



A  
DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS, 1862—1909;

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,  
1836—1909,

WITH AN INDEX OF CASES,

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA;  
AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

IN SIX VOLUMES.

VOLUME II: D—I.

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1912

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## HEADINGS, SUB-HEADINGS, AND CROSS-REFERENCES.

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type, and the sub-headings in small capitals. The cross-references are printed in ordinary type.

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(b) ACCOUNT.

(c) AGENT.

(d) ARBITRATION.

(e) BILL OF EXCHANGE.

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# A DIGEST OF THE HIGH COURT REPORTS, 1862-1909, AND OF THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836-1909.

## D

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1. ——— Definition of—*Plunder*. The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. *QUEEN v. KHOYRAT ALLY BEG* . . . 3 W. R. Cr. 60

2. ——— Elements of offence. In a case of dacoity, the Judge should direct the jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor or wrongful gain to themselves. *QUEEN v. BONOMALY GHOSE* . . . W. R. 1884. Cr. 8

3. ——— House-breaking by night. Five men armed were discovered committing an act of house-breaking by night. One of the party was

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4. ——— Participators in dacoity—Persons found in possession of property. When persons are found within six hours of the commission of a dacoity with portions of the plundered

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5. ——— Taking away produce in good faith under colour of right. Where the offence that was alleged to have been committed consisted of acts done under a claim of right in good faith entertained by the accused, however erroneously, a criminal charge cannot be sustained.

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6. ——— Robbery with violence—*Penal Code, s. 395—Causing fear of hurt*. When a body of men attack and plunder a house, the mere

sufficient, for the application of the section, that the robbers cause or attempt to cause the fear of

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instant hurt or of instant wrongful restraint.  
**QUEEN v. KISHOREE PATER** . 7 W. R. Cr. 35

7. ——— Assembly for purpose of committing dacoity—*Admission*. Case of an

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8. ——— [Gang of dacoits—*Penal Code*, s. 400. It is necessary, in order to establish a charge under s. 400, Penal Code, that the prosecu-

8. ——— Habitual commission of dacoity and robbery—*Penal Code*, s. 400. To

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10. ——— Forcible removal of cows by Hindus from the possession of Mahomedans—*Penal Code*, s. 395—*Rioting*. Where a large body of Hindus, acting in concert and apparently under the influence of religious feeling, attacked certain Mahomedans who were driving cattle along a public road and forcibly deprived them of the possession of such cattle under circumstances which did not indicate any intention of subsequently restoring such cattle to their lawful owners—*Held*, that the offence of which the Hindus were guilty was dacoity under s. 395 of the Indian Penal Code, and not merely not. **QUEEN-EMPRESS v. RAM BAHAN** . I. L. R. 15 All. 290

11. ——— Dacoity with murder—*Penal Code* (Act XLV of 1860), ss. 395 and 396—*Facts necessary to constitute the offence*. In order to

where certain persons were shown to have been concerned in a dacoity in the course of which murder

*held*, that the accused could not properly be con-

**DACOITY—contd.**

victed under s. 396, but only under s. 395, of the Penal Code. **QUEEN-EMPRESS v. UMRAO SINGH**  
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12. ——— Dacoity with murder—*Penal Code* (Act XLV of 1860), ss. 395, 396—*Ingredients necessary to constitute the offence*—*Causing of death or hurt, etc., not for the purpose of committing theft*. The first essence of an offence under s. 396 of the Penal Code is that the dacoity is the joint act of the persons concerned, and the second essence of the offence is that the murder is committed in the course of the commission of the dacoity in question. The essence of the offence of robbery involved in the offences under ss. 395 and 396 is that the offender for the end of committing theft or carrying away or attempting to carry away properties obtained by theft, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint. When several persons are found to have attacked and assaulted some other person or persons, not for the purpose of carrying out the object of looting property, but quite independently of it, the main element which constitutes the offence under s. 395, read with s. 396, Indian Penal Code, is wanting, and there can be no conviction of the accused for that offence. **KISA-DURFEROR v. MATHURA THAKUR** (1901)

6 C. W. N. 73

13. ——— Dacoity in the course of which murder is committed—*Penal Code* (Act XLV of 1860), s. 396—*Facts necessary to establish the offence*. When in the commission of a dacoity murder is committed, it matters not whether the particular dacoity charged under s. 396 of Act XLV of 1860 was inside the house where the dacoity is committed or outside the house, or whether the murder was committed inside or outside the house so long only as the murder was committed in the commission of that dacoity. **QUEEN-EMPRESS v. UMRAO SINGH**, I. L. R. 16 All. 437, distinguished. **QUEEN-EMPRESS v. TEJA** . I. L. R. 17 All. 86

14. ——— Using deadly weapon in dacoity or robbery—*Penal Code* (Act XLV of 1860), s. 397. A conviction, under s. 397 of the Penal Code, of using a deadly weapon whilst engaged in the commission of robbery or dacoity is equally good, whether the number of thieves be five or under. **QUEEN v. DWARKA AHEER**

2 W. R. Cr. 49

15. ——— Commission of grievous hurt in the course of a dacoity—*Penal Code* (Act XLV of 1860), ss. 397, 34—*Person liable under s. 34, liable also under s. 397*. *Held*, that the words "such offender" in s. 397 of the Indian Penal Code include any person taking part in the dacoity who, though he may not himself have struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of s. 34 of the Code. **QUEEN-EMPRESS v. MAHABIR TIWARI**

I. L. R. 21 All. 263

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18. ——— Attempt—Penal Code (Act XLV of 1860), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction under what section to be recorded. Where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested: *Held*, that they could not properly be convicted under s. 397, read with s. 511, of the Indian Penal Code. *Queen v. Koonce*, 7 W. R. Cr. 48, referred to *QUEEN-EMPRESS v. BENI* (1900) . . . I. L. R. 23 All. 78

17. ——— Penal Code (Act XLV of 1860), s. 402—Assembling for the purpose of committing dacoity—Evidence. Several persons were found at 11 o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. None of them had a license to carry arms, and none of them could give any reasonable explanation of his presence at the spot under the particular circumstances. *Held*, that these persons were rightly convicted under s. 402 of the Indian Penal Code of assembling together with intent to commit dacoity. *The Deputy Legal Remembrancer v. Karuna Baisobhi*, I. L. R. 22 Calc. 161; *Balmakand Ram v. Ghansam Ram*, I. L. R. 22 Calc. 391; and *Queen-Empress v. Papa Sant*, I. L. R. 23 Mac. 159, referred to. *QUEEN-EMPRESS v. BROLU* (1900) . . . I. L. R. 23 All. 124

18. ——— Possession of stolen property—Penal Code (Act XLV of 1860), ss. 395, 411—Charges of dacoity and receiving stolen property—Charge to jury—Possession of stolen property—Misdirection. On the trial of an accused before a Judge and jury at a Court of Session, for dacoity and receiving stolen property, the Judge, in his charge to the jury, directed them that the fact of a stolen shirt

was, on appeal, that this was a misdirection. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury, and should not have been put to them in the positive way which the Judge adopted. *GUZZALA HANUMAN v. EMPEROR* (1902)

I. L. R. 28 Mad. 467

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9 C. W. N. 122

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*See* MUNICIPALITY I. L. R. 31 Bom. 37*See* NEGLIGENCE. I. L. R. 31 Bom. 391*See* RAILWAY COMPANY

I. L. R. 29 All. 226

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I. L. R. 32 Calc. 429

**1. SUITS FOR DAMAGES.****(a) BREACH OF CONTRACT.**

1. ——— Breach of contract to put  
lessee in possession. A suit will lie for damages  
sustained by a lessee by his lessor's breach of con-  
tract to put him in possession of a portion of the  
property of which he granted the lease. *FIREN-  
GEE SINGH v. AHMED HOSSEIN* . . . 7 W. R. 22

2. ——— Liability to repay  
Defendants  
as a lease of  
to a zamindar  
Government.

but were at the time under temporary settlement  
with the defendants. Subsequently defendants  
sold their zamindari to a third party, reserving  
to themselves the chur. Ultimately it was ordered  
by the Commissioner of Revenue that the churs  
should be settled, not with defendants, but with  
the zamindar (the third party), as against the

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

*Held*, that it was the duty of the defendants to take steps to call in question the decision of the Commissioner, and that their manager's admission of their liability to repay the premium with interest put an end to any claim for damages for the original breach of contract, and constituted a fresh cause of action from which limitation ran. **BRZO NATH PAUL CHOWDHRY v. BIMOJA SONDDEKE DOSSIA** . . . . . 15 W. R. 288

3. ——— Suit by partner of lessee for illegal ejectment where he was not a party to the contract of lease. Where a person becomes surety for the due performance by the lessee of the obligations contained in a lease for a term of years, and afterwards became a partner with the lessee, and the lessor ejected the lessee before the expiration of the lease it—*Held*, that a suit would be by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor. **BERRODA KANT ROY v. RAM TENOO BUSE** . . . . .

7 W. R. P. C. 51

**S. C. BURDAKANTH ROY v. ALKE MUNJOOREE DASSIAH** . . . . . 4 Moo. I. A. 321

4. ——— Tenant's right to compensation for eviction—*Acquisition of land*. Government took for public purposes a quantity of land, which included four cottages leased by M to plaintiff as the site of an iron foundry. Proceedings with a view to compensation were duly had, pursuant to Act VI of 1857, and the arbitrators awarded a sum for the whole land and premises, of which sum they gave plaintiff a small part, and the rest to M. Plaintiff, who did not appear before the arbitrators, brought a suit to reimburse himself for loss sustained by him—*Held*, that the plaintiff was entitled to the whole sum awarded by the arbitrators.

5. ——— Neglect of tenants to pay road cess or public works cess—*Beng. Act I of 1871, s. 23—Beng. Act VIII of 1869, s. 41*. Tenants are liable in damages for neglect to pay road and public works cesses. **SARODA PHOSAD GANGGOOLY v. PROUSNO COOMAR SANDIAL** . . . . .

I. L. R. 8 Cal. 290; 10 C. L. R. 223

6. ——— Breach of contract in completing purchase—*Earnest-money, right to recover*. D contracted to sell to P a piece of land for Rs. 4,500, of which he received Rs. 700 as earnest-money. A contract was drawn up, by which D agreed to execute and register a bill of sale, and deposit a part (Rs. 1,800) of the price, and P was to execute a bond for Rs. 2,000, to bear interest conditioned for the payment of that sum by a fixed date, the transaction to be completed within a specified period. D was ready and willing to

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.]**

perform his part of the contract by the time named, but finding that P would not complete the purchase, but demanded back the earnest-money, he sold the property to a third party for Rs. 800. P then sued to recover the earnest-money and damages. *Held*, that P was bound to show that the circumstances were such as to give him an equitable right to have back the earnest-money, and that, had it not been deposited, D could have justly sued for damages to the extent of the loss incurred by the second sale, and therefore P was not entitled to recover the Rs. 700. **RAJCOOMAR ROY CHOWDHRY v. DEBENDRONATH ROY** . . . . . 15 W. R. 41

7. ——— Contract for sale of immovable property—*Breach of such contract—Damages—Costs of suit—Title to be made by vendor*. On the 8th October 1881, the defendant, who was executrix of one M, contracted to sell to the plaintiff a house in Bombay for Rs. 331; the contract to be completed within two months. The plaintiff paid Rs. 50 as earnest-money at the date of the contract, and the remainder of the purchase-money—*Held*, that the plaintiff was entitled to the conveyance.

the plaintiff was not for the title-deeds, in order that the conveyance might be prepared; and on the 6th December, the defendant through her solicitors replied that she was ready and willing to execute the conveyance, but could not find the title-deeds. The plaintiff's solicitor then requested to be furnished with an abstract of title, or a statement of the defendant's title to the house, and then they would consider what could be done. No reply to this letter being received, they wrote again on the 10th December 1881, stating that the time for completing the contract had expired; and giving formal notice that, if the defendant did not send the abstract or statement of title within two days, proceedings would be taken to compel specific performance and to recover damages. In reply to this letter, the defendant's solicitors wrote on the 11th December 1881, that they were unable to find the title-deeds, and that they were unable to state that the property was mortgaged to M (of whose will the defendant was executrix) and one K; that K had agreed to convey the property in question to the defendant; and that the deed of conveyance was being prepared. They

struck to state that the property was mortgaged to M (of whose will the defendant was executrix) and one K; that K had agreed to convey the property in question to the defendant; and that the deed of conveyance was being prepared. They



DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(a) BREACH OF CONTRACT—*contd.*

to take the mere conveyance offered, but if the defendant would deposit the purchase-money in a bank in the joint names of the plaintiff and de-

possible for loss and costs incurred by the delay. Further correspondence ensued, and a suit was filed on the 20th February 1885 praying for specific performance and Rs500 damages, or that the defendant should pay to the plaintiff the sum of Rs2,500 damages, and refund the Rs500 earnest-money. It subsequently transpired that the title-deeds were with A, the co-mortgagee, and they were set forth in the defendant's affidavit of documents filed in July 1885. The defendant, after the suit was filed, sold the property to one J, and A, the co-mortgagee, joined in the conveyance to him. Held, that the case was governed by *Flureau v. Thornhill*, 2 W. R. 1070, and *Bain v. Fothergill*, 7 Eng & Ir. Ap. 268, and that the plaintiff could not recover damages for the loss of his bargain. The defendant had offered to do all that lay in her power to carry out her contract, and the case of *Engell v. Fitch*, L. R. 4 Q B. 659, did not apply. PRAMBER SUNDARJI v. CANNISSI  
I. L. R. 11 Bom. 272

8. — Rights of renter of abkari farm—*Madras Abkari Act (Madras Act III of 1864), s. 6*—Right of Collector to close shops included in the renter's contract—Collector's orders modified by Board of Revenue. The plaintiff rented from Government an abkari farm, on terms which reserved certain powers of control to the Collector, and obtained a license under the Abkari Act.  
W. R. 1864, 337

the Collector's orders were not in excess of the powers reserved to him under the contract, and that they had not been issued arbitrarily or otherwise than in good faith. In a suit for breach of contract and for damages occasioned to the plaintiff by these orders:—Held the plaintiff was not entitled to recover. SECRETARY OF STATE FOR INDIA v. CHOYE  
I. L. R. 14 Mad. 82

9. — Breach of covenants for title—*Voluntary settlement—Consideration*. Though, under the English law, damages may be recovered for breach of covenants for title contained in a voluntary settlement of such a character as to be ineffectual without the assistance of a Court of equity, and which assistance a Court of equity would refuse to a volunteer, yet this depending

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(a) BREACH OF CONTRACT—*contd.*

on the principle of English law, that a document sealed and delivered imports consideration, which principle does not hold as between Hindus, it is open to a defendant to show that the plaintiff is suing on a contract for which there was no consideration other than natural love and affection, which cannot be made the ground of a suit for damages. RAJU BALU v. KRISHNARAY RAMCHANDRA  
I. L. R. 2 Bom. 279

10. — Refusal to deliver up child under order of Court—*Civil Procedure Code, 1859, s. 192, Act VIII of 1877*, only applied to suits for damages for breach of contract, and did not authorize damages for refusal of a mother to comply with an order of Court to deliver up her daughter. RAJ BEGUM v. REZA HOSEIN  
[2 W. R. 76]

11. — Omission to sue on bond pledged as security. Held, that a suit will not lie for damages against the holder of a bond pledged as security for his omission to sue on that bond within the period of limitation. MARUND LALL v. RAGHOBET DOSS  
2 Agra 83

12. — Breach of contract not to sell to stranger—*Co-sharers—Specific penalty*. When one of two co-sharers in a property violates a secret engagement between them by selling to a stranger, the other cannot claim a specific penalty, but has his remedy in an action for damages. TOSOBOK HOSEIN v. MEJAN  
W. R. 1864, 337

13. — Sale of estate on default of some co-sharers in payment of revenue—*Suit by co-sharer for damages by sale at inadequate price*. A suit will not lie between joint owners of an undivided estate for damages sustained by the sale of the estate of the defaulting co-sharer.  
W. R. 72

14. — Joint undivided proprietor—*Co-sharer*. No suit for damages as between joint owners on undivided estate.  
W. R. 72

15. — False representation—*Breach of contract—Husband signing bond for wife without authority—Cause of action*. Where a husband writes and signs a bond in the name of the wife, the wife is not liable to pay the debt.  
W. R. 249

**DAMAGES—contd.****I. SUITS FOR DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

16. ——— **Non-attendance at feast after accepting invitation—Suit for price of unconsumed food.** Persons accepting an invitation to an entertainment at their neighbour's house and afterwards failing to attend cannot be held liable to a suit for damages for the price of the food unconsumed on account of their absence. *KALAI ILLADAR v. KYAMUNDI* 28 W. R. 417

17. ——— **Suit after criminal prosecution—Cheating—Return of money by Criminal Court as compensation.** Defendant, having contracted to sell two boats to plaintiff for Rs. 1, received the consideration money, but did not deliver the boats to the plaintiff, who prosecuted him for cheating in the Criminal Court. The Magistrate convicted him of cheating, and ordered the money which had been obtained by it to be returned to plaintiff. Plaintiff then sued in the Small Cause Court for the value of the boats and for damages for non-delivery of the boats. *Held*, that the suit would not lie. *PROHLAD TEWAR MANJEE v. DED NARAIN GHOSE* 18 W. R. 247

18. ——— **Agreement to purchase—Notice—Agreement to purchase—Failure to do so—In an agreement made by the defendant with the**

to do so they would sell the property. *SUKUM SINGH v. HONUMAN DAS* (1902) 7 C. W. N. 108

19. ——— **Executory contract—Municipality—Bombay District Municipal Act Amendment Act (Dom Act II of 1884), s. 30—Breach of executory contract—Binding character.** In a suit for damages for breach of an executory contract, it is open to the defendant to show that it is not binding on him inasmuch as it is not binding on the plaintiff. *AHMEDABAD MUNICIPALITY v. SULEMANJI ISMAILJI* (1903) I. L. R. 27 Bom. 618

20. ——— **Proof—Proof of inferiority of quality—Examination of samples from portions of bulk—Method of ascertaining damages—Method established and recognized in the trade.** In a suit for

**DAMAGES—contd.****I. SUITS FOR DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

fair number of samples taken from different portions of the bulk is sufficient for the purpose. In a case of this class, if the method of ascertaining damages appears to be established and recognized in the trade, the plaintiff need not show how he has dealt with the goods delivered to him, and whether he has suffered any and what loss by reason of the goods not being up to the warranted standard. *BORISGOVOREFF v. NARAISET JETE CHURINA* (1902)

I. L. R. 29 Cal. 323; s.e. 6 C. W. N. 495

21. ——— **Continuous cause of action—Agreement—Restraint of trade—Contract Act (IX of 1872), ss. 23 and 27—Transfer of business to a limited company—Effect.** *Held*, that whether or not a High Court in India could award damages in respect of a continuing cause of action, up to the date of its decree, subsequent successive accruals of an obligation to contribute to a fund could not be treated as falling within that description, and could not be awarded in a suit where they had accrued due subsequently to its institution. *FRASER AND COMPANY v. THE BOMBAY ICE MANUFACTURING COMPANY* (1903)

I. L. R. 20 Dom. 107

22. ——— **Licence to work in forest—Damages, suit for—Breach of contract—Construction of contract—Verbal agreement, contemporaneous—Evidence Act (I of 1872), ss. 91 and 92, proviso (2).** One of two defendants in consideration of advances made to him by the plaintiff for the purpose of paying the cost of obtaining the lease of a forest in the name of his son, the other defendant, made an agreement with the plaintiff that "when

struction the agreement contemplated the making of a contract for working the forest only on the return of the son and left all terms to be then arranged; and the plaintiff was entitled only to recovery of the advances with interest. An alleged contemporaneous verbal arrangement as to the

I. L. R. 32 Cal. 90

s.e. 6 C. W. N. 147

I. L. R. 31 I.A. 188

23. ——— **Carriers—Contract to carry partly by river and partly by land—Liability of carriers—Damages—Discharge contract—Carriers Act (III of 1865), ss. 3 to 5, 8—Highways**

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

*Act (IX) of 1890, s. 75—Excepted articles—Misdescription of goods* In a suit for damages for loss of goods earned partly in steamers of one company and partly by trains of another, the plaintiff failed to declare the value and description of the goods as required under the provisions of the Carriers Act and the Railways Act:—*Held*, that so far as the journey is by river, the Steamer Company is entitled, as regards the acts of its agents and servants, to the protection afforded by the provisions of the Carriers Act, and so far as the journey is by rail, it is similarly entitled to claim the protection afforded by the Railways Act. *Le Conteur v. The London and South-Western Railway Company, L. R. 1 Q. B. 51, and Barendse v. The Great Eastern Railway Company, 33 L. J. Q. B. 137, referred to. NARANG RAI AGARWALLA v. RIVERS STEAM NAVIGATION COMPANY, LD. (1907)*  
**I. L. R. 34 Calc. 419**

**24. ——— Wrongful dismissal—Damages, suit for—Calcutta Municipal Act (Beng 111 of 1899), ss 15, 63 to 65—Chairman, power of, to appoint officers on salaries below Rs 200—General Committee, annual sanction by—Ultra vires** The provisions of s. 15 of the Calcutta Municipal Act do not apply to the appointment of municipal officers and servants whose appointments are expressly provided for by Chapter VI of the Act. Under s. 65 of the Act the Chairman may appoint officers and servants on a salary below Rs 200 a month, but such appointment is subject to an annual sanction by the General Committee; any appointment made outside the terms authorised by the section is *ultra vires*. *KEDAR NATH BHANDARY v. THE CORPORATION OF CALCUTTA (1907)*  
**I. L. R. 34 Calc. 863**

**(b) TORT**

**25. ——— Damage by wrongful act—Malice—Injury to legal right** In the case of

it was done by the order of Government. Malice is not a necessary ingredient to the maintenance of the action. It is essential to an action in tort that the act complained of should, under the circumstances, be legally wrongful as regards the party

**26. ——— Abetment of tort—Damages for wrongful taking of moveable property.** In actions of wrong, those who abet the tortious acts are equally liable with those who commit the

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(b) TORT—contd.**

wrong. Regard being had to the constitution of the Courts of this country, which are Courts of justice, equity, and good conscience, a decree-holder should be reimbursed damages for the time during which he is kept out of possession by the wrongful act of another party, whether his claim for enforcement damages is met or not.

if delivery cannot be had, the goods must be delivered if capable of delivery, but if not capable of delivery, then assessed damages should be paid. *KASHEE NATH KOOKER v. DEB KRISHO RAMA-NOOR DASS*  
**16 W. R. 240**

**27. ——— Suit for damages after decree declaring act wrongful.** A suit will not lie for damages apart from the cause of action out of which the damages arise. *MAHOMED ANOOR v. JALLA BISSESSUR DYAL*  
**21 W. R. 154**

**28. ——— Suit brought without reasonable or probable cause—Taking up suit after its institution.** In the case of a suit brought without any reasonable or probable cause, where a

he was held liable to damages for its institution. *GOLAR CHAND NOWLECKHA v. JEEBUT COOMAREE BISSE*  
**24 W. R. 437**

**29. ——— Order made by Magistrate without jurisdiction on bona fide application—Liability for damages** No man, acting with good faith, and believing that he has a ground for doing so, should be held liable because, upon his

application to the Magistrate to open a bund and let out the water, and the Magistrate

**30. ——— Order of Magistrate as to nuisance—Injury caused by order—Criminal Procedure Code (Act XXV of 1861), s 398.** Where a Magistrate has made an order under s 308 of Act XXV of 1861, the party aggrieved thereby cannot sue the Magistrate for damages before he can show that

were actual malicious motives against him, or intended wrongfully to injure him. *CHINTA-MONT BAPPOOLEE v. DIGAMBER MITTAR*

**2 B. L. R. S. N. 15**  
**s.c. 10 W. R. 409**

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(b) TORT—contd.**

HARAPRASAD ROY CHOWDHURY v. DIGAVERT MITTER . . . 2 B. L. R. S. N. 16

31. ——— Damages caused by civil action—Costs—Malicious suit. No action is maintainable for damages occasioned by a civil action, even though brought maliciously and without reasonable and probable cause: nor will an action lie to recover costs awarded by a Civil Court. SHIVSHANKAR v. GOVINDLAL PARDHIDAS

I. L. R. 1 Bom. 467

32. ——— Wrongful distraint of cattle—Cattle Trespass Act, III of 1857, s. 14—Suit where remedy under Act is barred. Where a person whose cattle have been illegally distrained fails to take advantage of the remedy provided by s. 14, Act III of 1857, he is not thereby prohibited from bringing an action for damages in a Civil Court. NOMAZ MOLLAN v. LALL MOHUN TAGADGEER

16 W. R. 279

33. ——— Suit for compensation for wrongful seizure of cattle—Cattle Trespass Act (I of 1871)—Jurisdiction of Civil Court. A

of Alem v. Kalla Durzi, 2 C. L. R. 344, dis- sented from. SHETTRUON DAS COOMAR v. HOKMA SHOWTAL . . . I. L. R. 18 Calc. 159

34. ——— Secretion of estate papers by one of joint owners. A joint owner who secretes the estate paper, and thereby deprives his joint owners of the means of collecting the rents and other debts due to them, is liable to be sued for damages. PITTUNER DOSS v. RETTON BELLER DOSS . . . W. R. 1864, 213

35. ——— Refusal to allow pleader to appear . . .

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6 Bom. A. C. 202

36. ——— Refusal of master of ship

GRASEMANN v. LITTLEPAGE

3 W. R. Rec. Ref. 1

37. ——— Fraudulent transfer of property—Sale without authority. Where the plaintiff's property had been fraudulently transferred:—Held, that he was entitled to recover the damage or loss which he sustained on account of such fraudulent transfer from the actual transferor, and from the person who was found to have been the prime mover and instigator in the transaction, as well as

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(b) TORT—contd.:**

from his own agent who consented to such transfer, and the purchaser who, being aware of circumstances sufficient to create suspicion, dealt with the persons who had no authority to sell. WHARTON v. MOONA LALL . . . 1 Agr. 96

38. ——— Persuading wife to absent herself from her husband—Mahomedan law. A suit for damages is maintainable by a Mussulman against persons who, without lawful excuse, have persuaded and procured his wife to remain absent from him and live separately. A Mussulman lawfully married to a girl who has attained puberty can maintain a suit for damages against the father of the girl, and against an alleged husband of the girl for wrongfully persuading her to remain absent from the plaintiff's society and for detaining her away from him. MUHAMMAD IBRAHIM v. GULAN AHMED . . . 1 Bom. 326

39. ——— Defamation of character—Dismissal of mooktear, ground for. In an action to recover damages for defamation of character brought by the late mooktear and manager of a parda-nashin Mahomedan lady who had in a petition to the Munsif represented that she had discharged the plaintiff from her service, because he had not managed her properties honestly, and had been guilty of misappropriation, it appeared that the plaintiff had rendered no accounts, and had allowed a year to pass before resenting the libel:—Held, by KEMP, J. (Glover, J. dissenting), that the defendant had reasonable grounds for making the statement, and that, in the absence of evidence of malice, the suit was rightly dismissed. AMZEN- OODDEEN AHMED v. KHAYROONISSA 20 W. R. 60

ERBAL BHADOOR v. SOLINO . . . 2 W. R. 164

40. ——— Destruction of indigo plants in execution of award—Costs. A suit will not be for damages sustained in consequence of the destruction of indigo plants in execution of an award under s. 15, Act XIV of 1859; nor for damages in the shape of the value of *kolai* crop, re-

41. ——— Injury caused in execution of decree—Omission to act legally by decree-holder. If a decree-holder has omitted to do what he is legally bound to do, and has thereby caused injury, the party injured may claim damages. RUMUDEEN HOSSEIN v. FEZALUN . . . 3 W. R. 120

42. ——— Execution of decree without jurisdiction—Liability of applicant for execution. Where a Court attempts to execute a decree without having jurisdiction to do so, the person applying for that execution would be liable to be sued for damages. DOYLE v. DWARAKANATH CHATTERJEE . . . 6 W. R. 69

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

See JOYKALEE DOSSEE v. CHAND MALLA

19 W. R. 133

43. ——— Refusal to deliver idol for worship—*Right to turn of worship of idol—Cause of action.* A refusal to deliver up an idol whereby the person demanding it was prevented from performing his turn of worship on a specified date, gives the party aggrieved a right to sue for damages. DEBENDRO NATH MULLICK v. ODIRA-CHURN MULLICK . . . I. L. R. 3 Cal. 300

44. ——— Intrusion on office—*Suit for fees by valandar joshi against intruder.* The valandar joshi of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him. RAJA VALAD SHIVAPA v. KRISHNABHAT . . . I. L. R. 3 Bom. 232

45. ——— Sale of minor's property—*Fraud and collusion between vendors and purchasers—Suit by purchasers against vendors when sale is set aside.* It is not for the public benefit that, where two parties knowingly deal with the sale and purchase of property of infants who have not by law the power of sale, one of the parties (the purchasers) who obtain possession of the property in a manner calculated to injure the infants should be able to sue the other party (the vendors) for damages. The Privy Council even refused to give costs to either party, considering them both *in pari delicto*. BHOGENARAIN CHOWRY v. RAGHU NATH GOBIND ROY . . . 18 W. R. 230

46. ——— Leaving boats in such a position that they are useless until river rises. A party who wrongfully takes possession of another's boats and places them in such a position

boats cannot be moved. NUDIAN CHAND SHANA v. PRANNATH SHANA . . . 21 W. R. 8

47. ——— Legal ejectment of tenant after he has sown crops—*Trespass—Right to possession.* F accepted a lease from N of certain land and sowed it with indigo. B then sued F and N, claiming to be maintained in possession of the land and the cancellation of the lease, and obtained a decree on the 10th of January 1873, and subsequently to that date entered upon the land and brought a suit . . .

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f

was at liberty to enter upon the land and to cultivate, notwithstanding he had not taken out execution of his decree, and that, if

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

injury occurred to F by B's occupation of the land under his decree, he had no claim on the latter for damages. BASANT KAWAL v. POTH 7 N. W. 47

48. ——— Suit for damages for removal of crop—*Defendant entitled to possession under decree of a competent Court of revenue—Plaintiff in actual possession under an illegal decree of a Civil Court—Trespass.* A held a decree of a competent Court of revenue for possession of certain land as against B, and obtained under that decree formal possession of that land. B, however, was allowed to remain in such necessary possession of the land as was requisite to enable him to remove a crop which was on the land. B removed his crop, and thereafter sued in a Civil Court for a declaration that he was A's tenant of the land in question holding occupancy rights. A did not defend the suit, and the Civil Court passed a declaratory decree in favour of the plaintiff, and further proceeded to execute that declaratory decree by putting B in possession. Subsequently B sued A for damages in respect of the alleged removal by A of a second crop, which he asserted that he (B) had sown upon the said land. Held, that B had no cause of action, and that, even if in fact he had sown the crop in respect of which damages were claimed, he did so at his own peril and as a trespasser. UDIT NARAY SIRON v. SHRI RAI . . . I. L. R. 20 All. 108

49. ——— Injury done by raising

damages had been given on proof of malicious trespass, although specific injury had not been established, were inapplicable to suits like the present, in which the essence of the plaint was a

50. ——— Omission of witness to appear—*Suit for damages against defaulting*

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) Tort—*contd.*

*se.*, a sufficient proof of his liability to damages.  
**DWARAKANATH KOONER v. ANUNDO CHUNDER SANNEL** . . . 5 W. R. S. C. C. Ref. 18

51. Cause of action—*Suit for damages covered by false statement of witness in a suit.* No action will lie against a witness for making a false statement in the course of a judicial proceeding.  
**CHIDAMBARA v. THELVANI**  
 I. L. R. 10 Mad. 87

52. Infringement of right—*Dammum sine injuria.* A plaintiff whose right has been invaded is entitled to some remedy, whether damage has accrued to him or not.  
**RAMDHUL SANOOR v. MISREE LALL** . . . 24 W. R. 87

53. Actual loss, proof of. Proof of infringement of a right, without proof of actual loss, does not necessarily entitle a plaintiff in this country to a verdict for nominal damages.  
**NADAREISHNA MOOKERJEE v. COLLECTOR OF HOOGHLY** . . . 2 D. L. R. A. C. 276

54. Proof of consequent injury. In order to maintain an action for damages for the infringement of a right, it is not necessary to show that there has been any subsequent injury consequent on such infringement.  
**RAM CHAND CHUCKERBUTTY v. NUNDIA CHAND GHOSE** . . . 23 W. R. 230

55. Failure to prove injury. Where defendants infringed plaintiff's legal right, and the lower Court dismissed the suit with costs, on the ground that plaintiff had given no proof of damage, the Court of Appeal allowed the appeal.  
**ALLIA**.  
 2 Mad. 442

56. Infringement of right—*Exclusive right to maintain a temple.*

Curia pot on that day in any part of that temple was a violation of that right entitling the plaintiff to damages.  
**NARAYAN SADANAND BAVA v. BALAKRISHNA SHRIDESHVAR** . . . 9 Bom. 413

57. Erection of embankment—*Interest in land—Right of suit.* A erected an embankment across river, in consequence of which lands let by B to raiyats were overflowed, and the crops lost. The raiyats paid rent to B only when crops were reaped from the lands. Held, that B had such an interest as to entitle him to sue A for damages.  
**RAM CHANDRA JANA v. JIBAN CHANDRA JANA**  
 I B. L. R. A. C. 203

58. Erection of buildings—*Right to such buildings.* Parties are at liberty to build

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) Tort—*contd.*

what structures they please on their own lands, but if by doing so they interfere with the free enjoyment of their neighbours' property, they are liable to damages.  
**KASSIM ALI KHAN v. BIRU KISSORE** . . . 2 N. W. 182

**RAM ROOCH CHOWDREE v. DEOKER NUNDUN**  
 7 W. R. 169

**KADER BUKSH BISWAS v. RAM NAG CHOWDHURY**  
 7 W. R. 448

59. Trespass—*Build- ing on plaintiff's land—Mandatory injunction—Suit for further damages for alleged disobedience of mandatory injunction—Cause of action—Right of suit—Execution of decree—Suit to enforce decree.*

plaintiff's asked action, d for a mandatory injunction, ordering the defendant within two months to remove the wall, and to restore the plaintiff's premises to their former condition. Two years subsequently the plaintiff brought another suit for damages, alleging his cause of action to be the defendant's disobedience of the mandatory injunction, and proving as damages that people were deterred from becoming his tenants by fearing that, owing to the defendant's previous action, the hill-side on which the plaintiff's premises were situate was likely to fall. There was no structural or other damage done to the plaintiff's property other than that which was done prior to the commencement of the previous suit. Held, that the suit would not lie for damages for non-compliance with the mandatory injunction, to compel the performance of which the plaintiff had his remedy in execution.  
**Mitchell v Darley Main Colliery Company, L. R. 11 Ap. Cas. 127, distinguished.** **JAWITRI v. EVELLE**  
 I. L. R. 13 All. 98

60. Suit for injury done to land by former proprietor. An action for damages will not lie against a present proprietor for injury done to the land during the time of the former proprietor.  
**COLLECTOR OF 24-PERGUN- NAMS v. JOYNARAIN BOSE**  
 W. R. F. B. 17: 1 Ind Jur. O. S. 101

61. Cutting timber. Where one acquires, by license, an exclusive right to cut, and to authorize others to cut, timber in a forest, such right does not vest in him the timber in the forest. He might thereby have a right to recover damages against any person who, by cutting timber, should interfere with his exclusive right, but that would not vest in him the timber so cut by others.  
**SNADDEN v. MAHWINE**  
 2 B. L. R. A. C. 292

62. Light and air—*Obstruction to free use of light and air.* A person is entitled to

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

the free use of his ancient light and air. When any person wilfully and intentionally obstructs that light and air, he is liable for the removal of the obstruction. Money damages will be no compensation for the injury. **MARHED HOSEIN v. JAFAR ALI** . . . . . 4 W. R. 23

**PURAN MADDUCK v. OODAY CHAND MULLICK** . . . . . 3 W. R. 29

63. ——— Injury to land by bursting of bund. Suit for damages caused to the plaintiff's land by the bursting of the defendant's bund. *Held*, that the plaintiff was not entitled to damages if the bund was made in a lawful manner, and if the breach was owing to no fault of the defendant. **GOONOO CHURN MULLICK v. RAI DUTTA** . . . . . 2 W. R. 43

64. ——— Stoppage of flow of water—*Prescriptive right*. A suit will lie to establish a prescriptive claim to irrigate from a running stream, and for damages caused by the stoppage of the water by the proprietors higher up the stream erecting dams on their own lands. **BEOPUR THAKOOR v. SUNKER DOSS** . . . . . W. R. 1864, 109

65. ——— Obstruction in exercise of right over water—*Question to decide at trial of suit*—*Civil Procedure Code, 1859, s. 197*. A suit may lie for damages for obstruction in the exercise of a right of *usufruct* over water, etc., although no property in the tank, etc., be asserted. And s. 197 of the Code of Civil Procedure does not apply to suits for damages of this nature, and consequently the question of the amount of damages must be determined at the trial and cannot be reserved for determination in execution of the decree. **RAMTUL LALL v. SREO NATH SINGH** . . . . . 1 N. W. 24; Ed. 1873, 24

66. ——— *Cause of action*—*Right to use of water*. In a suit for damages for the demolition of a singha or embankment intended to keep in surface water, if the embankment was situated on the defendant's land, such demolition could only be a cause of action where it not only infringed a definite right, but caused actual damage. **SEETA RAM v. KUMMEER ALI** . . . . . 15 W. R. 250

67. ——— *Damage to crops from interference with right of water*. In a suit to recover damages for loss caused during the years 1862, 1863, and 1864 by defendant's interference with plaintiff's right to the flow of water from a canal:—*Held*, with regard to the loss sustained in 1864, that plaintiff's right to recover depended upon whether or not the special damage claimed had accrued at the time of the bringing of the suit. **VISWANBARA RAJENDRA DEVER GARU v. STRADHI CHARANA SAMANTARAYA GARU** . . . . . 3 Mad. 111

68. ——— *Use of water—rights*—*Injury to neighbouring land*. The defendant closed up the outlets of a bank upon his own

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

land, whereby the surface drainage water had immemorably flowed from the plaintiff's land into and over the defendant's land, and so escaped. By reason of the closing of these outlets, the water was unable to escape, and the plaintiff's land became flooded and the crops therein damaged. *Held*, that the plaintiff was entitled to maintain a suit to recover from the defendant the amount of damages he had sustained by reason of the ancient flow of the water from his land being thus impeded. *Held*, also, that in a suit for damages sustained by such an act done on the defendant's own land, actual damage to the plaintiff must be shown in order to sustain an action; and that the liability of the plaintiff to remit the rents of raiyats whose crops were spoiled was sufficient damage. **ANUNDHOSE DASSEE v. HAMEEDONISSA** . . . . .

Marsh. 85; 1 Hay 152

**HAMEEDONISSA v. ANUNDHOSE DASSEE** . . . . . W. R. F. B. 22

69. ——— *Use of water—rights*—*Injury to neighbouring land*. A suit for damages will lie against a proprietor who pens back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his licence and consent. **BECHANAM CHOWDHURY v. PRUDENATH JHA** . . . . .

2 B. L. R. Ap. 53

70. ——— Abuse or threatening words—*Special damage*. Damages cannot be claimed for mere abuse or threatening language. **PHOOLBASSER KOER v. PARTON SINGH** . . . . .

12 W. R. 339

**CHUNDENATH DUTTA v. ISHTEREE DASSEE** . . . . . 18 W. R. 531

71. ——— Abuse and defamation—*Malice*—*Estimation of damages*. If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension

For further authorities on this point,—

See CASES UNDER JURISDICTION OF CIVIL COURT—ABUSE, DEFAMATION, AND SLANDER.

See CASES UNDER SLANDER.

## DAMAGES—contd.

## I. SUITS FOR DAMAGES—contd.

## (b) Tort—contd.

72. ——— Injury to reputation—*Malicious prosecution*. Damages may be recovered for injury to one's reputation. **RAMJEEY MOOKJEE v. WOONA CHITEN HAJJAH** . 7 W. R. 117

73. ——— *False charge*. Where a false charge led to a party being prevented going to his house until he had furnished bail, he was held to have suffered inconvenience and loss of reputation, for which an award of Rs 20 as damages was not unreasonable. **MADHUB CHANDER SINGH v. BAYLE MADHUB ROY** . 15 W. R. 85

74. ——— *Difficulty of assessing damages—Injury short of loss of caste*. The difficulty of assessing the amount of the damages, or the risk of numerous actions of the kind in the Civil Courts, forms no ground for dismissing a suit for damages for injury done to a plaintiff's social position and estimation, if a legal ground of action is shown. A plaintiff may be entitled to substantial damages for being beaten with a shoe, notwithstanding that he may not have lost his caste, or sustained a pecuniary loss or physical injury by the act complained of. **BYRAU PERSHAD v. ISHARR** . 3 N. W. 313

75. ——— *Public exhibition of effigy of person—Suit for damages for defamation of character*. Making and publicly exhibiting an effigy of a person, calling it by the person's name, and beating it with shoes, are acts amounting to defamation of character for which a suit for recovery of damages will lie. **PIRMAH DASS v. DWARKA PERSHAD** . 3 W. R. 435

76. ——— *Injury to personal honour and character*. A party whose conviction before a Criminal Court is reversed on

probable cause for making the complaint and charge. **KOIBATOULLAH v. MOTEE PERSHAD** . 13 W. R. 378

77. ——— *Wrongful attachment—Trespass—Bond fides*. A judgment-creditor who attaches property which does not belong to his judgment-debtor commits a trespass, for which he is responsible in damages, even though he may have acted without malice and mistakenly. **DAMODHAR TULJARAM v. LALLU KHUSALDIS** . 8 Bom. A. C. 177

78. ——— *Liability of decree-holder for wrongful execution*. Without proof of mala fides, the judgment-creditor is responsible in damages to any person whose property he wrongfully causes to be attached in execution of his decree. **RUGSON v. SUNJHEER SINGH** . 5 N. W. 311

**KANAI PRASAD BOSE v. HIRA CHAND MANU** . 5 B. L. R. Ap. 71

## DAMAGES—contd.

## I. SUITS FOR DAMAGES—contd.

## (b) Tort—contd.

**SURJAY BIRSE v. SARJUTILLA** . 3 B. L. R. A. C. 413

79. ——— *Cases reviewed*. Cases which decide that a person whose property has been wrongfully seized by the Court, or wrongfully seized and sold at a Court's sale as that of the judgment-debtor, is entitled to recover damages from the execution-creditor at whose instigation the property has been so seized or so seized and sold. *reviewed*. **KALU DIN VIRAJI v. DAMODHAR GOVIND** . 9 Bom. 82

80. ——— *Attachment of property of third person—Liability of execution-creditor for wrongful seizure in execution of decree*. There is not any universal rule that a judgment-creditor is, or that he is not, liable in suit for a wrongful seizure or for injury to the goods while under seizure. His liability must depend upon the

own conduct, not amount, in the judgment-creditor personally or his authorized agent (e.g.

tainly be liable for that wrongful seizure, and the officer of the Court could justify under the warrant, and would not be liable so long as he kept within the duty expressly prescribed for him by it. But if

circumstances as those last mentioned, the officer of the Court would be responsible. **VANA JAGANNATHJI v. HATA DITAJI** . 11 Bom. 48

81. ——— *Penalty—Compensation—Proof of malice*. Certain hundees, which F A & Co. had discounted for P, having been dishonoured by the drawers, F A & Co. sued

and J. O. belonging to Co. applied the regular



DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

suit which had been brought against P, on the ground that they (M and J) and P were partners in trade. The decision in the suit released the property on the ground that there was no such partnership, and that the property belonged exclusively to M and J. M and J then sued P & Co. to recover

and that damages in such a case should be in the nature of a penalty as well as of a compensation. Held, further, that plaintiffs were not bound to release their property, and it was no defence to their claim for damages to say that they might have done so by giving security, nor could their declining to do so shift the responsibility of the illegal acts of the defendants. VALABAI AM KHAN v. MTADEEN RAM 13 W. R. 3

82. Attachment before judgment without sufficient cause. Where a Court orders attachment of a defendant's property after it is satisfied that he is about to remove or dispose of it with intent to obstruct or delay the execution of the decree, it must be presumed that there was good and sufficient cause for the plaintiff having moved the Court to do so, even though the suits resulted unsuccessfully; and unless the contrary can be established, damages cannot be claimed. DHURMO NARAIN SARK v. SREENIVAS DASSEE 18 W. R. 440

83. Attachment made contrary to order. When a proper application for process has been made and a proper order granted, the officer of Court cannot be considered to be the agent of the person for whose benefit the process of the Court has issued. Nor is such person responsible for the mistakes or misconduct of the officer, unless he or his servants have personally interfered and directed the action of the officer. Where, in a suit for damages for wrongful attachment, it appeared that the defendant, in execution of a decree against a boat-owner, had obtained an order for attachment, by prohibitory order under s. 234 of Act VIII of 1839, of certain boats which had been hired by the plaintiff to take a cargo to Calcutta, and they were wrongly attached under

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

84. Attachment of property of third person under general warrant of seizure. Where a seizure is made under a general

A is not liable to B in a suit for damages. The seizure, moreover, having been made under the order of the Court, the defendant was not liable for what was done under the Court's order. *Semble*: Whether, if a judgment-creditor applies for a general warrant of attachment of all the defendant's property under s. 214, and under it causes property of a third person to be seized as property of the defendant, he is not liable to such third person. JOYMALEE DASSEE v. CHANDMALLA, 9 W. R. 133

85. Warrant of execution. A party is not liable to damages in respect of an attachment under a warrant issued by a Court. RAJENDRULAL GOPE v. ISHAN CHANDRA HAZRA 7 W. R. 355

86. Permission to use property attached—Principles in action of tort.

sion to use his own property, he was neither bound to accept the permission so accorded to him, nor, if he had accepted it, would he have lost his right of action, and he was entitled, at the very least, to a judgment for nominal damages. The principle

Doss 5 W. R. P. C. 91  
10 Moo. I. A. 563  
1 Ind. Jur. N. S. 269

87. Omission to claim compensation under Civil Procedure Code, 1859, s. 88. The omission to apply for compensation under s. 88, Act VIII of 1859 (assuming that section to be applicable to the present case), does not bar a regular suit for compensation for

and unjustifiable and without due authority of law, the award of damages was fair and unquestionable. DANIEL v. MORUN BISEE 1 Apr. 1904

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

88. ——— Transfer of decree—Subsequent attachment in execution against transferor—Right to compensation. A transferred a decree to B, who recovered part of the amount due under it, and was prevented from recovering the rest by an attachment of the decree in execution proceedings against A. *Held*, that A was liable to pay compensation to B. **PUTHIANDI MANIAND v. AVAIL MOIDIN** . . . I. L. R. 20 Mad. 157

age of the remedy provided by that section. **WILSON v. KANHYA SHAROO** . . . 11 W. R. 143

90. ——— Civil Procedure Code, 1859, s. 92, 96—Compensation for Injunction—Cause of action. A, having brought a suit against B, obtained and issued, on the 24th July 1868, an injunction against him under s. 92, Act VIII of 1859. The suit was, on the 18th of August 1868, dismissed; but no compensation was awarded to B, under s. 96 of Act VIII of 1859, in respect of the injunction which had been issued against him. A and B both appealed, the former against the decision dismissing his suit, the latter for compensation. Both appeals were dismissed on the 23rd November 1869; B's because it was engrossed on a stamp paper of the value of eight annas only. B, on the 6th December 1869, then instituted a suit against A in the Small Cause Court for damages in consequence of the injunction which A had caused to issue against him in his suit. *Held*, that B was not debarred, by s. 96 of Act VIII of 1859, from instituting a suit against A for damages, there not having been an award of compensation under that section. The cause of action accrued from the time at which the plaintiff was first damaged by the wrongful injunction, continued as long as the injunction remained in force, and limitation began to run as soon as the injunction was at an end. **NANDA KUMAR SHAH v. CAUR SANKAR** . . . 5 B. L. R. Ap 4: 13 W. R. 305

91. ——— Assault—Cause of action—Assault on provocation—Right of suit. An assault, which the defendant had committed on the plaintiff upon some provocation, was found to have been of a very gross character and not altogether justified. *Held*, that an action for damages lay against the defendant, and that the fact that the defendant had been fined by a Criminal Court was no bar to it. **AKHIL CHANDRA BISWAS v. AKHIL CHANDRA DEY** (1902) . . . 6 C. W. N. 815

92. ——— Trenches for foundation—Percolation of rain-water through the trenches—Injury to the neighbouring house. The defendant dug a trench on his land for the foundation of a superstruc-

DAMAGES—*contd.*1. SUITS FOR DAMAGES—*contd.*(b) TORT—*contd.*

ture on his land. This trench was close to, and in a line with, the back wall of the plaintiff's house. The rain-water collected in the trench and percolating into the foundations of the plaintiff's house, caused the back wall of the plaintiff's house to subside and caused other damage. The plaintiff

collected in the trenches and caused the shrinkage of the house, the defendant was not liable. Before a person can be held liable in damages for injury

natural user of it. Otherwise, he is not liable. **MOHOLAL v. BAI JIVEKOR** (1904)

I. L. R. 28 Bom. 472

93. ——— Slander—Suit for damages, maintainability of, in the Civil Court—Words spoken not defamatory to the person bringing the action. A suit for damages for an alleged slander will not lie in the Civil Court at the instance of any person, when the words complained of are neither defamatory of him nor have they caused him any injury. *Per HARRINGTON, J.*—A witness is not entitled to claim privilege for a slanderous statement wantonly made, which is neither an answer to any question addressed to him in examination or cross-examination, nor has any connection at all with the case under trial. **GIRWAR SINGH v. SIRAMAN SINGH** (1905)

I. L. R. 32 Cal. 1089

94. ——— Malicious prosecution—Commencement of prosecution bona fide—Continuance malo animo—Reasonable and probable cause—Question of fact. The plaintiff was a member of a joint Hindu family to which a house in Jambusar belonged. The tax in respect of this house fell into arrears. Summary proceedings before a Magistrate were instituted by the Municipality under the District Municipal Act. The amount was paid after the institution of the proceedings and the

members of its Managing Committee, (iv) its Secretary, and (v) its Diwara. The first Court dismissed the suit. The lower Appellate Court passed a decree against defendants Nos. 4 and 5 and awarded

**DAMAGES—contd.****1. SUIT FOR DAMAGES—contd.****(b) TORT—contd.**

teach a minatory lesson to other defaulters on the

Whether in such circumstances the Municipality could in any case be held liable for the malice imputed to its Secretary. *Held*, further, that

the proceedings it was not shown that the

the conviction of the accused. *Fitzjohn v. Maclean*, 30 L. J. (C. P.) 257, 264, followed. **MUNICIPALITY OF JAMBUSAR v. GURJASHANKER** (1903)

I. L. R. 30 Bom. 37

**95. False imprisonment—Suit for damages—Cause of Action—Defendant not the actual prosecutor—Suit not maintainable.** A having been badly beaten was carried to a police station, where he named X and others as the persons who had attacked him. The police,

before the Court is that the accused were an association, but no suit for damages for false imprisonment would under these circumstances lie against A. *Narasinga Row v. Muthaya Pillai*, I. L. R. 26 Mad. 362, followed. **BALBHADDAR PANDE v. BASUDEO PANDE** (1906)

I. L. R. 29 All. 44

**96. Defaming wife—Damages for**

he words of himself to sue. as well as his wife and therefore A could maintain an action. *Held*, further, that the words used by B were defamatory in themselves and did not amount to mere verbal abuse and that therefore A was entitled to damages without proving special damage. *Girish Chunder Mitter v. Jhatadhari Sadukhan*, I. L. R. 26 Cal. 653, distinguished. *Ibin Hosain v. Haidar*, I. L. R. 12 Cal. 109; *Trailokha Nath Ghose v. Chandra Nath Dutt*, I. L. R. 12 Cal. 424; *Joyeswar Sarma v. Dinaram Sarma*, 3 C. L. J. 140; and *Parath*

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(b) TORT—contd.**

*v. Mannar*, I. L. R. 8 Mad. 175, referred to. *Held*, also, that the cause of action having arisen in the month of the suit was not governed by the rule laid down in *Bhooni Moni Dossi v. Nalabar Bivara*, I. L. R. 28 Cal. 452. **SUKKAN TELI v. BIPAD TELI** (1906) I. L. R. 34 Cal. 48

**97. Detention of goods—Collector of Customs, powers of—Counterfeit trade mark—False trade description—Sea Customs Act (VII of 1878), ss. 18, 19A—Merchandise Marks Act (IV of 1889), ss. 10, 11—Indian Penal Code (Act XLV of 1860), ss. 28, 450** It is the duty of the Collector of Customs

**98. Injuries on railway—Damages for injuries on railway—Negligence—Accident.** The plaintiff sued the defendants, a Railway Company, for damages for injuries sustained by him when alighting from a carriage which overshot the platform of a station at night, and the evidence on the question of what light there was, either natural or artificial, on the night in question being conflicting, it was suggested during the hearing of the case on appeal and agreed to by the counsel for the parties that the Judges

judgment in accordance with them, reversing the decision of the Court which tried the case. *Held*, that such procedure was illegal. The result of it was that the appeal was decided not on the testimony given at the trial as to what took place on the night of the accident, but by the Judges'

**DAMAGES—contd.****1. SUITS FOR DAMAGES—contd.****(b) TORT—contd.**

99. ——— Injury by dogs—Dogs likely to bite without provocation—Injury by Dogs at a public Recreation-ground—Liability of Owner of Dogs—Scienter. The defendant's dogs which to the knowledge of his servant having the charge of such dogs were likely to bite people without provocation, were taken by such servant to a public recreation-ground. The plaintiff, a child of seven years of age, became frightened at the dogs and cried whereupon the dogs attacked and bit him severely:—*Held*, that the defendant was liable in damages to the plaintiff. *Barnes v. Lucile, Ltd., 23 T. L. R. 359*, distinguished. *Prakash Kumar Mukerji v. Harvey (1909)*

*L. L. R. 36 Cal. 1021*

**2. MEASURE AND ASSESSMENT OF DAMAGES.****(a) BREACH OF CONTRACT.**

1. ——— Suit for non-delivery of goods. In a suit for the non-delivery of goods agreed to be sold by the defendant to the plaintiff in a case where no money has passed, the measure of damages is the full market value of the goods at the time of delivery.

2. ——— Omission to specify time. In an action by a vendee against a vendor for non-delivery of goods, the measure of damages is the full market value of the goods at the time of delivery.

very. *MANSUK DASS v. RAOOYIA CHETTI*  
*1 Mad. 162*

3. ——— Reasonable time for delivery. In an action by the vendee against the vendor for breach of a contract to deliver goods "in two or three days," the measure of damages is the difference between the contract price and the price which similar goods bore on the lapse of a reasonable time for delivery, not less than three days from the date of the contract. *RAM MADHAIJI v. RAOOYIA CHETTI*  
*1 Mad. 168*

4. ——— Delay in delivery of goods by carrier. The damages claimable in a suit against a carrier on account of delay in delivering goods are the excess which is found by comparing the price of the goods on the day they ought to have been delivered with the price on the day when they were delivered. *BULDOO DASS NAYHOO MULL*  
*2 Agri 133*

5. ——— Forbearance of buyer at seller's request. The defendants, by bought and sold notes, contracted, in February 1877, to sell to the plaintiffs 200 tons of wheat, delivery under

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

the contract to be given during all April on 15 days' notice from the buyers. Notice was given on the 15th of April.

between the contract price, and the then market price, treating the contract as rescinded. Subsequently, the defendants being prepared to give delivery of 350 bags, the plaintiffs agreed to take delivery without "prejudice to their right of claim against the sellers on account of the remaining 175 tons still undelivered." This and several other contracts, making altogether 112 out of the 200 tons,

merely a forbearance on their part to pursue their rights, and that the plaintiffs were entitled to the full measure of damages. *Ogle v. Lane, L. R. 2 Q. B. 275*, and *Fresh v. Burr, L. R. 9 C. P. 208*, followed. *GLADSTONE v. SEWDUX 4 C. L. R. 106*

6. ——— Action for breach of collateral contract—Non-acceptance of goods. The defendant entered into a contract with the plaintiffs to purchase from them a quantity of gunny bags, of which the defendant was to take delivery at certain stated times. On failure by the defendant to take delivery, the plaintiffs brought a suit for breach of the contract, estimating the damages at the difference between the contract price and

a contract they had with a third person, and it was

undue between the contract price of the bags and the amount which it cost the plaintiffs under their collateral contract to procure and deliver them. *Held*, reversing the decision of the Court below, that the proper measure of damages was

7. ——— Failure to deliver timber—Place of delivery. The plaintiff brought a suit at Tonghoo in British Burma to recover possession of certain timber, which he alleged the defendants had, wrongfully and in collusion with the Burmese

DAMAGES—*contd.*2. MEASURE AND ASSESSMENT OF DAMAGES—*contd.*(a) BREACH OF CONTRACT—*contd.*

Governor of Ningham, taken out of his possession

the defendants removed the timber from Tonghoo to Rangoon. The Court below having fixed the price of the timber at Rangoon as the alternative damages in case of non-delivery, the High Court refused to interfere with such award. **BOMBAY-BUTLAK TRADING CORPORATION v. MAHOMED ALI SHERAGER**. 10 B. L. R. 345; 19 W. R. 123

8. ——— Failure to supply wood when required—*Omission to make requisition.* In a suit for damages for breach of contract to supply wood which defendant had engaged to supply for the construction of a house, where the intention was found to have been that the plaintiff should from time to time give defendant notice of the different articles of wood-work required:—*Held*, that the defendant was only liable for damages to the extent of the wood which he did not supply according to the order given to him, not for the wood for which requisition had not been made. **RADHA GOBIND SHARMA v. INAY BOKSH OSTAGUR**. 15 W. R. 217

9. ——— Bailment—*Misappropriation of Government promissory notes—Negligence of Treasury Officer.* The agent of the plaintiff delivered to the Treasury Officer at Meerut nine Government promissory notes, aggregating Rs. 4,000 in value, in order that such notes might be transmitted to the Public Debt Office at Calcutta for cancellation and consolidation into a single note for Rs. 4,000, having previously indorsed the plaintiff's name on such notes at the request of a subordinate of the Treasury Officer, and received a receipt for such notes under the hand of the Treasury Officer. Owing partly to such indorsements and partly to the negligence of the Treasury Officer, such subordinate was enabled to misappropriate and negotiate two of such notes, aggregating Rs. 2,000 in value. The remaining seven of such notes were despatched to Calcutta.

“... with interest On behalf of

DAMAGES—*contd.*2. MEASURE AND ASSESSMENT OF DAMAGES—*contd.*(a) BREACH OF CONTRACT—*contd.*

for loss or injury sustained through the fraud or dishonesty of his servant without the scope of his employment.

been delivered  
but having been  
that officer must be regarded as an undertaking on the part of Government to deliver a consolidated note for Rs. 4,000 in due course, and the plaintiff's suit was in reality one for damages on account of the refusal of Government to discharge its obligation, the measure of those damages being the amount by which the note for Rs. 1,200 fell short of Rs. 4,000 with interest, and such being the suit, the contention of Government was not any answer to it. **SECRETARY OF STATE FOR INDIA v. CONNELL v. SUEO SISON RAU**. I. L. R. 2 All. 748

10. ——— Failure to deliver steamer according to contract—*Loss of freight—Charter-party.* The plaintiff entered into a con-

charterers a complete cargo of merchandise, to consist of 700 tons dead weight, etc., and being so laden shall therewith proceed to London, with liberty to call for any legal purpose at any intermediate port or ports, etc., freight to be paid on the above cargo on right delivery of the same at and after the rate of £12s. 6d. per ton. Charterers to have the option of cancelling the charter-party, if the steamer has not arrived in Calcutta on the 15th April 1871. The defendants signed the charter-party as “agent of steamer *Atholl*.” The steamer was not, at the time the charter-party was entered into, on her way to Calcutta, being then in the port of London, and she did not start for some days after the date of the charter-party. She touched at Madras and Colombo on her way and did not arrive in Calcutta until 11th April.

ants in damages. *Held*, that the defendants were liable. The measure of damages was the difference between the value the steamer would have been to the plaintiffs as an instrument for earning freight at market prices, if she had been put at

11. ——— Failure to ship goods according to contract—*Freight—Expenses of carriage—Sub-charterers.* Where the defendant agreed to ship goods for a certain port, in a ship of which the plaintiffs were the sub-charterers, but

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

failed to ship any portion of the goods, and the plaintiffs were unable to obtain any freight:—*Held*, in an action to recover the whole amount of the freight which would have been payable to the plaintiffs if the contract had been carried out, that the plaintiffs were entitled to recover as damages a sum equivalent to the entire freight agreed to be paid by the defendant for the goods in question, after deducting therefrom a proportionate part of the expenses of carriage which had been saved by reason of the service not having been rendered. *Held*, also, that the sum payable by the plaintiffs to the original charterers of the vessel for the intended voyage ought not to be deducted from the sum payable by the defendant, as the damages payable by the defendant must depend upon his own contract with the plaintiffs, and not upon the terms of the bargain between the plaintiffs and the original charterers. *DE ANGELIS & Co v. MAYAPPA SETTY* I. L. R. 5 Calo. 578; 5 C. L. R. 57

**12. — Breach of warranty—Sale**

take back the machine. *LAMOURoux v. EVILLE*  
1 Ind. Jur. N. S. 274

**13. — Suit for breach of contract to admit into partnership—Partnership for specified time.** In a suit brought for damages for breach of a contract to admit the plaintiff into partnership:—*Held*, that the damages to be awarded, although they should be estimated with reference to the profits which the plaintiff might ultimately have derived from the partnership, ought not to have been assessed at such a sum as would place the plaintiff in the position which he might have held at the conclusion of the partnership. Where the partnership was to endure for two years:—*Held*, that 1000 year's profits would be a fair award of damages. *LEWIN v. MORRISON*

2 Agra Pt. II, 151

**14. — Failure to pay calls on shares—Agreement to forfeit shares.** Where a party takes shares in a trading company, agreeing

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**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

to forfeit his shares if he does not pay calls upon them at certain stated intervals, the penalty of forfeiture should be enforced against him if the calls are not paid according to agreement. The damages should not be measured by the amount of the call. *ACHUMBIT SHAHA v. RONGVOONISSA alias BHAZE NOOR JAN* . . . 24 W. R. 358

**15. — Breach of contract to register document.** *Not a suit for a penalty*

not performed certain conditions which were incumbent on them before they were entitled to the ijara. In a suit for a refund of the deposit money and for damages:—*Held*, that the suit was brought, not on the postah and kabulist, but on an implied

were required to do to enable them to the assent of the defendant to registration. As the postah

evidence. Damages for a breach of contract of this kind, though not necessarily the same as for

and for was in fact in deposit for the rents of the old lease which had not yet expired, yet, as the defendant had abandoned that lease and entered into a new arrangement as regarded the deposit, he could not now fall back on the old contract once abandoned, nor could he retain the money under the new contract which he had wrongfully refused to carry out. *MONOMONONATH DRY v. SREENATH GHOSE* . . . 20 W. R. 107

**16. — Breach of contract to convey immovable property.** Where a vendor, having agreed to convey, without any reasonable excuse conveys the property to a third party in order to obtain a higher price, the vendee is entitled by way of damages to the additional price obtained by the sale. *TRILOKHYA NATH BISWAS v. JOY KALI CHOWDHRAIN* . . . 11 C. L. R. 454

**17. — Refusal to execute lease as agreed—Amount of rent agreed on.** Under an indenture of lease, A and B covenanted to give C and D possession of premises comprised therein. The lease was executed by A, C, and D, and B's asset was comprised therein, but he refused to execute



**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

failed to ship any portion of the goods, and the plaintiffs were unable to obtain any freight:—*Held*, in an action to recover the whole amount of the freight which would have been payable to the plaintiffs if the contract had been carried out, that the plaintiffs were entitled to recover as damages a sum equivalent to the entire freight agreed to be paid by the defendant for the goods in question, after deducting therefrom a proportionate part of the expenses of carriage which had been saved by reason of the service not having been rendered. *Held*, also, that the sum payable by the plaintiffs to the original charterers of the vessel for the intended voyage might not be deducted from the sum payable by the defendant, as the damages payable by the defendant must depend upon his own contract with the plaintiff, and not upon the terms of the bargain between the plaintiffs and the original charterers. *DE ANGLIS & Co. v. MAYAPPA SETTY* I. L. R. 5 Cal 578; 5 C. L. R. 57

**12. — Breach of warranty—Sale**

would have had a monopoly, or nearly so, as an ice purveyor at that station. The ice machine turned out eventually a quantity much less than 100 seers a day. *Held*, that the plaintiff was entitled as damages to the amount paid for the machine, the expenses of ascertaining whether it would turn out 100 seers a day, and reasonable interest on the whole; the defendants to be at liberty to take back the machine. *LAKSHMOON v. EVILLE*

1 Ind. Jur. N. S. 274

**13. — Suit for breach of contract**

although they should be estimated with reference to the profits which the plaintiff might ultimately have derived from the partnership, ought not to have been assessed at such a sum as would place the plaintiff in the position which he might have

2 Agra Pt. II, 161

**14. — Failure to pay calls on shares—Agreement to forfeit shares.** Where a party takes shares in a trading company, agreeing

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to forfeit his shares if he does not pay calls upon them at certain stated intervals, the penalty of forfeiture should be enforced against him if the calls are not paid according to agreement. The damages should not be measured by the amount of the call. *ACHEMMUT SHANA v. HOMMOONNAN* alias *BRICK NOON JAY* . . . 21 W. R. 356

**15. — Breach of contract to register document—Nature of suit.** A pottah granting an *ajra* and a *kabuliat* in similar terms having been executed respectively by and exchanged between the plaintiffs and the defendant, when the parties went to register the pottah the defendant refused to allow it to be registered alleging that the plaintiffs had not performed certain conditions which were incumbent on them before they were entitled to the *ajra*. In a suit for a refund of the deposit money and for damages:—*Held*, that the suit was brought, not on the pottah and *kabuliat*, but on an implied contract by the defendant to do what which was necessary to give effect to his own pottah, i.e., to allow it to be registered, and that the real question was whether the plaintiffs had done all that they were required to do to entitle them to the assent of the defendant to registration. As the pottah had been executed and handed over, if it specified

the loss occasioned to the plaintiff by the contract not having been performed. *Held*, further, that, although the amount the refund of which was sued for was in fact a deposit for the rents of the old lease which had not yet expired, yet, as the defendant had abandoned that lease and entered into a new arrangement as regarded the deposit, he could not now fall back on the old contract once abandoned, nor could he retain the money under the new contract which he had wrongfully refused to carry out. *MONOMOTHONATH DEX v. SHEENATH GHOSE* . . . 20 W. R. 107

**16. — Breach of contract to convey immovable property.** Where a vendor, having agreed to convey, without any reasonable excuse conveys the property to a third party in order to obtain a higher price, the vendee is entitled by way of damages to the additional price obtained by the sale. *TRILOKIYA NATH BISWAS v. JOY KALI CHOWDHURAIN* . . . 11 C. L. R. 454

**17. — Refusal to execute lease as agreed—Amount of rent agreed on.** Under an indenture of lease, A and B covenanted to give C and D possession of premises comprised therein. The lease was executed by A, C, and D, and B's assent was comprised therein, but he refused to execute



**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

on breach by A, in an action for damages against

18. ——— Refusal to give lease as agreed—*Nominal damages*. A party who took from certain proprietors of an estate a lease of their interest therein without advance or premium, not having paid any money, was entitled to nominal damages.

19. ——— Refusal to give lease as agreed—*Nominal damages*. A party who took from certain proprietors of an estate a lease of their interest therein without advance or premium, not having paid any money, was entitled to nominal damages.

14 W. R. 362

20. ——— Breach of clause in lease—*Rent suit—Substantial damage—Nominal damage*. B obtained a lease of certain lands from A, agreeing thereunder to pay to A a certain rental for the land, and also a sum of Rs 183-6-3 yearly to

landlord as damages for breach of the contract, and that the amount of such damages ought not to be taken as nominal, but should be assessed on the footing of the sum for which A might become liable to his superior landlord. *RUTNESSUR BISWAS v. HURISH CHUNDER BOSE*

I. L. R. 11 Calc. 221

*See BASANTA KUMARI DEBYA v. ASHUTOSH CHUCKERBUTTY.*

I. L. R. 27 Calc. 67; 4 C. W. N. 3

20. ——— Contract assigning mortgage rights—*Interest—Guarantee of loss*. Defendants assigned their mortgage rights under two deeds to plaintiff, stipulating to make good any loss which the latter might sustain by reason of the opposition or resistance of the mortgagors. Plaintiff, in a suit against the mortgagors, failing to establish one of the mortgages, sued the original mortgagors to recover damages with interest and costs incurred by him in a suit against the mortgagors. *Held*, that the measure of damages or loss to which the plaintiff was entitled was not the sum paid by him as consideration, but the value of the thing which he had been deprived of; and that the suit being in its nature a suit for money.

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

dated damages, plaintiff was not entitled to the interest on the sum awarded as damages. *PARNUTI v. MISSER CHIMMUN LALL*, 1 Agra 82

21. ——— Suit for damages for being kept out of indigo factory—*Calculation of damages*. Suit for damages sustained by plaintiff

from the factory all benefit derivable from chur lands fit only for indigo was lost by her, and that the sum which represented that loss had been rightly included in the calculation of damages to which plaintiff was entitled. *HURISH CHUNDER KOONDOL v. BAMA KALEE DEBIA*

5 W. R. 164

22. ——— Breach of contract to cultivate Indigo—*Agreement to deliver indigo—Risk of loss in manufacture*. Where a raiyat took ad-

*Held*, that, if the raiyat's liability to supply to

12 W. R. 533

23. ——— Mode of performance—*First failure to sow*. In a suit for damages for breach of contract to cultivate in-

the sowing season (ii) That only one set of damages for one breach of contract alone could be recovered, and not a separate set of damages for each breach of failure to do each of all the vari-

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

ceased and determined therewith. (SHRUBHOONATH PUNDIT, J., dissenting.) *MOTER SAHOO v. FORBES* . . . . . **6 W. R. 278**

**24.** *Bengal Regulation VI of 1823, s. 5, cl. 2* *Held*, that the limit of damages recoverable under cl. 4, Regulation VI of 1823, was three times the sum advanced, and that the amount of advance itself could not be included or considered, except as the mode of measuring the damages. *ZYN-ODD-PREY v. WRIGHT* . . . . . **3 Agra 77**

**25.** *Bengal Regulation VI of 1823, s. 5, cl. 4* When a breach

sum advanced, but the plaintiffs were entitled to recover an amount of damages not exceeding the sum which the defendant stipulated to pay on failure by him to perform his contract. *LAL MAHOMED BISWAS v. WATSON* . . . . .

**4 W. R. 62; 1 Ind. Jur. N. S. 3**

**26.** *Bengal Regulation VI of 1823—Fraud* It is not imperative on the Courts, in cases of breach of contract for the supply of indigo plant, according to the provisions of Regulation VI of 1823, to award three times the amount of the advance. Where the breach is not fraudulent, the penalty should be adjudged with reference to the extent of the injury sustained, but not exceed three times the sum advanced. Where the breach is fraudulent, the extent of the injury sustained is, without any restriction whatever, the standard for regulating the amount awardable. *DALEEP SINGH v. SEITH ROSHUM LALL* . . . . .

**1 Agra 691**

**27.** *Liquidated damages.* By a contract for the cultivation of indigo, the defendants agreed, in consideration of certain payments, to prepare the land, sow the seeds that should be supplied, and reap the crops; and it was stipulated that in case the defendant should neg-

consequence of the loss of indigo and its profits, the defendant should pay compensation at the rate of twelve sicca rupees per bigha. *Held*, that the stipulation for the payment by the defendant of twelve sicca rupees per bigha, in the event of the land not being prepared for seed by the time mentioned, was a reservation in the nature of liquidated damages; and that the plaintiff was not entitled to recover more than that sum in respect of the breach of that stipulation, although loss to a

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

greater extent may have been sustained. *MACTRAE v. JHONUCK MISHRA* *Marsh*. **380; 2 May 391**

**28.** *Measure of damages.* In estimating the measure of damages to be paid for breach of contract to cultivate indigo, the period of the breach should be taken as the time for estimating the damages. Generally, the natural and immediate consequence of the breach of contract should alone be looked to, and not some possible remote result. Supposed profits ought not to be given as part of the damages, unless under special and extraordinary circumstances. *ZENV. CHITUNNA v. THOMAS* . . . . . **W. R. 1884, 251**

**29.** *Act X of 1836, s. 3.* When there has been a breach of contract to sow and cultivate indigo, both liquidated damages and the amount advanced to the cultivators cannot be recovered under s. 3, Act X of 1836. *MAHOMED KASEM CHOWDHRY v. FORBES* . . . . .

**5 W. R. 277**

*MAHOMED KASEM v. FORBES* . . . . . **8 W. R. 257**

**30.** *Suit on breach of contract to cultivate and deliver indigo for recovery of the amount specified in the contract.* *Held*, that, unless it was clear that the intention of the parties to the agreement was to treat the sum mentioned not as a penalty, but as liquidated damages, behind which the Court should not look, the Court could not award damages beyond the amount of injury actually sustained. *DOYLE v. MENDAREE MUNDUL* . . . . . **5 W. R. S. C. C. Ref. 10**

*HINOUX SOWDAGAR v. BOISTUM CHURN OJAN* . . . . . **8 W. R. Cir. Ref. 5**

**31.** *Liquidated damages.* In a suit to recover damages under a *labuhat*, in which defendant had engaged to sow and cultivate indigo, and in case of failure to pay as damages a specified sum for every year:—*Held*, that the amount agreed to be paid should be treated as liquidated damages, and not as a penalty. *LESLIE v. BRADDO FORAMANICK* . . . . . **11 W. R. 558**

**32.** *The sum agreed to be paid by a raiyat as damages for breach of contract in respect to the sowing of certain lands with indigo must be regarded as liquidated damages, and not as a penalty.* *TALIM MUNPUL v. WATSON & Co.* . . . . . **17 W. R. 94**

**33.** *Compensation for breach of contract—Contract Act, s. 74.* Where a *kohala*

bond, together with a draft of the *kohala*, to the opposite party, who then refused to execute. *FUKEER AHMED v. ISSUR CHUNDER DAS* . . . . .

**20 W. R. 481**

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

34. *Sum agreed on by parties.* Where the contracting parties have agreed at what sum the amount of damages for breach of a contract shall be estimated, it is not necessary to prove the amount of loss sustained. **PALMER v. SECRETARY OF STATE FOR INDIA**

2 Agra 184

35. *Liquidated damages—Penalty—Pleading.* Where the parties to a contract stipulate for the payment of a specified sum for any breach of it, and the damages

**ASHRUFUNISSA BEGUM v STEWART 7 W. R 303**

36. *Breach of contract in selling fish—Liquidated damages.* In a suit for damages on the ground that the defendants, after executing an agreement by which they stipulated to sell fish every day in the plaintiff's bazar, and to pay a fee per diem, and bound themselves to pay damages to a specified extent in the event of their leaving his bazar and moving to another

37. *Liquidated damages—Penalty—Measure of damages—Act IX of 1872 (Contract Act), s. 74.* Under s. 74 of the Contract Act, 1872, the Court are not bound, even in cases where the parties to a contract have, in

action" not exceeding such sum. As a general principle, compensation must be commensurate with the injury sustained. Acting upon the principle, when the injury consists of a breach of contract, the Court would assess damages with a view of restoring to the

to be made. Held, that no sum should be paid as compensation in case such indigo was not delivered as agreed, that the method of assessing damages in case of a breach of the contract would be to ascertain the quantity of indigo which could have

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

been pressed out of the stipulated amount of indigo plant, to ascertain the price at which the indigo might have been fairly sold in the market during the season to which the contract related, and to deduct from such price the ordinary charges of pro-

*Indigo Company, W. R. 1864, p. 354,* is presumably overruled by the case under the Contract Act, s. 74. **NAIT RAM v SHIB DAT**

I L. R. 5 All 238

38. *Breach of a contract to pay various sums—Agreement to pay enhanced rent in event of breach—Liquidated damages—Penalty—Contract Act, s. 74.* By the terms of a

rate:—Held, that plaintiff was entitled to recover the additional amount as liquidated damages. **BALEUBAYA v SANKARIA**

I L. R. 22 Mad 453

39. *Contract Act, ss. 73, 74—Interest—Agreement to lend money—Damages recoverable by lender for breach of such agreement.* The plaintiff a moneylender by

been lying in deposit, bearing interest at 6 per

to be made. Held, that he was not entitled to interest for three years, but only to interest for each period as might reasonably be required to find another borrower of the Rs20,000 at the rate of interest agreed upon between him and the defendant. The Court accordingly awarded him interest at 1½ per cent. per annum (i.e., the differ-

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

once between the banker's rate of interest and the contract rate) on Rs20,000 for four months together with the expense of preparing the deeds required for the purpose of the loan. **DATTAPAI EERAHIM v. ABUBAKER MOLEEDINA**

I. L. R. 12 Bom. 242

40. ——— *Contract which had become impossible to perform—Further and other relief—Damages—Contract Act (IX of 1872), s. 36—Novation.* Money having been advanced, a contract was made to secure repayment of it by a usufructuary mortgage, with possession to be given to the lender, of land which, however, had then already been attached under a decree, and had been taken under the Collector's management under s. 326 of the Code of Civil Procedure. To perform the contract by delivery of possession of the land having thus become impossible: *Held*, that the lender of the money was entitled to compensation, the damages being the amount of the advance, together with interest from the date when, had performance been possible, the land should have been made over to him. **SETTI JAYADAYAL v. RAM SAHAJ** . I. L. R. 17 Calc. 433

41. ——— *Contract Act (IX of 1872), s. 74—Penalty—Liquidated damages—Stipulation to pay sum named in case of breach—Reasonable compensation for breach.* Plaintiff and defendant, who were jointly interested in a sal forest, entered into an agreement by which they bound themselves not to cut down any tree in the forest for the next ten years and in case of any breach committed by any one of them to pay a penalty of Rs500. The principal defendant having cut down certain trees in violation of the agree-

has done away with the distinction between penalty and liquidated damages, and has left it to the

garded as a measure for assessing the damages. The lower Court should have fixed some reasonable sum, not exceeding Rs500, the amount stipulated, as would be likely to prevent any future breach. **Nait Ram v. Shib Dat**, I. L. R. 5 All. 238, distinguished. **Brahmaputra Tea Co. v. Scarth**, I. L. R. 11 Calc. 545, referred to. **DILBAR SARKAR v. JOYSHI KURMI** . . . 3 C. W. N. 43

42. ——— *Breach of covenant for title—Vendor and purchaser—Mortgagor and*

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

*mortgagee—Value of prospective profits.* A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction. Though in ordinary cases a mortgagee, when deprived of his security, can only recover his mortgage-money as the damages for breach of the covenant for quiet enjoyment yet, where the mortgage-deed contains a covenant on the part of the mortgagor not to pay off the mortgage for a term of years, the mortgagee is entitled to damages for being deprived of a favourable and long-enduring investment. For the purpose of estimating such damages, the Court will value the prospective profits as a jury would. **NAOARAS BANERJEE v. ANNEDEKIAN** . . . I. L. R. 21 Bom. 175

43. ——— *Appropriation by vendor—Passing of property—Power of re-sale—Contract Act (IX of 1872), s. 107—Changing shape of claim—Amendment of plaint.* The plaintiffs under several contracts with the defendant produced by manufacture goods answering to the description of the contracts and appropriated them to the several contracts. On notice of the production of the goods being given to the defendant, he directed the goods so appropriated to be marked and despatched for shipment according to certain instructions. The plaintiffs carried out these instructions, but the goods could not be shipped, as the vessels in which they were to be shipped were not available at their usual place. *Held*, that

and to recover as damages the difference between the contract price of the goods and the price at which they were resold. *Semle*: The proper course to be adopted, when it is sought to shape a claim for damages differently from what appears in the plaint, is to amend the plaint and add a claim for damages on the basis of that amendment. Then at the trial evidence may be given in support of the amended statement. But that course ought not to be allowed to be adopted after the plaintiffs have once closed their case and the defendants have been called on to meet the claim as originally framed in the plaint. **Yule & Co. v. Mahomed Hossain**, I. L. R. 24 Calc. 124, followed. **CLIVE JUTE MILLS Co. v. EERAHIM ARAH**

I. L. R. 24 Calc. 177

**YULE & Co. v. MAHOMED HOSSAIN**

I. L. R. 24 Calc. 124

1 C. W. N. 71

44. ——— *Measure of damages on breach of contract by purchaser—Power of re-sale—Contract Act (IX of 1872), s. 167—*

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

Right of re-sale to be exercised within a reasonable time of the breach of contract—Measure of damages. In the case of a sale, if the purchaser does not perform his part of the contract he is liable in damages to the seller, the measure of damages being the difference between the contract price and the price which the seller could have obtained for the article at the time of the breach of contract. If a vendor, on breach of contract by non-payment of the purchase-money, elects to exercise the right of re-sale given to him by s. 107 of the Indian Contract Act, 1872, not only is the vendor bound to wait a reasonable time after giving notice to the vendee of his intention to re-sell before actually re-selling, but he is also bound to exercise his right of re-sale within a reasonable time after the date of the breach. **PRAG NARAIN L. MOL CHAND**

I L R 19 All 535

45. ——— Principal and agent—Consignment of goods for sale—Unauthorized sale by agent below limit. The measure of damages, in a case where an agent has in breach of his duty sold goods of his principal below the limit placed upon them by the principal, is the loss which the principal has sustained, and if he has sustained no loss, he can only ask for nominal damages. **MANCHUBHAI NAVALCHAND v. TOB**

I L R. 20 Bom. 633

46. ——— Sale of unascertained goods—Breach of contract—Power of re-sale—Contract Act (IX of 1872), s. 107. The plaintiffs sold to the defendant under an "Indent" contract ten cases of tobacco at an agreed price. On arrival, the defendant refused to pay for and take delivery of the goods, on the ground that they were not the goods contracted for. After notice to the defendant, the plaintiffs re-sold the goods and sued to recover the expenses of the re-sale and the difference between the price realized and the contract price with interest. *Held*, that cl. 1 of the Indent Contract gave the plaintiffs a right to re-sell the goods, and sue for the damages mentioned therein. S. 107 of the Contract Act had no bearing on the case. **YULE & Co. v. MAHOMED HOSAIN**, I L R 24 Calc 124, dissented from **MOLL SCHUTTE & Co. v. LUCHMI CHAND**

I L R. 25 Calc. 505

47. ——— Re-sale—Breach of contract by purchaser—Contract Act, s. 107. The plaintiff sold to the defendant a certain number of cases of embroidered muslin. The defendant took delivery of some of the cases, but refused to take delivery of, or pay for, the rest. The plaintiff

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

the price realized by the plaintiff on the re-sale. **MOLL SCHUTTE & Co. v. LUCHMI CHAND**, I L R. 25 Calc. 505, followed **YULE & Co. v. MAHOMED HOSAIN**, I L R 24 Calc. 124, dissented from. **RASDEO V. SMIDT**, I L R. 22 All 55

48. ——— Contract consisting of distinct contracts with separate parties—Misjoinder of parties as defendants—Grant of relief not prayed for—Liquidated rate of damages applicable to certain specified breaches of contract only—Form of decree—Cite *Regent v. ...*

for seven years, in consideration of A's paying them at the rate of Rs11-80 per garce of salt, four months' credit after each delivery being allowed to A, and of his paying Government taxes and dues, and executing all but petty repairs in the defendants' factory. B was a party with A to the contract, though he was not expressly mentioned therein. A assigned his share in the contract to C B; as first plaintiff, and C, as second plaintiff, brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract.

no need name for any damages plaintiffs might suffer through a fall in the price of salt. The Court of first instance, having held that the contract contained seven separate and distinct contracts, each defendant having contracted with

for each garce of salt. *Held*, on appeal, that the suit was bad for misjoinder since the case of each defendant was distinct and separate.

and in not ascertaining the amount of damages payable by each defendant; that the measure of damages was what the plaintiffs had lost by the breach of contract, but that the lower Appellate Court was wrong in applying the rate fixed on this principle to each defendant without ascertaining the particular nature of the breach of which each defendant was guilty. **NAMASIVAYA GURUKAL v. KADIR AMMAL**, I L R. 17 Mad. 168

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

49. — Agreement to discharge a debt due by debtor to a third party—*No time fixed for performance—Failure to perform within a reasonable time—Cause of action.* Defendant agreed to discharge a debt due by plaintiff to a third party secured by a mortgage of a village which was held by plaintiff on lease and which had been sub-let by him to defendant after the mortgage to the third party had been granted. The agreement provided that if the defendant failed to discharge the debt he should be liable to plaintiff for any damage which the latter might sustain. No time was fixed for the performance by the defendant of this obligation, and he, in fact, failed to perform it for a period of nearly three years, whereupon this suit was brought. *Held*, that the agreement was not a mere contract to indemnify; that defendant was bound to discharge the debt within a reasonable time, and that his failure to do so during three years was a breach of the contract, notwithstanding the fact that the third party had not enforced his claim against the plaintiff. The measure of damages payable in consequence of such breach would be the amount of the debt which defendant had undertaken to discharge.

DORASINGA TEVAR v. ARUNACHALAM CHETTI.

I. L. R. 23 Mad. 441

50. — Assessment of damages—*Contract—Breach of contract to deliver goods—Market price at due date—Suit in High Court cognizable by Small Cause Court—Decree in such suit, for less than Rs. 1,000—Costs—Small Cause Courts Act (XV of 1882), s. 20, as amended by s. 11 of Act I of 1895.* Where for purposes of assessing damages, it is necessary to ascertain the market rate on a certain day, and evidence of alleged actual dealings on that day is given, the Court must be satisfied that such dealings were contracts made in relation to the true prices of the day, and not made merely with a view to influence the prices and, therefore, affording no clue to the real price at that date. *Per JENKINS, C.J.*—Obviously, value created for special purposes is irrelevant, and it is for this reason that the prices made by Bulls and Bears are of no use. If the market value is uncertain, then we must have recourse to such surrounding circumstances as affect the probabilities, and, among them, to real prices proved about the time of due date. The plaintiffs sued the defendants for damages for non-delivery of cotton, the question between them being the market rate on the 25th May, 1900, the date on which delivery should have been made. The 24th May was a holiday, and it was proved beyond dispute that on the 23rd the rate was Rs. 225 per *khandi*. The plaintiffs alleged that on the 25th the price was Rs. 240 per *khandi*; the defendant alleged that it was Rs. 217 per *khandi*, and counter-claimed accordingly. The plaintiffs adduced evidence of five

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

cases of alleged actual dealings at Rs. 220 per *khandi* on the 25th May. The lower Court, however, was not satisfied that the contracts were made in relation to the true price of the day, and the Court of Appeal could not say that it had misappreciated the evidence on the point. The defendant called (among others) the Chairman of the Cotton Trade Association, by which the rate of Rs. 217 had been fixed for the 25th May. He, however, knew of no transactions at that rate. The lower Court found the rate on the 25th May, 1900, to have been Rs. 217 per *khandi*, and passed a decree for the defendant on the counter-claim against the plaintiffs. On appeal by the plaintiffs: *Held*, that there was no satisfactory direct evidence of the actual market rate on the 25th May, 1900, but that, as the evidence showed that the rate on the 23rd was Rs. 225 per *khandi*, and that the market was on the rise, the

proved that on the due date the rate was not less than Rs. 225 per *khandi*, which therefore (and not Rs. 217) was the basis on which damages should be assessed. The Court of Appeal accordingly varied the decree of the Court below, and passed judgment for the plaintiffs. The question then arose whether, having regard to s. 20 of the Small Cause Courts Act (XV of 1882), as amended by s. 11 of Act I of 1895, the plaintiffs were entitled to the costs, the decree in their favour being for less than Rs. 1,000. *Held*, that no costs could be given. The mere fact that the plaintiffs claimed a sum in excess of the Small Cause Court jurisdiction was not enough to take the case out of the operation of s. 20. The result of the suit showed that the true amount or value of the subject matter was not above the Small Cause Court's limit. The Court of Appeal ordered that the defendant should get the costs in the lower Court of his counter-claim, and no more, but none of the general costs of suit or the costs incurred in connection with the plaintiff's claim. No costs of the appeal. SHRIDHAN GORINATH v. GORDHANDAS GOKULDAS (1901).

I. L. R. 28 Bom. 235

51. — Mode of assessing damages where no proof of market price. On 21st October, 1899, defendant contracted to deliver to the plaintiff at Bombay 1,000 tons of Powell Duffryn coal, January to May shipments, 200 tons to be supplied each month. The first shipment was due in middle of February. Defendant failed to deliver any of the coal, and the plaintiff did not purchase any coal against defendant's contract. The plaintiff now sued for damages for breach of the contract. The only question was as to the mode of assessing damages. There was practically no coal in Bombay of the description contracted for

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(a) BREACH OF CONTRACT—contd.**

at the dates at which delivery should have been given, and consequently no market rate could be proved. At the hearing plaintiff produced a statement showing the rates at which he had, during the contract period, settled certain contracts for Powell Duffryn coal which he had with the Bombay Company, Limited. *Held*, that, under the special circumstances of the case, and in the

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JUGNCHANDAS VURJIWANDAS v. NUSSERWANJI  
JEHANGIR KHANBATTI (1902)  
I. L. R. 26 Bom. 744

**52. ——— Contract for forward monthly deliveries—Construction of Contract**

delivered . . . . . of damages due to a

larger quantities than those, a whole 5,000 tons to be completed not later than 15th February 1907." In October 1906 the defendant tendered, in part-fulfilment of the contract, certain Domree ore which the plaintiffs refused to accept on the ground of inferiority in quality. Thereupon the defendant on the 5th November

the ore to constituted ; proper measure of damages was the sum of the differences between the contract and market price of the several quantities at the several periods for delivery, even though the defendant repudiated the contract at a period previous to the final date specified in the contract. *Josling v. Irvine*, 6 H. & N. 512, *Brown v. Muller*, L. R. 7 Ex. 319, *Roper v. Johnson*, L. R. 8 Q. P. 167, followed. Inasmuch as there was no market rate for the commodity in Calcutta at the date of the breaches, the damage for those breaches was the value to the

COOVERJEE BHOOJA v. RAJENDRA NATH MUKERJEE  
(1909) . . . . . I. L. R. 36 Calc. 617

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT.**

53. ——— Assessment of damages, practices as to. In a suit for recovery of damages, the Court which tries the case must, before passing final decree, assess the damages, and not leave them to be assessed in execution of the decree. The practice on the original side of the Court as to assessing the amount of the damages discussed. *MANIRAM C. BIBI MASHIHUN* . 4 B. L. R. Ap. 66

KRISTO MOTUN MOOKERJEE v. JUGGURNATH ROY JAGGER . . . . . 11 W. R. 236

BINDA BIBI v. LALA RAMSARAN SINGH  
1 B. L. R. S. N. 23

BINDA BIBI v. LALA RAMSARAN SINGH AND  
BHENUCK SINGH v. JUGGER SINGH 10 W. R. 189

54. ——— Wrongful act—Injury done—Punishment. In assessing damages caused by a wrongful act, the injury sustained should alone be considered, not the punishment to be indicated. *BOLOBHUNDUR SINGH v. SOLANO* . 5 W. R. 107

55. ——— Nominal damages—Obligation to award nominal damages. *Stimble v. Mingo* . . . . .  
plaintiff is  
it is not  
FUTTER

11 W. R. 365

56. ——— Right to damages—Establishment of cause of action—Assignment at too late a date . . . . .  
cause of action is estab-  
lished  
by  
plaintiff  
it is  
44

57. ——— Plaintiff exaggerating his claim. A plaintiff who comes into Court with a monstrously exaggerated statement of his claim, and who is served if the Court . . . . .  
was  
too  
478

58. ——— Plaintiff exaggerating his claim . . . . .  
Plaintiff exag-  
gerated was held to  
be liable for costs  
478

59. ——— Failure to prove special damage. Where special damage is the gist of a plaintiff's case, and he fails to prove such damage, he is precluded from recovering ordinary damages. *WILSON v. KANHYA SARKO* . . . . .  
11 W. R. 143

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

60. ——— Responsibility of each member of common assembly—*Compensation—Dress.* Held, that in a suit for compensation for damage done to property each and every one of the persons was equally responsible to make compensation for the loss sustained, when he happened to be a part of the common assembly and executed a common purpose, and that each one was not liable only in proportion to his share of the plunder received or of the damage done by him. Coercion to form a member of the assembly, or bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. *GANESH SINGH v. RAM RAJA* 3 B. L. R. P. C. 44 : 12 W. R. P. C. 38

61. ——— Mental anxiety—*Damage*  
*area as from tort* *Damage as from tort*

Courts in awarding damages are not compelled to estimate the damage too precisely, but are at liberty to give damages which may effectually protect the injured party from a repetition of the wrong. *FEROO KHAN HOSSEIN v. FUZUL HOSSEIN* 1 N. W. 209 : Ed. 1873, 293

62. ——— Abuse and assault—*Position in life of plaintiff.* In a suit for damages occasioned by abuse and assault, the plaintiff's position should be considered for the purpose of seeing how far the compensation awarded is commensurate with the injury inflicted, but not for any position beyond any position

17 W. R. 280

63. ——— Assault without provocation. In a suit for damages for an assault made without provocation, the damages given should be commensurate to the injury and annoyance caused, even though there has been no serious personal injury sustained. *RAMJOY MUZOONDAR v. RUSSELL* W. R. 1864, 370

64. ——— Injury done by cattle trespassing—*Striking average.* Striking an average on the amounts stated by several witnesses is not a

W. R. 1864, 363

65. ——— Loss of cultivation by cutting embankment. In a suit for damages for loss of cultivation by the cutting of a bank, the plaintiff is entitled not merely to the rent of the land but also to the profits of cultivation. *PURNAN SINGH v. MEHER ALI* W. R. 1864, 365

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

66. ——— Defamation—*Conviction and fine by Criminal Court.* A Civil Court is not bound to give damages for defamation after the defendant has been convicted and fined for the offence in the Criminal Court where plaintiff has suffered no actual damage. *OOMA CHERN alias GOPAL CHUNDER ROY MUZOONDAR v. GIPSH CHUNDER BAKERJEE* 25 W. R. 22

67. ——— Compensation for land taken by Railway Company under Act VI of 1857—*Compensation—Probable damages to adjoining lands.* When land is taken up for a railway company under Act VI of 1857, the owner should claim for all damages likely to be caused to his adjoining lands by the works of the company; and no suit will lie for damages so caused if there could be

of fact to be determined by the lower Court. *TARIDAS GOBINDRAI v. B. B. AND C. I. RAILWAY COMPANY. B. B. AND C. I. RAILWAY CO. v. TARIDAS GOBINDRAI* 6 Bom. A. C. 116

68. ——— Malicious prosecution—*Injury to feelings.* In estimating damages for a malicious prosecution, a Civil Court is not necessarily wrong in taking into consideration the plaintiff's feelings. *HURO LALL BISWAS v. HURO CHUNDER ROY* 12 W. R. 88

69. ——— Compensation. In a suit for malicious prosecution on a false charge of desertion, a Civil Court in awarding damages is not limited to the amount mentioned in s. 270 of the Code of Criminal Procedure. *SHAMACHURN HALDER v. BEHARI LALL KOTRAY* 14 W. R. 443

70. ——— Injury to feelings—*Reimbursement of legitimate expenses.* In a suit for damages for malicious prosecution, dam-

Ordinarily speaking, the plaintiff, in a successful suit, is entitled to receive damages in his own case. *Hicks v. Shell v. JUNG* 11 N. 537

71. ——— Wrongful distraint—*Actual loss.* In a suit for damages for excessive distress, the Judge awarded to the plaintiff damages equivalent only to the actual loss sustained. Held, that he had a discretion with respect to the amount of the damages, and that there was no ground for interfering with his assessment. *TEEKARAM KYBUTT v. RAJKISHEN ROY* Marsh. 495



**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

72. ————— Wrongful act—Suit for possession of property—Prospective loss. Damages

brace prospective loss **KOMAREE DASSEE v. BAMA SOONDEE DASSEE** . 10 W. R. 202

73. ————— Suit for negligence—Mode of assessment—Practice—Fresh issues—Civil Procedure Code (Act X of 1877), s 566. In a suit for negligence, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages

cases where some point has come to light in the Appellate Court which has not been raised, or the importance of which has not occurred to the parties or to the Judge in the Court below. **ANURDO LALL DASS v. BOYCAUNT RAM ROY**

I. L. R. 5 Calc. 263; 4 C. L. R. 473

74. ————— Wrongful conversion—Detention of ornaments pledged In an action for damages for the detention of ornaments pledged with the defendant which the defendant has wrongfully converted to his own use, the measure of damages is the value of ornaments, less the sum for which they have been pledged. **HASAM KASAM v. GOMA JADAVJI** . 5 Bom. O. C. 140

75. ————— Conveyance of timber—Price at place of destination. In an action

conversion *Held*, that the cost of carriage to Rangoon from the place where the wrongful conversion occurred must be deducted. **BOMBAY-BURMAH TRADING CORPORATION v. MAHOMED ALLY** . I. L. R. 4 Calc. 118

76. ————— Movable property—Non-existent moveables—Contract to assign after acquired chattels—Completion of assignment on property coming into existence—Transferee with notice of hypothecation—Suit against transferee for damages for conversion

when the crop was grown and the produce realized, and was enforceable against a transferee of such pro-

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

**MAHABHARATI, s. 10. R. 10. CIVIL. 20.**, referred to, **BANSIDHAR v. SANT LALL** . I. L. R. 10 All. 133

77. ————— Injury to indigo crop—Gross negligence. In a suit in which it is proved that defendants maliciously and from gross negligence allowed their cows to trespass on plaintiff's lands and to destroy the indigo plants thereon, knowing the value of the crops to the plaintiff: *Held*, that the case was one of tort, in which the

which would have been obtained from the indigo plant **SREENUREE ROY v. HULL** . 9 W. R. 156

78. ————— Suit for value of trees cut down—Person with some claim of right. Suit for damages in respect of the value of trees cut down by the defendant, not as a wrong-doer, but as one having some claim of right to justify him. *Held*, that the computation of damages in such a case is not a matter of exact calculation, but must be left to the discretion of the Judge who hears the evidence. **FORBES v. MEER MAHOMED KASSEM**

1 W. R. 236

79. ————— Suit for illegal ejectment—Surety of lessee. Explanation of the principle of assessing damages in a suit by a surety of

**ESU BORDAKANTH ROY v. ALUR MUNJOOREE DASSIAN** . 4 Moo I. A. 321

80. ————— False representation—Cause of action—Recurring damages. Where plaintiff

consequential damages:—*Held*, that he could not succeed in a second suit to get back so-called excess

DAMAGES—*contd.*2. MEASURE AND ASSESSMENT OF DAMAGES—*contd.*(b) TORT—*contd.*

of rent paid by him in terms of the *patni pottah* since the institution of the first suit. When once the cause of action is matured, the subsequent occurrence of further damage, after or before adjudication of the original matter, does not originate a fresh cause of suit. *NILMONEE SINGH DEO v. ISRECHENDER GHOSAL*. 6 O. W. R. 121

81. Actions for compensation for destruction of life—*Act XIII of 1855*. Mode of estimating damages in actions brought under Act XIII of 1855 discussed. *VINAYAK RAGHUNATH v. GREAT INDIAN PENINSULA RAILWAY COMPANY*. 7 Bom. O. C. 113

*LYELL v. GANGA DAI*. I. L. R. 1 All. 60  
*SORABJI RATANJI v. GREAT INDIAN PENINSULA RAILWAY COMPANY*. 7 Bom. O. C. 119 note  
*RATANBAI v. GREAT INDIAN PENINSULA RAILWAY COMPANY*. 7 Bom. O. C. 120 note

And, on appeal, *RATANBAI v. GREAT INDIAN PENINSULA RAILWAY COMPANY*. 8 Bom. O. C. 130

82. Suit, against Collector for

proper measure of the plaintiff's loss, and not the actual or probable value of the estate. *CORNELL v. OODY TARA CHOWDHRAIN*. 8 W. R. 372

83. Action of trespass—Damage to property by alteration of neighbouring house—*Injunction*. Plaintiff and defendants, occupants of neighbouring houses, were joint tenants of the party-wall. Defendants unroofed their house, raised the wall, and placed beams on it to rebuild their house. The lower Appellate Court found that, in consequence of this alteration, the rain from defendants' house descended upon plaintiff's

where it did not exist before, or that it rendered more burdensome an existent "*servitus stillicidii*," it would be very dangerous to hold that every trifling excess in the exercise of a servitude should justify the pulling down of the building creating the excess; that in the present case the damages should be assessed and awarded, and the injunction to remove the roof of the house and reduce the wall be made conditional upon the defendants not removing the cause of the nuisance.

yes is the to abate  
*ATA CHALA*  
 3 Mad. 112

DAMAGES—*contd.*2. MEASURE AND ASSESSMENT OF DAMAGES—*contd.*(b) TORT—*contd.*

84. *Trespass to immovable property—Quarrying stone without leave*. Where the defendants without leave quarried on the land of the plaintiff and removed a large quantity of stone therefrom: *Held*, that the plaintiff was entitled to recover by way of damages the value of the stone after it was quarried and taken away.

*MARODA AND CENTRAL INDIA RAILWAY COMPANY*  
 6 Bom. A. C. 235

Trade-mark  
 Where

by the defendants caused a loss of profit to the plaintiffs, not by diminishing the amount of goods sold by the plaintiffs, by taking away their customers or ousting them from their usual market, but by causing the goods actually sold by the plaintiffs to be sold at a diminished price:—*Held*, that the defendants were liable for the loss sustained by the plaintiffs; and that the amount of the reduction in the price of the goods sold was the measure of damages. The plaintiffs sued the defendants for the infringement of a trade-mark used by the plaintiffs upon bundles of yarn sold by them, and known as "No 20 red tie" yarn. They alleged that the defendants introduced into the Madras market a quantity of yarn bearing similar marks to those upon the plaintiffs' yarn, but of very inferior quality; and that, in consequence of this action of the defendants, the selling price of the plaintiff's yarn was, during the months of April and May 1885, depreciated beyond the amount of depreciation attributable to the natural fall of market prices.

It appeared that

of the plaintiffs' yarn beyond the general market

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

and probable result of the defendants' action; and that the plaintiffs were entitled to recover such damage from the defendants. **MANOCKJI PETIT MANUFACTURING COMPANY v. MAHALAXMI SPINNING AND WEAVING COMPANY**

**I. L. R. 10 Bom. 817**

**86. Wrongful execution of decree—Execution of decree after sale of decree.** The defendant, being the holder of a decree, whereby a certain sum was declared due as a lien on two mouzabs therein mentioned, sold his decree to the plaintiff in the present suit, who had purchased the proprietary right in the mouzabs subject to the lien. Subsequently the defendant, who retained possession of the decree, sued out execution and realized the amount due under it, together with subsequent interest thereon. *Held*, that the plaintiff was entitled to recover back the money paid by him as the consideration for the sale, together with damages proportionate to the loss sustained by reason of the subsequent improper execution of the decree, viz., the amount of subsequent interest. **GOOR SAHAI v. HUR SAHAI** . **3 Agra 202**

**87. Wrongful attachment—Death of cattle seized.** In execution of a decree against his judgment-debtor, the defendant caused the cattle of the plaintiff, a stranger, to be seized and taken. The plaintiff filed his claim under a 248, Act VIII of 1839, which was allowed. Subsequently to the admission of the claim, but before the order for release of the cattle, three of the bullocks died. The plaintiff sued for damages consequent on the seizure of the cattle, and for the value of the three bullocks which had died during the time they were in the custody of the officer of the Court. *Held*, that the defendant was liable to the plaintiff for damages sustained by him in consequence of the seizure and detention of the cattle, i.e., for a sum sufficient to cover what would have been plaintiff's expenses for hiring bullocks to cultivate his land. **SURJAN BIR v. SARIATULLA**

**3 B. L. R. A. C. 413 ; 12 W. R. 329**

**88. Liability of execution-creditor in damages for wrongful seizure—Attachment of stranger's property** Certain unthreshed rice belonging to the plaintiff was wrongfully attached by the defendant.

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

iff to recover the value of the unthreshed rice from the defendants:—*Held*, the measure of damages should be the value of the rice as it stood at the

ance should be deducted from the value of the straw and rice when unsevered from each other. **GOMA MAHAD PATIL GOKALDAS KHIMJI**

**I. L. R. 3 Bom. 74**

**89. Loss of timber on attached estate.** This suit was brought to cancel a decision of the Magistracy (A), dated 11th December 1892, whereby first defendant was put in possession of the Choldai forest, to establish plaintiff's

was begun in 1862 by G, who in 1865 transferred his interest in D, who in 1867 was succeeded by first defendant. In the following year the first defendant proceeded to lay claim to the land in dispute, and in 1868 he prosecuted some hill-men for trespass and had their crops attached. In June 1869 he procured an order from the Deputy Magistrate whereby the Gudalur Sub-Magistrate was ordered to attach certain lands (no boundaries

cancellation whereof was prayed in the plaint. The District Judge found that down to the interference of the Magistrate in 1868 plaintiff was

connection between its loss and a wrongful act of the defendant which was needed to justify the award of that sum as damages. There was no evidence of the mode of the loss. The occasion for it

**90. Wrongful detention of property.** The proper measure of damages for

clandestinely threshed and carried off by thieves, who left the straw. In a suit brought by the plaint-

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

wrongful detention of property is the difference between the value of the property when seized and its value when restored. **NUNDEERAM SINGH v. Inderchund Dogare** Cor. 80

s.c. in Court below. **Inderchund Dogare v. NUNDEERAM SINGH** Cor. 3

**81.** ——— *Interest on value of goods.* In a suit for damages for detention of property, interest at the bazar rate on the value of the goods awarded and recovered may not be an adequate measure of damages. The Judge should take into account all the circumstances.

cause of action, and know for their natural and immediate consequences. **PUNJU v. Oonoy**

18 W. R. 337

**82.** ——— *Suit for damages for taking and detaining coffee estate and properties and for destruction of crop—Profits of estate.* The plaintiff brought a suit against the defendant to recover damages for the wrongful taking and detention by the defendant of a coffee estate and certain moveable property belonging to the plaintiff, and for the loss sustained, partly by the destruction of the growing "supplemental crop" and partly by neglect of the proper cultivation of the estate. The possession of the estate had been in the first instance given in right of the defendant's claim as mortgagee, and afterwards retained mistakenly by the same person.

**83.** ——— *Suit for plundered property—Misappropriation—Presumption.* In a suit to recover the value of plundered property, when a question arose as to the amount of the property.

**84.** ——— *Injury to Ferry—Compensation—Land Acquisition Act (1 of 1894), ss. 9, 12 and 18—Notice—Irregularity in the notice, effect of—Valid award, requirements of—Railways Act (IX of 1890), s. 10, sub-s. (2)—Limit*

**DAMAGES—contd.****2. MEASURE AND ASSESSMENT OF DAMAGES—contd.****(b) TORT—contd.**

ation Act (XI of 1877), Sch. II, Art. 120—*Damages, measure of.* Where notice under s. 9 of the Land Acquisition Act does not contain the material facts, which would enable the landowner to identify the land intended to be taken or

ages for permanent injury to a ferry caused by acquisition under the Land Acquisition Act, is maintainable in the Civil Court.

toward by the owner. A suit will lie in the Civil Court in respect of claim for damages, which could not be foreseen at the time of the acquisition proceedings. A suit to recover compensation for

refusal by the Collector to award compensation. The mere construction of a railway bridge across a river, whereby the profits of the ferry are reduced, does not entitle the owner to claim damages; but where lands and both banks of the river, which were used as landing places for the ferry,

ought not to be determined by ascertaining the average profits at the date of the acquisition by regarding it as an invariable quantity and by taking a number of years' purchase. The damages ought to be calculated on the basis of the average profits from the ferry. **RAMESWAR SINGH v. SECRETARY OF STATE FOR INDIA** (1907)

I. L. R. 34 Calc. 470

**3. REMOTENESS OF DAMAGES.**

**1.** ——— *Suit for trespass—Expenses of criminal proceedings—Loss of income.* The plaintiffs, describing themselves as the agent and gomastah of the hereditary *domest* of the Trivellore I against the defendant, appointed *domest* of 1803, and their servants, for a trespass by the defendants in forcibly dispossessing them of the pagoda and the property therein, and for the wrongful removal and retention of the property. The plaintiff stated

DAMAGES—*contd.*3. REMOTENESS OF DAMAGES—*contd.*

that the defendants were punished criminally for the trespass by the Magistrate, who, after enquiry under ss. 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were the value of jewels, cash, records, and accounts not restored ;

... damages due to a festival held at the

as damages, such damages not being directly traceable to the wrong and its natural and necessary consequences ; that the amount of income received by the defendants during the festival was a loss sustained by the *durmakutah* and not by the plaintiff personally ; and that the plaintiff had failed to make out the loss of property alleged. *VENKATASA NAIKER v. SRINIVASSA CHARIAR* . . . . . 4 Mad. 410

2. ——— Invasion of right of private ferry—*Damages for trespass to lands*. In a suit to maintain the old boundaries of a ferry, the plaintiffs did not assert that they enjoyed a . . . . . which had been invaded by an

boats, or in boats hired by them, their labourers and cultivators and implements of husbandry ; and that, in the exercise of this right, the order of the Magistrate was injurious to them. *Held*, that such damage was much too remote to entitle them to relief. *Held*, also, that the damage done to the plaintiffs by passengers and carriers trespassing on their lands on their way to the ferry was too remote to entitle them to maintain the suit. *RAM GOVIND SINGH v. MAGISTRATE OF GHAZIPORE*

4 N. W. 146

3. ——— Expected custody of idols—*Uncertain damages—Anticipated profits*. A claim for damages for being prevented from receiving certain sums which the plaintiffs might

4. ——— Anticipated profits from turn of worship—*Right of suit—A suit for wastel in respect of profits derived from a turn of worship, whether maintainable*. A suit for wastel, in respect of profits derived from a turn of worship, which are in their nature uncertain and

DAMAGES—*contd.*3. REMOTENESS OF DAMAGES—*contd.*

voluntary, is not maintainable. *Rameswar Mookerjee v. Ishan Chunder Mookerjee*, 10 W. R. 457, followed. *KASHI CHANDRA CHUCKERBUTTY v. KAILASH CHANDRA BANDOPADHYA*

I. L. R. 26 Calc. 356

3 C. W. N. 279

See *DINO NATH CHUCKERBUTTY v. PROTAP CHANDRA GOSWAMI* . . . . . I. L. R. 27 Calc. 30

4 C. W. N. 79

5. ——— Charter-party—*Unseaworthiness of ship—Expense of renewing bills—Delay—Loss by exchange*. The plaintiffs chartered a ship of the defendant, and by the charter-party it was stipulated that the said ship, being tight,

was stopped. The charges of shifting the cargo and the cost of the cargo substituted were paid by the defendant. Considerable delay occurred in consequence of the leak, and the loading was not completed until the end of July. On May 28th, when

ference in the rate of exchange, were out of pocket Rs400. In an action against the owner for breach of the charter-party in not supplying a ship tight, staunch, and strong, as stipulated, the plaintiffs sought to recover, as damages arising out of such breach of the charter-party, the interest paid by them on the drafts in pursuance of their arrangement with the Comptoir d'Escompte, the sum they had to pay on renewing the bills, a further sum for interest on bills they could not negotiate in consequence of not being able to obtain bills of lading from the defendant, and the value of the

DAMAGES—*contd.*3. REMOTENESS OF DAMAGES—*contd.*

stamps on the bills, which had been cancelled in pursuance of the plaintiffs' arrangement with the Comptoir d'Escompte. *Held*, that such damages were too remote. **ROBERT AND CHARNIOL v. ISAAC** 6 B. L. R. Ap. 20

6. Breach of covenant in not giving lessee possession—*Expenses of litigation for possession.* In a lease for a period of nine years, without payment of salami, entered into between A and B, A bound himself by the following covenant: "In the event of B not being put in possession of the leased premises, A will have to make good anything in the shape of *khams* or *nulson* (loss) to which B may be put in consequence." On A failing to put B in possession of the premises mentioned in the lease, B brought a suit against the party in possession, but failed to recover possession. In a suit by B against A for recovery of damages for breach of contract measuring the amount of damages at the expenses he had to incur in the suit for possession, and also the whole of the profits which he expected to derive from the lease:—*Held*, that the plaintiff was entitled to recover only nominal damages. **MAHOMED ISA KHAN v. KISHO LAL.** 6 B. L. R. Ap. 44

7. Suit for damages against lessor, including costs—*Costs of litigation—Cause of action.* In 1883, A, the trustee of a certain charity, executed in favour of X and Y an agricultural lease for nine years and delivered over possession of the lands comprised in it, being part of the trust property. The lease contained a provision that it should be cancelled on default being made in payment of the rent and kist, and it contained no express covenant for quiet enjoyment. In 1887 default was made in payment of the rent and kist. A thereupon cancelled the lease, and sued X and Y, and obtained a decree for the arrears. In a suit by X for damages for breach of contract against A, the plaintiff alleged that certain raiyats setting up a false claim had evicted X from the lands demised at the instigation of A, who had subsequently sought unsuccessfully to obtain further advantages for himself. *Held*, that the plaintiff disclosed a good cause of action against the lessor; and that, even if the plaintiff had substantiated his allegations against his lessor, he would not have been entitled to recover the cost of civil and criminal proceedings against the raiyats who had evicted him. **Mahomed Isa Khan v. Kisto Lal,** 6 B. L. R. Ap. 45, referred to. **VITHILINGA PADAYACHI v. VITHILINGA MUDALI**

I. L. R. 15 Mad. 111

8. Loss of profits from non-cultivation—*Magistrate's order as to possession—Disputed possession—Non-cultivation—Criminal Procedure Code, 1872, s. 531.* A dispute having

DAMAGES—*contd.*3. REMOTENESS OF DAMAGES—*contd.*

arisen his title in a Civil Court. The land, in consequence of this order, was not cultivated in the following year. The plaintiff sued for damages

**AMMANI AMMAL v. SELLAYI AMMAL**

I. L. R. 6 Mad. 426

9. Breach of condition in lease—*Speculative damages.* Where it was stipulated in a lease that, if the tenant did not cultivate, the landlord might enter and cultivate a portion of the land demised:—*Held*, that, on breach of the condition by the tenant, the landlord might be entitled to recover any damage directly consequent on the breach of contract, but he was not entitled to claim speculative profits which he might have derived from the most hazardous crop. **ABDOOL GHUNNEE v. GOODREE RAI**

2 Agr. Pt. II, 192

## 4 RENT SUITS, DAMAGES IN.

1. Bengal Rent Act VIII of 1880, s. 44—Beng Act VI of 1882, s. 2—*Additional damages—Discretion of Court.* The award of additional damages under s. 2, Bengal Act VI of 1882, was discretionary and not imperative. Before awarding such damages, the Court, in the exercise of its discretion, had to look to the condition of the parties and the particular hardship inflicted on the landlord by the omission of the undertenant to pay his rents. **RAMBODDUN SINON v. SREE KOONWAR** . W. R. 1884, Act X, 22

**DHEERAJ MAHTAB CHUND v. DEBENDER NATH THAKOOR** . W. R. 1884, Act X, 68

**GOPAL LAL THAKOOR v. MAHOMED KADIR** W. R. 1884, Act X, 73

**BOYLECHAND DUTT v. PUNCHANUN CHORAY** W. R. 1884, Act X, 64

**ZAMEERODDINNISSA KHANUM v. PHILLIPS** 1 W. R. 280

2. Beng. Act VI of 1862, s. 2—*Additional damages—Interest under s. 20, Act XI of 1859—Construction of statute.* Damages under s. 2, Bengal Act VI of 1862, were awardable

**KANTH DEY v. BORADAKUNTH ROY** . 1 W. R. 100

3. Facts justifying award of damages. Before awarding damages for arrears of rent under s. 2, Act VI of 1862, the Court should find whether, when the rent was demanded, it was withheld without just reason or not. **MOHANUND CHOWDHRY v. EOLINTON**

1 W. R. 343

DAMAGES—*concll.*4. RENT SUITS, DAMAGES IN—*concll.*

4. ————— Damages when not awardable. Damages were not awardable under s. 2, Bengal Act VI of 1862, in a suit for rent in

5. ————— Bengal Rent Act, 1869, s. 44.—*Beng. Act X of 1871, s. 25* Tenants are liable in damages for neglect to pay road and public works cesses. *SARODA PRASAD CANGOOLY v. PROSONNO COOMAR SANDBAL*  
I. L. R. 8 Cal. 290

6. ————— Withholding receipt on payment of rent.—*Act X of 1853, s. 10—Injuria sine damno.* Where money is actually paid as rent and the necessary receipt is withheld, the case is not one of *injuria sine damno*, but one in

## DAMDUPAT, RULE OF.

See HINDU LAW—USURY.

I. L. R. 28 Mad. 862

I. L. R. 28 All. 354

See INTEREST . . . 10 C. W. N. 884

See REGULATION II of 1877.

1. ————— Hindu Law—Interest.—Interest accrued due not affected by the rule of *damdapat*. Plaintiff advanced R744 to the defendant. The whole of this sum was repaid by the defendant. The plaintiff then sued to recover R339.2, being the amount of interest over the amount from the date of the loan to the date of its repayment. The defendant raised the plea of *damdapat*, alleging that no sum was due as principal at the date of suit, so none could be recovered by way of interest. *Held*, that the claim should be allowed, since the rule of *damdapat* had no application to a right that has already accrued. The rule of *damdapat* does not divest rights that have accrued; it merely limits accruing rights. A suit against a Hindu debtor for interest actually and legally accrued is not barred merely because the principal sum lent has been paid off. *NUSSERWANJI v. LAXMAN* (1906)  
I. L. R. 30 Bom. 452

2. ————— Practice—Civil Procedure Code (Act XIV of 1882), ss. 351 and 352.—Proof of claim in insolvency proceedings, effect of. An order admitting a creditor's claim made in insolvency proceedings, amounts to a decree and the rule of *damdapat* is not applicable to a claim so admitted. The rule of *damdapat* applies only during the existence of the relation of debtor and creditor, and ceases to apply when the

DAMDUPAT, RULE OF—*concll.*

contractual relation has come to an end by reason of a decree. *HARI LAL MULLICK, In the matter of* (1906) . . . I. L. R. 33 Cal. 1269

## DANCING GIRLS.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

I. L. R. 13 Bom. 150

See HINDU LAW—CUSTOM—ADOPTION.

I. L. R. 12 Mad. 214

I. L. R. 19 Mad. 127

I. L. R. 21 Mad. 229

See HINDU LAW—CUSTOM—ENDOWMENTS . . . I. L. R. 14 Bom. 90

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS . I. L. R. 1 Mad. 166, 358

I. L. R. 4 Bom. 545

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION

I. L. R. 14 Mad. 183

See HINDU LAW—INHERITANCE—DANCING GIRLS . I. L. R. 13 Mad. 133

I. L. R. 14 Mad. 183

See PENAL CODE, s. 372

I. L. R. 12 Mad. 273

I. L. R. 15 Mad. 41, 323

I. L. R. 16 Bom. 737

See PENAL CODE, s. 373.

I. L. R. 23 Mad. 159

## DANGEROUS CONDITION.

See BOMBAY MUNICIPAL ACT.

I. L. R. 33 Bom. 334

## DARBHANGA RAJ.

————— Babuana grant.

See HINDU LAW . I. L. R. 33 Cal. 1158

12 C. W. N. 956, 966

12 C. W. N. 118

————— custom of—

See HINDU LAW—MAINTENANCE

I. L. R. 36 Cal. 843

## DARKHAST RULES, GRANT OF LAND UNDER.

1. ————— Grant by competent authority not to be set aside because not made in the manner prescribed. A grant of land on darkhast, by an authority competent to make such grant, cannot, where no fraud has been practised in obtaining such grant, be set aside on the ground that it was not made in the manner prescribed by the Board's Standing Order. *Collector of Salem v. Rungappa*, I. L. R. 12 Mad. 404, 405, followed. SECRETARY OF STATE FOR INDIA v. BUNDEPPA OF KOKAKONDIA (1908)  
I. L. R. 32 Mad. 300

2. ————— Nature of grant—Power of Civil Courts to interfere where grant set

**DARKHAST RULES, GRANT OF LAND UNDER—contd.**

aside by appellate authority on the ground of irregularity of procedure. A applied to the Tahsildar under rule IV of the Darkhast rules for a grant of land. The Tahsildar made the grant under rule VII on the 10th May 1897 and the grant stated that it was subject to the result of any appeal that might be preferred. On the 15th July 1897 and on the 2nd November 1897, two appeals were preferred to the Deputy Collector against the grant. On the 15th June 1898, the Deputy Collector issued a pottah to A in pursuance of the grant. The appeals were heard on the 28th June 1899, after notice to A and the grant by the Tahsildar was set aside on the ground that the notice under rule V was not duly published. A appealed to the Collector and to the Board of Revenue and his appeals were dismissed. The present suit was instituted by A for a declaration that the lands had become his property and that the Deputy Collector's order cancelling the grant was null and void or in the alternative for a decree directing the defendant to pay the list paid by A and the cost of the improvements effected by him. The Court of first instance granted the relief.

but, modified the decree by granting the alternative relief claimed in respect of list and improvements. On appeal to the High Court: Held, per SIR ARNOLD WHITE, C.J., that it is not open to a Civil Court to cancel a pottah because some of the formalities of the Darkhast rules have not been observed. It may, however, set aside an order of an Appellate Revenue Tribunal which allows a grant by irregularity of formality of

is no evil be open to a Tahsildar to make the grant on the ground of irregularity of procedure. In the former case there is a conditional contract, but in the latter there is no contract at all. *Per BENSON, J.*—Under the rules the Tahsildar has power only to make a

is not open to the Civil Courts to discuss the sufficiency or otherwise of the grounds on which the Darkhast authorities, whether original or appellate

*Secretary of State for India v. Kusturi Redda*, I. L. R. 26 Mad. 268, referred to and approved. *Sappani Asari v. The Collector of Coimbatore*, I. L. R. 26 Mad. 742, referred to and approved. *MUTHU VEERA VANDANAYAN v. SECRETARY OF STATE FOR INDIA* (1906). I. L. R. 29 Mad. 461

3. ————— Darkhast Rule 14—Jurisdiction of Civil Courts—Registry under

**DARKHAST RULES, GRANT OF LAND UNDER—cont'd.**

rule 14 only conditional—Civil Courts can interfere only when the grant is made by the Tahsildar, the registry grant is not valid if it might be the Civil Courts validity of acts done by Government officers when they act within the scope of their official powers is not properly original or its powers; the Civil Courts have no jurisdiction. THE SECRETARY OF STATE FOR INDIA (1908)

I. L. R. 30 Mad. 270

4. ————— Grant good if set aside on the opinion of the High Court. A grant of land made by the Tahsildar under the Darkhast rules by the officer empowered by the rules to make the grant is binding on the Crown, unless it is revoked by an officer of a higher grade on appeal. The omission on the part of the officer making the grant to consult an authority, whom he is directed to consult by an order of Government, which, however, does not make the opinion of such authority binding on him, is a mere irregularity, which does not invalidate the grant. *HUMMADE BEARI v. SECRETARY OF STATE FOR INDIA* (1908)

I. L. R. 31 Mad. 204

**DARPATNI TENURE.**

See LIMITATION. I. L. R. 34 Calc. 711

**DATE OF HEARING.**

See PRACTICE. I. L. R. 32 Bom. 534

**DAUGHTER.**

See HINDU LAW—INHERITANCE—

SPECIAL HEIRS—FEMALES—DAUGHTERS;

DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.

I. L. R. 26 Mad. 508

I. L. R. 22 Calc. 347

See HINDU LAW—INHERITANCE—

SPECIAL HEIRS—FEMALES—DAUGHTERS. I. L. R. 31 Bom. 485

See HINDU LAW—

MAINTENANCE—RIGHT TO MAINTENANCE—DAUGHTER;

MARRIAGE—NO OBLIGATION TO GET DAUGHTER MARRIED

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**DAUGHTER—*concl.***

----- appointment of—

See HINDU LAW—CUSTOM—APPOINTMENT OF DAUGHTER.

15 B. L. R. P. C. 180  
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----- gift to, at dwiragaman ceremony—

See HINDU LAW . 13 C. W. N. 694

----- right to alienate—

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**DAUGHTER-IN-LAW.**

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—SON'S WIDOW.

**DAUGHTER'S SONS.**

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP  
I. L. R. 26 I. A. 156

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See Oude Estates Act, s. 22  
I. L. R. 3 Calc. 626  
I. L. R. 21 Calc. 667  
I. L. R. 21 I. A. 163

----- if may be adopted.

See HINDU LAW . 13 C. W. N. 620

**DAYABHAGA.**

See HINDU LAW—INHERITANCE  
I. L. R. 35 Calc. 721

See HINDU LAW—JOINT FAMILY  
I. L. R. 31 Calc. 214 ; 448  
12 C. W. N. 103

See HINDU LAW—PARTITION.  
11 C. W. N. 239

See HINDU LAW—SELF ACQUISITION.  
I. L. R. 33 Calc. 1116  
I. L. R. 36 Calc. 66

See HINDU LAW—STRIDHAN.  
12 C. W. N. 924  
I. L. R. 32 Calc. 261  
I. L. R. 33 Calc. 315

**DEADLY WEAPON.**

See PENAL CODE, s. 148.  
I. L. R. 15 All. 16

See UNLAWFUL ASSEMBLY.  
7 C. W. N. 512

**DEAF AND DUMB PERSON.**

See CRIMINAL PROCEDURE CODE, ss. 340, 341 (1872, s. 186) . 7 N. W. 131  
18 W. R. Cr. 57  
22 W. R. Cr. 35, 73  
I. L. R. 27 Calc. 386  
4 C. W. N. 421

**DEAF AND DUMB PERSON—*concl.***

See ESTOPPEL—ESTOPPEL BY CONDUCT.  
I. L. R. 18 Calc. 341

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—DEAFNESS AND DUMBNESS.

See PARTIES—DISABILITY TO SUE.  
2 N. W. 414

**DEATH.**

----- of appellant—

See ABATEMENT OF SUIT—APPEALS.  
I. L. R. 28 Bom. 597

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS I. L. R. 26 Bom. 317

----- of defendant—

See DEFENDANT, DEATH OF.

----- of donor—

See REGISTRATION ACT, 1877, s. 17.  
I. L. R. 25 Mad. 672

----- of executant—

See REGISTRATION ACT, s. 49.  
13 C. W. N. 722

----- of intending plaintiff—

See CIVIL PROCEDURE CODE, 1882, s. 424.  
I. L. R. 25 All. 187

----- of joint appellant, pending appeal—

See CIVIL PROCEDURE CODE, 1882, s. 544.  
I. L. R. 27 Bom. 284

----- of judgment-debtor—

See CIVIL PROCEDURE CODE, 1882, s. 103.  
I. L. R. 23 Calc. 33  
I. L. R. 35 Calc. 1100

See SURETY—LIABILITY OF SURETY  
I. L. R. 24 Mad. 637

----- of party to civil proceedings—

See ABATEMENT OF SUIT—APPEALS.  
I. L. R. 25 All. 97

----- of party criminal proceedings.

See ABATEMENT OF PROSECUTION.  
4 Mad. Ap. 55

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.  
2 C. L. R. 284

----- of party to insolvency proceedings

See INSOLVENCY ACT, s. 36.  
8 B. L. R. 119  
10 Bom. 58

----- of plaintiff—

See PLAINTIFF, DEATH OF.

**DEATH—contd.**

of respondent—

See ABATEMENT OF SUIT—APPEALS.

I. L. R. 23 All. 22

presumption of—

See EVIDENCE ACT, s. 108.

I. L. R. 11 Bom. 433

I. L. R. 35 Cal. 26

11 C. W. N. 833

See HINDU LAW—PRESUMPTION OF DEATH.

See MAHOMEDAN LAW—PRESUMPTION OF DEATH.

sentence of confirmation of—

See CRIMINAL PROCEDURE CODE, s. 376

(1872, s. 288) . I. L. R. 1 Bom. 639

19 W. R. Cr. 57

**1. — Presumption of—Evidence Act (I of 1872), s. 108—Presumption of death of person not heard of for more than seven years—Time of death, no presumption as to.** The presumption that arise so under s. 108 of the Evidence Act is that a man who has not been heard of for seven years is dead at the time the question is raised and not that he died at some antecedent date. It is incumbent on the party who alleges that a person died on a certain date to prove that fact by evidence. *FANI BHAU BANERJEE v SURJA KANT ROY CHOWDHURY* (1907)

11 C. W. N. 833

**2. — Sentence of—Age of the accused**

**Sentence.** Where the accused, a girl of 16, was held guilty of deliberately killing her husband by means of arsenic poison which she mixed up with the food, cooked and served up by herself to the husband: *Held*, that in consideration of her age she should be transported for life instead of suffering the extreme penalty of law. *EMPEROR v JASHA BEWA* (1907)

11 C. W. N. 804

**3. — Criminal rashness or**

**negligence—Firing at object on the sky-line of an eminence near a public road without proper precautions against danger—Indian Penal Code (Act XLV of 1860), ss. 304A, 336, 337 and 338—Compensation to relative for death by rash or negligent act—Criminal Procedure Code (Act V of 1898), s. 345.** Two persons, one a corporal and the other a private, who had both been in the regiment over four years, went to a plantation at the edge of which there was an eminence on which they set up at the sky-line a small tin case as a target, and fired several shots at it, from a distance of 100 feet, with a quarter inch bore saloon rifle sighted to 100 yards. There was a public road used by the villagers about 150 yards away, and 60 feet below the level of the eminence, but in the direct line of fire. The road was not visible from the firing point, but clearly so from the target. A bullet struck a man passing along the road at a spot in the line of fire, though it did not appear, who had fired the shot. No precautions of any

**DEATH—contd.**

kind were taken to prevent danger to passers-by on the road from such firing. *Held*, that they were both guilty of criminal rashness and negligence within section 304A read by itself without reference to ss. 34 and 107, in firing at an object on the sky-line of the eminence against the light (which was in itself dangerous), near a public road within the zone of fire with a rifle which, sighted to a 100 yards, they must have known might easily carry

304A of the Penal Code have the same meaning as "does any act so rashly or negligently" in ss. 336, 337 and 338. S. 336 renders criminal the doing of any act so rashly or negligently as to endanger human life or the safety of others, irrespective of the consequences. Ss. 337 and 338 only impose a greater punishment when hurt or grievous hurt is the result of such rashness or negligence. S. 304A provides for the case of death by such rash or negligent act under circumstances not amounting to culpable homicide. *Reg. v. Salmon, L. R. 6 Q. B. D. 79*, and *Reg. v. Nidamarti Nagabhushanam, 7 Mad. H. C. 119*. Section 545 (1) (b) provides for compensation, in cases where it is recoverable under Act XIII of 1855, to the persons therein indicated, viz., "the wife, husband, parent and child, if any," of the deceased. *Yalla Ganguluv. Mamidi Dahi, I. L. R. 21 Mad. 74*, dissented from. *EMPEROR v. MORGAN* (1909)

I. L. R. 38 Cal. 302

**DEATH-BED GIFTS.**

See MAHOMEDAN LAW.

I. L. R. 35 Cal. 271

**DEATH ILLNESS, WHAT CONSTITUTES.**

See MAHOMEDAN LAW.

I. L. R. 35 Cal. 271

**DEBATE ON BILL IN LEGISLATIVE COUNCIL.**

See STATUTE, CONSTRUCTION OF

I. L. R. 18 Bom. 133

**DEBT.**

See ACKNOWLEDGMENT OF DEBT.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS.

See CERTIFICATE OF ADMINISTRATION—Acts XXVII of 1860 and VII of 1889 AND GRANT OF CERTIFICATE.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

See CIVIL PROCEDURE CODE, 1882, s. 258.

I. L. R. 28 All. 36

**DEBT—contd.**

See HINDU LAW—

DEBTS;

FATHER'S LIABILITY—LIMITATION.

13 C. W. N. 9

IMMORAL DEBT I. L. R. 33 Calc. 676

JOINT FAMILY—DEBTS, AND JOINT  
FAMILY BUSINESS;

SON'S LIABILITY TO PAY FATHER'S DEBTS.

I. L. R. 33 Bom. 39; 264

PARTITION—EFFECT OF PARTITION.

I. L. R. 24 Mad. 555

See IMPRISONMENT . 5 C. W. N. 145

See INSOLVENCY—INSOLVENT DEBTORS  
UNDER CIVIL PROCEDURE CODE—EXE-  
CUTION OF DECREE.

I. L. R. 30 Calc. 407

See INSOLVENCY ACT, s. 39.

I. L. R. 19 Calc. 146

See JUDGMENT-DEBT.

See LIMITATION ACT, 1877, s. 19

I. L. R. 31 Calc. 95

6 C. W. N. 166

See LIMITATION ACT, 1877, s. 20.

I. L. R. 26 All 36

See MAHOMEDAN LAW—DEBTS.

See SUCCESSION CERTIFICATE ACT

I. L. R. 26 Bom. 119

12 C. W. N. 146

acknowledgment of—

See LIMITATION ACT, s. 19—ACKNOW-  
LEDGMENT OF DEBTS.

assignment of—

See INSOLVENT DEBTORS ACT, s. 23

I. L. R. 25 Mad. 406

barred by limitation.

See ADMINISTRATION.

I. L. R. 2 Bom. 75

See ADMINISTRATOR-GENERAL.

I. L. R. 1 Mad. 267

See COLLECTOR . I. L. R. 19 Mad. 255

See HINDU LAW—ALIENATION—ALIENA-  
TION BY WIDOW—WHAT CONSTITUTES  
LEGAL NECESSITY 6 Bom. A. C. 370

I. L. R. 11 Bom. 320

I. L. R. 13 Mad. 166

I. L. R. 21 Calc. 160

See MORTGAGE—REDEMPTION—RIGHT OF  
REDEMPTION . I. L. R. 16 Bom. 755

dishonestly or fraudulently  
preventing debt being available for cre-  
ditors—

See PENAL CODE, s. 422.

I. L. R. 28 Calc. 314

**DEBT—contd.**

due to Crown.

See CROWN DEBTS.

I. L. R. 12 Calc. 446

5 Bom. O. C. 23

incurred for necessities binds  
minor's estate—

See GUARDIAN AND WARD.

I. L. R. 35 Calc. 320

joint—

See CONTRIBUTION, SUIT FOR—PAYMENT  
OF JOINT DEBT BY ONE DEBTOR.

nature of—

See HINDU LAW—ALIENATION—ALIENA-  
TION BY FATHER.

See HINDU LAW—JOINT FAMILY—POW-  
ERS OF ALIENATION BY MEMBERS.

See HINDU LAW—JOINT FAMILY—  
SALE OF JOINT FAMILY PROPERTY IN  
EXECUTION, ETC.

part payment of—

See LIMITATION ACT, 1877, s. 20

6 C. W. N. 766

payable by instalments.

See BOND.

See LIMITATION ACT, 1877, SEC. II, ART.  
75.

See LIMITATION ACT, 1877, SEC. II, ART.  
179—ORDERS FOR PAYMENT AT SPE-  
CIFIED DATE.

recovery of—

See PROVISORY NOTES—ASSIGNMENT OF,  
AND SUITS ON, PROVISORY NOTES.  
5 C. W. N. 56

transfer of—

See TRANSFER OF PROPERTY ACT, s. 131.

1. Hindu Law—  
Son's liability to pay father's debts—Decree for  
damages resulting from a wrongful act committed  
by the father—Ancestral estate in the hand of the  
son not liable under the decree The plaintiff  
obtained a decree against the defendant's father  
for damages to the plaintiff's property caused by  
a dam erected by the latter, which obstructed  
the passage of water thereto. On the latter's  
death the decree was sought to be enforced against  
his son with respect to the ancestral estate in  
the hands of the son *Held*, that the son was  
not liable under Hindu Law under the decree.

DEBT—*cont'd.*

liability so incurred the son could not be held answerable, when the estate that had come to his hands had derived no benefit from the act. Under Hindu Law, the son is not to be held liable for debts, which the father ought not, as a decent and respectable man, to have incurred. He is answerable for the debts legitimately incurred by his father: not for those attributable to his failings, follies or caprices. *DURBAN KHACHAR v. KHACHAR HARSUR* (1908) . . . . . I. L. R. 32 Dom. 348

2. ———— *Succession Certificate—Succession Certificate Act (VII of 1889), s. 4.* In the case of a debt existing in the life of the creditor which did not become payable until after his death, his heirs cannot obtain a decree without the production of a certificate under the Succession Certificate Act. *Nemdhari Roy v. Dissanayari Kumari*, 2 C. W. N. 591, overruled. *BANCHIARAM MAJUMDAR v. ADYANATH BHATTACHARJEE* (1909) . . . . . I. L. R. 38 Calc. 936

## DEBTOR.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

I. L. R. 15 Calc. 54  
I. L. R. 19 Calc. 336

See DEBTOR AND CREDITOR.

See EXECUTOR . . . . . 7 C. W. N. 478

See INSOLVENCY.

See JOINT DEBTORS.

See LIMITATION ACT, 1877, SCH. II, ARTS. 12, 49, 115 AND 145.

I. L. R. 31 Calc. 519

arrest of—

See ARREST—CIVIL ARREST.

See ATTACHMENT—ATTACHMENT OF PERSON.

assignment by—

See DEBTOR AND CREDITOR.

See INSOLVENCY—ASSIGNMENT BY DEBTOR . . . . . I. L. R. 19 ALL. 223

I. L. R. 16 Mad. 397, 449  
I. L. R. 23 Calc. 592

discharge of—

See APPROPRIATION OF PAYMENTS.

I. L. R. 13 Calc. 164  
I. L. R. 26 Calc. 39

removal of property of, by creditor.

See THEFT I. L. R. 22 Calc. 669; 1017  
I. L. R. 18 ALL. 88

## DEBTOR AND CREDITOR.

See CONTRACT ACT, 1872, s. 16.

I. L. R. 31 ALL. 366

See DEBTOR.

DEBTOR AND CREDITOR—*cont'd.*

See EXECUTION OF DECREE.

See LIMITATION ACT (XV of 1877), s. 19.  
I. L. R. 33 Calc. 1047

See RECEIVER . . . . . I. L. R. 30 Calc. 037

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.

fraudulent conveyance—

See TRANSFER OF PROPERTY ACT, s. 53.  
I. L. R. 25 Dom. 202

1. ———— Gift by judgment-debtor. If a judgment-debtor has sufficient other property to satisfy a decree against him it cannot be said

*KRIPANATH SURMA v. NRIPOKALEE DABEE*  
12 W. R. 137

2. ———— Voluntary gift by

especially if the plaintiff became a creditor of the husband long after the gift. *ENAFAT ALI v. RAM-PRASAD KOOHWAR* . . . . . 1 W. R. 21

3. ———— Conveyance by hus.

the creditors. So also a conveyance by a man in such circumstances to his wife is fraudulent and void if no dower is due, and the conveyance is voluntary, and not made in satisfaction of any debt due to him. *MAHOMED BUSSEEROOLLAH CHOWDHURY v. ABEMOONISSA* . . . . . 7 W. R. 513

4. ———— Voluntary transfer—Bond fide gift—Gift not to defraud creditors. A voluntary transfer of property by way of gift if made bond fide, and not with the intention of defrauding creditors, is valid as against creditors. The Hindu and English law on the subject discussed. *GANUBHAI v. SRINIVASA PILLAI* 4 Mad. 84

5. ———— Transfer of property by judgment debtor. It is not illegal for a judgment-debtor to dispose of all his property before attachment, provided the transaction is an actual conveyance and not merely nominal. *DIUMBUREE DASSEE v. BANAY MADHUB GHOSH*

15 W. R. 155

*CHUNDER MADHUB DOSS v. AMER ALI*  
25 W. R. 119

*RAM BUREN SINGH v. JANKEE SAHOO*  
22 W. R. 473

6. ———— Sale made pending suit against vendors for debt—Sale to prevent land being taken in execution. A sale made of immove-

DEBTOR AND CREDITOR—*contd.*

RAMALINGA CHETTY . . . o Mas. Joo

transfer was made before he sued for his debt, so that the debt was unsecured. *SUJUN KOONWER v. PIRMOO LALL* . . . 2 Agra, Pt. II, 211

8. ———— *Assignment in fraud of creditors—Possession of property sold remaining in vendor.* Where a person purchases

that the purchaser has bought, and paid the consideration, and some sufficient explanation of the apparently suspicious circumstances attending the purchase. *KALLYAN v. DOULTA* . . . 1 Agra 79

9. ———— *Deed, execution of, by judgment-debtor—Deed executed in fraud of creditors.* Where a mortgagor executes a deed of sale for the purpose of defrauding and defeating his creditors, it is void against any of the creditors who may obtain a decree against him, although the deed may have been executed before execution was taken out on the decree. *RADHA MOHUN DUTT v. BISSESSUR BUNDOPADHAYA* . . . 6 W. R. 90

10. ———— *Deed executed by judgment-debtor—Assignment to defeat creditors—Consideration—Validity of transaction for valuable consideration defeating execution.* Plaintiffs sued for certain lands under an agreement executed to their elder brother, S, by defendants in the following terms: "You have this day received a loan of Rs. 345-4-4 from D and from me, B, for the purpose of remitting to the Court, in satisfaction of the warrant amount, in the matter of the suit

yammappa to be attached for the said (warrant) amount, and caused six puttis of land, houses, backyards, and certain moveable property out of the same, to be knocked down in auction in our names

the Court; to obtain receipts for the amount and

DEBTOR AND CREDITOR—*contd.*

certificates in our names for the real property; to allow the tiled house, back-yard having fruit trees and moveable property, to be held by you as hitherto; Y and myself, B, to enjoy the produce of the six puttis of land for twenty years from Saruari to Sittadhri, on account of the said loan and interest thereon; and to restore the land, together with the

own land; that defendants purchased only for and on behalf of S, taking from him an assignment of part of the property for twenty years, in order to repay themselves the money lent; that there was, therefore, abundant consideration for the defendants' promise to give up possession at the end of twenty years. *Held, also, following the English*

even as against a creditor, though the object may have been to defeat an expected execution. *SANKARAPPA v. KAMAYYA* . . . 3 Mad. 231

11. ———— *Assignment of property by debtor—Stat. 13 Eliz., c. 5* An assignment made *bond fide* and for valuable consideration, before execution put in, and without notice of claim of execution-creditor, held not to be void under the Stat. 13 Eliz., c. 5. *TARRUCKNATH PAUL v. GLADSTONE* . . . 1 Hyde 178

12. ———— *Voluntary assignment—13 Eliz., c. 5; 27 Eliz., c. 2* A *bond fide* conveyance, though voluntary, is valid as against a subsequent judgment-creditor. *Quare: Whether 13 Eliz., c. 5, and 27 Eliz., c. 2, relating to voluntary conveyances, are in force in this country.* *SOODHREKEENA CHOWDHRAIN v. GOPIN MOHUN SEIN* . . . 1 W. R. 41

13. ———— *Assignment set aside as not being bond fide.* *BHAVAN LAL v. AKEDUN* . . . 1 W. R. 319

*JOTENDRO MOHUN TAGORE v. BROJOSOODHREX DABBE* . . . 1 W. R. 462

14. ———— *Fraudulent assignment—Action of trespass—Want of possession—Stat. 13 Eliz., c. 5.* In an action of trespass against the Sheriff, it appearing that the plaintiff had never had possession of the property alleged to be converted, and that the conveyance to the plaintiff of the property seized had been effected with the view of defrauding the creditors of an insolvent, who shortly before such conveyance was the owner of the same:—*Held*, that the plaintiff was not entitled to recover. The doctrine of a fraudulent conveyance being void as against creditors held

DEBTOR AND CREDITOR—*contd.*

to be a principle of Hindu as it is of English law.  
**SNAM KISSORE SHAW v. COWIE**

2 Ind. Jur. O. S. 7

15. *Fraudulent assignment—Stat. 13 Eliz., c. 5—Hibba—Equity and good conscience.* Whether or not the Stat. 13 Eliz., c. 5 (which may or may not extend to or operate in the "mofussil"), is more than declaratory of the common law, so far as it avoids transactions intended to defraud creditors, its principles, and those of the common law for avoiding fraudulent conveyances, have received effect in the Indian Courts, and have properly guided the decisions of the Courts in administering law according to justice, equity, and good conscience. A hibba having been found on the evidence to have been made not *bona fide*, nor on any good consideration, and by it creditors being delayed in their just rights, the maker having intended to protect his property thereby from those who at the time were his creditors—*Held*, that the hibba was void according to equity and good conscience. **ABDUL HYE v. MAHOMED MOZAFFAR HOSSEIN**

I. L. R. 10 Cal. 616 : 11 I. A. 10

16. *Fraudulent preference—Stat. 13 Eliz., c. 5—Transfer of property by insolvent in consideration of debt barred by limitation—Fraud—Conveyance in trust for payment of creditors—Hindu widow, duty of, to pay husband's creditors equally—Purchaser from Hindu widow—Contract Act (IX of 1872), ss. 16, 17.* The English Stat. 13 Eliz., c. 5, has not, as such, any operation in the mofussil of India, but it embodies principles of general application on account of their essential equity. An unequal disposition of property by a person in insolvent circumstances, and known to be so by the donee, will be set aside if impeached by creditors, except where the transferee has simply pressed a valid claim or made a purchase in good faith. The plaintiff *G* obtained a decree against *M* on the 30th September 1878. *M* died in April 1879, leaving *A*, a childless widow, him surviving. At his death, *M* was in insolvent circumstances. On the 7th June 1879, *A* conveyed by a deed of sale (exhibit 98) the whole of his property, consisting of a house and a garden, to the defendants, who were his separated brothers, in consideration of two time-barred debts due to them by her deceased husband. At the same time she executed in their favour a rent-note (exhibit 99) by which she agreed to pay them a nominal rent for her occupation of the house; but no rent was ever claimed or paid. On the same day the defendants passed an agreement, in writing (exhibit No. 114), to the widow, by which they undertook to settle the debts due to her.

*G*, in execution of his decree against *M*, attached the house conveyed by the sale-deed. The

DEBTOR AND CREDITOR—*contd.*

attachment was raised at the instance of the defendants, who claimed the house under the sale-deed (exhibit 98). Thereupon the plaintiff *G* brought the present suit to establish his right to attach and sell the house as the property of his judgment-debtor, *M*, in execution of his decree. The defendants relied upon the deed of sale executed by the widow (exhibit 98). *Held*, that the alleged sale to the defendants (exhibit 98) was not a real transaction supported by good consideration, and must be set aside in so far as it interfered with the execution of the plaintiff's decree. The transferees were not purchasers for money, or even creditors diligent in pressing an enforceable right. They were members of the vendor's family, and the consideration they gave consisted of old and barred claims that could not be enforced. Payment of such debts by a transfer of the insolvent's whole estate, to the disappointment of creditors whose claims were not barred, was in itself a fraud. Being made to near relatives acquainted with the facts, it would not be regarded as a real and practical transaction. *Held*, also, that the

agreement at any moment by the concurrence of the parties to it. If that agreement was independent of the conveyance (exhibit 98) of the property to the defendants, the latter had no consideration

ment (exhibit 114) was connected with the conveyance (exhibit 98), the exclusion of its terms from that document and the secrecy observed about it stamped the transaction with fraud, whether the transfer was real or only fraudulent. There was no honest trust for distribution which could defeat the plaintiff's execution. *M* might have preferred one creditor to another having an equal right, and the fact that the creditor was his brother did not make such a preference improper. But although *M* might have preferred one creditor to another, his widow could not do so. She took her husband's estate as an aggregate, assets and debts together. She was in some degree a trustee and at any rate under a legal obligation to pay her deceased husband's debts, and to pay them as far as she could equally. She was not at liberty to deal capri-

her, to prefer one valid claim to another, as her husband might have done. This advantage a creditor might have obtained from her husband by his diligence, but on her no pressure could be exercised except through the estate which she was bound, pressure or no pressure, to distribute among the creditors. A purchaser from a Hindu widow must see that she exercised her power of sale strictly, or at least satisfy himself that a sufficient

DEBTOR AND CREDITOR—*contd.*

cause for alienation exists. If the defendants told the widow that the claims, in consideration of which she made the conveyance to them, were barred by limitation, then clearly she had joined with them in a scheme for depriving the judgment-creditors of their due. If they did not tell her, they deceived her by their silence when, as near relatives getting an advantage, they were bound, in dealing with an ignorant woman, to put her in possession of all the material facts. CONTRACT ACT (IX of 1872), ss 15 and 17. **RANOLBHAI KALYANDAS V. VINAYAK VISNU**

I. L. R. 11 Bom. 686

17. — **Fraudulent conveyance—Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud** In June 1875, A, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs B, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale, the first defendant, by means of false representation, became the purchaser at an inadequate price. In July 1879, A applied to have the sale set aside, on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of B's decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiffs' claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That gift was made to them by A when he was in pecuniary difficulties, and included all A's property. It was, therefore, void as against his then existing creditors, of whom B was one. B was, therefore, entitled to sell the property in execution of his decree. **KORNUMATI V. COWASJI**

I. L. R. 13 Bom. 297

18. — **Sale to creditor for old debt and new advance on debtor's bankruptcy—Intent to delay and defeat creditors—Bona fides of purchaser—Fraudulent preference—Stat. 13 Eliz., c. 5.** On the 27th February 1886,

DEBTOR AND CREDITOR—*contd.*

The plaintiff's objection to the attachment by the defendant having been disallowed, he brought the present suit against the defendant, to establish his right to the property attached under his sale-deed. The defendant contended (*inter alia*) that the sale to the plaintiff, having been effected in order to delay and defeat the creditors and to give

of which the plaintiff had been pressing, and Rs 3,400 in cash; and that there were no circumstances in the case which showed that the plaintiff in entering into it was a party to any scheme to delay the general body of the creditors. That being the case, the sale was not impeachable at the instance of

preference, and as such perhaps be impeachable at the suit of the whole body of creditors. *In re Johnson, Golden v. Gillam, L. R. 20 Ch D. 353*, referred to and followed. **MOTILAL RAVICHAND V. UTAM JAGJIVANDAS**. I. L. R. 13 Bom. 434

19. — **Mortgage—Arrangement between firm and its creditors—Giving time—Mortgage security** A firm in difficulty executed a mortgage, securing debts due to creditors named in the deed, it being understood that all the creditors should refrain from suing the firm until the expiration of a certain period. Notwithstanding this, two creditors named in the deed immediately sued for their debts, and obtained decrees. Other creditors named in the deed afterwards bringing the present suit to enforce their rights under the mortgage, it appeared that the intention and agreement was that the deed should not take effect unless all the creditors came in and were bound by it. *Held*, that, the suits abovementioned having been brought before the expiration of the period agreed upon, the consideration for the mortgage had failed, and the creditors could not sue the firm on the mortgage-deed. **AJUDHIA PRASAD V. SIDDH GOPAL**

I. L. R. 9 All. 330

20. — **Time fixed for payment of debt—Intention of parties** The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. **BHAGWAT DAS V. PARSHAD SIKOH**

I. L. R. 10 All. 602

21. — **Debtor giving priority to**

22. — **Assignment to one creditor in preference to others—Bankruptcy laws** It is not illegal for a debtor to execute a security or make an assignment in favour of one creditor over

whereof was one of the creditors of the firm, and sought to attach and sell the property conveyed to the plaintiff in execution of a decree which the defendant had obtained against the firm.

DEBTOR AND CREDITOR—*contd.*

others. The provisions of the bankrupt laws, made to promote the equal distribution of the trader's assets among all his creditors, are not in force in these provinces. *Buldeo Das v Noorxa Lall*. . . 1 N. W. 23 ; Ed. 1873, 21

23. — Deposit with creditor by debtor when in insolvent circumstances to protect his property—*Sale in execution under decree by creditor—Purchaser, right of* A member of a firm of native bankers which had become insolvent, with a view to protect his property from the general body of his creditors, in March 1870, deposited property to the value of Rs30,000 with the appellants, another firm of bankers, to whom he owed Rs1,500. In April 1871, the appellants brought an action against him for Rs300, the balance of that debt, and obtained a decree, in execution of which the property was put up for sale and purchased by the respondent. *Held*, by the Privy Council (affirming the decision of the High Court of the North-Western Provinces), that the respondent was entitled to the property. *DWANKA DASS v RAI SITA RANI* . . . 5 C. L. R. 430

24. — Equitable assignment prior to attachment of debt—*Assignee for value without notice*. A creditor, who attaches a debt due to his judgment-debtor, is not in the same position as an assignee for value of such debt without notice of a prior assignment but in respect to prior assignments stands in no better position than his judgment-debtor. *Held*, that also, as a creditor.

sary to complete, as against the assignor, an equitable assignment of such funds. In August 1870, *R J* signed and gave to *F S & Co.* a letter addressed to *E L & Co.* by which he "requested them to pay over to *F S & Co.* any surplus proceeds of his consignment of one hundred bales per *Aurora*, after recovery from the underwriters of the same."

— A letter was given to *F S & Co.* in consideration of a pre-existing debt. On the 8th of August 1870, *F S & Co.* sent the letter to *E L & Co.* with a request that they should act upon it. The surplus proceeds of the insurance of the one hundred bales reached *E L & Co.* on the 26th of June 1871, and were attached in their hands by a judgment-creditor of *R J* before they were paid over to *F S & Co.* *Held*, that *R J* had validly assigned the surplus proceeds of the hundred bales to *F S & Co.*, and that such assignment was valid as against subsequent attaching creditors. *Semle*. That an attachment upon such surplus proceeds, before they reached the hands of *E L & Co.* from the underwriters, would have been invalid. *MEGJI HANSRAJ v RAMJI JOTTA* . . . 8 Bom. C. 169

25. — Assignment made with intention of defeating creditors. *Executed a razinama in favour of plaintiff on the 20th August*

DEBTOR AND CREDITOR—*contd.*

1868, transferring certain lands to the latter. Plaintiff, after passing the usual *kabuliat* to the Collector, was put in possession of the lands in question. On the 7th April 1869, *T* obtained a money-decree against *D*, and on the 3rd July 1869 attached the lands as belonging to *D Held*, that, for a with of the that razinama would prevail. A sale or mortgage, if real, though made for the purpose of defeating an intended or probable execution, is valid against the execution-creditor. But if it be only a colourable transaction, not intended to confer upon the vendee or mortgagee any beneficial interest in the property, but simply to substitute such vendee or mortgagee as a nominal owner in lieu of the real owner (the judgment-debtor), with the object of saving the property from execution, the vendee or mortgagee is a mere trustee, and the judgment-creditor is entitled to attach and sell the property. *TILAKCHAND HINDUMAL v. JITMAL SUDARAN*

10 Bom. 208

26. — Fraudulent transfer—*Evidence of proof—Mahomedan law—Sale of immovable property by Mahomedan in satisfaction of wife's dower—Consideration—Deferred debt*. A genuine sale made for good and valid consideration to one creditor, even if effected to delay and defeat another, apart from cases in which either insolvency or bankruptcy is involved, is not void. If a man owes another a real debt, and in satisfaction thereof sells to his creditor an equivalent portion of his property, transferring it to the vendee, and thereby extinguishing the debt, the transaction cannot be assailed, though the effect of it is to give the selected creditor a preference. *Wood v. Dixie*, 7 Q. B. 592, *Choene v. Baylis*, 31 L. J. Ch. 757, and the authorities collected in the notes to *Twyne's Case*, 1 Smith's L. C. 12, referred to. Pending a suit for recovery of a debt, the defendant, who was a Mahomedan, executed a deed of sale, dated in June 1882, of a four-annas zamindari share in favour of his wife, the consideration recited therein being the amount of the vendee's deferred dower-debt. Subsequently the creditor obtained a simple money-decree against the defendant, and in execution thereof attached the four-annas share. The vendee objected to the attachment on the basis of her sale-deed, but her objection was disallowed on the ground that the

and he transferred and she accepted the four-annas share in satisfaction of it, the transaction was a perfectly legitimate one, and no Court had any power to disturb it. It was for the defendant, the judgment-creditor, to establish either that the deferred dower-debt did not constitute such a



DEBTOR AND CREDITOR—*contd.*

present consideration as would support the sale, or that the transaction was merely colourable and a fictitious one, which was never intended to have operation or effect, either as a transfer of the pro-

le-deed, the  
position as  
appas attil

the vendee was entitled to maintain it, and to succeed in the suit. *SUBA BIBI v. BALGOBIN DAS*  
I. L. R. 8 All. 178

27. — Assignment in fraud of creditors—*Deed of trust—Voluntary conveyance.*

that time was in a state of indebtedness which occasioned his afterwards becoming an insolvent.

MAILLAND I. L. R. 1100, 2, 2, 51.

28. — Assignment to trustees for benefit of creditors—*Power of insolvent debtor—Insolvency—Retirement of trustees* P, a trader in insolvent circumstances, on the 1st December 1866, executed two deeds conveying his moveable and immoveable property to trustees to hold on certain trusts in favour of such of his creditors as should assent to the said deeds within three calendar months. The deeds contained powers directing the trustees, after dividing the trust-moneys rateably among the assenting creditors, to pay "the residue, if any, after answering the several purposes aforesaid and also the debts or dividends upon the debts of all such creditors

COURT (TURNER, J.), that an insolvent debtor in the moribund may assign all his property to trustees

creditors a substantial interest in the property assigned, and not merely to defeat or hinder a judgment-creditor. Such an assignment may be made to trustees, but it is not requisite that it should be made to trustees; and it is not requisite that it should be made directly to the assenting

DEBTOR AND CREDITOR—*contd.*

creditors. It will confer on the trustees a title to the property assigned superior to that of a judgment-creditor, who has obtained an order for attachment subsequently to the assignment. It is not invalid if made subject to a condition requiring assenting creditors to execute a release of the debtor, nor is it invalid if it declares a resulting trust in favour of the debtor; but *semble*. that the Court might order such resulting trust to be executed for the benefit of judgment-creditors who decline to assent to the assignment. Nor is it invalid if it,

to discharge the primary objects of the trust. Nor is it invalid if it contain a power for the trustees to continue the business, if the power so given is ancillary to winding up the business and realizing the assets of the estate; nor is it invalid if executed only by the minority of the creditors. Nor can it be invalidated by subsequent negligence on the part of trustees. The question as to the intention of the debtor in executing such an assignment, is a question of fact rather than of law; and in determining this question the conditions and trust

statutory provision and of a bankrupt law, make a valid assignment of his property, before liens have attached upon it, or afterwards subject to such liens, to trustees simply for the purpose of having it distributed fairly among all his creditors, although it may defeat particular decree-holders and deprive them of their execution. *Semble*. Such a trust does not become inoperative by reason of the retirement of two out of three trustees and of the inability of the third to charge his duties properly. *STEPHENSON v. BAUNOARTNER BAUMGARTNER v. STEPHENSON*

3 Agre 104, 321

29. — Trust deed to liquidate debts—*Non-communication of trust-deed to creditors—Limitation Act (XV of 1877), s. 10.* D executed a trust-deed, whereby he made over

titled to rank as a beneficiary under it; and that it did not create a trust in favour so as to take out

DEBTOR AND CREDITOR—*contd.*

of the operation of the Limitation Act, a claim that otherwise fell within it. *FINK v. MOHARAJ BAHADUR SINGH*. I. L. R. 25 Cal 642  
2 C. W. N. 409

30. — *Assignment of all his property by debtor to trustees for payment of creditors—Creditors' trust deed—Right of suit by creditor who had signed as creditor and trustee to recover his debt notwithstanding the deed.* On the 30th March 1894, the plaintiff sued the defendant, who traded under the name of V J, to recover

defendant executed a deed, whereby he assigned all his property to the plaintiff and three other persons as trustees in trust for the payment of his creditors. The deed was executed by the plaintiff and the other trustees both as trustees and as creditors. It contained no release and no agreement by the creditors to take less than the full amount of their debts. It conveyed all the defendant's property to the trustees, who were to collect the estate and divide it rateably among the creditors "without prejudice to the rights of the several creditors to recover" the balance (if any) which might remain due to them after receiving such rateable distribution, and it declared that the said agreement for the payment of the debts was accepted by the creditors, and that, "upon payment to the said creditors, respectively, of the full or whole amount of their respective claims, these presents shall operate as fully and effectually as an order of discharge from the Insolvent Court in respect

for himself, his heirs, executors, and administrators, doth hereby covenant with the said debtor, his heirs, executors, and administrators, that he or they will not, if the said debtor shall pay the said full amount of the debts due by him or his said firm of V J to the said creditors, bring any action, suit, or proceeding against them or any of them for or in respect of the debts now due from the said debtor or the said firm of V J to the said creditors respectively." On the execution of this deed, the trustees took possession of defendant's books of accounts, and proceeded to recover the defendant's estate. The three months for which, as above mentioned, the suit was adjourned in April 1894, having now expired, it came on for hearing. The defendant pleaded the deed, and contended that the plaintiff, having accepted the trust and signed the deed, was not entitled to continue the suit against him. *Held*, that it would be inequitable that the defendant, having handed over all his property to four of his creditors as trustees with a view to the payment of his debts in full, should be harassed by one of those creditors who had accepted the trust. The conduct of the

DEBTOR AND CREDITOR—*contd.*

plaintiff had been such as to deprive him of the right to present payment of his debt except by

creditors. Under the circumstances, there was an implied condition that the creditors should not sue until their remedy under the assignment was exhausted. The creditors should get what they could under the assignment, and then proceed for the rest. *GOKULDAIS MEECHANJI v. VASSANJI JAINAM*. I. L. R. 10 Bom. 12

31. — *Composition-deed between debtors and creditors—Managing member of a firm appointed as trustee—Right of suit after dissolution of the firm.* Certain traders having been adjudicated bankrupts in the Court of Mauritius, the creditors agreed to a composition-deed, which was sanctioned by the Court, whereby the present plaintiff, therein described as the managing member of the firm of S & Co. was appointed trustee, and his firm guaranteed the payment of a dividend of 50 per cent. The firm was subsequently dissolved, and its assets were assigned to a third party. The plaintiff now sued to recover costs decreed to him in his capacity as trustee in various suits in Mauritius, and it was objected that he was precluded from suing by the dissolution of his firm and the assignment away of its assets. *Held*, that the plaintiff was entitled to maintain the suit. *Subbaraya v. Pythilinga*, I. L. R. 16 Mad. 85, referred to. *SUBBARAYA PILLAI v. VAITHILINGAM*. I. L. R. 20 Mad. 61

32. — *Private settlement—Bond given after personal discharge in respect of debt incurred before insolvency—Private settlement with creditor without notice to official assignee and creditors—Agreement by creditor not to oppose final discharge—Admissibility of evidence—Untrue recital in bond.* An agreement, by which an insolvent who has obtained his personal, but not his final, dis-

charge, executed an admission on behalf of the obligor to prove that a recital in it that all the other creditors have been settled with, was untrue. Though no creditor is bound to oppose the final discharge of an insolvent not a creditor by a creditor without consideration of a himself not to policy of the Insolvent Debtor's Act and as in fraud of creditors. *NAOROJI NUSSEERWANJI THOONTHI v. SIDICK MIRZA*. I. L. R. 20 Bom. 636

33. — *Bond—Order giving mesne profits not awarded by decree—Bond, construction of—Condition in a bond unfulfilled—Admission of debt—*

DEBTOR AND CREDITOR—*contd.*

*Abandonment of non-existent claim on compromise*  
An order assumed to be made by a Court in execu-

money to be due to the plaintiff, and, as to a particular sum, promising payment out of the mesne profits when realized by them. The decree-holders, afterwards compromising with their judgment-debtor, abandoned the claim to mesne profits. This, however, was no real concession, because the right to mesne profits had no existence. Although the unqualified admission of a debt implies a promise to pay it, yet this implication does not necessarily follow where there is an express promise to pay in a particular manner, and on a certain event happening. *Held*, on the construction of the bond, that here the admission was referable to the particular obligation agreed to be discharged only in the manner stipulated; and that therefore the payment was to be contingent on there being mesne profits. *Held*, also, that it had not been established that the non-occurrence of the condition had been occasioned by the conduct or default of the defendants, and that, therefore, the objection to pay the sum in question never took effect or became enforceable. *KALEA SINGH v. PARAS RAM*

I. L. R. 22 Cal. 434  
I. L. R. 22 I. A. 68

34. ——— Mortgage—Contract Act (IX of 1872), ss. 33, 42, 43, and 45—Joint promise—Joint creditors—Discharge of mortgage by one of two joint mortgagees. The sum due upon a mortgage was given by one of the other upon the mortgage. It appeared that there was no fraud on the part of the mortgagee, and that the mortgagee who received payment was not the agent of the plaintiff in that behalf. *Held*, that the mortgage had been discharged, and the plaintiff was not entitled to sue. *Wallace v. Kelso, 7 M. & W. 264*, referred to. *BARBER MARAN v. RAMANA GOUNDAN*. I. L. R. 20 Mad. 461

35. ——— Collusive discharge by one of two creditors—Estoppel—Fraud. In 1877 the plaintiff executed a deed of hypothecation to one of two partners to secure a loan obtained from them jointly. In 1881 the plaintiff sold, *inter alia*, the hypothecated property to defendants Nos. 2 to 4, and it was arranged that the secured debt should be paid off by the vendees. They failed to do this, but in 1882 they executed a mortgage for the amount due in favour of the other

DEBTOR AND CREDITOR—*contd.*

upon the hypothecation-bond and obtained a personal decree against the present plaintiff, which was *ex parte*, the amount of the decree being declared to be charged on the land in the possession of defendants Nos. 2 to 4. Meanwhile, defendant No. 1 who was the assignee of the mortgage of 1882, had obtained a decree upon it against defendant No. 4. This decree not having been executed, he subsequently sued upon the mortgage again and obtained a decree against defendants Nos. 2 to 4. The plaintiff now sued to have the last-mentioned decree set aside and recover the balance of the purchase-money from defendants Nos. 2 to 4. The Court of first instance passed a decree for the amount claimed, and declared it to be charged on the land. Defendant No. 1 preferred an appeal, in which defendants Nos. 2 to 4 were joined by the Court of first appeal, which dismissed the suit. *Held*, that plaintiff, having allowed a decree to be passed against him *ex parte* in the suit of the holder of the hypothecation-bond, and having obtained a collusive discharge from the other partner, was not entitled to recover against the defendants. *KANAGAPPA v. SOKKALINGA*. I. L. R. 15 Mad. 362

36. ——— Deed of settlement—Attachment of settled property by creditors of settlor—Summons to remove attachment—Order dismissing summons, effect of—Civil Procedure Code (XIV of 1882), ss. 280-283—Sale of settled property in execution against settlor—Purchaser, right of—Right to set aside deed—Suit by creditors to set aside deed on ground of fraud—Limitation Act (XV of 1877), Art. 95. On the 7th April 1877, one N, executed a trust-deed, whereby certain immovable property belonging to him was conveyed to trustees in trust for himself for life or until he became insolvent or attempted to alienate, assign, or encumber the same, and then for his wife and children. At the date of the deed, N was largely indebted, and two or three months prior to the date of the deed he had deposited the bulk of his moveable property with a friend, who endeavoured to compromise with his (N's) creditors, and who applied the said property in paying off a portion of his debts. About a fortnight after the trust-deed was executed, N filed a suit against one H and others. That suit was dismissed, and N was ordered to pay H's costs. In execution of that decree for costs, H, in July 1882, attached a house which was part of the property settled by the trust-deed of April 1877. Thereupon the trustee of the deed claimed to have the attachment removed, alleging that he was in possession as trustee. He took out a summons for that purpose which was dismissed on the 19th December 1882, without prejudice to the rights of the parties to file a suit in respect of the subject-matter thereof. No suit, however, was filed by any of the parties, and the house was sold in execution. H, the execution-creditor, bought it at the sale, and was put into possession, which he retained until his death in December 1883. After his death, his executors took possession.

DEBTOR AND CREDITOR—*contd.*

They desired to sell it, but were unable to do so, in consequence of the claim put forward by N's wife and children (defendants Nos 1, 3, and 4) under the trust-deed of 1877. They accordingly filed this suit against N's wife and children (defendants Nos 1, 3, and 4) and the surviving trustee of the trust (defendant No 2), praying for a declaration that the defendants had no right or interest, present or future or contingent, in the said property that they (the plaintiffs), as executors of H, were absolutely entitled to it, and that the trust-deed was fraudulent and void against the plaintiffs and other creditors of N. It was contended that the suit was barred under Art. 95 of Sch. II of the Limitation Act, XV of 1877, having been filed more than three years after 1882, at which date the fraud was alleged by H himself and relied on by him in the attachment proceedings. *Held*, that the suit did not fall within Art. 95, and was not barred. The substantial prayer of the plaint was a declaration that the plaintiffs were absolute owners of the property in suit, and the basis on which that prayer was rested was the sale to H in 1883. The "relief" asked for was the declaration of the plaintiffs' absolute title, the "ground" of the relief was the acquisition of that title by virtue of the certificate of sale, coupled with a denial of it by the defendants. Such a case did not come within the purview of Art. 95. It was further contended that the effect of the order in December 1882, dismissing the summons which had been taken out by the trustees to having the attachment removed, was to declare the trust settlement invalid, and that, as no steps had been taken by the trustees against whom that order was made to establish the validity of the trust within a year from the date of that order, the defendants could not now rely on their rights as *cestui que trust* under that deed. It was argued that the Judge, in dismissing the summons, must have intended to pronounce the whole settlement invalid, having regard to s. 280 of the Civil Procedure Code (Act XIV of 1882), because otherwise he ought, according to that section, to have ordered, in express terms, the removal of the attachment from the reversionary estate of wife and children. *Held*, that the portion of s. 280 relied on only applies where the property is in the possession of the judgment-debtor "partly on his own account and partly on account of some other person." Here the property was at the time of the attachment, and had been for some months previously, in the sole possession of the trustee, and neither wholly nor partly in the possession of the judgment-debtor. The conditions under which the latter

DEBTOR AND CREDITOR—*contd.*

Civil Procedure Code. *Held*, on the evidence, that the deed of settlement was fraudulent and void as against creditors. It was proved that at or before the date of the settlement N was largely indebted. Nearly the whole of his moveable property had been deposited with a friend in order that the creditors might be compromised with and a portion of his debts paid off, and under those circumstances he made a settlement of this moveable property, which was all that could really be said to have then belonged to him on the eve of the litigation which was about to commence. But *Held*, also, dismissing the suit, that the plaintiffs

of N.  
claim,  
virtue  
and in-

ditors can only be made by creditors whose claims are not barred by limitation. *Quare*: Whether the existence of creditors who were creditors at the date of the deed of settlement is necessary: **BURJORJI DORABJI PATEL v DHUNDAI**

I. L. R. 16 Bom. 1

37. — Account—Burden of proof—Presumption—Principal and agent—Restriction of principal's liability to debts proved to be just. Fraud and undue influence having been found, with the result that a decree cancelled transfers executed in favour of a creditors by a talukdar whose manager had received in his name money forming the consideration for the transfers, an account was directed to be taken of the sums actually due and payable by the principal. Directions were given for the payment, not of all the money received from the creditor by the manager, but only of sums (a) shown to have been lent by the creditor to the principal himself personally, and of those (b) received by the manager on behalf of the principal in the course of a prudent management. The burden of proof lay on the creditor of showing that any particular advance fell within the above (b).

ered the revenue due; and this presumption having to be met, it was for the creditor to bring proof to overcome it. **PARTAB BHADUR SINGH v CHITPAL SINGH**

I. L. R. 19 Cal. 174

I. L. R. 19 I. A. 33

38. — Bankruptcy in Mauritius—Right of suit by trustee under foreign composition-deed in British India—Judgment of foreign Court—Insolvency—Stamp Act (I of 1879), s. 31—Registration Act (III of 1877), s. 17 (c). A debtor

was no such order passed against the interests represented by the first, third, and fourth defendants as to come under the terms of s. 283 of the

DEBTOR AND CREDITOR—*contd.*

and the firm of which he was a member were adjudicated bankrupts in Mauritius, and a receiver was appointed by the Court. Subsequently the creditors met and resolved that, if the adjudication was annulled, a composition, payable by instalments, be accepted in full satisfaction of their debts, and that the security of the plaintiff's firm be accepted for payment of such composition, and that the bankrupts' estate be assigned to that firm, and that the plaintiff be appointed trustee to carry out such arrangement. An instrument was executed to give effect to these resolutions, and was concurred in by the receiver and approved by the Court, which annulled the adjudication, and ordered that the bankrupts' estate in Mauritius and India vest in the plaintiff, who was appointed trustee to carry out the said composition with full powers of realization. The plaintiff now sued to recover the moveable and immoveable property of the bankrupts in India. *Held*, (1) that the above instrument was valid as a composition-deed, and did not require to be stamped and registered as a conveyance; and that any surplus that might remain after payment to the

without deciding that the Court cannot compel the bankrupt when within its jurisdiction to exe-

39. ——— Protection of assets. The assignment in a trust deed by which a person assigns all his property to trustees for the benefit of his creditors protects the assets so assigned from all creditors. *BAPUJI AUDHIFAM v. UNFONHAI KATHESING* . . . 8 Bom A. C. 245

40. ——— Attachment. A *bona fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor, until the trusts of the deed of assignment have been carried out. *BAMANJI MANIKJI v. NAORAJI PALANJI* . . . 1 Bom. 233

41. ——— Voluntary conveyance—Construction—Trustee for creditors—Circuity of actions—Administration suit. K, who was a relation of the plaintiff, executed a deed of conveyance

DEBTOR AND CREDITOR—*contd.*

by which he conveyed all his estate to the plaintiff, in consideration of his undertaking to pay all K's debts. The deed stated that it was K's desire that the estate should remain in his family. After K's death the plaintiff sued for an account and for redemption of some of K's land which had been originally mortgaged by K to the defendant. It was contended in defence that the deed created a trust for the payment of K's debts, and that the defendant was entitled to tack on to the mortgage debt a simple contract which K owed to him. It was found that the defendant was the only unpaid creditor, and that the property was more than sufficient to pay the debt. *Held*, that the deed did not create a trust for K's creditors, the object, on the contrary, being the preservation of the family property. *Held*, further, that due effect could not be given to the whole of the instrument, unless construed as a conveyance to the plaintiff, charged as between himself and K with the payment of K's debts. *Held*, also, that during K's life his creditors could not claim to be paid under this instrument, in the absence of any communication between them and the plaintiff, capable of being construed as an admission by him that he held the property as trustee for them, although they might possibly impeach it. On K's death, however, his creditors would be entitled in an administration suit to have the charge of his debts enforced in their favour. *RAGHO GOVIND v. BALVANT AMRIT* . . . I. L. R. 7 Bom. 101

42. ——— Arrangements made between creditor and debtor—Proof of advances—Razinamas not made decrees of Court, effect of. Razinama arrangements not made decrees of Court, but irregularly acted upon as if they had been so made, do not substantiate advances alleged to have been made by creditors. *PUREYASANI alias KOTTAI TEVAR v. SALUCKAI TEVAR alias OYYA TEVAR* . . . 8 Mad. 157

*KOSALA RANA PILLAI v. SALUCKAI TEVAR alias OYYA TEVAR* . . . 8 Mad. 198

*See VENKATURAMANA HODAI v. BAPANNA RAI* . . . 7 Mad. 103

43. ——— Drawing hundi—Right to credit item in account. The drawing of a hundi on one's own factory and the delivery of it to another, may be evidence of indebtedness to the amount of the hundi, but it is not an item for which the drawer of a hundi is entitled to credit. *SHIB RAM MUNDUL v. MAHESH LALL BISWAS* . . . 7 W. R. 179

44. ——— Sale of goods—Arrangement

DEBTOR AND CREDITOR—*contd.*

45. — Assignment of debt—*Release of debtor*—Failure to prove assignment against third parties. When a creditor accepts the assignment of a debt due by third parties to his debtor, and releases the latter, he has no action against him. *BISREEN CHUNDER SAEHAN v. GOROOK CHUNDER LAHATA* . . . . . 5 W. R. 171

46. — Release, construction of deed of. Construction of document holding that it could not have been intended by the parties to be a general release. *MALICK RAPOO MEYAN v. HARI WALUB NAGURDAS* . . . . . 5 W. R. P. C. 112

47. — Arrangement between decree-holder and one of several judgment-debtors—*Effect of, as against co-debtors*. *Held*, that no arrangement between the decree-holder and one of the judgment-debtors would affect the interest of a co-judgment-debtor unless by express consent. *BHAIRABCHANDRA MADAK v. NADYAR CHAND PAL* . . . . . 3 B. L. R. A. C. 357  
12 W. R. 201

48. — Adjustment of claims—*Composition payment*. The plaintiff, a creditor of the late Rajah Chatpal Singh, accepted, from the Collector in charge of the estate, a composition payment in adjustment of his claims. *Held*, that he could not sue the Rani, nor the infant son of the Rajah, on a contract or bond for payment of the balance. *JAYRAM GEB v. SIBURAJ KOER* . . . . . 2 B. L. R. P. C. 98  
11 W. R. P. O. 41

49. — Co-contractors—*Liability of the others on death of one*. The defendant

defendants promised to pay to the plaintiff from generation to generation Rs100 a year out of a specified fund. *Held*, that, on the death of one of the co-contractors, the whole liability to the plaintiff attached to the surviving co-contractors. *CHETUR NARAYANA PILLAY v. AYANPERUMAL ANBALOM* . . . . . 4 Mad. 447

50. — Substitution of liability. The defendant being indebted to the plaintiff in the sum of Rs74 5-0, the amount of the plaintiff's bill against the ship *Campla*, of which the defendant was master, they both went to the office of the ship's dubash in Bombay, where the defendant signed the bill as correct, and ordered the dubash to pay the amount. The dubash gave the plaintiff Rs500 in cash, saying he would pay the balance next day. The plaintiff said he would prefer a receipt for his bill, and returned the Rs500. An acknowledgment was then given to him, by which the dubash promised to pay the bill for Rs74 5-0 immediately on the money being received from Mr. S. On the day following the plaintiff took out a summons in the Small Cause Court against the defendant, whom he arrested, on making an affidavit that he was about to leave Bombay; and the Court held that "there was no valid substitution of the lia-

DEBTOR AND CREDITOR—*contd.*

bility of any person or fund in place of the original liability of the defendant," and gave judgment for the plaintiff for Rs74 5-0 and costs, which judgment, as to the principal sum, was affirmed by the High Court, but costs on the sum of Rs500, originally paid to and returned by the plaintiff, were disallowed. *ALLARAKIA ALI v. GEACH* . . . . . 3 Bom. O. C. 150

51. — Arbitration—*Award not signed by all the creditors*—*Suit by signing creditor for his debt*—*Act IX of 1872, s. 65*. *K*, on the one part, and his creditors, including *C*, on the other

rected that *K* should dispose of such property for their benefit, and that, if he misappropriated any of the property, he should be personally liable for the loss sustained by the creditors on account of such misappropriation. *C* signed the award amongst other creditors, but not all. *Held*, that *C* was not bound by all the creditors' award, and that he was not liable for a debt awarded over the award, in which suit *C* alleged that several creditors had not signed the award, that some of them had sued *K* and recovered debts in spite of the award; that *K* had misappropriated some of the property; and that, if the plaintiff did not sue, there would be no assets left to satisfy his debt, and that such suit was not maintainable. *LEETA MAL v. CHURU LAT* . . . . . I. L. R. 2 All 173

certain firm gave its creditors jointly, and not severally, a mortgage on certain immoveable property as security for the payment of the debts due to them by the firm, the consideration for such mortgage being a promise by all the creditors not to sue the firm for their debts for a certain time. Before the expiration of such time, several of the creditors sued for their debts. Subsequently several of the creditors brought separate suits against the firm to enforce the mortgage in respect of their debts. *Held*, that the consideration for the contract of mortgage, viz., the forbearance of all the creditors not to sue for their debts for a fixed time, having failed, the firm was discharged from liability on the mortgage. *Held*, also, that, had the contract of mortgage remained in force, it would not have been competent for individual creditors to come into Court and enforce the contract in respect of their separate debts. *SIDH GOPAL v. AJUDHIA PRASAD* . . . . . I. L. R. 5 All 392

53. — Sale to defeat execution of decrees—*Creditor without specific lien*. A creditor without a specific lien (e.g., a mortgage or other direct charge or incumbrance) has not any

DEBTOR AND CREDITOR—*concl.*

*a priori* right to debar his debtor from parting with his immovable property until it is attached in due course of law. **RAJAN HARJI v. ARDESHIR HORMASJI WADIA** . I. L. R. 4 Bom. 70

**MOONA v. CHAND MONEE GOSSAIN**

7 W. R. 208

54. ———— **Fraudulent assignment—**  
Suit by creditor to set aside—Suit by creditor on his own behalf and also on behalf of all creditors—Civil Procedure Code (XIV of 1882), s. 30—Misjoinder—Practice—Notice of assignment—Mahomedan law—Mushaa—Assignment of undivided share. On the 25th July, 1898, the plaintiff obtained a decree against the second defendant, and in execution attached (as belonging to the said defendant No. 2) a one-third share of the interest accruing upon certain moneys in the hands of the Accountant General of Bombay. The said one-third share was thereupon claimed by the first defendant (wife of defendant No. 2), who alleged that it had been assigned to her by her husband (defendant No. 2) by a deed of assignment executed by him on the 15th October, 1886. The plaintiff now sued to have that assignment set aside, contending that it was a sham and colour-

plaintiff in his own right and also on behalf of all the other creditors of defendant No. 2. It was objected on behalf of the defendants that this was a misjoinder of causes of action; and that in his own right the plaintiff sued to have the deed set aside as void, while on behalf of the other creditors he sued for a declaration that it was voidable. *Held*, that there was no misjoinder. The plaintiff and the creditors had one cause of action, viz., the right to treat the deed as one which would not affect their rights. It was further contended that the assignment was not valid, because no notice of it was given to the Accountant General, who had possession of the money assigned. *Held*, that the omission to give notice of assignment to the Accountant General did not invalidate the assignment. It was lastly contended that the parties were Suni Mahomedans, and that according to the Suni law an assignment of an undivided share (*mushaa*) of property was invalid. *Held*, that the rule did not apply, inasmuch as the assignment was of a definite share of the money in the hands of the Accountant General. On the merits the plaintiff's claim was dismissed. **DEHAHIMBHAI RAHIMBHAI v. FULBAI** (1902)

I. L. R. 28 Bom. 577

55. ———— **Tender, validity of—Bond, suit on—Deposit in Court before due date.** A deposit in Court, before due date, of money due upon a bond, is not a valid tender of the debt. **ESHAUQ MOLLA v. ABUL BARI HALDAR** (1904).

I. L. R. 31 Calc. 183

## DEBUTTER PROPERTY.

See CIVIL PROCEDURE CODE, 1882, s. 244.  
11 C. W. N. 145  
12 C. W. N. 739

See CONTRACT ACT  
I. L. R. 32 Calc. 582

See EVIDENCE ACT (I of 1872), s. 9.  
I. L. R. 33 Calc. 571

See HINDU LAW—ENDOWMENT.  
I. L. R. 33 Calc. 507  
I. L. R. 38 Calc. 1003

See HINDU LAW—LIMITATION.  
I. L. R. 33 Calc. 511  
13 C. W. N. 805

See LIMITATION ACT, 1877, s. 22.  
9 C. W. N. 421

See PARTIES . I. L. R. 32 Calc. 582

See RECEIVER . 11 C. W. N. 489

See SHEBAIT . I. L. R. 35 Calc. 891

1. ———— **Dedication—Pre-  
catory trust—Alienation of trust property—Mokurra-  
ri—Purchaser for value with notice of debutter—  
Character of property—Adverse possession—Limita-  
tion Act (XV of 1877), s. 10, and Sch. II, Arts.  
134 and 144—Evidence Act (I of 1872), s.  
90—Proper custody—Minerals.** In the terms of  
a *sanad* granted in favour of the Mohunt of a  
Thakur, there was nothing to show that the  
properties, the subject-matter of the *sanad*,  
were dedicated to a God or Gods or that they  
were to be held in  
perpetuity  
for the  
benefit of  
the  
debutter  
family.  
The  
debutter  
family  
did not  
claim  
the  
property  
as  
their  
own.  
An  
ex-  
amination  
of  
the  
property  
would,  
after  
satisfying  
the  
personal  
wants  
of  
the  
grantee,  
be  
devoted  
to  
the  
service  
of  
the  
God,  
whom  
he  
attended,  
would  
not  
constitute  
a  
valid  
dedication.  
**Ram Kana Ghose v.  
Raja Sri Sri Hari Narayan Singh Deo Bahadur,  
2 C. L. J. 546**, referred to. The grant of a per-  
manent *mokurrari* lease of debutter property is  
an alienation of proprietary interest *pro tanto*,  
and being beyond the competence of the trustee,  
possession under it becomes adverse to the lessor,  
and the trustee is bound to reconvey the property to the lessor.

within twelve years. **Gnanasambanda Pandara  
Sannadhi v. Velu Pandaram, 4 C. W. N. 329;**  
a.c. I. L. R. 23 Mad. 271, followed. **The Presi-  
dent and Governors of the Magdalen Hospital v.  
Knolly, L. R. 4 App. Cas. 324**, and **Attorney-  
General v. Darcy, 4 De Gez & Jones 136**, referred to.  
The effect of a 10 read with Art. 134 of Sch. II  
of the Limitation Act is that time is no bar to an  
action against the trustee himself, his represent-

DEBUTTER PROPERTY—*contd.*

atives or assigns except an assign for valuable consideration, but as regards the latter the period of 12 years from the date of the purchase is to be the period within which the suit must be brought. A person who takes a permanent *moujdar* lease of debutter property for its full value, but with notice of its debutter character, is not precluded by the provisions of s. 10 and Art. 134 of Sch. II of the Limitation Act from pleading 12 years' limitation in a suit brought to recover it. *Radda Nath Das v. Gisborne & Co.*, 15 W. R. (P. C.) 24, and *Ram Churn Tewary v. Frolap Chandra Dutta Jha*, 2 C. L. J. 449, referred to. *Ram Kana Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur*, 2 C. L. J. 546, approved. *SHAMA CHARAN NARAYAN ABHIRAM GOSWAMI* (1906). I. L. R. 33 Cal. 511 s.c. 10 C. W. N. 738

2. ———— *Transferability—Shabait, trespass by—Decree for ejectment—Mortgage profits—Liability of trust estate—Construction of decree—Execu-*

whole decree and alleged that the other decree-holders had assigned to him the interest of them all, and the latter also made an application intimating that they have no objection to the execution of the decree at the instance of their assignee, the applicant. *Held*, that the application was maintainable. *Per RAMPING, J.*—A debutter property according to Hindu law is not absolutely inalienable, it can be alienated for legal necessity, and, therefore, when a shabait as such trespasses on the property of another and so commits a tort and he is sued for and cast in damages, the debutter property can be sold in execution of such a decree. *Per WOODROFFE, J.*—As the decree in question appeared to have bound the trust estate the debutter property was liable. *KRISHNA KISSORE CHAKRAVARTI v. SUEHA SINDHU SANYAL* (1906)

10 C. W. N. 1000

3. ———— *Power of a shabait to bind the estate by compromise—Benefit of the estate* Although it is not competent for a shabait to alienate endowed property by way of mortgage or sale, yet he is authorised to deal with the endowed property for its benefit and preservation and especially for the purpose of preventing it from being lost.

*per Bullock*

R. 299; *Pro-*

*Baboo, L. R.*

*Roy v. Ram*

*Chunder Sen*, L. R. 41 A. 52, *Sheo Shankur Gur v. Ram Shevak Choudhri*, L. R. 24 Cal. 77; and *Parsolam Gur v. Dat Gur*, I. L. R. 25 All. 296, referred to. *HOSSEIN ALI KHAN v. MAHAKTA BHAGAN DAS* (1906). I. L. R. 34 Cal. 249

4. ———— *Conversion—Debutter—Idol—Secular Property.* If property dedicated to a family idol may be converted into secular property by the consensus of the family. *Held*, that in this case the properties, if originally debutter, have been so converted with common consent. In dealing with

DEBUTTER PROPERTY—*contd.*

a question as to whether properties alleged to be debutter are really debutter or only nominally so, the manner in which the dedicated properties have been held and enjoyed is the most important point for consideration. Release by Government is not conclusive evidence of property being debutter. *Nemaye Churn Pooleetundee v. Jogendra Nath Banerjee*, 21 W. R. 365, followed. Shabait right cannot be transferred even to a co-shabait or to one who is next in succession. *Raja Furma Valsa v. Ravi Furma Mutha*, L. R. 4 I. A. 76; *Gnana Sambanda Pandara Sannadhi v. Velu Pandaram*, I. L. R. 23 Mad. 271, *Sri Roman Lalji Maharaj v. Sri Gopal*, I. L. R. 19 All. 428; *Prasanno Kumar Audhicary v. Saroda Prasanno*, I. L. R. 22 Cal. 989, referred to. *Mancharam v. Prananthar*, I. L. R. 6 Bom. 298, not followed. *Quare*: Whether an idol, which has been broken, is capable of holding property. *GOVINDA KUMAR ROY CHOWDHURY v. DEBENDRA KUMAR ROY CHOWDHURY* (1907). 12 C. W. N. 98

5. ———— *Permanent lease by shabait—Adverse possession—Acceptance of rent, effect of.* A permanent lease of debutter property is void, if not executed for legal necessity. Plaintiff's predecessor, who had a *larsha* lease, obtained a permanent lease from the shabait of an idol, the predecessor of defendant No. 2, on payment of a bonus, and the latter, who is the present shabait, continued to receive rent from plaintiff. Subsequently defendant No. 2 deter-

be regarded as adverse to defendant No. 2, nor can the latter's acceptance of rent from the plaintiff either operate as an admission of the plaintiff's having a permanent right in the land or cause an extinction of his own previous title. *NITYA GOPAL SEN PODDAR v. MANI CHANDRA CHAKRAVARTY* (1907). 12 C. W. N. 63

6. ———— *Mourasi Lease—Limitation Act (XV of 1877), s. 7, and Sch. II, Art. 134—Hindu Law—Endowment—Alienation of endowed property—Shabait—Adverse possession—Possession continued under a void lease—Trespasser—Bond fide purchaser for value—Family idol, if perpetual infant—Relief as between co-defendants—Notice of debutter—Legal necessity for alienation of debutter property—Pleadings—Tenant who sets up adverse title if may fall back on tenancy, as a defence in ejectment suit.* A mourasi lease of a debutter property was granted whereby the shabait purported to relinquish all future increment in the value of the property for a little more than seven years' purchase of rents arising therefrom, reserving to them almost the same rent that was being raised before such mourasi. Two of the three shabait concerned subsequently parted with their interest as lessors to the lessee. No evidence was adduced as to what happened to the money raised



**DEBUTTER PROPERTY—concl'd.**

by such transactions; *Held*, that this was not justifiable in the interest of the endowment. *Nawab Sir Syed Hossain Ali Khan v. Mohant Bhagwan Das*, 11 C. W. N. 261, distinguished. The lease granting the above *mourasi* recited that the necessity for such a demise was that the *shebaitis* might be called on to fill up a tank on the property which they could not afford the means to do; *Held*, that such necessity was illusory and the mere advisability of filling up a tank did not constitute a necessity to justify alienation of the trust property. In an ejectment suit, the defendant pleaded exclusive possession and demed the title of plaintiffs as landlords of certain premises claimed by the latter as appertaining to a *debutter* of which they were present *shebaitis*. The plaintiffs contended that it was not open to the defendant to fall back upon the title under a *mourasi* lease purported to have been granted by previous *shebaitis* to the defendant's predecessors in title; *Held*, that the effect of the defendant's plea was merely to put the plaintiffs to the proof of a title which would justify their prayer for ejectment and did not prevent the defendant from relying on the *mourasi* lease. Where a defendant claims to be in possession of endowed property as a tenant under a *mourasi* lease granted by previous *shebaitis* and the successors of the latter seek to recover possession on the ground that the lease was invalid: *Held*, that if the grant of such a lease constituted an alienation which it was beyond the power of the lessors to make, then, the lessee is to be taken as a trespasser and his possession is not deemed to be that of the lessors from

evidence, that the *mourasi* lease granted to the defendant's predecessors in title created a new holding and that the principle laid down in *Nitya Gopal Sen Poddar v. Mani Chanda Chakrabutty*, 12

1 A 1, referred to. Possession of *debutter* property, *shebaitis* and not *mourasi* of the *shebaitis*.

*Ram Chunder Sen*, L R 21, A 52 s c. 1 L R 2 Cole 311, referred to. *JNANANJAN BANERJEE v. ADORNOKEY DASSEE* (1909) . 13 C. W. N. 805

7. ——— Transfer of. A transfer of *debutter* land by a *shebait* to another member of the family to which he belonged for the purpose of carrying on the worship of the idol, is valid. *BARODA CHARAN DUTT v. HEMLATA DASSEE* (1908)

13 C. W. N. 242

**DECEASED DECREE-HOLDER.**

——— application for substitution of—

See LIMITATION ACT, 1877, SCH. II, ART. 180 . . . I. L. R. 38 Calc. 543

**DECEASED PERSON.**

——— statements of—

See EVIDENCE ACT, s 32  
I. L. R. 25 All. 143; 238  
See HINDU LAW . I. L. R. 36 Calc. 590

**DECEASED WIFE'S SISTER.**

See MARRIAGE . I. L. R. 35 Calc. 381

**DECEIT.**

——— action for—

See COMPANY—POWERS, DUTIES, AND  
LIABILITIES OF DIRECTORS  
I. L. R. 18 All. 58

**DECEPTION.**

See CHEATING . I. L. R. 33 Calc. 50  
See TRADE MARK I. L. R. 35 Calc. 311

**DECLARATION.**

See DISTRICT MUNICIPAL ACT  
I. L. R. 30 Bom. 409  
See DYING DECLARATION  
See MORTGAGE 13 C. W. N. 850; 357

——— suits for—

See SUITS VALUATION ACT.  
I. L. R. 33 Bom. 307

**DECLARATION OF OWNERSHIP.**

——— suit for—

Plaintiff's title proved—Defendant's

(*Civ. Rev.*), and Agency Company v. Short, 13 App. Cas. 793, followed. *Frampi Cursetsy v. Goculdas Madhooji*, I. L. R. 16 Bom. 338, referred to. *GANPATI v. RAOHUNATH* (1909)

I. L. R. 33 Bom. 712

**DECLARATION OF ALE OF ENTIRE ESTATE.**

See SALE FOR ARREARS OF REVENUE.  
I. L. R. 34 Calc. 381

## DECLARATORY DECREE.

See CIVIL PROCEDURE CODE (V OF 1908),  
s. 9 . . . I. L. R. 33 Dom. 387

See DECLARATORY DECREE, SUIT FOR.

See EXECUTION OF DECREE—MODE OF  
EXECUTION—DECLARATORY DECREE.

See POSSESSION . I. L. R. 35 Calc. 189

See RES JUDICATA—ESTOPPEL BY JUDG-  
MENT . I. L. R. 13 Mad. 313

See SPECIFIC RELIEF ACT, I OF 1877, s. 42.  
I. L. R. 31 All. 271

1. ——— Not to be given when suit is for cancellation and when no consequential relief prayed A suit for cancellation of a mortgage deed on the ground of fraud must be dismissed in the absence of evidence of fraud and a decree declaring plaintiff's right to a smaller amount cannot be made when at the date of the plaint the plaintiff was entitled to consequential relief which he failed to claim. CHAKKA SUBBIAH v. MADDALA LAKSHMINARAYANA (1905) . I. L. R. 29 Mad. 298

2. ——— Suit for declaration of rights to receive fees as "Chowdhries" of certain bazzars—Suit not maintainable. The plaintiffs sued for a declaration that they were the "chowdhria" of the bazzars in the villages Muhammadabad Ghona, Khairabad and Behna, and that the defendants were not the "chowdhria" of the said bazzars and were not entitled to take chowdhria's dues. Held, that such a suit was not maintainable. *Bhinuk Chowdhree v. The Collector of Jaunpur*, (1867) All. H. C. 271; *Beharee Lal v. Baboo*, (1867) All. H. C. 80; and *Ram Dechul v. Chulhoo*, (1869) All. H. C. 291, followed. *BARSAI v. CHASTRU* (1907), I. L. R. 29 All. 683

3. ——— Power of Court to make declaratory decree—Suit for possession by alleged next reversioners on ground that their mother, who held a woman's estate in immoveable property, was dead—Failure to prove mother's death—Dismissal of suit so far as possession was concerned, and declaratory decree made as to plaintiff's title. The plaintiffs brought a suit for certain immoveable property as the next reversionary heirs of a deceased Hindu, and the only relief they claimed was possession on the allegation that their mother, who had succeeded to a woman's estate in the property, was dead. Held, that on the finding by the Court that the

allegations made by the alleged mother were not justified by legal necessity, and that the plaintiffs were really her sons, which were both denied, were merely argumentative steps towards the only decree sought, namely, possession; and under the circumstances the Court was not entitled to make a declaratory decree in the plaintiffs' favour on those allegations

DECLARATORY DECREE—*conclld.*

after the failure of the sole cause of action. *WALL-  
HAN v. JOGESHWAR NARAYAN* (1907)

I. L. R. 35 Calc. 189

S. C. L. R. 35 I. A. 38

12 C. W. N. 227

## DECLARATORY DECREE, SUIT FOR.

	COL.
1. REQUISITES FOR EXISTENCE OF RIGHT . . . . .	3173
2. SUITS CONCERNING DOCUMENTS . . . . .	3175
3. ADOPTIONS . . . . .	3182
4. REVERSIONERS . . . . .	3185
5. DECLARATION OF TITLE . . . . .	3190
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10. RENT AND ENHANCEMENT OF RENT . . . . .	3225
11. ORDERS OF CRIMINAL COURT . . . . .	3227
12. MISCELLANEOUS SUITS . . . . .	3229

See ACT—1863—XX, s. 14.

I. L. R. 24 Mad. 243

See ACT—1869—I. I. L. R. 26 All. 238

See COURT FEES ACT, s. 7, CL. 4.

See COURT FEES ACT, SCH. II, ART. 17.

See COURT FEES ACT (VII OF 1870).

I. L. R. 28 Calc. 567

See DECLARATORY DECREE.

See DECLARATORY SUIT.

See DECREE—FORM OF DECREE—DECLARATORY SUIT . . . . .

10 W. R. 105

12 W. R. 328

See HINDU LAW.

I. L. R. 32 Calc. 62; 463

See JURISDICTION I. L. R. 32 Calc. 734

See LIMITATION ACT, 1877, ART. 118

(1871, ART. 129; 1859, s. 1, CL. 16).

See LIMITATION ACT, 1877, ART. 120.

I. L. R. 4 All. 261

I. L. R. 5 All. 345

I. L. R. 14 All. 512

I. L. R. 10 Mad. 347

I. L. R. 11 Mad. 127

I. L. R. 12 Mad. 265

# DECLARATORY DECREE, SUIT FOR— contd.

See SPECIFIC RELIEF ACT (I OF 1877),  
s. 42.

See VALUATION OF SUIT—SUITS.

enforcing attachment—

See CIVIL PROCEDURE CODE, 1882, s.  
244—PARTIES TO SUIT.

I. L. R. 28 Calc. 402

## I. REQUISITES FOR EXISTENCE OF RIGHT.

1. — Existence of relief which can  
be granted—*Civil Procedure Code, 1859, s. 15.*  
No declaration of right can be made in a suit under

S. G. BEEJOY NATH CHATTERJEE v. LUKHI MOHI  
DEBIA 12 W. R. 248

2. — Existence of right to conse-  
quential relief—*Declaration of right for relief  
in other suit* A declaratory decree ought not to be  
made unless

SHLO SINGH RAI v. DAENO  
I. L. R. 1 All. 68

ZALBUNNISA v. ELANEE BEGUM 19 W. R. 268

3. — Hostility of defendant—*Suit  
for declaration of title* Held by JACKSON, J., that  
in a suit for declaration of title defendants must  
have

4. — A party is en-  
titled to ask  
against a def  
respect of th  
JODOO NATH

5. — Suits for declarations of ab-  
stract rights—*Civil Procedure Code, 1859, s. 15.*  
S. 15 of Act VIII of 1859 refers to declarations  
which are binding relatively to the parties before the  
Court, not to declarations of abstract right or bare  
declaration of trust, exclusive of any practical  
equity. MUZHUR HOSSEIN v. DINOBUNDU SEN  
Bourke O. C. 8 : Cor. 84

6. — Right to consequential relief  
—*Question relating to third persons not parties to  
suit.* The question proposed for adjudication in  
the suit, in which a declaratory decree was sought,  
being in effect one not between the plaintiff and  
the defendant, but between the plaintiff and third  
persons not parties to the suit, the suit was dis-  
missed in reference to the ruling of the Privy  
Council in *Vijaya Ragunadiah Rani Kolondapuri*

# DECLARATORY DECREE, SUIT FOR— contd.

## 1. REQUISITES FOR EXISTENCE OF RIGHT —contd.

*Natchiar v. Dorasinga Taver, 15 B. L. R. 83*, dated  
the 10th of February 1875, that a declaratory  
decree is not to be made unless there is a right to  
consequential relief which, although not asked for,  
might, if asked for, have been given. *RAY*  
*REAGAN v. ...*

8. — Intricate questions of law—  
*Principles on which Court grants relief.* The Court  
will not, in a declaratory suit, decide intricate ques-  
tions of law, where no immediate effect, and possibly  
no future effect, can be given to its decision, and  
when the postponement of the decision to a time  
when there may be before the Court some person  
entitled to immediate relief will not prejudice a  
plaintiff's right in any way *HONSBUTTI KERAIN*  
*v. ISHBI DUTT KOER*

I. L. R. 5 Calc. 512 : 4 C. L. R. 511

9. — Remand entailing delay and  
expense—*Further enquiry* Since a declaratory  
decree is a matter of discretion, a claim for a de-  
claration ought not to be remanded by an Appel-  
late Court for further enquiry which is likely to  
entail delay and expense, where the plaintiff's  
claim is contingent on his surviving the defendant,  
and where the declaration will not be binding on  
parties with possibly preferential titles who have  
not been joined in the suit. *DOOROA PERSHAD*  
*SINGH v. DOOROA KOONWARI*

I. L. R. 4 Calc. 180 : 3 C. L. R. 31

10. — Suit before Specific Relief  
Act, 1877. A declaratory suit instituted before the  
*Specific Relief Act*

MURASARA  
BHATTAR v. RANGA BHATTAR  
I. L. R. 2 Mad. 202

11. — Consequential relief—*Speci-  
fic Relief Act (I of 1877), s. 42. Per Curiam.* The  
restrictions imposed under s. 42 of the Specific  
Relief Act are not to be construed

I. L. R. 11 Mad. 118  
12. — Suit to declare alienation  
by Hindu widow invalid—*Specific Relief Act,  
s. 42—Amendment of plaint—Death of widow  
pending appeal by plaintiff—Right of appellant*

DECLARATORY DECREE, SUIT FOR—  
cont'd.1. REQUISITES FOR EXISTENCE OF RIGHT  
—cont'd.

to proceed with appeal—Plaint not to be amended by claim for possession. The proviso to s. 42 of the Specific Relief Act, that "no Court shall pass a declaratory decree where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so," refers to the position of plaintiff at the date of suit. Where a suit was brought for a declaration that certain alienations of land made by a Hindu widow to the defendants were not binding on plaintiff, her reversionary heir, and, pending appeal by the plaintiff, the widow died:—*Held*, (i) that the plaintiff was entitled to proceed with his appeal; (ii) that plaintiff could not be permitted to amend his plaint and claim possession. *GOVINDA v. PERUMBEVI*

I. L. R. 12 Mad 136

## 2. SUITS CONCERNING DOCUMENTS.

1. — Hostile document affecting title—Right to sue to have it declared invalid. When a person in possession finds that a document has been set up and registered which affects his title, and which every day's delay is likely to render him less able to disprove, he is justified in coming before the Court and asking that such a deed may be declared inoperative. *MUHAMMAD BANOO v. MAHOMED SUFDAN* . . . 24 W. R. 336

2. — Suit to set aside mortgage—*Civil Procedure Code, 1859, s. 15*—Injury not admitting specific relief. Act VIII of 1859, s. 15, did not give power to the Court to give a declaratory decree, unless the position of the parties is one of hostility to one another. The plaintiff must come into Court with some definite complaint

and, bring that person into Court merely for the purpose of getting the Court to clear up difficulties, whether of fact or law, which may have arisen between himself and the defendant. He must generally allege and rely upon some cause of action against the defendant, except in that class of cases in which the Court gives its aid towards the fulfilment of trusts, and this principle is not affected by s. 15 of Act VIII of 1859. Therefore where a plaintiff bought, at a sale in execution of a decree, the right, title, and interest of one defendant, a judgment-debtor, in a ship, and by his plaint sought to discover the *bond fides* of certain transactions by way of mortgage between the judgment-debtor and the other defendants, and asked a declaration that he, as purchaser, was entitled to the right, title, and interest of the judgment-debtor; or in case it should appear that, at the time of the attachment in execution, the ship was the property of the judgment-debtor, subject to any

DECLARATORY DECREE, SUIT FOR—  
cont'd.

## 2. SUITS CONCERNING DOCUMENTS—cont'd.

valid lien or charge in the hands of the other defendants or either of them affecting the same, then the amount of such lien or charge might be ascertained, and the plaintiff as such purchaser might be declared entitled to redeem the same. *Held*, that the plaintiff was barred upon the face of it. But as it appeared, taking the plaint and evidence together, that there was some substantial dispute between the parties relative to the defendant's mortgage, the Court, to prevent further litigation, construed the plaint as having asked that the alleged mortgage might be set aside. *JALLAN BRUGMAN DOSS v. ARBAN I Ind. Jur. N. S. 390*

3. — Suit to set aside, effect of recital in bond—*Nature of consideration*. A declaratory decree will not be given to show that a bond was not executed as recited in the bond, for money borrowed by the widow for the performance of the husband's *sadhi*, such recital being no evidence against the heirs of the husband in a suit to charge the estate. *SUNKER LALL v. JUDHOORNA SHAYE* . . . 9 W. R. 255

4. — Suit by son to have deeds by father declared void—*Unauthorized alienation*

ancestral, and cannot be alienated except under circumstances recognized by the Mitakshara law as justifying alienation, and with the consent of those whose consent is by that law requisite. *KANTH NARAIN SINGH v. PREM LALL PAUREY* . . . 3 W. R. 102

5. — Suit to declare deed valid—*Failure to prove case—Form of decree*. When a plaintiff sues to declare that a deed is valid, and to confirm his possession under it, and fails to show sufficient cause for the Court's interference under s. 15 of Act VIII of 1859 . . . 8 W. R. 104

6. — Suit to declare deed forged—*Unused documents*. In a suit to obtain a declaration that two pottahs and a chitta which had been

used, the Court could not make any binding declaration of right. *SHEO LALL CHOWDHURY v. CHUNDER BENODE OOPADHYA* . . . 8 W. R. 588

7. — Registered deed—*Cause of action*. A suit will lie to set aside a registered deed on the mere allegation that it is a forgery. *FAKIR CHAND v. THAKUR SINGH* . . . 7 B. L. R. 614; 15 W. R. 421

DECLARATORY DECREE, SUIT FOR—  
contd.

## 2. SUITS CONCERNING DOCUMENTS—contd.

8. ———— Lease set up by

RAGHUBAR CHOWDRY v. BRAIKEDIARI SINGH  
3 B. L. R. Ap. 48 : 11 W. R. 4559. ———— Cause of action  
—Guardian, suit by, for minor. In a suit for a declaratory decree that certain pottahs put forward by the defecodants in a suit for enhancement were forged, and calculated to injure the interests of a minor, whom the plaintiff as guardian represented. Held there was no cause of action OOMAR SALMA BIBI v. LAHRI PRYA DEBI

7 B. L. R. 617 note : 10 W. R. 47

10. ———— Suit to have will set aside  
—Consequential relief—Obstruction to title—Nun-

sufficient to sustain a declaratory decree. *Semble* : Where a defendant sets up a nuncupative will as entitling him to property in respect of which the plaintiff asks for a declaration of his right, a right

2 C. L. R. 193 : L. R. 5 I. A. 87

11. ———— Suit to set aside lease—Consequential relief—Act VIII of 1859, s. 15—Jurisdiction of Civil Courts. A granted a lease of his entire property to the plaintiff for a term of years, with power to enhance the rents and make settlements. Immediately after, A executed a pottah in favour of B, covering a portion of the same estate, whereby B's rent was to remain unchanged for a period continuous with the plaintiff's lease. In a

decree cannot be made, unless there be a right to consequential relief," the Privy Council did not intend to deny to the Courts of this country the power to grant decrees in any case in which, independently of the provisions of Act VIII of 1859, s. 15, they had the power to grant a decree. This power is generally the same as that of the Court of Chancery in England. RAM NEEDHEE KOONDOO v. RUDHOO NATH NARAIN MULLO

I. L. R. 1 Calc. 458 : 25 W. R. 516

DECLARATORY DECREE, SUIT FOR—  
contd.

## 2. SUITS CONCERNING DOCUMENTS—contd.

12. ———— Cause of action—  
Suit to cancel pottah. Plaintiff sued in a Civil

court in a declaratory suit; a copy of the pottah had been affixed to plaintiff's house. Held, that the plaintiff had no cause of action cognizable by a Civil Court. NURDIN v. ALAVUDIN

I. L. R. 12 Mad. 124

13. ———— Suit to declare registered document forged—Jurisdiction of Civil Court Under s. 84 of Act XX of 1866, the District Judge ordered, without taking evidence, the registration of a document which had been opposed on the ground that the execution of it had been obtained fraudulently and by putting the executant under duress. The executant brought a civil suit against the party in favour of whom the document had been drawn for a declaration that the document was not genuine, and was invalid and inoperative. Held, that the Civil Court had juris-

decree. PRASANNA KUMAR SANDYAL v. MATHURANATH BANERJI

8 B. L. R. Ap. 26 : 15 W. R. 487

14. ———— Suit to contest the genuineness and validity of a registered document—Registration Act (III of 1877), ss. 74, 75—Specific Relief Act (I of 1877), s. 39. Under the special procedure provided in the Registration Act (III of 1877), the defendant, in whose favour a

appeared before the Sub-Registrar, and subsequently before the Registrar, and denied executing it, and alleged it to be a forgery. In a suit brought under the above circumstances to have the document declared void and to have it cancelled:—Held, that the proceedings of the Registrar, when he enquired whether the document had been

I. L. R. 7 Calc. 736 : 9 C. L. R. 471

# DECLARATORY DECREE, SUIT FOR— contd.

## 2. SUITS CONCERNING DOCUMENTS—contd.

15. ——— Suit to cancel a void or voidable instrument—*Specific Relief Act (I of 1877), s. 39—Reasonable apprehension of serious injury.* Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it cancelled. The test is "reasonable apprehension of serious injury." Whether that exists or not, depends upon the circumstances of each case. It cannot be laid down, as a rule of law, that in no case can a man, who has parted with the property in respect of which a void or voidable instrument exists, sue to have such instrument cancelled. *Iyyappa v. Ramalakshamma, I L. R. 13 Mad. 549, referred to. KOTABASAPPA v. CHENVI RAFFAYA I. L. R. 23 Bom. 375*

18. ——— Suit to set aside fraudulent deeds—*Absence of any attempt to disturb possession.* In a suit for declaration of right of possession to certain lands and to set aside alleged fraudulent pottahs, which the plaintiff alleged had been executed by the defendant with a view to put an obstacle in the way of his attaining his right, but it was not shown that they had made any actual attempt to disturb the right of occupancy which it was found the plaintiff had:—*Held*, that the plaintiff did not disclose a sufficient cause of action to enable the Court to make a declaratory decree in favour of the plaintiff. *UDAI CHANDRA MANDAL v. ANMEDULLA P. P. 7 B. L. R. 918 note*

*S. C. WOODY CHANDR MUNDL v. AHMEDULLA 12 W. R. 487*

17. ——— No use of deed to plaintiff's injury. Where a petition was presented by A under a 84, Act X of 1866, for registration of a deed, and the deed was duly registered, a plaint filed against A in which the plaintiff simply complained that A had executed the deed fraudulently, and obtained registration of it, was held to show no cause of action, no act of A having been shown to use the deed to the plaintiff's injury. *RAM CHANDRA PAL v. BECHARAM DRY 8 B. L. R. Ap. 28 note: 10 W. R. 329*

18. ——— Suit for declaration that document is forged—*Apprehension of injury—Cancellation of deed.*

*I. L. R. 1 All. 622*

19. ——— Suit in Civil Court to enforce exchange of pottah and muchalka—*Madras Rent Recovery Act (VIII of 1865)—Civil Procedure Code, s. 53—Amendment of plaint.* A suit in the Court of a District Munsif to enforce acceptance of a pottah and execution of a muchalka by defend-

# DECLARATORY DECREE, SUIT FOR— contd.

## 2. SUITS CONCERNING DOCUMENTS—contd.

ant in respect of a holding in a village to which plaintiff claimed title was dismissed as not being maintainable. *Held*, that the suit should not have been dismissed, but the plaint should have been amended by the addition of a prayer for a declaration of the plaintiff's title; and that the Court then would have had jurisdiction to grant, by way of consequential relief, the relief originally sought. *NARASIMHA v. SUBBANARAYANA I. L. R. 12 Mad. 491*

20. ——— Consequential relief—*Specific Relief Act (I of 1877), s. 42.* Plaintiff, being in possession of certain land as an incumbrancer under a registered instrument, agreed orally with the mortgagor in 1885 to purchase it. The mortgagor subsequently sold the land to others, who took the conveyance, which was registered with notice of the plaintiff's mortgage and of the oral agreement with him. Plaintiff now sued for a declaration that the conveyance was not binding on him and for a specific performance of the oral agreement. *Held*, that the suit was not bad for want of a prayer for delivery up, and cancellation of the conveyance. *KANNAN v. KRISHNAN I. L. R. 13 Mad. 324*

21. ——— Suit for cancellation of document and for possession—*Withdrawing portion of claim—Specific Relief Act, s. 42.* Plaintiffs, members of a Malabar tarwad, sued (i) for the

karnavan, on behalf of the tarwad. The Munsif dismissed plaintiff's suit on the merits. On appeal, the Subordinate Judge allowed plaintiffs,

below, that the prayer for restoration of the property being in the circumstances of the case maintainable, it was not competent to plaintiffs to restrict themselves to the other kind of relief sought, and that the maintenance of the suit in its mained form would be an evasion of s. 42 of the Specific Relief Act. *BIRUTHI v. KALENDAR I. L. R. 14 Mad. 267*

22. ——— Consequential relief—*Specific Relief Act (I of 1877), s. 42—Suit by a member of a tarwad for a decree declaratory of the invalidity of a kanom granted to other members by*

was, as that is necessary for a junior member to do in order to prevent the possession becoming adverse to the tarwad is to obtain a declaration that the



DECLARATORY DECREE, SUIT FOR—  
contd.

## 3. ADOPTIONS—contd.

3. \_\_\_\_\_ Suit by reversioner to have forged letter giving power to adopt set aside and to restrain adoption—*Specific Relief Act, s. 42*. Under Act VIII of 1859, s. 15, a suit will not lie at the instance of the reversionary heir for a declaration that a certain letter purporting to have been written by the husband of the defendant empowering his widow to adopt a son is a forgery, and to have the same cancelled; and for an injunction restraining the adoption of a child under the letter. *Raj Coomary Dassee v. Nolo Coomar Mullick*, 1 Bom. 137, followed. *RUN BANADOO SINGH v. LUCHO COOMAR*

4 C. L. R. 270

4. \_\_\_\_\_ Suit to set aside invalid adoption—*Cause of action*. A suit having been brought by a Hindu reversioner for a declaration that an adoption alleged to have been made by the mother of K, the owner of the estate after the estate had vested in the widow of K, was invalid:—*Held*, that the alleged adoption afforded a cause of action for a declaratory suit. *THAYANVAL v. VENKATARAMA* . . . I L. R. 7 Mad. 401

5. \_\_\_\_\_ Suit to set aside adoption—*Civil Procedure Code, 1859, s. 15—Right to declaratory decree*. In a suit brought on the ground of an existing right of inheritance, for immediate possession and mesne profits, by setting aside an adoption, the Court will not allow the form of action to be changed, and proceed to decide whether (the claim for possession on the ground of an existing right being abandoned) a declaratory order may not issue for setting aside the adoption, but will, on failure of right to immediate possession, dismiss the suit. According to s. 15, Act VIII of 1859, declaratory orders can be issued only in suits brought to obtain such orders. *RAJESSORE KOONWAR v. INDERJEET KOONWAR* . . . 6 W. R. 1

6. \_\_\_\_\_ Suit to have adoption set aside—*Onus of proof*. A stranger, having no interest in the matter, has no right, even with the consent of presumptive reversionary heirs, to sue for an order declaring an adoption to be invalid.

9 W. R. 463

7. \_\_\_\_\_ Suit to have adoption declared invalid—*Adoption by widow 35 years after death of her husband*. The plaintiff was a son of a mother of the deceased husband of the first defendant. The first defendant adopted a son 35 years after the death of her husband.

DECLARATORY DECREE, SUIT FOR—  
contd.

## 3. ADOPTIONS—contd.

8. \_\_\_\_\_ Suit to set aside adoption—*Court Fees Act, Sch. II, Art. 17, cl. 2—Limitation Act, IX of 1871, Sch. II, Art. 129*. B died, leaving him surviving two widows, K and R. Some time after B's death, P, a son, was born to R on 15th September 1818. Some time before P's birth, a portion of B's watan lands had been made over to K by the revenue authorities. The remaining portion of B's watan lands was placed by Government under sequestration, which was not removed until 1835. Shortly after P's birth, R petitioned the revenue authorities, claiming the watan lands of B for P as B's son. On 15th February 1849, the revenue authorities on enquiry held that P was not the son of B, and decided that K was entitled to retain the watan lands of B. On 16th March 1872, K adopted a son D. A. In a suit brought by P on 4th December 1872 for a declaration that P was the son of B, and for setting aside the adoption of D. A. by K:—*Held*, that under the circumstances, a suit for a declaratory decree would lie; for the plaintiff, even if his claim to the property were barred as against K, would yet be

of B's adopted son, and, moreover, the Legislature has in Act VII of 1870 and Act IX of 1871, recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding, independent of any claim to property. *KALOWA KUM BHUJANORAY v. PADATA VALAD BHUJANORAY* . . . I L. R. 1 Bom. 248

9. \_\_\_\_\_ *Guardians and Wards Act (VIII of 1890), s. 48*. S. 48 of the Guardians and Wards Act does not prevent a widow, who has been appointed by the District Judge under that Act to be guardian of a minor as her husband's

I L. R. 30 Calc. 613; s.c. 7 C. W. N. 419

10. \_\_\_\_\_ Suit by reversioner in lifetime of widow to set aside invalid adoption. In a suit by the reversioner to set aside

property declared, the Court refused to make such a declaratory decree. *BROMOMOYEE v. ANNAND LALL ROY*

13 B. L. R. 225 note; 19 W. R. 419

JODOO NUNDUN PERSHAD SINGH v. NUNDO KOORA . . . 1 W. R. 219

JEONATH BHUGOUT v. ROOPA KOONWAR . . . 2 W. R. 273 note

11. \_\_\_\_\_ Suit to restrain widow





DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

former will be held to be equally inapplicable in India. The application of s. 15 of Act VIII of 1859 must be viewed in connection with the system of procedure to which it belongs. *TIRUMALAM v VENKATARAMANAYAN* . . . 2 Mad. 378

See *PERIYA GAUNDAN v. TIRUMALA GAUNDAN* . . . 1 Mad. 208

7. — *Alienation by Hindu widow—Rights in widow's lifetime.* Though a reversioner cannot obtain possession during the lifetime of a Hindu widow, yet he may be entitled to a declaration whether the alienations made by the widow are or are not valid and binding on the absolute heir. If the reversioner can prove that wilful default is about to take place, he will be entitled to such relief from the Court as will prevent the apprehended occurrence of a sale for arrears. *SURESH CHANDRA SEIN v. MATHOORA NATH PODATICK* . . . 7 W. R. 303

8. — *Alienation by Hindu widow—Reversioner.* A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death. A suit is not to be dismissed on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to. *SHEWAK RAM ROY v. MOHAMMED SHAMSUL HODA* . . . 3 B. L. R. A. C. 186 : 12 W. R. 26

*OODOY CHAND JHA v. DHEN MONEE DEBIA* . . . 3 W. R. 183

*HARADHUN NAO v. ISSER CHUNDER BOSE* . . . 6 W. R. 222

*BYRUNT NATH ROY v. GRISH CHUNDER MOOKERJEE* . . . 15 W. R. 96

9. — *Cause of action.* A brought a suit against C and D, alleging that he was an heir-expectant upon the death of B, a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have certain conveyance of this estate, said to have been executed by C in favour of D, set aside affecting A's future interest, without charging any act of waste or injury to the property which might affect his rights as reversioner. Held, that A had disclosed no cause of action against C and D. *SURAJ BANSI KUNWAR v. MAHIPAT SINGH* . . . 7 B. L. R. 669 : 16 W. R. 18

10. — *Suit by reversioner for declaration of right—Cause of action.* A, a Hindu infant, disappeared and had not since been heard of. In a suit brought within twelve years by B, the

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

11. — *Waste by Hindu widow—Declaratory suit, ground of—Adverse possession.* It is open to a Hindu widow to give over possession to a stranger to the extent of her interest in the estate; but actually to favour the claims of the

upon which a declaratory suit would lie. *ITAM PERSHAD CHOWDURY v. JOKHOO ROY* . . . I. L. R. 10 Calc. 1003

12. — *Suit by reversioner in lifetime of Hindu widow—Civil Procedure Code, 1859, s. 15.* A suit brought during the life of a Hindu widow by the presumptive heir, entitled on her death to the possession of the property in which she held her limited estate, to have an alienation by her declared to operate only for her life, is among the exceptions to the general rule established by decision upon Act VIII of 1859, s. 15; viz., that, except in certain cases, a declaratory decree is not to be granted.

although to grant a declaratory decree under the above section was discretionary with a Court, yet in a suit of this class, known to the law, and in many cases the only practical mode of enforcing

reasons. *ISRI DUT KOER v. HANSBETTI KOERAIN* . . . I. L. R. 10 Calc. 324 : 13 C. L. R. 416  
I. L. R. 10 I. A. 150

13. — *Hindu law—Alienation by Hindu widow—Parties—Vested and contingent interest—Specific Relief Act (I of 1877), s. 42.* The plaintiff, claiming to be entitled in reversion to certain property on the death of his grandfather's widow, sued for a declaration that certain alienations made by the widow were void as against him. To this suit the widow and her aliases were defendants. The defence was, that the plaintiff was not the reversioner, and certain parties, who claimed to be the real reversioners, intervened, and were made defendants by order of the Court. The plaintiff obtained a declaration of his reversionary right, and the deeds of

sought, and that the defendants, who claimed as reversioners, should not have been made parties to the suit. S. 42 of the Specific Relief Act refers only to existing and vested rights, and not to

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

contingent rights. *GREEMAN SINGH v. WAHARI LALL SINGH*

I. L. R. 8 Cal. 12 : 9 C. L. R. 249

14. ——— *Joinder of plaintiffs—Suit by daughter and daughter's son against widow to declare alienations invalid.* The palayam

the provisions of Reg. XXV of 1802. The last male holder died in 1860, leaving him surviving

to K by the Inam Commissioner, by which her title to the estate was acknowledged by the Government of Madras, and the estate was confirmed to her as her absolute property subject to the quit-rent. In 1882 C and her minor son A sued K and others to whom K had alienated portions of the estate, for a declaration that they were the reversionary heirs of K, and that the alienations made by K were good only during the lifetime of K. The District Judge held that, there being no collusion between C and the defendants, A was not entitled to join in the suit. *Held*, that A was entitled to join C as co-plaintiff. *NARAYANA v. CHENGALAMMA*. I. L. R. 10 Mad. 1

15. ——— *Suit by reversioner on death of Hindu widow—Right to sue—Cause of action—Specific Relief Act, 1877, s. 42.* On the

adverse to her and to them as next reversioners, sued B and S for a declaration of their reversionary right, and for possession of D's estate or such relief in this respect as the Court might think fit to give. *Held*, that the plaint disclosed a right to sue on the part of the plaintiffs and a cause of action.

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

to B, and if she declined to accept possession, then that A, one of the plaintiffs, should be put in possession for her as manager on her behalf, and he should act under the orders and directions of the lower Court, filing accounts in, and paying the income to her through, such Court, whose receipts should be a sufficient discharge. *ANI DIO NARAIN SINGH v. DUKHARAN SINGH*. I. L. R. 5 All. 532

16. ——— *Specific Relief Act, s. 42* The plaintiffs, uncle's sons of R, a deceased Hindu, brought a suit as reversioners of R for a declaration that certain alienations made by M, the widow of R, were not binding beyond the lifetime of M. The District Judge held on the strength of *Greenman Singh v. Wahiri Lall Singh* I. L. R. 8 Cal. 12, that the suit would not lie under s. 42 of the Specific Relief Acts. *Held*, that the suit would lie. *GANGAYYA v. MAHALAKSHMI*. I. L. R. 10 Mad. 80

17. ——— *Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representative of her deceased husband's estate—Fraud—Collusion—Right of reversioner to possession.* The plaintiff, as the nearest heir of one O T who died intestate in 1873, sued to set aside a sale of certain immoveable property belonging to the estate of the deceased, which had been sold on the 3rd November 1875, in execution of a money-decree obtained by the defendant J against B V, the widow of O T. B V had married a second time in 1876, and her second husband was the brother of the purchaser at the execution-sale. The plaintiff

the usage of the country, the rights and interests of B V by inheritance in her deceased husband's property, the subject of this suit ceased and determined on re-marriage in 1876 as if she had then died." *PAREKH RANCHOR v. BAL VARNAT*. I. L. R. 11 Bom. 119

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4 REVERSIONERS—contd.]

18. — — — *Alienation by widow to her married daughter—Act I of 1877 (Specific Relief Act), s. 42.* The effect of a gift by a Hindu widow of her deceased husband's estate to her daughter is merely to accelerate the latter's succession and put her by anticipation in possession of her life-estate, and therefore affords no cause of action to a reversioner to maintain a declaratory suit impeaching the gift. *Per MAHMOOD, J.*, that in the exercise of the discretion allowed to the Court by s. 42 of the Specific Relief Act, a declaratory decree should be refused to the plaintiff in such a case, where the donee was a married woman and capable of bearing a son, who would be the next reversioner to the full ownership of the estate of the donor's deceased husband. *Indar Kuar v. Lalla Prasad Singh*, 1 L. R. 4 All. 532, and *Udhar Singh v. Ranee Koonwar*, 1 Agra 234, referred to *BIHARAL RAM v. LACHMA KUAR*.

I. L. R. 11 All. 253

19. — — — *Suit by reversioners to declare purchase by ancestor benami—Ground for declaratory decree.* In a suit by reversionary heirs to declare that the property standing in the name of defendant had been purchased by the ancestor in his name benami, it was held that there was no ground for a declaratory decree. *RAJ-BUNSE LALL v. JUDOOBUN SURAYE*.

S W. R. 285

20. — — — *Suit for declaration of right to succeed—Alienation by Hindu widow.* The plaintiff's mother was entitled to certain property for her life under an award, under which the plaintiff was entitled to succeed to the property after her mother's death. The plaintiff sued her mother and the holder of a decree in execution of which the property had been sold, praying for a declaration of her right to succeed to the property and

21. — — — *Suit by daughter in lifetime of mother.* Held, that a daughter can claim a declaration of her rights in paternal estates during the lifetime of her mother. *JEEWAN RAM v. ROONTA*. 1 Agra 240

22. — — — *Suit by remote reversioner—Specific Relief Act, 1877, s. 42.* An Oudh talukdar, deceased, before annexation, provided by his

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

under s. 8 of the Oudh Estates Act, 1869. Certain of her acts were not explicable except on the understanding that she was abiding by the will. Held, in a suit by the remainder man for a declaration of the invalidity of a deed of gift made by the widow as against him, that, although declaratory relief might have been, at the Court's discretion, refused to him, on the ground of his remoteness in remainder and the identity of the object of his suit with that of the other, yet he was entitled on

L. R. 8 I. A. 41

23. — — — *Specific Relief Act (I of 1877), s. 42.* The intervention of two life estates does not preclude a reversioner from obtaining a declaration of his interest as to land under the Specific Relief Act, s. 42. *KANDASAMI v. AKKAMAL*. I. L. R. 13 Mad. 195

24. — — — *Suit for declaration that defendant not the adopted son—Consequential relief—Specific Relief Act (I of 1877), s. 42.* A suit by persons who are merely distant relations and not reversionary heirs, for a declaration that the defendant is not the adopted son, is not maintainable under s. 42 of the Specific Relief Act (I of 1877). Every declaratory decree must be ancillary to some consequential relief obtainable thereby, and no such relief is possible in the case of distant and contingent, and not presumptive, reversionary heirs. *ANYABA v. DASI*. I. L. R. 20 Bom. 202

25. — — — *Suit to set aside will for invalidity—Hostile will.* A party who, subject to the life-interest of his mother, has a real and vested interest in remainder such as a Hindu has

under s. 8 of the Oudh Estates Act, 1869. *ANAND MOHUN MULLICK v. INDRO MOONEE CHOW.* DRAIS 18 W. R. 214

26. — — — *Suit to avoid effect of nuncupative will—Cause of action—Hindu widow—Testamentary declaration.* A sonless Hindu widow, in possession of her deceased husband's estate as such, made a statement before a revenue official, which was recorded by him, to the effect that she wished the property to go after her death to her nephew, and that she, the person entitled to succeed her, had no right to the property. Held, that such statement, as it was intended to operate, and would

SINGH v. DANWAL SINGH. I. L. R. 7 All. 163

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contd.

## 4. REVERSIONERS—contd.

27. — Suit by reversioner to set aside deed. A Hindu died, leaving a widow, two daughters *R* and *P*, and a grandson *B* by his daughter *R*. The widow took possession of the estate and executed an ikramama, wherein, after reciting that she was in possession "without the co-parcenary of any one," she declared that "*B*, the grandson of me, the declarant, is the heir of my late husband and of me, the declarant," and that all the property was "the right of *B* as aforesaid," and continued:—"During the life of me, the declarant, I am in possession without the co-shareship of any one, and will continue to be so; after my death, *B* will get possession of the whole of the moveable and immoveable properties appertaining to the estate of my late husband. No one else has the right or demand to the same; therefore, these words have been written and given as an ikramama, that it may be of use when occasion arises." Under the ikramama, proceedings were completed for mutation of names in favour of *B*. Subsequently to the execution of the ikramama, *P* gave birth to the plaintiff, and shortly afterwards died. The plaintiff, on attaining his majority and during the life of the widow and *R*, brought a suit against *B* to have the ikramama set aside and declared void as against him, and for a declaration of his right to a moiety of the estate of his grandfather on the death of the widow. *Held*, that he had no cause of action. **BEHARY LALL MOHURWAR v. MADHO LALL SHIR GYAWAL**

13 B. L. R. 222 : 21 W. R. 430

28. — Discretion of Court to grant declaratory decree. A suit by a

passed. *Held*, that it was not a case in which it would be right for the Court to exercise its discretion. **DOOLHUN JANKEE KOORER v. LALL BEHAREE ROY**

19 W. R. 32

29. — Mortgage by Hindu widow in possession of property in lieu of maintenance—Specific Relief Act, s. 42—Hindu widow. The name of the widow of a member of a joint Hindu family was allowed by the other members to be recorded in her husband's place in respect of his rights and interests in the family property by way of complement to the and the property that in

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

suit, in which they prayed for a declaration that the mortgage executed by the widow was invalid, and that the property was not liable for the amount due thereunder, or to attachment in execution of the decree obtained upon the bond. *Held*, that, if the widow's possession were only a possession by the plaintiff's consent entitling her merely to receive the profits for her maintenance, the plaintiffs might eject her from the property, and that, before they could obtain a declaration under s. 42 of the Specific Relief Act, they must seek their relief by ejectment, that being the substantial and real relief appropriate to the cause of action. On the other hand, if the widow had an estate in possession, given to her in exchange for her maintenance, she had an interest which she was competent to alienate. *Held*, also, that, inasmuch as the deed of mortgage contained no description of the amount of the estate mortgaged by the widow, and upon its

30. — Suit by reversioner for possession—Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, s. 578. A suit brought against *K*, the widow of *R*, a Hindu, by the representatives of *R*'s brothers, *H* and *P*, for possession

had been born after *K*'s compromise, brought a

promise entered into by *K* was conclusive against the plaintiffs' claim, and also that, during his

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

of which he had a reversionary right. Also that the awarding of declaratory relief, as regulated by s. 42 of the Specific Relief Act, is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint, and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and, entering into the merits of the case, arrives at right conclusions and awards a declaratory decree, such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised; and that such improper exercise of discretion, under s. 42 of the Specific Relief Act, has no higher footing than that of an error, defect, or irregularity, not affecting the merits of the case or the jurisdiction of the Court, within the meaning of s. 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily, and in a manner grossly inconsistent with judicial principles, the Court of appeal would have no power to interfere. *Ram Kanaye*

ferred to. *SANT KUMAR v. DEO SARAN*

I. L. R. 8 ALL. 365

31. ——— Decree against widow—*Fraud—Reversioner*. Upon the death of *R*, a Hindu who was separate from his brother *S*, his widow *G* became life-tenant of his estate, and his daughter *B* became entitled to succeed after *G*'s death. In 1882 a suit was brought by *S* and *G* against *V* to recover the value of a branch of a mango tree wrongfully taken by the defendant, and for maintenance of possession over the grove in which the tree was situate. The suit was dismissed, and it was decided that *R* was not the owner of the grove, nor was *G* the owner. In 1885 *B* brought a suit against *G*, *S*, *V*, and *A*, to whom *V* had sold some of the trees, claiming a declaration of her right and possession of the grove, upon the allegation that the proceedings of 1882 were carried on in collusion between *S* and *G* on the one hand and *V* on the other, for the purpose of improperly preventing her from asserting her rights. *Held*, also, that, if it should turn out that there was fraud and collusion in the proceedings of 1882,

and that such relief could be given upon

DECLARATORY DECREE, SUIT FOR—  
contd.

## 4. REVERSIONERS—contd.

this form of plaint. *Kotama Natchiar's Case*, 9 Moo. I. A., 543, *Adi Deo Narain Singh v. Dukharam Singh*, I. L. R. 5 All. 532, and *Sant Kumar v. Deo Saran*, I. L. R. 8 All. 365, referred to. *SACHIT v. BUDHA KUR*, I. L. R. 8 All. 429

## 5. DECLARATION OF TITLE.

1. ——— Intention to interfere with rights. To entitle a plaintiff to a declaration

with such rights should be held to constitute a cause of action, if at all, only when it is clearly shown. *JESMANEE KOOR v. DEBEE DYAL RAE* 3 N. W. 137

2. ——— Obligation to show title—*Discretion of Court*. In a suit for a declaration of

3 N. W. 262

3. ——— Hostile act—*Invasion of right*. In order to entitle a plaintiff to a declaration

decree for damages, or a decree for delivery of possession being passed against the defendant, if the Court had so thought fit to exercise its discretion. *KENARAM CHUCKERBUTTY v. DEO NATH PANDA* 9 W. R. 325

*GOVINDONATH ROY CHOWDHRY v. KISHEN KANT ROR* 10 W. R. 254

4. ——— Inability to make binding decree—*Consideration*. *not, as are who not be*

if the defendant should succeed in establishing his right. *BRJO KISHORE DASSEE v. SREENATH BOSE* 9 W. R. 463

*SURJEEAN BHATTOO v. BYKUNT CHUNDER CHUCKERBUTTY* 7 W. R. 96

though plaintiffs had not yet been endangered by the acts of the defendants, it was in the discretion

# DECLARATORY DECREE, SUIT FOR— contd.

## 5. DECLARATION OF TITLE—contd.

of the Court, if they proved their right, to give them a declaratory decree recognizing that right, seeing that serious consequences might otherwise result. *WUZEEROODDEEN v SHEO REND LALL*. 11 W. R. 285

7. ———— Anticipation of injury—Annoyance. Courts cannot by anticipation grant a decree prohibiting a defendant from annoying a plaintiff. It must be shown that some substantial

## 8. ———— Cause of action.

A suit was brought against the plaintiff by his tenants for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated

a cloud over it. *Held*, that there was no cause of action. *Per PAUL, J.*—A suit merely in anticipation of a threatened ejectment will not lie. There must be something in the case either in the nature of an invasion of some right, or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right, to found a claim to a declaratory relief, but a mere allegation, or a mere threat without action taken or founded upon it, will not be sufficient to entitle a party to a declaration of his title. *JAN ALI v KHOYDKAR ANDER KRUMA*. 20 B. L. R. 154; 14 W. R. 420

8. ———— Allegation injurious to plaintiff—Consequential relief. The words of s. 15, Act VIII of 1859, are to be interpreted as giving a right to obtain a declaration of title only in those cases in which the Court could have granted relief if relief had been prayed for. A suit by a party in possession for a declaration of title and to set aside, not any deed nor any act of the defendant, but a mere allegation on his part that he holds under a certain tenure, is not maintainable. *NILMONT SINGH DEO v. KALEE CHURN BHUTTA*. 14 B. L. R. 382

10. ———— Suit by person in possession—Unnecessary suit. A suit ought not to be

*BACHUN ALI v DEWAN ALI*. 11 W. R. 378

11. ———— Confirmation of title. Where the plaintiff in a suit for confirmation

# DECLARATORY DECREE, SUIT FOR— contd.

## 5. DECLARATION OF TITLE—contd.

of his title being (though illegally) in possession, it was held that his not suing for possession was no bar to his obtaining a decree declaratory of his title. *SUNDOO SOONDUREE DASI v. BECKWITH*. 9 W. R. 580

12. ———— Order under Land Registration Act (Beng. Act VII of 1878), s. 53—Specific Relief Act, 1877, s. 42—Possession. The effect of an order under s. 53 of the Land Registration Act being to "settle the actual possession," the person against whom such an order is made is precluded by s. 42 of the Specific Relief Act from bringing a suit merely for a declaration of his title without seeking to recover possession also. *RAM MENDUR v. JANKI PERSHAD*. 12 C. L. R. 139

13. ———— Land not properly described—Land Registration Act (Bengal Act VII of 1878), s. 53, 62—Specific Relief Act (1 of 1877), s. 42—Subsequent suit for possession. A person is not debarred from bringing a suit for declaration of title on the ground that the land in question is not properly described. *Kasem Sheikh v. Dinesh Sheikh*, 1 C. W. N. 574; *Dwarkanath Roy v. Jannabce Chowdhraim*, 19 W. R. 31; *Darbarees Sayal v. Fahu Dider*, 23 W. R. 235; *Mahomed Ismail v. Lilla Diander Kishore Narain*, 25 W. R. 39; *Apothia Lall v. Gamra Lall*, 2 C. L. R. 131, distinguished, but if an order under s. 53 of the Land Registration Act is made against him, he is precluded by s. 42 of the Specific Relief Act

*Omransissa Bibee v. Dilawer Ally Khan*, 1 L. R. 10 Cal. 350, and *Krishnabhadra Devi v. Ramamurti Pantulu*, 1 L. R. 13 Mad. 495, referred to and followed. *RAJ NARAIN DAS v. SHAMA NANDO DAS CHOWDARY*. 1 L. R. 26 Cal. 845

14. ———— Declaration of title as

On appeal to the Privy Council, however, it was found that the plaintiff had asked for and were entitled to consequential relief.

See s. c. 13 B. L. R. 427; 21 W. R. 340

L. R. 1 I. A. 182

15. ———— Right ceasing to exist pending suit—Declaratory decree where right to pos-

declaratory decree of title will not be given when the plaintiff's claim would have been barred by

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

limitation had he sued for possession. *NOROKI-SHORE DEY v. RAMKISHEN*. . . O W. R. 131

16. — Suit by person out of possession—*Omission to ask for possession—Refusal to recognize proprietary right*. In a suit in which the plaintiffs stated that they had already obtained a decree for possession of certain land, and had received formal possession, and stated their cause of action to be "the defendant's act of not recognizing us as their landlords and thereby preventing us exercising our proprietary rights in respect of the land in suit, and not allowing us to make a measurement of that land, and also withholding payment of rent" praying for a decree establishing their proprietary right and declaring the defendants to be their tenants:—*Held*, that the declaratory decree prayed for could be made notwithstanding the plaintiffs might have asked for possession of the land: *LORENATH SURMA v. KESAB RAM DOSS*. . . I. L. R. 13 Calc. 147

17. — Denial of title without injurious act—*Annoyance*. In suits for a declaration of title to a divided share of ancestral property, the ground alleged in each case for seeking the declaration was that the representatives of the brothers of the plaintiff's father had refused to be parties to the registering of the property in plaintiff's name, and had executed a deed of sale of it to a third party (third defendant), and registered him as the purchaser. The Court of first instance in each case decreed for the plaintiff. The Appellate Court, following *Padaqqaligum Pillai v. Shanmugham Pillai*, 2 Mad 333, dismissed the suits on the ground that the plaintiffs were not in a position to maintain them. On special appeal:—*Held*, that the suits should be remanded for a declaration of the plaintiff's title, if established. To maintain a suit for a declaration of title, some adverse act, intended and calculated to be prejudicial to the title which the plaintiff seeks a declaration of, must appear to have been done by the defendant. The mere denial of the title, or doing an act which causes annoyance, cannot imperil the plaintiff's title, nor have any serious effect on the quiet enjoyment of his proprietary right, and is not sufficient to support such a suit. The principle upon which the decision in *Padaqqaligum Pillai v. Shanmugham Pillai* proceeds, is inapplicable to suits under s. 15 of the Civil Procedure Code. *KARYAN v. PERIA SIDDEN. KARYAN v. LINGA GAUNDAN. KARYAN v. DODDALI*

6 Mad. 307

18. — Failure of previous suit for possession of land—*Res judicata, plea of*. Suit brought by plaintiff against the first three defendants as his tenants on *kanam*, and the fourth, the representative of a rival *jenmi*, to obtain a declaration of title as *jenmi*. Plaintiff had previously sued the first three defendants to establish the relation of *jenmi* and *kanamkar* and to recover

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

the land. He failed and then brought the present suit. *Held*, that this was a case of the employment of the device of a suit for a declaration of title in order to get back land by a crooked and not legal process, after failure to recover by proper legal means, the intention being to cut off the defendants (the tenants) from the plea of *res judicata*. The Court, which had a discretion as to whether such a suit should be permitted, ought at once to have said that it should not. Where there are no interests to be protected, there is no foundation for a suit for a declaratory decree. *SUBBAYY MEYOV v. KALAMPULLY VALIA NAIR*

6 Mad. 117

19. — Injury or hostile act giving cause of action—*Fraud*. In a suit for a declaration of the plaintiff's title to, and confirmation of his possession of, certain lands which he alleged had first been sold to him by one of the defendants and then sold by his vendor to the other defendant: *Held*, that, in the absence of proof of fraud in the later sale, there was no cause of action. *ABDOOL AZIM CHOWDHURY v. MAHOMED KABEE*

11 W. R. 281

20. — Suit for ejectment—*Intention to evade stamp laws*. The provision as to declaratory suits requires great care and circumspection in its application. A declaratory decree should not be made where the object of the plaintiff is to evade the stamp laws or to eject under colour of a mere declaration of title. *CHOKALINGATESHANA NAIRER v. ACHIRAE*. . . I. L. R. 1 Mad. 40

[*Ses GANPUTOIR BHOLOIR v. GANPUTOIR*  
I. L. R. 3. Bom. 230

21. — Improper execution of decree by ameen—*Omission to give possession*

*of land*

*action of a decree*

*Held* that when a decree is

executed by an ameen, the

plaintiff is bound to

obey it, and cannot

bring a fresh suit

to set it aside, unless

he can show that

the execution was

improperly done.

1839, a cause of action arose to plaintiff under the

circumstances against defendant, and the suit

would be. *GOUD PRESHAD DOSS v. SODDER RAM*

*DEB*. . . 12 W. R. 279

22. — Tenant setting up larger

claim than his own

right to a *kursa-jumma* tenure in certain lands, but

denying a *perpetual* right



DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

of the Court, if they proved their right, to give them a declaratory decree recognizing that right, seeing that serious consequences might otherwise result. *WUZEEROODDEEN v. SREO BOND LALL*.  
11 W. R. 285

7. Anticipation of injury—  
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2 N. W. 192

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There must be something in the case either in the nature of an invasion of some right, or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right, to found a claim to a declaratory relief; but a mere allegation, or a mere threat without action taken or founded upon it, will not be sufficient to entitle a party to a declaration of his title. *JAK ALI v. KHONDEAR ABDUS KHUMA*.  
6 B. L. R. 154; 14 W. R. 420

9. Allegation injurious to plaintiff—Consequential relief. The words of s. 15, Act VIII of 1859, are to be interpreted—

A suit by a party in possession for a declaration of title and to set aside, not any deed nor any act of the defendant, but a mere allegation on his part that he holds under a certain tenure, is not maintainable. *NILMONEY SINGH DEO v. KALEE CHURN BHUTTA*.  
14 B. L. R. 382

23 W. R. 150; L. R. 21 A. 83

10. Suit by person in possession—Unnecessary suit. A suit ought not to be entertained, where the plaintiff, who merely seeks for a declaration of title is in possession of all his alleged rights, and is not in a position to bring an action. *PADAGALIGUN PILLAI v. SHANMUGHAN PILLAI*.  
2 Mad. 333

*DACHUN ALI v. DEWAN ALI*. 11 W. R. 376

11. Confirmation of title. Where the plaintiff in a suit for confirmation

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

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13. Land not properly described—Land Registration Act (Bengal Act VII of 1876), s. 53, 62—Specific Relief Act (I of 1877), s. 42—Subsequent suit for possession.

*N. 674, Durwanath Roy v. Jannabher Chowdhury*, 19 W. R. 31, *Darbaree Sayal v. Fata Dider*, 23 W. R. 235, *Mahomed Ismail v. Lilla Dindur Kishore Narain*, 25 W. R. 39, *Ajodhya Lall v. Guman Lal* & C. v. R. 191

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I. L. R. 28 Cal. 845  
4 C. W. N. 162

14. Declaration of title as owners. Parties not proving possession, and not entitled to consequential relief.

On appeal to the Privy Council, however, it was found that the plaintiffs had asked for and were entitled to consequential relief.

See s. c. 13 B. L. R. 427; 21 W. R. 340  
L. R. 11 A. 192

15. Right ceasing to exist pending suit—Declaratory decree where right to possession has been barred by

DECLARATORY DECREE, SUIT FOR—  
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## 5. DECLARATION OF TITLE—contd.

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measurement of that land, and also withholding payment of rent" praying for a decree establishing their proprietary right and declaring the defendants to be their tenants:—*Held*, that the declaratory decree prayed for could be made notwithstanding the plaintiffs might have asked for possession of the lands *LOKENATH SERMA v. KESHAB RANI DOSS* . . . I. L. R. 13 Cal. 147

17. ——— Denial of title without injurious act—*Annoyance*. In suits for a declaration of title to a divided share of ancestral property, the ground alleged in each case for seeking the declaration was that the representatives of the brothers of the plaintiff's father had refused to be parties to the registering of the property in plaintiff's name, and had executed a deed of sale of it to a third party (third defendant), and registered him as the purchaser. The Court of first instance in each case decreed for the plaintiff. The Appellate Court, following *Padagaligum Pillai v. Shanmugham Pillai*, 2 Mad. 333, dismissed the suits on the ground that the plaintiffs were not in a position to maintain them. On special appeal:—*Held*, that the suits should be remanded for a declaration of the plaintiff's title, if established. To maintain a suit for a declaration of title, some adverse act, intended and calculated to be prejudicial to the title which the plaintiff seeks a declaration of, must appear to have been done by the defendant. The mere denial of the title, or doing an act which causes annoyance, cannot imperil the plaintiff's title, nor have any serious effect on the title.

LINGA GAUNDAN. KARYAN v. DODDALI

6 Mad. 307

18. ——— Failure of previous suit for possession of land—*Res judicata, plea of*. Suit brought by plaintiff against the first three defendants as his tenants on Kanam, and the fourth, the representative of a rival Jenmi, to obtain a declaration of title as Jenmi. Plaintiff had previously sued the first three defendants to establish the relation of Jenmi and Kanamdar and to recover

DECLARATORY DECREE, SUIT FOR—  
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6 Mad. 117

19. ——— Injury or hostile act giving cause of action—*Fraud*. In a suit for a declaration of the plaintiff's title to, and confirmation of his possession of, certain lands which he alleged had first been sold to him by one of the defendants and then sold by his vendor to the other defendant: *Held*, that, in the absence of proof of fraud in the later sale, there was no cause of action. *ABDOOL AZIM CHOWDHRY v. MAHOMED KABEE*

11 W. R. 281

20. ——— Suit for ejectment—*Intention to evade stamp laws*. The provision as to declaratory suits requires great care and circumspection in its application. A declaratory decree should not be made where the object of the plaintiff is to evade the stamp laws or to eject under colour of a mere declaration of title. *CHOKALINGA PESHANA NAIRER v. ACHIVAR* . . . I. L. R. 1 Mad. 40

[*See GANPUTOIR BHOLOIB v. GANPATIB*  
I. L. R. 3. Bom. 230

21. ——— Improper execution of decree by ameen—*Omission to give possession*

the ameen measured a portion of plaintiff's land as covered by defendant's decree, and delivered over possession to defendant, taking receipts and issuing proclamations as required by a 321, Act VIII of 1859, a cause of action arose to plaintiff under the circumstances against defendant, and the suit would lie. *GOUR PERSHAD DOSS v. SOORDEER RAM DEB* . . . 12 W. R. 279

22. ——— Tenant setting up larger interest than he is entitled to—*Specific Relief Act (1 of 1877), s. 42—Discretion of Court to give a declaratory decree—Landlord and tenant—Notice to quit*. A plaintiff admitting a defendant's right to a karsa-jumma tenure in certain lands, but denying a permanent malguzari tenure set up by him, sought to eject the defendant from the karsa-jumma holding, and for a declaration that the defendant was not entitled to the, permanent malguz-

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

ari tenure. *Held* that the plaintiff was entitled to the declaration asked for, notwithstanding that in consequence of his failure to prove a reasonable notice to quit, he was unable to obtain a decree for ejectment. A Judge, interfering with the discretion exercised by a lower Court in granting a declaratory decree, should state his reasons for so doing. *KALI KISHEN TAGORE v. GOLAM ALI*

I. L. R. 13 Cal. 3

23. ——— Third person compelling payment of rent to him—*Cause of action*. When a person obliges the tenants of an estate to pay rent to him, his act may be treated as a dispossession of the party wronged, sufficient to entitle the latter to sue for declaration of title. *RADHA MADHUB PANDA v. JUGGERNATH DOOAB*

14 W. R. 183

See HOYMORUTTY DASSEE v. SREEKISSEN NUNDEE

14 W. R. 58

24. ——— Unsuccessful intervention in rent suit—*Cause of action*. Unsuccessful intervention in a suit for rents against rayats, followed by plaintiff's action *firm* v. Mo

25. ——— Slander of title—*Civil Procedure Code, 1859, s. 15*. The issuing of proclamations and orders by B to the rayats of an estate to pay rent to him as rightful owner of the estate,

and enjoyment of the estate as rightful owner, to a decree declaring him to be the rightful owner. *THIRUVENGADATHRENGAR v. SANGILAYERAMPA PANDYA CHINNATHUMBILAR*

I. L. R. 1 Mad. 65

26. ——— Suit for ejectment of one defendant and declaration against others—*Suit before Act VIII of 1859*. Before the enactment of Act VIII of 1859, s. 15, a suit could not have been brought for a mere declaration of title without consequential relief. A suit cannot be brought against several defendants to eject one,

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

28. ——— Suit by first mortgagee against subsequent mortgagee as purchaser affecting his title—*R* having executed two mortgages of the same share, his mortgagee

decree obtained on the earlier mortgage, and defendant (who was the second mortgagee) himself purchased the same right, title, and interest at the second sale. The suit was brought for confirmation of plaintiff's possession of the estate, on the ground that his title was affected by the subsequent purchase of the defendant. *Held*, that plaintiff had no cause of action, as his rights had not been disturbed by any act of the defendant. *BRN. DRENATH JHA v. ANKIT SAROO*

10 W. R. 128

29. ——— Suit for declaration of title as mortgagee—*Rejection of claim to attached property*. On attachment of certain property in execution of a decree, A preferred his claim under s. 246, Act VIII of 1859, on the ground that he held a mortgage thereof from the judgment-debtor. Thereupon an order was passed for sale of the property subject to the mortgage. B afterwards claimed the same property as his absolute estate, and his claim was allowed, and the property released from attachment. A was not a party to these proceedings. *Held*, that A could maintain a suit against B for a declaration of his title as mortgagee. *GABIND PRASAD TEWARI v. UDAI CHAND RANA*

6 B. L. R. 320

30. ——— Interference with plaintiff's right—*Cause of action*. A Government waradar's covenant with Government that he will not object to the use of the tanks, roads, cow-path, etc., within his ijara, does not prevent him from making settlements for those tanks, roads, etc.; and the mere fact of his giving a lease to one party cannot interfere with another party's right to use such road, or the waters of such tank, or give that other party cause to sue for a declaration of title. *WOOSUM ALI v. JAN ALI*

11 W. R. 384

31. ——— Suit to declare estate forfeited—*Specific Relief Act (I of 1877), s. 42*. Certain trusts of a house were declared in favour of

cestus que trustent, and C, praying that, in the event which had happened, it might be declared that the life estates of A and B had been forfeited. He also asked for various declarations as to his rights. *Held*, that no declaratory decree could be made. *BRUTENDRO BHUSAN CHATTERJEE v. TRIDINATH MOOKERJEE*

I. L. R. 8 Cal. 761

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

32. — Suit by landlord during continuance of tendency—*Specific Relief Act*, s. 42. It is open to a landlord, where his title is in jeopardy from the aggressions of neighbouring zamindar, and where his title may be damaged by a

R. 15, explained. *BHESMURI DABEEA v. BARODA KANTA ROY CROWDERY* I. L. R. 10 Cal. 1078

33. — Suit to establish title to property on the ground of trespass by defendant to particular part of it—*Decree confined to that portion*. He who seeks a declaration of matter not necessary to the immediate relief sought must sustain the burden of making out the abstract proposition which he has volunteered to support, and it will even then be a matter for the discretion of the Court, not to be lightly exercised, whether it will undertake the solution of the problem. Suit brought for a declaration of title to a considerable tract of country on account of a trespass committed by defendant on a particular hill. *Held*, that, as to that particular hill, the plaintiff's claim was sustainable, and that disposed of the only question which it was necessary to decide. *KALLAVETTI KURUJAL KUMHOLEN KUTTY v. NILAMBUR THACKAYARAVIL MANA VIKRAMEN alias THIRUMULPAD* 8 Mad. 17

34. — Suit for declaration of title after defendant has obtained order for certificate under Act XXVII of 1860. A suit may be maintained for a declaration of title which may be used as a means for the withdrawal of a certificate under Act XXVII of 1860, though a suit will not lie to set it aside. *RUSSICK CHUNDER v. RAM LALL SHANA* 22 W. R. 301

35. — Suit against holder of certificate under Act XXVII of 1860. Where a certificate had been granted to the personal representative of a deceased shebait of debutter property, who set up no claim to the property, and the manager of the debutter property on behalf of the surviving shebait brought a suit against the certificate-holder for a declaration under Act VIII of 1859, s. 15, the District Judge was held to have done right in refusing the declaration. *RUGHOOBER DIAL SINGH v. RAM NARAIN KOLYA*

22 W. R. 312

36. — Refusal to register—*Suit for declaration of title under unregistered deed*—*Specific Relief Act*, s. 42.

lobala was executed; that possession was given to him; that B and C set up before the Deputy Regis-

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

trar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money had not been embodied in the deed, and that part of the consideration-money had not been paid; that therefore the Registrar refused to register the deed; that in fact there was no such stipulation as alleged by B and C, and that the whole of the purchase-money was paid. It was stated in the plaint that the suit was brought to set aside the fraudulent objections and to establish the full title of A as purchaser.

SERADEE SINGH v. CHUNDUN

2 N. W. 160; Agra F. B. Ed. 1874, 213

37. — Suit to ascertain shares in family property—*Overt act of injury*. Where there is a dispute as to the shares of the several members of a family in a family property, the possession of which is undisturbed, a suit will lie to ascertain the shares of the different members. In a suit for a declaratory decree, it is not necessary to allege any overt act which may give rise to relief in the shape of damages or a decree for possession. *BHAGWAN SINGH v. MITARAJ SINGH*

8 B. L. R. 382; 17 W. R. 169

38. — Suit by one member of joint Hindu family for declaration of right to receive share—*Partition*. A Joint Hindu family, consisting of three brothers, enjoyed an undivided one-third share of certain lands. One member sued the others for partition of the family property, claiming to have his right declared to receive one-third of the share of the family in the profits of the said lands. *Held*, that the Court was not debarred from granting the relief prayed for by the provisions of s. 42 of the Specific Relief Act. *PANCHANADAYAN v. NILAKANDAYAN*

I. L. R. 7 Mad. 191

39. — Invasion of right—*Cause of action*. In a suit for establishment of lakhiraj title to, and confirmation of possession in, land which was alleged to have been brought to sale and purchased in execution by the principal defendant, who had then sued some of the plaintiffs for a kabuli; *Held*, that there had been no invasion of plaintiff's title even if they had a lakhiraj title, and that, therefore, they had no cause of action. *RANGOPAL TEWARIE v. GORA CHUND PORYAL*

15 W. R. 28

40. — Dismissal of former suit

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

ISSUR CHUNDER ROY v. JUGGESSUR GHOSH

17 W. R. 184

41. — Suit by person in possession of land to establish title—*Civil Procedure Code, 1859, s. 15*—*Defendant claiming under decree of Small Cause Court*. The plaintiff, in a suit to establish her lakhiraj right to lakhiraj land, stated in her plaint that she was in possession of certain land by virtue of the will of her husband; that while in possession of the land, a suit was brought against her in the Small Cause Court for rent by the defendants, who obtained a decree; and that, there being no appeal against the decision, the lakhiraj rights in respect of the lands were consequently injured; she, therefore, brought the present suit. *Held*, that such a suit was not maintainable, as the claim which the defendants set up was no longer in the condition of a mere assertion or a claim for right, but had passed into a decree. *Held*, further, that in this case the plaintiff was not without a remedy, for if a further suit for rent brought, she might file a suit and apply for an injunction to prevent the other party from proceeding so long as her suit was not disposed of and an absolute relief given her. *FORAN SMOOKH CHUNDER v. PARETTY DOSSEE*

I. L. R. 3 Cal. 612; 1 O. L. R. 404

42. — Suit to declare land lakhiraj—*Resumption decree declaring lands mal—Specific Relief Act (I of 1877), s. 42—Title by possession—Limitation Act (XV of 1877), s. 23, Sch. II, Art. 130*. In a suit instituted in 1877, A prayed for a declaration that he had a lakhiraj title to certain lands; the defendant stated that the lands for a declaration of a title to which A now sued formed part of certain lands which had been the subject of resumption proceedings, which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit, including the lands now claimed by A, were not lakhiraj. It being found as a fact that A had

been taken by the defendant calculated to disturb such possession: *Held*, that A was entitled under s. 42 of Act I of 1877, to the declaration prayed for. *ABHOY CHURN PAL v. KALLY PERSAD CHATTERJEE*  
I. L. R. 5 Cal. 949; 6 O. L. R. 260

43. — Suit to declare proprietary right—*Previous suit for rent dismissed—Consequential relief—Specific Relief Act (Act I of 1877), s. 42*. S sued B in a Court of Small Causes for arrears of ground rent of a house. The latter

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DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

denied S's proprietary right to the land and his liability to pay ground-rent, and S's suit was in consequence dismissed. Thereupon S sued B in the

include a claim for arrears of ground-rent; and that the suit was one in which the specific relief claimed might properly be granted. The principle laid down in *Sadul Ali Khan v. Khajeh Abdool Gunnee, 11 B. L. R. 203*, applied. *SOMKALI v. BHAIRO* I. L. R. 5 All. 65

44. — Suit to declare rights under benami mortgages—*Omission of prayer for possession—Specific Relief Act (I of 1877), s. 42*. In 1880 A and B jointly advanced moneys on the security of a usufructuary mortgage which was taken in the name of B. In 1884 A alone advanced moneys on the security of usufructuary mortgages which were likewise taken in the name of B. A died leaving three sons, of whom the plaintiffs were two. The plaintiffs, having become divided from their brother, now brought suits in 1894 against B and the mortgagors for a declaration of

that no suit had been collected for several years before suit, the mortgagors who had remained in possession as lessees after the execution of the mortgages having refused to attorn to B. *Held*, that the suits were not barred by Specific Relief Act, s. 42, for want of a prayer for possession; that the suits were not barred by limitation save as to the claim for rent; that the transactions

of the mortgage documents of 1881 and the other documents connected therewith, but not the others. *MAHARAJA BHATTA v. KUNHANNA BHATTA*  
I. L. R. 21 Mad. 373

45. — Obstruction to alleged highway—*Specific Relief Act (I of 1877), s. 42*

party. Such a suit is not barred by an order of a Criminal Court under s. 137 of the Criminal Procedure Code. *Khodabux Mundul v. Monglal Mundul, I. L. R. 14 Cal. 60*, overruled. *CHUNIL LALL v. RAM KISHEN SABA* I. L. R. 15 Cal. 480.

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

46. ——— Sale in execution of decree of property not belonging to judgment-debtor—*Right of owner to bring suit to establish title and not wait for dispossession* In execution of a decree on a mortgage, certain property was sold which the plaintiff in this suit claimed as his own under a sale to himself by the sons of the judgment-debtor. He applied to the Court to have the sale set aside, but failing in his application he sued both the decree-holder and the auction-purchaser for a declaration of his title to the property in question. The Assistant Judge held on appeal that the suit was not maintainable on the grounds that a separate suit could not be brought, as the question of title was one for decision in the execution-proceedings, and that, even if the point could be raised in a separate suit, the present suit was premature, as the plaintiff should have waited till he was dispossessed by the auction-purchaser. *Held*, that the suit was not premature. A person, whose property is sold in execution of a decree against a third party, is not bound to wait till he is dispossessed by the auction-purchaser. As soon as his title is denied, he is entitled to bring his suit. *SHIVRAM CHINTAMAN I. J.* I. L. R. 13 Bom. 34

47. ——— Suit for declaration of title as holder of a stanom to which a malikana allowance is attached—*Specific Relief Act (1 of 1877), s. 42.* Suit to declare plaintiff's title to the stanom of fifth Raja of Palghat; the first Raja (defendant No. 1) received a malikana allowance from Government payable to the various stanomdars, but had refused to pay to plaintiff the fifth Raja's share. *Held*, the plaintiff being entitled to sue for further relief than the declaration of his title and having omitted to do so, that the suit must be dismissed under Specific Relief Act, s. 42. *KOMBI v. AVUNDI* . I. L. R. 13 Mad. 75

48. ——— Consequential relief—*Specific Relief Act (1 of 1877), s. 42.* In a suit in which the plaintiffs sought declarations that they were members of an undivided Ahyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have the lands registered in his name, the defendants denied the allegations in the plaint, and pleaded that the suit for declaration only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants, and had for more than twelve years been excluded to their own knowledge from the joint family property. *Held*, that if, as alleged by the plaintiffs, plaintiff No. 1 was the *de jure* ejaman of the family, he was entitled to the possession and management of the family property, and a suit for a mere declaration of his right would not lie. *Chandu v. Chathu Nambiar*, I. L. R. 1 Mad. 381, distinguished. *MUTTAKKE I. THIMMAIA* I. L. R. 15 Mad. 168

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

49. ——— Suit for declaration of right to possession of lands as member of joint family—*Specific Relief Act (1 of 1877), s. 42.* A plaintiff brought his suit in a Civil Court, asking for a declaration of his right to the possession of certain lands as a tenant at fixed rates or in the alternative for possession, alleging that the lands were the property of a joint Hindu family of which he was a member, that the family still remained joint, and that he was entitled, as a member of such joint Hindu family, to a one-third undivided share in this ancestral property. *Held*, that the Civil Court was competent to give the plaintiff a decree declaring that he was a member of the joint Hindu family, that the family still remained joint, that the property in dispute was ancestral and had not been partitioned, and that the plaintiff was entitled to a one-third undivided share, further that s. 42 of the Specific Relief Act would not apply to the suit, inasmuch as the Civil Court, if the plaintiff was found to be out of possession, was not competent to grant consequential relief in the shape of a decree for possession as a tenant at fixed rates. *BRIS BRUKHAN v. DURGADAT* . I. L. R. 20 All. 258

50. ——— Illegitimate son of a Sudra—*Specific Relief Act (1 of 1877), s. 42—Hindu law—Inheritance—Further relief.* The widow of a shrotriendrar, who was a sudra, brought a suit for a declaration of their title by inheritance to his lands against his illegitimate son, who had been registered as shrotriendrar in lieu of his deceased father, and to whom certain of the rajyats had

having performed the ceremony of *periyam* before his birth. *Held*, that the suit was not precluded by Specific Relief Act, s. 42. *CHINNAMMAL v. VARADARAJULU* . I. L. R. 15 Mad. 307

51. ——— Refusal of declaratory decree, the case made for it being defective—*Specific Relief Act, s. 42.* Under the Specific Relief Act, s. 42, a suit was brought for a decree declaratory of the plaintiff's title to be mutawals and managers of property from ancient times connected with religious observances, viz., a ghat upon the

passed in the DIST COURT. EVEN IF THE EVIDENCE HAD shown that the plaintiffs had some relation to the

No decision was, however, given, nor was any opinion expressed, with respect to other rights, which either of the parties might have, or claim to

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

have, relating to the property. *MAINA v. BILU MOHAN* . . . I. L. R. 12 All 587  
I. R. 17 I. A. 187

52. ————— Consequential relief—*Specific Relief Act, s. 42*. Where a suit was brought in which the defendants' . . .

the del . . . occupancy tenants . . . the land in question was the plaintiff's soil; and it was held that such a suit could not be brought within the Civil Court's jurisdiction by dropping all the reliefs claimed except the last-mentioned declaration, that being merely of importance as incidental to the previous ones, and as a round-about mode of obtaining a declaration that the defendants were not the plaintiff's occupancy-tenants:—*Held per EGGE, O. J., and MAHMOOD J. Quere v. Waether* the last-mentioned prayer is one which could be brought under s. 42 of the Specific Relief Act. *MAHESH RAI v. CHANDER RAI* . . . I. L. R. 13 All 17

53. ————— Suit for declaration of title by an objector in execution-proceedings—*Specific Relief Act (I of 1877), s. 42—Consequential Relief—Civil Procedure Code, s. 233*. In a suit under Civil Procedure Code, s. 233, for a declaration that the sale to defendant No. 2 of certain land in execution of a decree was invalid, it appeared that the land had been attached in execution of a decree obtained by defendant No. 2 against defendant No. 1, who held it as the plaintiff's tenants, that the plaintiff had intervened unsuccessfully in the execution-proceedings and had been referred to a regular suit, and that the land had been brought to sale and purchased by defendant No. 2 who was now in possession. *Held*, that the suit was not maintainable for want of a prayer for possession. *KORIMBIA v. KUMBHUNI* . . . I. L. R. 18 Mad. 140

54. ————— Mere possession on the one side and unjustifiable dispossession on the other—*Specific Relief Act (I of 1877), s. 42—Right of the possessor dispossessed by a wrong doer, as against the latter—Injunction—Waf*. Lawful possession of land is sufficient evidence of right as owner as against a person who has no title whatever, and who is a mere trespasser. The former can obtain a declaratory decree and an injunction restraining the wrong-doer. In such a suit the defence was that the land was waf, and the defendant mutwalli of it. Both Courts found that the plaintiff was in possession as purchaser from some of those who were entitled to sell. But the first Court did not find a fact which the Appellate Court found, viz., that the property had been constituted waf. Both Courts, however, con-

DECLARATORY DECREE, SUIT FOR—  
contd.

## 6. DECLARATION OF TITLE—contd.

curring in the finding that the defendant, at all events, was not the mutwalli, and had no title. *Held*, that the plaintiff was entitled to a declaratory decree against this defendant . . .

to the validity of the judgment, no decision being needed. This could not be decided either way in this suit, as parties interested were not before the Court. *ISMAIL ARIFF v. MAHOMED GHOSSE* . . . I. L. R. 20 Cal. 834; I. R. 20 I. A. 99

55. ————— Suit by person in possession for declaration of title—*Burden of proof—Failure of plaintiff or defendant to prove title—Effect of plaintiff's possession—Specific Relief Act (I of 1877), s. 42*. The plaintiff, who was in possession of certain land, sued for a declaration that the defendant had no title to it, and that it belonged to him. The plaintiff also contained a prayer for general relief. At the trial, both plaintiff and defendant failed to prove any title to the land, but the plaintiff proved that he had been for ten years in possession and had built a shed on it. *Held*, that no declaration of the plaintiff's title could be made; but *held*, on the authority of *Ismail Ariff v. Mohamed Ghosse*, I. L. R. 20 Cal. 834, I. R. 20 I. A. 99, that the plaintiff was lawfully entitled to the land and to the shed thereon. *GANGARAU CHIMNA PATEL v. SECRETARY OF STATE FOR INDIA* . . . I. L. R. 20 Bom. 768

56. ————— Objection that consequential relief is available—*Specific Relief Act (I of 1877), s. 42—Objection raised for first time on appeal*. The plaintiff, as heir to her husband brought a suit, in which Government was not represented, for a declaration of the title to a quarter share of the jennu value of land taken up under the Land Acquisition Act. *Held*, that the suit for a declaration only was maintainable. Even assuming that the plaintiff was able and called upon in this case to ask for further relief, *held*, following the decision in *Limbo bin Krishna v. Rama bin Pimplu*, I. L. R. 13 Bom. 543, that the suit should not be dismissed on this ground, the objection not having been raised in either of the lower Courts. *CHORU v. UMMA* . . . I. L. R. 14 Mad. 48

57. ————— Consequential relief—*Specific Relief Act (I of 1877), ss. 42, 56—Amendment of plaint on appeal—Reasons* . . .

that the defendant had no right either to the office of Sheik or to the properties in question, for an injunction restraining him from interfering with the properties or doing anything in any way inconsistent with the plaintiff's

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

right to the office, and for further and other relief. It appeared on the evidence for the defence, that the defendant was in possession of part of the property, but no issue had been framed as to the maintainability of the suit under the last clause of the Specific Relief Act, s. 42. *Held* (on appeal by the defendant) that the Court of first instance should take evidence and try an issue specifically directed to this question. It having appeared on the evidence recorded on that issue that the defendant was substantially in possession of the office of Sheikh and of its emoluments, *held*, that the suit was not maintainable, although an injunction was asked for as relief consequential on the declaration. The plaintiff was permitted to pay additional stamp duty and amend the plaint by adding a prayer for possession. **ABDULKADAR v. MARONED**

I. L. R. 15 Mad. 15

58. — *Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, s. 53—Amendment of plaint on appeal.* A karar was executed by members of two Malabar taravads, by which the taravad of the plaintiffs and defendants Nos. 1 and 2 was amalgamated with that of which defendant No. 3 was a karnavan; part of the property of the plaintiff's branch was in the possession of defendant Nos. 1 and 3, and part of it was held under demise from defendant No. 3. The plaintiffs sued for a declaration of their title to this property and for a declaration that the karar was not binding on them. An issue was framed on the question whether the suit was maintainable for want of a prayer for all relief consequential on these declarations. *Held*, (i) that the suit was not maintainable for want of a prayer for possession of the lands under demise; (ii) that the plaintiffs should not be permitted to amend the plaint on appeal by the addition of such a prayer. **NARAYANA v. SHANKUNNI** I. L. R. 15 Mad. 255

59. — *Suit for a mere declaration of title without consequential relief—Specific Relief Act (I of 1877), s. 42—Injunction—Amendment of plaint.* The plaintiff sued for a declaration that he was entitled to succeed, on his father's death, to a talukdars' estate. The estate was a jagir. It appeared that defendant No. 1 had obtained a decree against the plaintiff's father, establishing his title to the estate.

... who was in management of the estate under Act XXI of 1881, paid defendant No. 1 an allowance of Rs 200 a month on account of his maintenance. The plaintiff

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

ance. The defendants contended that the suit was not maintainable because the plaintiff had sued for a mere declaration of title without asking for consequential relief. *Held* (CANDY, J., doubting), that the suit was barred under s. 42 of the Specific Relief Act, as the plaintiff had omitted to seek the relief of an injunction against defendant No. 1, restraining him from receiving future payment of maintenance. *Held*, further, that plaintiff was at liberty to amend his plaint by praying for an injunction as against both defendants. **SARDAR-SINGJI v. GANAPATISINGJI** I. L. R. 14 Bom. 395

60. — *Executor or administrator of a shareholder, rights of—Specific Relief Act (I of 1877), s. 42—"Holding a share," Meaning of—Agreement, Construction of—Objection taken for first time in appeal.* Prior to the year 1803, W' W' carried on an extensive timber trade in Burma. In that year the defendant company was formed for the purpose of taking over the business from him together with the capital and assets engaged therein. The nominal capital of the company was Rs 25,00,000, divided into one thousand shares of Rs 2,500 each. On the 22nd July 1864, an agreement carrying out the above object was executed between W' W' and the defendant company. This agreement set forth the assets and property to be transferred, and classified them as (a) "fixed assets," which consisted of immovable property, buildings, etc., valued at Rs 7,78,000 or thereabouts; and (b) assets other than fixed assets which consisted of what was called "forest operations," and of valuable contracts, rights, and concessions from the King of Burma, etc. The agreement further specified the consideration to be paid to W' W' for each of these classes of assets. For the "fixed assets" he was (under the 12th clause of the agreement) to receive one hundred fully paid-up shares of the Company. That clause contained certain provisions as to the payment of the ordinary dividend up to the date of the agreement, but not to any assignment made by him, his executors or administrators of the shares, or any of them, within five years from the date of the registration of the company. For the remaining assets it was provided by the 13th clause of the agreement that W' W', his executors or administrators, should be entitled, so long as he or they should hold the

entia dividend was to be one-third of such surplus net profits. The said 13th clause also provided that,



DECLARATORY DECREE, SUIT FOR—  
*contd.*5. DECLARATION OF TITLE—*contd.*

if W W died within the above stated period of five years, his executors or administrators should not be entitled to the said extra or preferential dividend after the expiration of the said period, notwithstanding they might continue to hold the said shares. Subsequently to the execution of this agreement, the business and assets were transferred to the company by W W, and one hundred fully paid up shares were duly allotted to him under cl 12, and his name was entered on the register of shareholders. In 1888, W W, then domiciled in England, died. By his will he appointed his three brothers—R W, L A W, and A F W—his executors, and he directed that his executors should hold the said shares and all his interest therein and attached to the holding thereof upon trust for such of his said brothers as might survive him, if more than one, as joint tenants. R W died in the testator's lifetime, and only A F W proved the will. On the 27th September 1888, letters of administration, with the will annexed, were granted by the High Court of Bombay to the plaintiff in this suit (F Y S) as attorney for the said executor A F W. On the 20th September 1889, the said letters of administration were produced to, and registered with, the defendant company. The hundred shares continued to stand in the testator's

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Save for this entry, the register remained unaltered after the testator's death. The plaintiff now sued to have it declared that cl 13 of the agreement was still in operation, and that, as such administrator as aforesaid, he was entitled to the extra or preferential dividend payable on the said one hundred shares if and when there should be sufficient net profits to allow payments thereof under the

that he was only entitled to the preferential dividends if, at the time when such dividends were declared, he was holding the shares in the capacity of executor and as an undistributed part of the testator's estate. They insisted that the plaintiff should prove that he so held the shares before he could be entitled to the declaration sought for. The executor was examined in England on commission. He deposed that the estate had been got in, and the debts paid; that the estate had not been divided, because it would not be in accordance with the private wishes of the testator which they (i.e. he and his brother L A W) were aware of; that apart from these private wishes, there was no reason why the estate should not be divided between his brother and himself. *Held*, by FARRAN, J., and by the Court of appeal,

DECLARATORY DECREE, SUIT FOR—  
*contd.*5. DECLARATION OF TITLE—*contd.*

that the plaintiff was entitled to the declaration sought for. The executor or his attorney (the plaintiff) was still the registered holder of the shares, and under cl 13 of the agreement it was intended

*Held* by the Court of appeal, that the present case was one in which, in the interests of both parties, the Court, in the exercise of a sound discretion, should make a declaration as to the right in question. The right was existent, and although the exercise of it was undoubtedly contingent on there being a balance of profits as contemplated by cl 13 of the agreement, the very nature of the agreement assumed that there might, and probably would, be such a balance, and a large sum had been already applied towards the dividend in question. Further, it was intended that the directors should exercise their discretion as to the amount to be carried to the reserve fund, upon which the balance of profit available for the preferential dividend depended. It was therefore, from the very nature of the case, important that the directors should know for certain whether the right to a preferential dividend was still in existence as contended by the plaintiff, or had come to an end. The circumstance, moreover, that the objection had been taken for the first time on appeal would by itself be fatal to it. **BOMBAY-BURMAN TRADING CORPORATION v. SMITH**

I. L. R. 17 Bom. 197

61. Constructive possession—Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, 1882, s. 319. In a suit for declaration

ON APPEAL. *Held*, that this suit for a declaration merely was not maintainable under the Specific Relief Act, s. 42. **KRISHNABHUTATI DEVU v. RAMANURTI PANTULU**. I. L. R. 16 Mad. 405

DECLARATORY DECREE, SUIT FOR—  
contd.

## 5. DECLARATION OF TITLE—contd.

62. ————— Consequential relief—*Specific Relief Act (I of 1877), s. 42*. At a sale in execution of a decree against the plaintiffs, the pleader who had acted for the plaintiffs purchased their property with his own money, but in the name of his mohurrir, and for a very inadequate sum. The plaintiffs thereupon brought a suit against the defendants (the pleader and his mohurrir) for a declaration that the pleader-defendant, in so purchasing, was a trustee on their behalf, for an order directing the defendants to convey the property to the plaintiffs.

as being one merely for a declaratory decree without consequential relief. *AGHORE NATH CHACKRABUTTY v. RAM CHURN CHACKRABUTTY*  
I. L. R. 23 Cal. 805

63. ————— Suit for a declaration that plaintiffs' interests are not affected by sale in execution of decree—*Specific Relief Act (I of 1877), s. 42—Further relief*. The plaintiffs were purchasers at a sale held in execution of a decree for money, and had obtained possession. Before that decree had been executed, the property in question was mortgaged to two other persons.

*N S* and another. The former auction-purchasers thereupon sued the purchasers under the decree upon the mortgage for a declaration that they and their interests were not affected by the suit for sale and by the decree for sale and the sale in execution of that decree. *Held*, that the plaintiffs in that suit were not bound either to tender the mortgage-money, or to offer to redeem, or to frame their suit as a suit for—  
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64. ————— Right to sue for declaration—*Specific Relief Act (I of 1877), s. 42—Mortgage—Code of Civil Procedure, 1882, s. 237*. *D* mortgaged certain property to plaintiff. After *D*'s death, plaintiff obtained a decree for recovery of his debt by sale of the mortgaged property. Before the property was advertised for sale, the defendants, who were *D*'s brothers, objected under s. 237 of the Code of Civil Procedure Act (XIV of 1882), alleging that *D* was not the sole owner of the property.

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contd.

## 5. DECLARATION OF TITLE—contd.

longed to *D* exclusively, and the defendants

after this claim for declaration had been allowed by the Subordinate Judge, it was contended that he was not entitled any longer to a declaratory decree. *Held*, that the change of circumstances brought about by the plaintiff himself purchasing the property did not take away the right to sue which had already accrued to him. *Gorinda v. Perumderi*, I. L. R. 12 Mad. 136, referred to. *WAMANRAO DAMODAR v. RUSTOMJI EDALJI*  
I. L. R. 21 Bom. 701

## 6. ENDOWMENTS.

1. ————— Suit to eject one claiming to be the jheer of a muth—*Specific Relief Act (I of 1877), s. 42—Consequential relief*. Three disciples of a muth brought a suit, alleging that the defendant was in possession of the muth under a false claim of title as the jheer of the muth.

was asked by the Court, but no consequential relief was asked for. *Held*, that the suit was not maintainable for the reason that relief consequential on the declaration sought under s. 42 of the *Specific Relief Act* was not asked for. *STRINIVASA ARYANGAR v. STRINIVASA SWAMI*  
I. L. R. 16 Mad. 31

2. ————— Suit by trustees for a declaration that an appointment to the office of pattamali was invalid—*Specific Relief Act (I of 1877), s. 42—Omission to ask for consequential relief*.

defendants that, even if the allegation were true, the suit must fail, as the pattamali (who was also implicated as a defendant) had taken charge of documents and jewels belonging to the temple, and

prayed for  
the dis-  
appointment  
of the suit  
had been made  
imposition. *Held*,



DECLARATORY DECREE, SUIT FOR—  
contd.

## 7. ERRORS IN DEMARCATION AND SURVEY OF LANDS—contd.

SOODUKHINA CHOWDHURAI v. ISSER CHANDER MOJJOONAR . . . 12 W. R. 25

6. ———— *Suit for lands wrongly marked on survey map.* A suit will lie for a declaration of title to certain lands which have been erroneously marked on the survey map as belonging to the defendant SHIN JATON ROY v. PANCHANAN BOSE

3 B. L. R. Ap. 55 : 11 W. R. 466

7. ———— *Thalbusht map—Omission of allegation of injury or loss.* Where a plaintiff in a suit for declaration of title merely alleged that a certain thalbusht map was erroneous, and did not state that any injury had occurred to the plaintiff in consequence of the error, the plaint was held to disclose no cause of action. FRAN BANDHU CHATTERJEE v. MADHUSUDAN PATRA

13 B. L. R. Ap. 12

S.C. RAM BUNDHOO CHATTERJEE v. MUDHOO SOORUN PATRA . . . 21 W. R. 134

8. ———— *Alteration in Survey map—Cause of action.* A suit for a declaration of title to certain lands which the defendants had caused to be demarcated in the survey maps as a part of their talukhs without the knowledge and in fraud of the plaintiff, was held to disclose a sufficient cause of action. PROMOTHONATH ROY v. POORNO CHUNDER BANERJEE . . . 11 W. R. 543

9. ———— *Causing alteration in maps—Hostile act—Cause of action.* Where, on the occasion of the batwarra of a zamindar, the proprietors of an outside talukh interfered and caused the Collector to exclude certain land of an *ousut* talukh from the maps and records then made, without opposition from the *shikmi* talukhdars, it was held that their conduct amounted to making evidence which might eventually be used adversely to the rights of the *ousut* talukhdars, who, therefore, had a cause of action against them justifying a suit for a declaratory title. OMBOYA CHURN SINGLY v. MOHESH CHUNDER DASS

23 W. R. 22

10. ———— *Suit to declare survey maps incorrect—Alteration by misrepresentation of defendant.* In a suit for a decree declaring certain survey maps to be incorrect on the ground of their having been altered on an incorrect representation by the defendants of their boundaries, where it was found that plaintiff had always been in possession, and no infringement of her right had taken place : *Held*, that there was no cause of action. JARDINE, SKINNER & Co. v. SHURVO MOYEE . . . 24 W. R. 215

## 8. REGISTRATION OF NAMES BY COLLECTOR.

1. ———— *Joint property standing in one name in Collector's register—Cause of*

DECLARATORY DECREE, SUIT FOR—  
contd.

## 8. REGISTRATION OF NAMES BY COLLECTOR—contd.

*action.* The fact of joint property standing on the Collector's register in the name of the elder brother is no slur on the younger, and no ground for a suit on the part of the latter for declaration of title. GOREE LALL v. BHUGWAN DASS . 12 W. R. 7

2. ———— *Decision of Collector declaring right in partition proceedings—Cause of action.* A Collector's declaration of the title of a party to an entire share of an estate and his action in dividing the share for such party are an injury to, and a slur upon, another party claiming a fraction of the share, and give him a sufficient cause of action. SHEO PERSHAD SOOKOOL v. SHUNKER SAHOY . . . 16 W. R. 190

3. ———— *Estates with same name—Cause of action.* Defendant having obtained from the Collector an order for a batwarra of his share in a mouzah in the vicinity of plaintiff's estate, the latter, after applying in vain to the revenue authorities for a declaration that his own estate (Sheepore) had nothing to do with defendant's mouzah, which was found to be recorded on the towns with an *alias* of Sheepore, brought a civil suit for a declaration of his own right to Sheepore. *Held*, that, as the two estates were separately re-

defendant's estate, plaintiff had no cause of action FOOLBASHEE KOWAR v. ARJUN SAHOY

12 W. R. 134

4. ———— *Obtaining hostile registration of name—Suit for declaration of title and to have name registered.* Immediately before the British entered Bhootan, the Soobah of Mynagorie gave plaintiff a mourasi pottah of some jotes of land, and shortly after ran away. After the British entered, the defendants gave him kahulats and paid him rent. The British authorities also recognized his rights and received rents from him. Subsequently the defendants disputed plaintiff's rights, and applied to the Collector to have their own names registered as jotedars. Their applications having been successful, plaintiff sued for a declaration of his title under the pottah. *Held*, that, as plaintiff's title had been acknowledged by the defendants and recognized by the British authorities, he was entitled to the declaration sought. SREE KANT SHAHA v. KALTOO DASS

10 W. B. 135

5. ———— *Successful opposition to entry of names in Collector's register—Cause of action.* Where parties relying on their title to certain property apply to have their names put into the Collectorate books, and their application is successfully opposed by other parties claiming the same property on the ground of a conveyance

# DECLARATORY DECREE, SUIT FOR— contd.

## 8. REGISTRATION OF NAMES BY COLLECTOR—contd.

made to themselves, such opposition constitutes a good cause of action to the parties first mentioned if they have the right alleged. *Rewal Manton v PENAM MUNDAR* . . . 22 W. R. 9

6. — Co-sharer recorded as entitled to larger share than he was entitled to—*Act XI of 1859, s. 11—Suit to declare rights.* In a suit for a declaration of plaintiff's title on the allegation that defendant, one of the sharers with him in a joint estate, had been recorded under Act XI of 1859, s. 11, separately in respect of a larger share than that to which he was entitled, it was pleaded that the suit would not lie, because plaintiff had not appeared before the Collector and objected to defendant's being registered. *Held*, that by such omission plaintiff had not forfeited his right to the share of which he was in possession, and that the suit was one in which it would be proper to make a declaratory decree. *GOLUCK CRUNDER v. RAM HURR* . . . 23 W. R. 104

7. — Injury to title—Causing wrongful entry of name as proprietor—*Cause of action.* In 1832 *B* and *M* granted a *zur-i-peshgi* lease of a mouzah to *T*. Subsequently *M* mortgaged his share to *D, L*, and *S*. After this (in 1855), the defendant's wife purchased *M*'s rights and interests under a decree of Court. A suit for foreclosure was then brought by the three mortgagees who obtained a decree in 1856. Prior to the decree, one *J S*, who had purchased the interest of *S*, was made a party to the suit, and he sold his interest to the plaintiff's father in 1861. The defendant, having failed in a suit to recover

objection, had his name recorded in the town as

so from the time of the conveyance by *J S*, there was no necessity for his taking out execution of the foreclosure decree, the expiry of which, therefore, could not deprive him of his title to the declaratory decree now sought, the defendant's conduct in the mutation proceeding being sufficient cause of action. *ABRAHAM RAM v. MOHENDRO PERSHAD TEVARRE* 23 W. R. 365

8. — Suit for declaration of title to land and to have the revenue register transferred to plaintiff's name. Suit to obtain a declaration that the

# DECLARATORY DECREE, SUIT FOR— contd.

## 8. REGISTRATION OF NAMES BY COLLECTOR—contd.

In question where the private acquisitions of three of the deceased members of the tarwal, of whom the last, in whose name the lands were last assessed, on becoming karnam of the tarwal, applied to the Collector to have the registry of those lands transferred to the names of his own nephews, the first and second defendants; that plaintiff protested, and was referred to a civil suit to obtain a declaration that the registry could not be so transferred. *Held*, on special appeal affirming the decree of the lower Appellate Court, that the plaintiff was entitled to the declaration sued for, as it would enable him to go to the Collector for substantial relief in the shape of the transfer of registry to his name, but that the relief sought for could not be granted by the Court, as the revenue authority was not a party to the suit. *CHANDU v. CHATHU NAMDIAR*

I. L. R. 1 Mad. 391

## 9. ENFORCING OR REMOVING LIEN OR ATTACHMENT.

1. — Mortgage lien not enforced—*Civil Procedure Code, 1859, s. 15—Suit to avoid lien.* *D* mortgaged by deed certain premises to *J D*, and at the same time delivered to him title deeds comprising the said premises and also other immovable property of *D*. *D* subsequently became embarrassed and assigned all his immovable estate to trustees for his creditors. In a suit by the trustees against *J D*, alleging that he had refused to permit the sale by them of the immovable property, including the mortgaged premises (they offering to apply the proceeds of the latter in satisfaction of his claim), and to hand over to them the said title deeds, and praying for a declaration that the immovable property other than the mortgaged premises was vested in them free of any lien of the defendant; *Held*, that *J D* not having made any attempt or taken any active measures to enforce his lien, and no foundation having been laid by the plaintiffs upon which any

2. — Claim to attached property—*Suit for declaration of rights in attached property.* An unsuccessful claimant to property about to be sold in execution of decree is entitled,

KESSEE DEBEE . . . 7 W. R. 161

3. — Suit for declaration of right in attached property—Consequential

DECLARATORY DECREE, SUIT FOR—  
*contd.*9. ENFORCING OR REMOVING LIEN OR  
ATTACHMENT—*contd.*

*relief.* The plaintiff in a suit for a declaration that the plaintiff had a right of property and possession in a certain house under attachment, having for its object the relief of the house from attachment, does seek consequential relief. **MOTICHAND JAI-CHAND v. DADABHAI PESTANJI . 11 Bom. 189**

4. ———— *Suit for declaration that property is not liable to attachment—Consequential relief.* Where a claimant to property attached in execution of a decree intervenes, but fails to get the order of attachment set aside and is compelled to bring a suit to establish his right, the discharge of the order of attachment cannot properly be asked for in such suit. The intervenor having established his title by declaratory decree or otherwise, should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognize the adjudication and govern itself accordingly. **Narayanav Damodar Dabholkar v. Balkrishna Mahadev Gadre, I. L. R. 4 Bom. 529, followed. KOLASHERRI ILLATH NARAYAN v. KOLASHERRI ILLATH NILAKANDAN NAMBUDEI . I. L. R. 4 Mad. 131**

5. ———— *Consequential relief—Specific Relief Act (I of 1877), s. 42—Court Fees Act (VII of 1870), s. 7, cl. viii.* The defendant obtained a decree against D, father of the plaintiffs, for satisfaction of his debt by the sale of a moiety of a village mortgaged to him by D. In execution of it, B attached the mortgaged property, the attachment being made under s. 274 of the Civil Procedure Code (Act X of 1877), by an order prohibiting D from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift, or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a declaration of their

title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced

removal of the attachment by a cancellation of the prohibitory order to D so long as they admitted that D had an interest in the attached property. *Held*, also, that the plaintiffs could not have properly asked for any consequential relief in their suit, but

DECLARATORY DECREE, SUIT FOR—  
*contd.*9. ENFORCING OR REMOVING LIEN OR  
ATTACHMENT—*contd.*

that, when they instituted it, they were entitled, and indeed bound, to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendants' decree against D, from afterwards alleging that he had purchased without notice of the plaintiffs' claim. **NARAYANAV DAMODAR v. BALKRISHNA MAHADEV I. L. R. 4 Bom. 529**

6. ———— *Specific Relief Act (I of 1877), s. 42—Suit for release of goods wrongfully seized.* A suit for the release of goods wrongfully seized is not a declaratory suit under s. 42 of the Specific Relief Act (I of 1877). In substance the suit was a suit for goods, though as a matter of form the decree might contain a declaration. **RAONUKATH MUKUND v. SAROJ KAMA I. L. R. 23 Bom. 286**

7. ———— *Assignment of interest of judgment-debtor in surplus proceeds of sale—Attachment by creditor of judgment-debtor—Suit for declaration of assignee's title—Civil Procedure Code, s. 260 (1)—Contingent interest.* In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favour of the judgment-debtor X. After the date of sale but before the whole of the purchase-money had been paid into Court, X applied to the Court by petition, praying that the amount due to him might be paid to A, to whom, he alleged, he had assigned it. Before any order was made on this petition B, C, D, and E, in execution of separate decrees against X, attached the sum in Court. The District Munsif ordered that B, C, D, and E should be paid before A. A brought a suit against B, C, D and E in another District Munsif's Court for a declaration that he was entitled to the money and to set aside the said order. The Munsif set aside the order and declared the plaintiff to be entitled to the amount. B, C, D, and E appealed

8. ———— *Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, 1882, s. 283—Suit to declare attachment subsisted, and that there had been no termination of attachment by abandonment.* The plaintiff had an attachment against certain property. Owing to his not filing a necessary affidavit, the execution-petition was struck off. Subsequently he applied for the sale of the property, and the Court directed a fresh attachment to issue. The defendant then came forward and alleged that he had purchased the property prior to the second attachment, and he obtained an order in his favour. *Held*, in a suit brought under s. 283 of the Civil Procedure Code

DECLARATORY DECREE, SUIT FOR—  
contd.

9. ENFORCING OR REMOVING LIEN OR ATTACHMENT—cont'd.

to enforce the first attachment and to have it declared that it was subsisting at the time of the defendant's purchase, that the suit for a declaratory decree was maintainable, and " - - - - -"

17 Mar. 180

—Rights of attaching creditor—Suit by one attaching creditor for declaration that property cannot be attached by another creditor—*that the second* . . . . .

1. . . . . capacity of their judgment-creditors, sued another judgment-creditor who attached the same property, asking for a declaration that the property attached was not saleable in execution of the second judgment-creditor's decree. The suit was based upon the allegation that the decree held by the second judgment-creditor was a decree which, as a matter of law, the Court ought not to have passed, although it was otherwise within the Court's jurisdiction. It was found that the decree impugned had not been obtained by means of fraud. *Held*, that the plaintiffs as attaching creditors had no cause of action. The decree assailed might have been a bad decree in law, but it was the decree of a Court which had jurisdiction, and it was not tainted with fraud. *Mota Lal v. Karabulain*, 1 L R 25 Cal. 1, and *Mallikarjun v. Navahi*, 1 L R 25 Bom. 337, referred to *LACHUN DAYAL v. HAR DART LAL* (1903).

#### 10. RENT AND ENHANCEMENT OF RENT.

**L. — Decree as to rate of rent—**  
*Consequential relief—Decree before rent is due.*  
**Per PHACOCK, C. J.** A decree that the defendant is liable to pay rent at a certain rate before any rent is due being a mere declaratory decree without any consequential relief, ought not to be made.  
**BORDONATH V. RAMJOY DEX. 9 W. R. 282**

2 Right to enhance on future  
service of notice—Enhancement of rent—Reg.  
V of 1812—Notice. A decree declaratory of the  
 plaintiff's general right to enhance on future  
 service of notice may be passed in a suit under  
 Regulation V of 1812 where the plaint was for  
 enhancement at a certain specified rate, and in  
 which service of notice was held to be not proved.  
**ISHOR CHUNDER MUNDUL v. SHAM CHUNDER DOSS**  
**W. R. 1864. 312**

3. Suit for enhancement with-  
out notice—*Declaration of right*. Plaintiff sued  
for arrears of rent at enhanced rates without  
notice. *Held*, that the plaintiff was not entitled

DECLARATORY DECREE, SUIT FOR—  
cont.

10. RENT AND ENHANCEMENT OF RENT  
—*contd.*

to recover rent at the enhanced rate, but the question as to the liability of tenure having been fully tried, he was entitled to a decree declaratory of his right to enhancement. The Court had no power in this suit to try the validity of the lakhira tenure set up by defendant as to some of the land; plaintiff should have proved that it was his mal land, and that the defendant had paid rent for it. He had failed to do so, and the Court refused, therefore, to declare his right to enhance the rent of such land. *GUMANI KAZI v. HANUMAN MOOKERJEE* B. L. R. Sup. Vol. 15 : Mersh. 523  
W. R. F. B. 115

4. Declaration of  
right. The plaintiff filed a suit for rent at an en-  
hanced rate under Act X of 1859. The  
instance is a . . . . .  
Judge, the  
as dismissed on the ground that  
he had not proved service of notice, but a declara-  
tory decree was given that the tenure was liable  
to enhancement. *Held*, that the Judge should sim-  
ply have dismissed the suit; Act X of 1859 gives  
him no power to make such a declaratory decree.  
NARAYAN MZANDAR V. BARADAKANT ROY  
3 B. L. R. 40. 31

ANUNDHOTEE CHOWDHURAN v. CRUNDER MOONE  
DOSSIA . . . . . 3 W. R. Act X, 139

KHSTOMOFFER DEBIA v. FAKHER CHAND KHAN  
3 W. R., Act X, 140

RADHAMONTEE DOSSIA v. SHREEBUNTEE DEBIA  
G W. R. Act X. 25

NILMONEE SINGH DEO v. HEERA LALL CHOW.  
DUEY 33 W. R. 442

5. Suit for declaration of title  
to land with a view to enhance the rent—  
—Discretion of Court. A declaratory decree  
may be made only where the declaration of right  
may be the foundation of relief to be got some-  
where. Thus a suit to establish a title to land,  
with a view to taking proceedings in the Collector's  
Court under Act X of 1859 to enhance the rent, is  
one in which a declaratory decree may be made.  
The Judicial Committee will not on slight grounds  
interfere with the exercise by a High Court of its  
discretion in granting a declaratory decree, the  
suit being one in which a declaratory decree may  
be made. **SADU ALI KHAN v. ABDUL GUNNEY**  
**AND ABDUL GUNNEY v. ZAMORUDONISSA**  
**KHANUM** . 11 B. L. R. 203; 19 W. R. 171  
T. R. I. A. Sup. Vol. 185-

BIPIN DEBARIE ROY v. ISSUR CHUNDER SEN  
24 W. R. 13

8. \_\_\_\_\_ Failure to prove notice of  
enhancement—Discretion of Court. If, in a suit,

DECLARATORY DECREE, SUIT FOR—  
contd.10. RENT AND ENHANCEMENT OF RENT  
—contd.

for enhancement, the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. *GUJNES CHUNDER HAZRA v. RAMPALA DEBEA*. I. L. R. 5 Calc. 53

7. ——— Arrears of rent—*Declaratory decree*—"Further relief"—*Specific Relief Act* (I of 1877), s. 42. In a suit for a declaratory decree in respect of plaintiff's right to certain land where it appeared that rent was due to the plaintiff in respect of such land, if his case were a true one, and where such rent was not claimed: *Held*, that the "further relief" referred to in the proviso to s. 42 of the *Specific Relief Act* is further relief in relation to "the legal character or right as to any property which any person is entitled to, and whose title to such character or right any person denies or is interested in denying," and does not include a claim for arrears of rent. *FAIR CHAND AUDHIKARI v. ANUNDA CHUNDER BHUTTACHARYI*. I. L. R. 14 Calc. 586

## 11. ORDERS OF CRIMINAL COURT.

1. ——— Order convicting of mischief—*Civil Procedure Code*, 1859, s. 15—*Suit after criminal proceedings under ss. 430, 432, Penal Code*. Certain criminal proceedings having been successfully taken against the plaintiff's tenants for mischief done in respect to a *nullah*, coming under either a 430 or 432 (injury or obstruction to flow of water) of the *Penal Code*, the plaintiff brought a suit in the Civil Court for a declaration that the *nullah* was his own exclusive property, and therefore not such a stream as could come under either of those sections. *Held*, that it was within the discretion of the Court under s. 15 of the *Civil Procedure Code* to allow such a suit to be brought. *KARTICK PARAMANICK v. KISHEN MOHUN MITTA*. 22 W. R. 329

2. ——— Order as to nuisance—*Suit to set aside order of Magistrate under Act XXV of 1861, ss. 308 to 315—Jurisdiction of Civil Court*. The plaintiff built a bridge over a certain *khal* (canal), which was removed by order of the Magistrate under Ch. XX of the *Criminal Procedure Code*; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the

DECLARATORY DECREE, SUIT FOR—  
contd.

## 11. ORDERS OF CRIMINAL COURT—contd.

3. ——— Order on dispute as to possession—*Suit to set aside Magistrate's order under s. 321, Criminal Procedure Code, 1861—Order not put in force*. Plaintiff's right to a declaratory decree as to the erroneous nature of the Magistrate's order, passed under s. 321, Code of Criminal Procedure, permitting defendant to erect a drain-pipe to take water from plaintiff's reservoir, was held to be not affected by the fact that the Magistrate's order had not been put in force. *MEHRAJ SINGH v. RASHIDHAREE SINGH*. 17 W. R. 261

4. ——— Trespass to land—*Order under Ch. XL, Criminal Procedure Code—Right to suit for declaratory decree*. A person whose right to land has been disputed, and who has obtained an order under Ch. XL of the Code of Criminal Procedure, 1872, from a Magistrate to

I. L. R. 6 Mad. 176

5. ——— Order as to rival hats—*Case of order of Magistrate*

that the defendant had set up a rival hat on these days and prevented persons from attending the plaintiff's hat; that this led to disturbance which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his hat on the said days, and that the plaintiff suffered loss and damage in consequence: *Held*, that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring, as against the defendant, that the plaintiff had a right to hold his hat on Tuesdays and Fridays. *GORI MOHUN MULLICK v. TARAMONY CHOWDHURANI*. I. L. R. 5 Calc. 7 : 4 C. L. R. 309

6. ——— Declaration of title to land—*Specific Relief Act* (I of 1877), s. 42—*Criminal Procedure Code* (Act X of 1862), s. 133, order under, for removal of an obstruction standing upon certain land—*Ownership of such land—Public roads—Bombay Land Revenue Act* (Bombay Act V of 1879), s. 37. A Magistrate made an order against the plaintiff under s. 133 of the *Criminal Procedure Code* (Act X of 1862) for the removal of a certain obstruction in front of the plaintiff's shop as an obstruction to the public way. The plaintiff thereupon brought this suit against the Secretary of State for India in Council for a declaration that the land on which the obstruction stood was his property, and not that of the Government. *Held*, that, the public roads being vested by s. 37 of the *Land Revenue Code* (Bombay Act V of 1879) in the Government of Bombay, they were "interested to deny" the plaintiff's title to the land, and, therefore, under s. 42 of the *Specific*

bridge over the *khal*. *Held*, on appeal, the suit ought to have been dismissed. *MADHAB CHANDRA GURU v. KANALA KANT CHUCKRABORTY*. 6 B. L. R. 643 : 15 W. R. 293



DECLARATORY DECREE, SUIT FOR—  
—*contd.*9. ENFORCING OR REMOVING LIEN OR  
ATTACHMENT—*contd.*

to enforce the first attachment and to have it declared that it was subsisting at the time of the defendant's purchase, that the suit for a declaratory decree was maintainable, and that the facts did not amount to an abandonment of the first attachment by the plaintiff. *SRINIVASA SASTRIAL v SAMI RAU* . . . I. L. R. 17 Mad. 180

9. ———— *Execution of decree*  
—Rights of attaching creditor—Suit by one attaching creditor for declaration that property cannot be attached by another creditor on the ground that the second creditor's decree was bad in law—Cause of action. The plaintiffs, as judgment-creditors who had attached under a decree for money certain immovable property of their judgment-debtors, sued another judgment-creditor who attached the same property, asking for a declaration that the property attached was not saleable in execution of the second judgment-creditor's decree. The suit was based upon the allegation that the

decree impugned had not been obtained by means of fraud. *Held*, that the plaintiffs as attaching creditors had no cause of action. The decree assailed might have been a bad decree in law, but it was the decree of a Court which had jurisdiction, and it was not tainted with fraud. *Moti Lal v. Karabulain*, I. L. R. 25 Cal. 1, and *Mallaryun v. Narhari*, I. L. R. 25 Bom. 337, referred to. *LACHMI DAYAL v. HAR DASS LAL* (1903)

I. L. R. 25 All. 347

## 10. RENT AND ENHANCEMENT OF RENT.

1. ———— Decree as to rate of rent—*Consequential relief—Decree before rent is due.* Per *FRYCOCK, C. J.* A decree that the defendant is liable to pay rent at a certain rate before any rent is due being a mere declaratory decree without any consequential relief, ought not to be made. *BOYDONATH v. RAMJOY DEY* . . . 9 W. R. 293

2. ———— Right to enhance on future service of notice—*Enhancement of rent—Reg. V of 1812—Notice.* A decree declaratory of the plaintiff's general right to enhance on future service of notice may be passed in a suit under Regulation V of 1812 where the plaintiff was for enhancement at a certain specified rate, and in which service of notice was held to be not proved. *ISSUR CHUNDER MUNDUL v. SHAM CHUNDER DOSS* . . . W. R. 1864, 312

3. ———— Suit for enhancement without notice—*Declaration of right.* Plaintiff sued for arrears of rent at enhanced rates without notice. *Held*, that the plaintiff was not entitled

DECLARATORY DECREE, SUIT FOR—  
—*contd.*10. RENT AND ENHANCEMENT OF RENT  
—*contd.*

to recover rent at the enhanced rate, but the question as to the liability of tenure having been fully tried, he was entitled to a decree declaratory of his right to enhancement. The Court had no power in this suit to try the validity of the *lakhsra* tenure set up by defendant as to some of the land; plaintiff should have proved that it was his mal

4. ———— *Declaration of right.* The plaintiff filed a suit for rent at an enhanced rate under Act X of 1859. The Court of first instance dismissed the case on the ground that the defendants had shown that the tenure was not liable to enhancement. On appeal to the Judge, the plaintiff's suit was dismissed on the ground that he had not proved service of notice, but a declaratory decree was given that the tenure was liable to enhancement. *Held*, that the Judge should simply have dismissed the suit; Act X of 1859 gives him no power to make such a declaratory decree. *NARAYAN MIZANAR v. BARADAKANT ROY*

3 B. L. R. Ap. 81

*ANUNDMOYEE CHOWDHRAIN v. CHUNDER MOYEE DOSSIA* . . . 3 W. R., Act X, 139

*KRISHNAMOYEE DEBIA v. FAKHER CHAND KHAN*  
3 W. R., Act X, 140

*RAMHAMOYEE DOSSIA v. SHIBSUREE DEBIA*  
8 W. R. Act X, 25

*NILMOYEE SINGH DEO v. HEERA LALL CHOWDHRY* . . . 23 W. R. 442

5. ———— Suit for declaration of title to land with a view to enhance the rent—*Discretion of Court.* A declaratory decree may be made only where the declaration of right may be the foundation of relief to be got somewhere. Thus a suit to establish a title to land,

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and  
KHARI

*BIPIN BEHAREE ROY v. ISSUR CHUNDER SEN*  
24 W. R. 13

6. ———— Failure to prove notice of enhancement—*Discretion of Court.* If, in a suit

DECLARATORY DECREE, SUIT FOR—  
*contd.*10. RENT AND ENHANCEMENT OF RENT  
—*contd.*

for enhancement, the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. *GUNNES CHUNDER HAZRA v. RAMFILA DEBEA*. I. L. R. 5 Calc. 53

7. — *Arrears of rent—Declaratory decree—“Further relief”—Specific Relief Act (I of 1877), s. 42.* In a suit for a declaratory

decree, and where such rent was not claimed: *stet*, that the “further relief” referred to in the proviso to s. 42 of the Specific Relief Act is further relief in relation to “the legal character or right as to any property which any person is entitled to, and whose title to such character or right any person denies or is interested in denying,” and does not include a claim for arrears of rent. *FAKIR CHANN AUDHUKARI v. ANUNDA CHUNDER BHUTACHARJI*. I. L. R. 14 Calc. 586

## 11. ORDERS OF CRIMINAL COURT.

1. — *Order convicting of mischief—Civil Procedure Code, 1859, s. 15—Suit after criminal proceedings under ss 430, 432, Penal Code.* Certain criminal proceedings having been successfully taken against the plaintiff's tenants for mischief done in respect to a *nulka*, causing under either s. 430 or 432 (injury or obstruction to flow of water) of the Penal Code, the plaintiff brought a suit in the Civil Court for a declaration that the *nulka* was his own exclusive property, and therefore not such a stream as could come under either of those sections. *Held*, that it was within the discretion of the Court under s. 15 of the Civil Procedure Code to allow such a suit to be brought. *KARTICK PARAMANICK v. KISHEN MOHUN MITTER*. 22 W. R. 329

2. — *Order as to nuisance—Suit to set aside order of Magistrate under Act XXV of 1861, ss. 303 to 315—Jurisdiction of Civil Court.* The plaintiff built a bridge over a certain *khal* (canal), which was removed by order of the Magistrate under Ch. XX of the Criminal Procedure Code; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the defendant for a declaration of his right to erect the bridge in question, and to have the order of the Magistrate set aside. *Held*, that no such suit would lie. The Judge in the Court below held that the suit would lie to try the plaintiff's right to erect a bridge over the *khal*. *Held*, on appeal, the suit ought to have been dismissed. *MADHAB CHANDRA GUNO v. KAMALA KANT CHUCKERBUTTY*. 6 B. L. R. 643; 15 W. R. 293

DECLARATORY DECREE, SUIT FOR—  
*contd.*11. ORDERS OF CRIMINAL COURT—*contd.*

3. — *Order on dispute as to possession—Suit to set aside Magistrate's order under s. 321, Criminal Procedure Code, 1861—Order not put in force.* Plaintiff's right to a declaratory decree as to the erroneousness of the Magistrate's order, passed under s. 321, Code of Criminal Procedure, permitting defendant to erect a drain-pipe to take water from plaintiff's reservoir, was held to be not affected by the fact that the Magistrate's order had not been put in force. *MEGHNAJ SINGH v. RASHDHAREE SINGH*. 17 W. R. 281

4. — *Trespass to land—Order under Ch. XL, Criminal Procedure Code—Right to suit for declaratory decree.* A person whose right to land has been disputed, and who has obtained an order under Ch. XL of the Code

I. L. R. 6 Mad. 176

5. — *Order as to rival hâts—Cause of action—Consequential relief.* When a plaintiff alleged that he had held a hât on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival hât on these days and prevented persons from attending the plaintiff's hât; that this led to disturbance which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his hât on the said days, and that the plaintiff suffered loss and damage in consequence: *Held*, that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring, as against the defendant, that the plaintiff had a right to hold his hât on Tuesdays and Fridays. *GOPI MOHUN MULLICK v. TARANONY CHOWDHURANI*. I. L. R. 5 Calc. 7; 4 C. L. R. 309

6. — *Declaration of title to land—Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), s. 133, order under, for removal of an obstruction standing upon certain land—Ownership of such land—Public roads—Bombay Land Revenue Act (Bombay Act V of 1879), s. 37.* A Magistrate made an order against the plaintiff under s. 133 of the Criminal Procedure Code (Act X of 1882) for the removal of a certain *ott* standing in front of the plaintiff's shop as an obstruction to the public way. The plaintiff thereupon brought this suit against the Secretary of State for India in Council for a declaration that the land on which the *ott* stood was his property, and not that of the Government. *Held*, that, the public roads being vested by s. 37 of the Land Revenue Code (Bombay Act V of 1879) in the Government of Bombay, they were “interested to deny” the plaintiff's title to the land, and, therefore, under s. 42 of the Specific

DECLARATORY DECREE; SUIT FOR—  
contd.11. ORDERS OF CRIMINAL COURT—*con-M.*

Relief Act (I of 1877), the plaintiff (subject to the discretion of the Court) was entitled to a declaration as against the Government of his right to the land, and the plaintiff was not called upon to wait until the Government had taken possession of the land. It was contended that the jurisdiction of the Court to make the declaration prayed for

istrate  
in any  
order  
ination  
State

(1. L. R. 11 Bom. 293)

## 12. MISCELLANEOUS SUITS.

1. ——— Suit to have status as tenuresholder declared—*Civil Procedure Code, 1839, s. 15—Consequential relief.* A suit in which the plaintiff prayed for a decree declaring that the defendant was not, as had been fraudulently re-

able. *MAHOMED N. ALI v. MAHOMED N. ALI*

6 N. W. 231

2. ——— Suit for declaration of right as vaddi—*Consequential relief—Act XI of 1813.* A suit to be declared vaddi, or elder, among the holders of a patilkiwatan will not lie, as upon such declaration no consequential relief can be given. See Act XI of 1813. *YESAJI APARJI PATIL v. YESAJI RATHORI*

8 Bom. A. O. 35

3. ——— Denial of plaintiff's right

to be the

defendant.

to be the

plaintiff.

to be the

defendant.

to be the

plaintiff.

to be the

defendant.

to be the

plaintiff.

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plaintiff.

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DECLARATORY DECREE, SUIT FOR—  
contd.12. MISCELLANEOUS SUITS—*contd.*

the Specific Relief Act (I of 1877), inasmuch as to do so would enable the plaintiff to obtain a relief on a stamp of Rs 10 which the Legislature intended should be chargeable with a higher fee, and thus would have the effect of giving countenance to an evasion of the stamp law. *GOVERNMENT OF BOMBAY v. GANPATRAO*

I. L. R. 3 Bom. 230

5. ——— Suit to declare illegal proceedings removing person from office—*Want of actual ouster—Specific Relief Act, s. 42.* Suit by six plaintiffs praying for a declaration

have been sought. *Held*, that, unless it could be shown that there had been an actual ouster from office, a declaratory suit would lie. *RAMANUJA S. DEVANAYAKA*

I. L. R. 8 Mad. 301

6. ——— Right to appoint ghatwal—*Infringement of right of Government.* In a suit by the Government in which the plaintiff claimed the right to reconstitute a ghatwal in possession of a certain estate as being a ghatwali tenure liable to be appropriated to the use of the ghatwal for the time being, by setting aside a patni talukh collusively created by the defendants, it was found that no right of the Government had been infringed by the creation of such patni talukh, which the defendant had a right to make, and the Government was held not to be entitled to a bare declaration of right. *ANAND KUMAR v. GOVERNMENT*

9 B. L. R. 16 note; 11 W. R. 180

— Suit for declaration of right

to flow of water—*Prescriptive right.*

A suit for a declaration of prescriptive right to the use and enjoyment of the water of a watercourse can be maintained without the specification of any particular amount of damage sustained by the plaintiff. The general rule of law in a case of this kind is that the plaintiff must show that he has enjoyed the water of the watercourse for a period of 30 years, and that he has enjoyed it in such a manner as to acquire a prescriptive right. *SARDARWAN S. HARBANS SINGH*

11 W. R. 254

7. ——— Suit for declaration of right to maintenance—*Raising issues not raised by pleadings.* In a suit by a Hindu widow for a declaration of her right to maintenance out of her husband's estate, which had been mortgaged to the defendant by the heir, the plaintiff prayed "that the rights of the plaintiff over the estate of her husband by way of maintenance, and for the ex-

to be the

plaintiff.

to be the

defendant.

to be the

plaintiff.

to be the

defendant.

to be the

DECLARATORY DECREE, SUIT FOR—  
contd.

## 12. MISCELLANEOUS SUITS—contd.

expenses attendant on the marriage of her daughters, might be ascertained and declared; that it might be declared that the defendant took the mortgage subject to the plaintiff's right to maintenance and right to such expenses as aforesaid; that for such purpose all proper accounts might be taken for an injunction and such further or other relief as might be necessary. No specific sum was asked for maintenance, nor was it stated on what portion of the estate the maintenance was sought to be charged, nor that the defendant took notice of the plaintiff's assertion of her rights. The lower Court held that the suit ought to be dismissed as praying only for a declaration of right. No alteration in the form of the suit or in the issues in this respect was proposed for the plaintiff. *Held*, on

the marriages, if the plaintiff should be found entitled to them. *NISTRANIN DASI v. MAHANLAL DUTT*, 42, [9 B. L. R. 11; 17 W. R. 422]

10. — Suit for 'declaration that decree is fraudulent and collusive—*Specific Relief Act, 1877, s. 42*—Suit to set aside a decree on the ground of fraud. Subsequently to a decree for partition of an ancestral estate, the creditors of one of the parties thereto, who, from the time they obtained the estate, obtained by then declaration that the decree then passed was, so far as it affected their (the plaintiffs') interests, fraudulent and collusive, and of no effect. *Held*, that the suit was not maintainable. *RAM SIBPUR v. RUMNIV KVAR*. I. L. R. 7 All. 884

11. — Suit for declaration of right to an account—*Specific Relief Act, s. 42*. Where it is open to the plaintiff to ask for an account, against the defendant, of moneys received by him under a certificate of heirship, and for payment of moneys not properly accounted for, he is precluded by s. 42 of the *Specific Relief Act, I of 1877*, from asking for a mere declaratory decree. *BAI ANOPE v. MULCHAND GIRBHAK*. I. L. R. 9 Bom. 355

DECLARATORY DECREE, SUIT FOR—  
contd.

## 12. MISCELLANEOUS SUITS—contd.

take a portion of the occupancy-holding at a certain period of the year for the purpose of cultivating indigo. *Held*, by the Full Bench, that the word "khushi" used in the wajib-ul-urz indicated that the land was only to be taken with the occupancy-tenant's consent, and the document created like the special (1877).

*SHEOBHAY v. BHAIRO PRASAD*

I. L. R. 7 All. 580

13. — Suit for declaration that property is wuqf—*Act XX of 1863, ss. 14, 15, 18—Civil Procedure Code, s. 539—Specific Relief Act (Act I of 1877), s. 42*. A Mahomedan brought a suit against a person in possession of certain property for a declaration that the property was wuqf. He did not allege himself to be interested in the property, further or otherwise than as being a Mahomedan. He stated as his cause of action that the defendant had, in a former suit between the same parties, filed a written statement, in which he denied that the property now in question was wuqf. *Held*, that the suit was not maintainable under the provisions of s. 42 of Act I of 1877 (*Specific Relief Act*). *Held*, further, that the relief con-

per to make the declaration prayed for by the plaintiff, even if the suit was maintainable. *WAJID ALI SHAH v. DIANAT-ULLA BEG*. I. L. R. 8 All. 31

that (1 of lation passed fraudulently, the judge having been ordered by the decree-holder, the present defendant. *Held*, that the suit did not lie. The remedy would appear to be by way of injunction to restrain the decree-holder from executing the decree. *KUNTIAMED v. KURTI*. I. L. R. 14 Mad. 167

15. — Suit for declaration that the defendant is a mere benamidar for plaintiff—*Specific Relief Act (I of 1877), s. 42*. In a suit by A to obtain a declaration that a decree originally obtained by B against C and another,

DECLARATORY  
Act.  
KAR

18. — Consequential relief—*Court-fees Act (VII of 1870), Sch. II, Art. 17, cl. (iii)*.

DECLARATORY DECREE, SUIT FOR—  
contd.

## 12. MISCELLANEOUS SUITS—contd.

and s. 7, cl. iv (c). A suit in which the only prayer is to have it declared that a certain decree is ineffectual and inoperative against the plaintiffs, is a suit for a declaratory decree without consequential relief, and falls within Sch. II, Art. 17, cl. (3), and

I. L. R. 30 Calc. 788

*—Tarwad—Specific Relief Act (I of 1877), s. 42.* A suit was brought in the Court of a Subordinate Judge for a declaration that the plaintiffs and defendants therein had no community of interest and were not members of a *tarwad* having joint property. The property of the *tarwad* was valued by plaintiffs at Rs. 3,000 and this was held to be a true valuation, but it appeared that the value of the plaintiff's interest in it was Rs. 2,000 only. In a previous suit between the parties, which had been brought in the Court of a District Munsif, it had been held that the parties belonged to the same family; and this finding had been upheld on appeal. Plaintiffs did not ask, by way of further relief, for possession of a portion of the property, which was in the enjoyment of the defendants. *Held*, that the suit was barred, both *as res judicata* and by s. 42 of the Specific Relief Act. The value of a suit for a declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent. *PANGA v. UNNIKUTTI* (1900)

I. L. R. 24 Mad. 275

18. ——— Mortgage—Specific Relief Act (Act I of 1877), s. 42—Burden of proof—Usufructuary mortgagee in possession seeking a declaration that the property is not saleable in execution of a decree on a prior mortgage. The plaintiff, a usufructuary mortgagee in possession, came into Court seeking a declaration that the mortgaged property was not saleable in execution of a decree for sale obtained by another mort-

own, on  
mortgagee  
in such a  
that he

had obtained possession as a usufructuary mortgagee and was still in possession, but that his mortgage still subsisted and had not been discharged. *CHITTA SINGH v. DEVI DEVI* (1901)

I. L. R. 24 All. 170

19. ——— Will—Specific Relief Act (I of 1877), s. 42—Suit for declaration of invalidity of will on ground that it bequeathed family

DECLARATORY DECREE, SUIT FOR—  
concll.

## 12. MISCELLANEOUS SUITS—concll.

*property—No claim for partition—Maintainability—Hindu law—Existence of leases over family property no bar to partition.* Plaintiff sued his brother, his sister, and his brother's son for a declaration of invalidity of a will, which purported to have been executed by his late father, and by which certain property had been bequeathed to one of the defendants. Plaintiff claimed that the property was ancestral; that he was entitled to his share in it by right of survivorship, and that the testator had no power to bequeath it. No claim was made in the plaint for partition of the property, which was stated to be in the possession of tenants under leases granted by plaintiff and first defendants. *Held*, that the suit was barred by the proviso to s. 42 of the Specific Relief Act, inasmuch as plaintiff might have sued for partition of his share in what he claimed to be the joint family property. Even though the land were in the possession of tenants entitled to continue in occupation under subsisting leases, that would be no bar to a partition of the property among the members of the family. *SURYA NARAYANAMETTI v. TAMMANNA* (1901) I. L. R. 25 Mad. 504

## DECLARATORY SUIT:

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See HINDU LAW . . . 9 O. W. N. 25

See JURISDICTION I. L. R. 35 Calc. 777

## DECREE.

Col.

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Col.

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I. L. R. 29 Calc. 395

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See SALE IN EXECUTION OF DECREE—  
MORTGAGED PROPERTY

I. L. R. 24 All. 546

for damages—

See EASEMENT. I. L. R. 35 Calc. 991

for mesne profit—

See HINDU LAW—DEBTS.

11 C. W. N. 193

**DECREE—contd.**

for money—

See CIVIL PROCEDURE CODE, 1882, s. 232.  
I. L. R. 31 Bom. 309

for partition—

See PARTITION ACT (IV of 1893).

I. L. R. 32 Bom. 103

for performance of a particular  
act—

See CIVIL PROCEDURE CODE, 1882, ss.  
259, 260 (1859, s. 200).

for possession and mesne profits,  
form of, where deeds are invalid—

See CHAMPERTY AND MAINTENANCE.

I. L. R. 35 Calc. 420

for rent—

See DECREE. I. L. R. 32 Calc. 680

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 298

I. L. R. 35 Calc. 737

for rent due on two holdings—

See BENGAL TENANCY ACT (VIII of 1885),  
s. 170. I. L. R. 36 Calc. 76b

for sale—

See CIVIL PROCEDURE CODE.

I. L. R. 26 Bom. 13, 366

I. L. R. 27 All. 98, 153, 325,  
374, 390, 495, 575

See EXECUTION.

I. L. R. 29 Bom. 76; 915

I. L. R. 32 Calc. 265

form of—

See CO-SHARERS—ENJOYMENT OF JOINT  
PROPERTY—ERECTON OF BUILDINGS.

I. L. R. 30 Calc. 901

See HINDU LAW. I. L. R. 34 Calc. 785

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I. L. R. 28 Calc. 37

See TRANSFER OF PROPERTY ACT, ss. 92  
AND 93. I. L. R. 26 All. 491

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SALES. I. L. R. 29 Bom. 159

fraudulent—

See FRAUDULENT DECREE.

joint liability under—

See CONTRIBUTION, SUITS FOR—PAYMENT  
OF JOINT DEBT BY ONE DEBTOR.

See LIMITATION ACT, 1877, ART. 99 (1871;  
ART. 100). I. L. R. 4 Calc. 526



DECREE—*contl.*

Magistrate to respect

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

DECISION OF MAGISTRATE AS TO POSSESSION . 6 C. W. N. 841

DISPUTES AS TO RIGHT OF WAY, WATER, ETC. . 8 C. W. N. 161

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . 6 C. W. N. 469

obtained by fraud—

See LIMITATION . I. L. R. 34 Calc. 711

of Court of Native State—

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES . I. L. R. 15 Bom. 216

of Small Cause Court, suit on—

See EVIDENCE—CIVIL CASES—DECREES . 6 B. L. R. 729, 730 note  
7 B. L. R. Ap. 61

See RIGHT OF SUIT—DECREES.

on appeal—

See LIMITATION . I. L. R. 34 Calc. 874

on compromise—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE . 50 W. N. 465

on mortgage—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII of 1879) . I. L. R. 32 Bom. 98

on private award—

See APPEAL . 11 C. W. N. 220

payable by instalments—

See CIVIL PROCEDURE CODE, 1832, ss. 257, 258.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—ORDER FOR PAYMENT AT SPECIFIED DATES.

pending appeal—

See CIVIL PROCEDURE CODE, 1832, ss. 108, 560, 582 . I. L. R. 30 Mad. 535

reversal of—

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES AFTERWARDS REVERSED.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—ALTERING, SETTING ASIDE, OR REVERSING, DECREE . I. L. R. 19 Mad. 98

See RIGHT OF SUIT—FRAUD.

7 C. W. N. 353

DECREE—*contl.*

reversal of whole, on appeal by—  
ona defendant—

See CIVIL PROCEDURE CODE, 1832, s. 544 (1839, s. 337).

revival of—

See DECREE—REVIVAL OF DECREE.

3 B. L. R. Ap. 94; 12 W. R. 28

See LIMITATION ACT, 1877, SCH. II, ART. 179 (1871, ART. 167)—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS . 24 W. R. 143

See RIGHT OF SUIT—DECREES, SUITS ON . I. L. R. 7 Calc. 74

set aside; application for re-  
fund of amount of—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178, 179 . I. L. R. 28 Calc. 113

splitting up of—

See LIS PENDENS . 13 C. W. N. 228

superseded—

See MONEY PAID UNDER PROCESS OF DECREE.

transfer of—

See PRACTICE . I. L. R. 31 Bom. 5

transfer of, for execution—

See BENGAL ACT III of 1870.

See CIVIL PROCEDURE CODE, 1832, s. 232 . I. L. R. 29 Calc. 235

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.

See SET-OFF—CROSS DECREES.

I. L. R. 26 Mad. 428

validity of—

See EXECUTION OF DECREE.

I. L. R. 30 Mad. 26

variation of, on appeal by some  
of joint appellants—

See CIVIL PROCEDURE CODE, 1832, s. 544 . I. L. R. 25 Bom. 699

## I. FORM OF DECREE.

## (a) GENERAL CASES.

1. Necessity for a decree—

essential that in a suit under the Civil Procedure Code, the plaintiff should show that he is entitled to the decree.



DECREE—*contd.*1. FORM OF DECREE—*contd.*(a) GENERAL CASES—*contd.*

Court decreed the whole of the plaintiff's claim.

... and in  
... decree,  
... held,  
... modified  
... ANDRA

RUJ v. KANYE LALL RUJ . I, L. R. 4 Calc. 60

10. ———— *Anticipated difficulty of executing decree.* The Court will not be deterred from making a decree by the difficulties to be expected in carrying it out. PURAPPANTANALINGAM CHETTI v. NALLASIVAN CHETTI

1 Mad. 415

11. ———— *Decree not specifying relief granted—Decree on appeal.* A decree of an Appellate Court not specifying the relief granted but merely repeating the judgment "that the appeal be decreed," is not a sufficient compliance with the requirements of the law. HURSANATH SINGH v. PUNSHUN SINGH . . . 2 N. W. 415

12. ———— *Refund of purchase-money—Decree on appeal.* In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to. A purchased a Government revenue-paying estate from B, but on going to take possession he found C, who claimed under a patni grant, also from B, in possession. A case was, therefore, instituted by B under Act IV of 1840, but it was ordered that C should be retained in possession. A then brought a suit against B and C to recover his purchase-money. No relief was asked against C, nor had C anything to do with the sale from B to A. The suit was dismissed. On appeal it was ordered merely

the purchase-money. BELL v. GURUDAS ROY  
1 B. L. R. A. C. 50

13. ———— *Decree on appeal. Distinction pointed out between a decree of an*

14. ———— *Decree of High Court affirming decree of mofussil Court. The*

DECREE—*contd.*1. FORM OF DECREE—*contd.*(a) GENERAL CASES—*contd.*

ruling in *Chordhry Wahid Ali v. Mullick Inayet Ali*, 6 B. L. R. 52, that, whether the decree of the Lower Court is reversed, or modified, or affirmed, the decree passed by the Appellate Court is the final decree in the suit, and as such the only decree which is capable of being enforced by execution, not dissented from, except that it was suggested that in all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree. *Quere*: Can the ruling in *Anandmayi Dasi v. Purno Chandra Roy*, B. L. R. Sup. Vol. 506, be supported? KISTORIKER GHOSE ROY v. BUREODACANT SINGH ROY

10 B. L. R. 101; 17 W. R. 292

14 Moo. I. A. 495

S. C. in lower Court. KISHEN KISHORE GHOSH v. BELODA KANT ROY . . . B W. R. 470

JOY NARAIN GIREK v. GOLUCK CHENDER MYTEL  
23 W. R. 102

15. ———— *Reversal of order under which land is taken in execution—Mesne profits.* For the restoration of possession with mesne profits of lands made over in execution of a decree subsequently reversed on appeal, a specific order is not necessary to be inserted in the decree of the Appellate Court. GOOROOCHURN BOSE v. BYKUNTATH ACHARYEE

5 W. R. MIA. 38

18. ———— *Decree to have a future operation.* In a suit by a landlord to recover possession where defendant, who was a tenant-at-

RAM NARAIN MANJHEE v. FUTENA SOORA  
23 W. R. 399

17. ———— *Decree to have*

So a prospective decree for contingent arrears of maintenance irregular. JULERIA CHITTA KOOR v. BHADRE KOOR . . . 6 N. W. 41

18. ———— *Allegation of fraud—Decree dealing only partly with case.* The plaintiff alleged fraud in the defendants in that they represented themselves as agents, when in fact they were principals, in fifty-eight instances in which they had made contracts with the plaintiffs. The prayer of the plaintiff was "that the defendants may either be held personally responsible on the

DECREE—*contd.*1. FORM OF DECREE—*contd.*(a) GENERAL CASES—*contd.*

several said contracts as purchasers thereunder, or otherwise that they may be held generally liable for damages, for fraudulently representing that they were authorised to effect the contracts aforesaid," and further asked for an account and for damages. It appeared clear to the Judge below, on the evidence, that the defendants acted as principals, and he treated the case on the issue of fraud alone. Ten cases only of the fifty-eight were selected by the plaintiffs, on which they gave evidence of the fraud; and the Judge found in their favour as to three, and held that the plaintiff charging fraud, the plaintiffs could not succeed on any cause of action incidentally disclosed. The decree was drawn up with reference only to the three cases on which the fraud was found, so far as

19. — Decree for larger amount than that claimed—Consent of parties—Compromise of suit awarding plaintiff more than amount claimed—Execution of decree limited to amount claimed—Suit for larger amount awarded in compromise. By consent of parties and the leave of the Court, a suit may be amended to cover an increased claim, and there is nothing in the law which prevents the parties to a suit enlarging by consent or compromise the original claim, and getting or allowing a decree for a greater amount of money or land than that originally asked for. *MORIBULLAH v. IMANI*. I. L. R. 9 All. 229

20. — Agreement out of Court, to pay rent-decree by instalments on hypothecation of property—Suit to enforce such agreement, if maintainable. A suit lies to enforce an agreement embodied in an instalment-bond executed, without the sanction of the Court, in favour of the decree-holder, hypothecating certain property for payment of a decretal amount. *Lalji Singh v. Gai Singh*, I. L. R. 25 All. 317, referred to.

referred to. *BELCHAMPERS v. SARAT CHANDRA GHOSH* (1908). I. L. R. 35 Cal. 879

21. — Suit set down for hearing

mentioned in the summons. *DINRAJLAL v. HORMUSJI* (1908). I. L. R. 32 Bom. 534

DECREE—*contd.*1. FORM OF DECREE—*contd.*

## (b) ACCOUNT.

22. — Account, suit for—Principal and agent—Duty of Court as to decree. Where a plaintiff alleged a continued agency in the defendant and prayed for relief on the ground that there was a specific balance against him, and prayed for the recovery of such sum or any larger sum that might be proved to be payable; Held, that such suit was essentially one for an account, and that the Court following the general rule ought not to make a final decree at the hearing, but should order an account to be taken of such agent's dealings with the plaintiff's money. *HIRENATH ROY v. KRISHNA COOMAR MUKHERJEE*

I. L. R. 14 Cal. 147; L. R. 13 I. A. 123

23. — Decree for account of dissolved partnership—Civil Procedure Code, 1882, s. 212—Incidental—Omnis of effect—Taking of accounts. In a suit for an account of a

an account of the balance of the accounts and transactions between the parties, and of the credits,

*INDRANATHAN CHETTI v. SUBBAYYA CHETTI*  
I. L. R. 20 Mad. 313

## (c) AGENT.

24. — Agent, suit in name of, for Principal—Description of plaintiff on decree. Where a plaintiff sues by his recognised agent and obtains a decree, the decree should stand in the name of the agent, not as for himself alone, but as agent and on behalf of the plaintiff. *GOLAN JELANEE CHOWDHURY v. NUTTAN CHUNDER SINHA*. 11 W. R. 503

## (d) ARBITRATION.

*HARI NAIK* 7 N. W. 357

25. — Arbitration, reference to, when one party declines to consent—Suit for share of land. In a suit in which plaintiffs claimed a 6-anna share of certain land belonging to a mouzah, it was found on measurement that 262

DECREE—*contd.*1. FORM OF DECREE—*contd.*(d) ARBITRATION—*concl.*

decree was that the plaintiffs were entitled to recover, as against all the defendants, including O, a 6 anna share in 262 bighas; and as against all except O, a 6-anna share in the 44 bighas awarded by the arbitrators. *DOORACHURN THAKOOR v. KALLY DOSH HAZRAH* . . . 10 W. R. 483

37. ———— 'Award—Order setting aside award under s. 521 can be questioned on appeal against the final decree. Where a Court sets aside an award of arbitrators on application under s. 621 of the Civil Procedure Code, and decides on the merits, the Court of appeal can, on appeal from the final decree, inquire into the propriety or otherwise of the order setting aside the award. *Ganga Persad v. Kura, I. L. R. 23 All. 403*, not followed. *ACHUTHAYYA v. THIMMAYYA* (1903).  
I. L. R. 31 Mad. 345

28. ———— Appeal against decree on fresh award made after order of remittal under s. 520.

Civil Procedure, no appeal lies against such decree on the ground that the order of remittal under s. 520 was wrong and that the original award ought to have been accepted and acted upon. *SYDIAH IYER v. SUBRAMANIA AYYAR* (1903).

I. L. R. 31 Mad. 479

## (e) BILL OF EXCHANGE.

defendants; a decree containing a condition exempting the endorser from liability until the plaintiff has exhausted his remedies against the drawer and acceptor is therefore illegal. *BANK OF BENGAL v. KARTICK CHUNDER ROY*

I. L. R. 16 Cal. 804

## (f) CONSENT DECREE.

30. ———— Decree by consent against minor—Duty of Court. A Court ought not to make a decree by consent against an infant without ascertaining that it is for the benefit of the

DECREE—*contd.*1. FORM OF DECREE—*contd.*(f) CONSENT DECREE—*concl.*

Infant that such a decree should be pronounced. *RAM CHURN RAHA BUKSHEE v. MUNGUL SIECAN*  
16 W. R. 232

## (g) CONTRIBUTION.

31. ———— Contribution, suit for—Specification of separate sums due. In a suit for contribution, a decree cannot pass jointly against all the defaulters. It should specify the particular sums to be paid by each. *BAMA SOONDUREE DEBIA v. ANUNDMOYEE DEBIA* . . . 3 W. R. 170  
*PITAMBUR CHUCKERBUTTY v. BHUYEENATH PALEET* . . . 15 W. R. 52

*MOHAMED MISSER v. LAHORZE MISSER*  
24 W. R. 250

32. ———— Order for

of his just proportion of the debt. *TAVASI TALAVAR v. PALANIANDI TALAVAR* . . . 3 Mad. 187  
*RUPJOT RAI v. MAHOMED ALI KHAN*  
5 N. W. 215

*OTHOOLA v. ASERUN* . . . 7 W. R. 194  
*KRISTO COOMAR CHOWDERY v. ANUND MOTEN CHOWDHRAIN* . . . 7 W. R. 300

*MOHESSEE BUKSH SINGER v. MUTHOORA PERSHAD*  
8 W. R. 515

*NOBIN MOHUN GHOSAL v. GOPAL CHUNDER MOOKERJEE* . . . 11 W. R. 538

*RASH MUNJOOREE CHOWDHRAIN v. RADHA SOONDUREE DOSSEE* . . . 23 W. R. 283

*BHURUT PANDEY v. MUTHOORA KOER*  
23 W. R. 421

33. ———— Suit against co-tenants to recover rent paid on their behalf—Order for separate payments. In a suit against co-tenants to recover rent paid by plaintiff on their behalf, a joint decree declaring the defendants collectively

*DOSSIA CHOWDHRAIN* . . . 14 W. R. 143

34. ———— Proportionate liability of co-sharers. Parties liable for contribution held to be liable according to their respective shares in a property and not simply per capita. *MURHAN ALI v. TUFUSSAL ROSSEN* 18 W. R. 78

35. ———— Principle in assessing share of co-sharer of revenue. Principle considered fair in assessing a co-sharer's share of the

DECREE—*contd.*1. FORM OF DECREE—*contd.*(g) CONTRIBUTION—*concl.*

Government revenue paid for the whole estate to save it from sale. **JAGGUBENNOO ROY v. FREZ BUKSH CHOWDHRY** . . . 6 W. R. 108

36. ——— *Suit for contribution in respect of money deposited by the plaintiffs to save the property, of which they were co-sharers, from being sold for arrears of revenue—Personal liability.* In a suit for contribution by the plaintiffs against the defendants, the Court of first instance gave the plaintiffs a decree against one defendant and exonerated the others. On an appeal by the defendant against whom the decree was passed, the Appellate Court directed the defendants exonerated by the first Court to be added as respondents, set aside the decree against the appealing defendant, and passed a decree against the defendants, who were added as respondents, as representatives of one S, and ordered the amount so decreed to be recovered from the estate of her (S's) husband. On appeal to the High Court by the defendants, who were thus made liable, on the ground that the liability to contribution being the personal liability of S, then not being her estate, the decree does not create a charge on the estate, the persons liable would not be the reversionary heirs to S's husband's estates, but those who would inherit her estate. **UPENDRA LAL MUKERJEE v. GIRINDRA NATH MUKERJEE** I. L. R. 25 Cal. 665  
2 C. W. N. 425

## (h) COSTS.

37. ——— *Annoting amount of costs to decree—Civil Procedure Code, 1859, s. 360—Practice.* It is a convenient practice for a Court to annex to every decree the costs incurred by both parties. **NONO KRISTO MOOKERJEE v. PARBUTTY CHURN BRUTACHARJEE** . . . 13 W. R. 23

38. ——— *Specification of costs without allotment of responsibility—Civil Procedure Code, 1859, s. 189—Decree for costs.* The mere specification of costs in a decree without an allotment of responsibility is not a sufficient compliance with s. 189, Act VIII of 1859. **JANKEE NATH MOOKERJEE v. JOYKISHEN MOOKERJEE** . . . 15 W. R. 4

39. ——— *Copy of judgment with schedule of costs annexed—Civil Procedure Code, 1859, s. 189.* A copy of the judgment, with the schedule of costs appended, does not constitute a proper decree such as is required under s. 189, Code of Civil Procedure. **PURMESUREE DUTT JHA v. JOYNATH THAKOOR** . . . 15 W. R. 326

40. ——— *Decree of Appellate Court—Civil Procedure Code, 1859, s. 360. Semble:*

DECREE—*contd.*1. FORM OF DECREE—*contd.*(h) COSTS—*concl.*

When an Appellate Court decrees an appeal and gives costs of its own Court, the costs of the first Court should be included in the decree. **MAHOMED BUSSEEROOLLAN CHOWDHRY v. RAM KANT CHOWDHRY** . . . 16 W. R. 266

41. ——— *Omission to specify costs—Civil Procedure Code, 1859, s. 360.* S. 360, Act VIII of 1859, only requires the Judge of an Appellate Court to state in his decision by what parties (and in what proportions if necessary) the costs of the original suit, which he must take for granted, are to be paid; but not to go into particulars, or append to his judgment a schedule setting forth the different items which make up the costs of the first Court. **MORNOORA MONUN ROY v. HUREE KISHORE ROY** . . . 16 W. R. 286

Reversing on review s. c. **HUREE KISHORE ROY v. MUTHOORA MONUN ROY** . . . 17 W. R. 445

42. ——— *Specification of proportionate share of costs—Civil Procedure Code, 1859, s. 360.* Where a decree of the High Court awards costs, the order is not bad in law simply because it does not specify the exact amount to be paid as costs of the lower Court. *Such order is valid.*

**COOMAREE** . . . 21 W. R. 74  
42

**MOHAMMED HASHEM CHOWDHRY DEY v. DUNUSHEE BUDHUN DEY** . . . 23 W. R. 69

## (i) DAMAGES.

44. ——— *Damages, suit for—Plaintiffs with . . . damages.*

*sua for and be a joint tion the* **DUTT KHU** . . . 13 W. R. 200

45. ——— *Assessment of damages.* A decree for damages must assess them, and not leave them to be ascertained in execution of the decree. **MUSEERUN v. MUSEERUN** . . . 13 W. R. 139

## (j) DECLARATORY SUIT.

46. ——— *Declaratory decree, suit for—Suit by one of several brothers for declaratory*

DECREE—*contd.*1. FORM OF DECREE—*contd.*DECLARATORY SUIT—*contd.*

decree as to *mal* land. Where property in dispute was found by the lower Court to be *debutter* land belonging to plaintiff, one of four brothers of a joint family, and not *mal* land included in defendant's *patni*: *Held*, that plaintiff was entitled to a declaration that the whole land was *mal* land, and that he was entitled to a fourth share. **GURGA GOBIND SINGH v. JOY GOPAL PANDA**

10 W. R. 105

47. ——— Suit for declaration of title and confirmation of possession. Plaintiff prayed for a declaration of title to, and confirmation of his possession of, 17 *bighas* which he claimed through J and five others. The lower Court found that of these persons, J only ever had

AHIR v. BHUGWAN DUTT PAUREY

12 W. R. 320

## (k) DEED, SUIT TO SET ASIDE.

48. ——— Suit to set aside deed of sale—*Legal necessity as to part of consideration-money*. *Quære*: Where it has been found that, as to a certain portion of the consideration-money of a deed of sale of joint ancestral property, there was a legal necessity, is it a correct principle to uphold the deed as to that portion of the land which bears the same proportion to the whole quantity conveyed, as the money borrowed for the discharge of the legal necessity bore to the whole amount of the consideration-money? **RAJARAM TEWARI v. LUCHMUN PERSAD**

4 B. L. R. A. C. 118: 12 W. R. 478

49. ——— *Parda-nashin*, suit by, to set aside deed—*Declaration of title*. In a suit by the heirs of a Mahomedan *parda-nashin* lady to set

13 B. L. R. P. C. 427: 21 W. R. 340

L. R. 1 I. A. 192

s.c. in lower Court

8 W. R. 341

## (l) EJECTMENT.

50. ——— Suit for arrears of rent—*Order in default of payment*. In suits for arrears of

DECREE—*contd.*1. FORM OF DECREE—*contd.*(h) EJECTMENT—*contd.*

rent the decree ought not to direct in what mode execution should issue. **SHYAM CHURN CHUCKER-BUTTY v. HEEERACHAND MOZOOMDAR**

Marsh. 48: 1 Hay 113

51. ——— Decree for eject-

25 W. R. 218

52. ——— Cancellation of tenure—*Act X of 1859, s. 78*. The decretal order in

SAHOO v. BUKSUN

1 W. R. 361

53. ——— Execution of decree for ejectment for arrears of rent—*Extension of time for payment—Bengal Tenancy Act (VIII of 1855), s. 60, cl. 2 and 3*. *Per PRINSEP and BANERJEE, JJ.*—The extension of time authorized by s. 60, cl. 3 of the Bengal Tenancy Act can be granted by the Court after the decree, and not only when framing the decree under cl. 2 of that section. *Per RAMPHI, J. (contra)*. *Per PRINSEP and BANERJEE, JJ.*—The decree for ejectment passed under s. 60, cl. 2 of the Bengal Tenancy Act, need not incorporate the terms as to the ejectment being avoided by payment within fifteen days from the

debtor on a mere petition, and not in the form of an application for review of judgment. **BODH NARAIN v. MAHOMED MOOSA J.** I. L. R. 26 Calc. 639  
3 C. W. N. 628

54. ——— Decree for unconditional re-entry—*Farmer—Act X of 1859, s. 22, 78*.

## (m) ENDOWMENT.

55. ——— Suit to set aside sale of property belonging to religious endowment

DECREE—*concl.*1. FORM OF DECREE—*concl.*(m) ENDOWMENT—*concl.*

debts and necessities of the *mukh*. *Held* that such a decree was erroneous, as the transaction of sale was one and indivisible. If the sale was valid, the plaintiff was not entitled to have it set aside to any extent; but if the conveyance was not operative against the plaintiff, it should have been set aside in its entirety, either absolutely or upon condition that the plaintiff should repay such portion of the consideration money as had been rightly advanced. *JOY LALL TEWARÉE v. GOSSAIN BHODUN GEER*. 21 W. R. 334

56. ——— Charitable trust—Scheme for management of account—Matters to be considered in framing scheme. The plaintiffs sued as persons interested in the maintenance of a religious and charitable institution, and prayed that the defendants, as recipients of the offerings at the idol's shrine, should be made accountable as trustees for the right disposal of the property thus acquired. They also prayed for an account, a receiver, for the removal of the shevaks, the defendants, from their office, and for the settlement of a scheme for future

ments of the temple; (iii) to make the requisite orders for recovering property appropriated by the shevaks; and (iv) to draw up a scheme for the future management of the temple and its funds, regard being had to the established practice of the institution and to the position of the shevaks and of other persons connected with it. *Held*, that the decree was right, no further direction being necessary, and the first thing to be done being to take an account of the trust property. *CHOTALAL LAKHIRAM v. MANOHAR GANESH TANBEKAR*. I. L. R. 24 Bom. 50

4 C. W. N. 23

Affirming the decree of the High Court in *MANOHAR GANESH TANBEKAR v. LAKHIRAM GOVINDRAM*. I. L. R. 12 Bom. 247

## (n) ENHANCEMENT OF RENT.

57. ——— Enhancement, suit for—Enhancement, grounds for—Suit for enhancement on several grounds. In decreeing enhanced rent, it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed. *GANOA NARAYAN DAS v. SARODA MOHUN ROY CHOWDERY* 3 B. L. R. A. C. 230: 12 W. R. 30

58. ——— Act X of 1859, s. 13—Defective decree. In a suit for a *kabuliat* at enhanced rates to correspond with the terms of a *pottah* which had been tendered at some date preceding the suit, where the lower Court decreed the plaintiff's appeal: *Held*, that the decree was

DECREE—*concl.*1. FORM OF DECREE—*concl.*(n) ENHANCEMENT OF RENT—*concl.*

defective, inasmuch as it did not declare what the *kabuliat* was to which the plaintiff was entitled, and that the claim of the plaintiff could not succeed,

which notice the plaintiff had failed to give in this case. *ZINNUT BIBE v. JAFFUR ALI*

14 W. R. 172

59. ——— Parties, non-joinder of—Suit barred as to added parties. In a suit for the recovery of rent at an enhanced rate, brought by two of four brothers, joint and undivided owners of the tenure, the other two brothers, on an

## (o) GOODS.

60. ——— Goods—Suit to recover specific goods in hands of third parties—Alternative claim for value as compensation—Specific Relief Act (I of 1877), ss. 10, 11. In execution of a decree

I. L. R. 22 Mad. 478

## (p) HEIRS.

61. ——— Heirs, suit against—Joint decree. In a suit against heirs inheriting equally, a



DECREE—*contd.*1. FORM OF DECREE—*contd.*(p) HEIRS—*concl'd.*

joint decree may be passed without determining the liability of each. *BROJO MONEN MOZOOMDAR v. ROODRANATH SURMAH* . . . 15 W. R. 192

62. ——— Heir of deceased obligor, suit on bond against—*Specification of mode of*

execution of the decree was set aside by the Principal Sudder Ameen, on the ground that the decree did not warrant the issue of an attachment, since it was not against any person. *Held*, that the decree was informal in not expressing that the debt was to be realized out of the assets of the deceased in the hands of the heir, or that should come to the hands of the heir, but that the Principal Sudder Ameen had jurisdiction to amend and ought to have amended the decree in this respect. *ANUND ROY v. MUNOOR SINGH* . . . Marsh 611

## (q) HINDU WIDOW.

63. ——— Hindu widow, decree against—*Specification of nature of decree.* In a decree against a Hindu widow it should be stated whether the decree is a personal decree or one against her as representing her deceased husband. *RAM KISHORE CHUCKERBUTTY v. KALLY KANT CHUCKERBUTTY* . . . I. L. R. 6 Calc. 479; 8 C. L. R. 1

64. ——— Hindu widow, suit against—*Suit by reversioner to set aside sale.* In a suit by a reversioner to set aside a sale of property made by a Hindu widow, the Court cannot direct possession to be given to the reversioner, but can only declare the sale to be invalid, and leave the widow or her vendees as her tenants in possession. *GOLUCK CHUNDER DASS v. GOPAL KISHEN SEN*

W. R. 1864, 250

## (r) IDOL.

65. ——— Suit respecting idol whose temple has been destroyed—*Turn of worship—Removal and re-conveyance of idol.* In a suit respecting an idol which had been set up by the common ancestor of the parties, but whose temple had been destroyed by the crossing of the river, the plaintiffs asked for a declaration of their right to remove the idol to their own house and to keep it there for the period of their turn of worship. *Held*,

DECREE—*contd.*1. FORM OF DECREE—*contd.*(r) IDOL—*concl'd.*

ration of their turn of worship, so as to allow the other parties the full benefit of their turn. *RAM SOONDAR THAKOOR v. TARUCK CHUNDER TERKOOTUN* . . . 10 W. R. 28

## (s) IMPROVEMENTS.

66. ——— Improvements, value of—*Suit for possession.* In a suit for the recovery of immoveable property inquiries as to the value of improvements must be held before decree, and cannot legally be reserved, with or without the consent of the parties, for determination in the execution department. *NELLAY VARIYATH SILAPANI v. VADIKAPAT MANAKKAL ASHTAMUTTI NAMREDDI* . . . I. L. R. 3 Mad. 382

## (t) MAHOMEDAN WIDOW.

67. ——— Widow in possession of estate as security for dower—*Suit by heir for possession.* Where a woman is in possession of her husband's estate as security for unpaid dower, the proper decree in a suit against her for possession by the heir is a decree for possession subject to the amount due with a direction for an account as to mesne profits received by her. *MAHOMED AMEER OODZEN KHAN v. MOHAMMED HOSSEIN KHAN* . . . 5 B. L. R. 570; 14 W. R. P. C. 5

## (u) MAINTENANCE.

68. ——— Suit by Hindu widow for

2 Ind. Jur. N. S. 118

69. ——— Suit for recovery of possession of property on which Hindu widow has a claim for maintenance—*Order as to maintenance.* Where the nearest relative of a Hindu widow sued for recovery of property in her possession

might be fixed, notwithstanding that the widow claimed maintenance in that Court for the first time. *RAZARAI KUM RANGOJI v. SADUBIN BHAVANI* . . . 8 Bom. A. C. 98

70. ——— Decree for contingent arrears of maintenance—*Non-payment of arrears.* A prospective decree for contingent arrears of

DECREE—*contd.*1. FORM OF DECREE—*contd.*(u) MAINTENANCE—*contd.*

71. — Decree declaring right to maintenance, and directing payment of arrears—*Order for future payments* Where the Civil Court, upon the suit of a Hindu widow for maintenance, makes a decree containing an order in express terms to the defendant to pay to the plaintiff the amount claimed by her for maintenance during a past period, but as to the future merely declares

of future maintenance. *VISHNU SHAMBUO v. MANJAMMA* . . . I. L. R. 9 Bom. 108

72. — Cash allowance—*Decree for future payment of share*. The plaintiff in this suit sought to recover eleven years' arrears of his share in a certain Government allowance received by the defendants, and also prayed for an order directing the defendants to pay him and his heirs his proper share in future. The Court passed a decree for the plaintiff for the amount claimed, and also directed that the defendants should pay to the plaintiff and his heirs for the future his share in the allowance. *Held*, also, that the order in the decree as to payment in future was bad. It could not be executed, as the amount of the allowance was variable, and the defendants were not liable until they obtained payment of the allowance from Government. *CHAMANLAL v. BAPUBHAI* . . . I. L. R. 22 Bom. 669

73. — Declaration of mother's right to maintenance where whole estate goes to adopted son—*Suit to establish adoption and recover property*. The High Court, being impressed with the propriety of not allowing the adopted son to recover the whole property from the widow, his adoptive mother, until proper provision had been made for her maintenance, added a declaration to the decree made in his favour that he do take the property awarded to him, subject to the obligation to provide a sufficient maintenance for the widow, and directed that the Court executing the decree should determine what was a proper and sufficient maintenance for the widow, and should

I. L. R. 7 Bom. 225

74. — Suit by heir to recover family property from widow—*Provision for widow*. The Court will not allow the heir to recover family property from a widow entitled to be maintained out of it without first securing a proper maintenance for her. *Jambhai v. Rajchand Nahalchand*, I. L. R. 7 Bom. 225, followed. *YELAWA v. BHIMARAO* . . . I. L. R. 18 Bom. 452

DECREE—*contd.*1. FORM OF DECREE—*contd.*(u) MAINTENANCE—*contd.*

75. — Maintenance, mother's right to—*Right to possession in virtue of claim to maintenance—Mortgagee's right to possession, subject to mother's claim to maintenance*. After the death of S, who had mortgaged certain land

(defendant No. 1) of S for possession. The mother (defendant No. 1) contended that any right the widow (defendant No. 2) had to mortgage the property was subject to her (the first defendant's) right to maintenance out of it, and, as her maintenance, she claimed to remain in possession. The lower Court held that the property should not be given to the plaintiff until a proper arrangement had been made by him for the maintenance of defendant No. 1. It stated that "it seemed that the plaintiff

first defendant to remain in possession dependent

76. — Reduction of maintenance—*Suit for altering the rate of maintenance fixed by a decree*. A suit will lie to obtain a reduction in the amount of maintenance decreed to a Hindu widow on a change of circumstances, such as a permanent deterioration in the value of the family property. But where such deterioration is due to the plaintiff's own default in not having the property properly

reserved. *GOPIKABAI v. DATTATRAYA* . . . I. L. R. 24 Bom. 386

77. — Decree for maintenance where it is charged on property—*Receiver. Appointment of, in case of default—Transfer of Property Act (IV of 1882), ss. 67, 99, 100*. To avoid any difficulty in executing a decree for maintenance out of property charged with

DECREE—*contd.*1. FORM OF DECREE—*contd.*(u) MAINTENANCE—*contd.*

allowance for maintenance. *HEMANGIRI DASS* v. *KUMODE CHANDER DASS* I. L. R. 28 Calc. 441  
3 C. W. N. 139

78. ——— Maintenance of mother and marriageable daughters—*Provision for maintenance of daughter ceasing on marriage.* A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by another wife. *MAHARAJA* v. *MAHARAJA*

should have separated the maintenance to which it considered the three plaintiffs respectively entitled, and that, as to the two minor plaintiffs, it should have declared that such maintenance should cease upon their marriage. *TULSHI v. GOPAL RAI*  
I. L. R. 8 All 832

## (v) MESNE PROFITS.

79. ——— Mesne profits, conditional decree for. A decree awarding immediate mesne profits at the rate admitted by defendants, and larger mesne profits contingently on a higher rate being proved at the time of execution, is altogether irregular. *LOTFOOLAN v. NUSSFERUN*  
10 W. R. 24

90. ——— Mesne profits, decree for, after partition of zamindari. A question of the partition of a zamindari disputed in a family of six brothers having been decided in favour of the

I. L. R. 5 Mad. 236  
I. L. R. 9 I. A. 125

## (w) MORTGAGE.

81. ——— Suit on money-bond—*Charge on land—Specification of property from which money may be realized.* In decreeing a claim founded on a simple money-bond, a Court has no authority to direct the realization of the money out of any named property, and thus make it a charge upon such property. In such a case, if the decree

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

does this, and the property is sold before attachment, the title conveyed by the sale is not affected (as there is no charge upon this property before it is attached) and the decree-holder's remedy lies against the judgment-debtor. *OMRITO LALL SIRCAR v. RAMDHUN CHAKKE* 18 W. R. 503

82. ——— Decree against mortgagor—*Mode of execution.* Where a decree is against the mortgagor generally, coupled with a declaration of the lien, the decree-holder may proceed either against the person and his property or against the

83. ——— Money-decree in  
as to the mortgagee's sale, a mortgagee must first

the Court had a discretionary power to grant or refuse the sale. The note at the end of the decree did not amount to an absolute prohibition against

equity of redemption, except by special leave of the Court. The Court made an order as if there had

84. ——— Foreclosure, suit for—*Mortgage in English form.* Form of decree in a suit for foreclosure or sale in the mortgage, where the mortgage is in the English form, and all parties concerned are English. *MANLY v. PATTERSON*  
I. L. R. 7 Calc. 394

85. ——— Suit by purchaser at sale in execution of decree on mortgage against assignee of mortgagor. Form of decree discussed where a person who at a sale in execution of a mortgage-decree has purchased a portion of the mortgaged property brings a suit for that portion against the assignee in possession as a mortgagor. *BEJIN BEHARI BUNDORADHYA v. BROJO NATH MOOKHOPADHYA* I. L. R. 8 Calc. 357

DECREE—*contd.*1. FORM OF DECREE—*contd.*(10) MORTGAGE—*contd.*

of a judgment-debtor, who had previous to the attachment executed a simple mortgage thereof to A, was sold; and B and C respectively purchased them at different prices. A sued the mortgagor and the purchasers B and C for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court, but on appeal the order was "appeal decreed." A entered into a compromise with B, and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against C, and compelled him to pay. C now sued B for recovery of the proportion of the amount paid by him to A.

incumbrances, in satisfaction of the mortgage-bond debt. BHAIKAB CHANDRA MADAK v. NADYAR CHAND PAL

3 B. L. R. A. C. 357 : 12 W. R. 291

87. ——— Suit for declaration of right to redeem—Decree for redemption. *Quare*. Whether the Court can pass a decree for redemption when the plaintiff seeks only a declaration of the right to redeem PERUMAL v. KAVERI

I. L. R. 16 Mad. 121

88. ——— Redemption, suit for—Sub-mortgage—Accounts taken between mortgagee and sub-mortgagee. In a suit for the redemption of land which has been sub-mortgaged by the mortgagee, in which suit the sub-mortgagees are co-defendants, the mortgagee is entitled to have an account taken of the sub-mortgage. The judgment should direct an account of what is due to the original mortgagee and then of what is due to the sub-mortgagee; and that upon payment to the latter of the sum due to him, not exceeding the sum found due to the original mortgagee, and on payment of the residue, if any, of what is due to the original mortgagee, both shall reconvey to the mortgagor. NARAYAN VITHAL MAVAL v. GANONI

I. L. R. 15 Bom. 692

89. ——— Rights and liabilities of prior and subsequent mortgagees—Suit by second mortgagee—Right of redemption. S mortgaged a house and site to R on the 4th January 1870, and on the 21st February 1870 he

purchased by A in his own name, but as trustee for R. At the Court sale, D, the puisne mortgagee, gave notice of his claim to R and N. D sued N, R,

DECREE—*contd.*1. FORM OF DECREE—*contd.*(10) MORTGAGE—*contd.*

and S for the amount due on his mortgage. In his evidence R admitted that he, subsequently to the sale to N, called down the balance of the

D, being puisne mortgagee and as such representing the equity of redemption as to the extent of

could not be deprived of his right by proceedings to which he was not a party, and was, therefore, entitled to a decree framed on the basis of such right of redemption. DAMODAR DEVCHAND v. NARO MAHADEV I. L. R. 7 Bom. 11

90. ——— First and second

mortgages—Second mortgagee not made party to suit by first mortgagee for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 55—Notice. Certain immovable property was mortgaged in 1874 to P.

circumstances, he should be placed in the same position as he would have held if the decree of 1877 had never been passed. *Held*, also, that although it would have been more regular had the defendant in the Court below asked in express terms to be allowed to redeem the plaintiff's mortgage and brought into Court what he alleged to be due thereunder, or expressed his willingness to pay such amount as might be found to be due on taking accounts, yet the defendant having pleaded that he ought to have been afforded an opportunity of protecting his rights by payment of the prior mortgage-money, the Court should not be too technical in such

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

decree for redemption on payment of the amount due on the mortgage of 1895 would stand. *MUHAMMAD SAMUDDIN v MAN SINGH*

I. L. R. 9 All. 125

81. — *Unnecessary declaration—Costs* A mortgagee holding two mortgages of the same property sold, under the second mortgage, to the plaintiff, and subsequently under the first mortgage to his son, benami for himself *Held*, in a suit against the mortgagee and the benamidars, that the plaintiff was entitled to set aside this second sale and to redeem, but that the mortgagor not being a party, the Court was wrong in introducing into the decree a declaration to the effect that the plaintiff was entitled "as second mortgagee," and had not acquired the equity of redemption belonging to the mortgagor. Such a declaration should in appeal be struck out as embarrassing to the plaintiff's title at the expense of the respondent who resisted. *CHODASWUR SINGH v MOHAMED ALI*

I. L. R. 9 I. A. 21

82. — *Condition in decrees.* In a suit for redemption of a mortgage: *Held* with reference to the last paragraph of s. 51 of the Transfer of Property Act, that the Courts below were

83. — *Redemption of usufructuary mortgage—Conditional decree for possession.* In a suit to recover possession of certain lands founded on the allegation that the defendants had obtained possession of them from the

rendered any accounts, and inasmuch as no agreement had been made between the parties as to the amount at which the profits of the land should be estimated, it was impossible for the plaintiffs to have ascertained before suit what sum, if any, was

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I. L. R. 1 All. 524

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

84. — *Conditional decree for redemption.* A conditional decree fixing a period for payment of money found to be due on mortgage bond entitling the mortgagor to redemption, though not claimable as of right by the mortgagor, who ordinarily should be ready at once with

85. — *Decree for redemption allowed in suit for ejectment—Discretion of Court* A Court can in its discretion pass a decree for redemption in a case in which the plaintiffs have sued in ejectment. *Nilakant Banerjee v. Suresh Chunder Mullick*, I. L. R. 12 Cal. 414; I. L. R. 12 I. A. 171, referred to and followed. *PARSHOTAM BHATNAGAR v. RUMAL ZUNJAR*

I. L. R. 20 Bom. 108

86. — *Suit for sale of mortgaged property without redeeming prior mortgage—Transfer of Property Act (IV of 1882), s. 96.* In a suit on a mortgage by a subsequent mortgagee who made prior mortgagees parties thereto, and in which the plaintiff prayed that the amount due to him might be realized by sale of the mortgaged property, the lower Court decreed the

regard to the difficulty which arises from the fact that arise under such decree by reason of the fact that

I. L. R. 23 Cal. 100

that it had been one

of the mortgagee and proved, but that he was entitled to redeem the two previous mortgages if they were found to be genuine and valid. *ARUMUGAM PILLAI v. PERIA SAMI*

I. L. R. 19 Mad. 180

DECREE—*contd.*1. FORM OF DECREE—*contd.*(u) MORTGAGE—*contd.*

See KRISHNA PALLAI v. RANGASAMI PILLAI  
I. L. R. 18 Mad. 482

98. ———— Money decree—*Mortgage being invalid, whether a money decree can be made upon the covenant in the bond.* When a suit is brought upon a mortgage-bond, although the mortgage is held to be invalid on the ground that the requirements of a 60 of the Transfer of Property Act were not satisfied, the plaintiff is entitled to recover upon the covenant money which the defendant covenanted to pay. *TOTALUDDI PRADA v. MAHANATHI SHAHA* I. L. R. 28 Cal. 78

99. ———— Interest—*Transfer of Property Act (IV of 1882), ss. 56, 58—Decree for sale—Provision for interest at contract rate until six months from date of decree.* Defendants promised to pay plaintiffs a sum of money for value received, with interest thereon from the date of the promise until demand at the rate of 8 per cent. per annum, and after demand at the rate of 15 per cent. per annum until payment in full, and as further security for such re-payment deposited with plaintiffs the title-deeds of certain immovable property. Demand was made, but was not complied with, whereupon plaintiffs informed defendants by letter that their account carried interest at the higher rate provided for in the promissory note. Plaintiffs now sued for the amount due in respect of principal and interest at the rate of 15 per cent. per annum from the date of their letter till payment, and asked that, in default of payment on a day to be fixed by the Court, the property might be sold. A decree having been passed in plaintiffs' favour, provision was made therein ordering defendants to pay the amount of principal and interest due at the date of the decree, with interest thereon at the rate of 15 per cent. per annum from that date to a date six months thereafter. Objection having been taken to the form of this decree on the ground that payment of interest at the contract rate was only provided for up to the termination of six months from the date of decree, instead of till payment: *Held*, that the decree was correctly drawn. In principle there is no difference between a mortgage decree which has become absolute and ordinary decree for money. After the day fixed for payment, or on the passing of the decree, as the case may be, the rights of the parties under the contract become merged in the decree, and afterwards there is no more  
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v. *Udit Narain Singh*, I. L. R. 21 All. 361, referred to.  
COMMERCIAL BANK OF INDIA v. *ATEENDRULAYYA* I. L. R. 23 Mad. 837

100. ———— Usuary mortgage—*Transfer of Property Act (IV of 1882), ss. 1, 67, 68.*—*Usuary mortgage, dated 20th April 1882,*

DECREE—*contd.*1. FORM OF DECREE—*contd.*(u) MORTGAGE—*contd.*

*sued on in 1884.* In a suit filed in 1884 on a usufructuary mortgage, dated 20th April 1882, a decree was passed for the payment of the mortgage money, or in default for the sale of the mortgage property. *Held* (semble under the Transfer of Property Act) that the decree for sale was the right decree. *VENKATAPANI v. SUBRAMANYA*  
I. L. R. 11 Mad. 88

101. ———— Construction of mortgage-bond—*Liability of property other than that mortgaged.* Under a mortgage-bond, a mort-

other cases, the mortgagee might, in such cases, recover the money advanced by execution against the person or other property of the mortgagor. *Held*, no sale having taken place under the second stipulation, that the mortgagee could only obtain a decree against the mortgaged properties. *Narotam Dass v. Shoopargash Singh*, I. L. R. 10 Cal. 740, referred to. *DEASEEDHUR v. SUJAT ALI*  
I. L. R. 18 Cal. 540

102. ———— Second mortgagee—*First and second mortgages—Suit by second mortgagee for sale—Plaint denying or ignoring title of first mortgagee.*

referred to. *SALIG RAM v. HAR CHARAN LAL*  
I. L. R. 12 All. 548

103. ———— *Suit by second mortgagee against purchaser of equity of redemption.*

transaction paid off the prior mortgage. The mort-

IN A SUIT *ABOUGHEIR*. *Saig Ram v. Haracharan Lal*, I. L. R. 12 All. 448, distinguished. *KALR CHARAN v. AHMAD SHAH KHAN*  
I. L. R. 17 All. 48

104. ———— Rights of persons advancing money to pay off a prior mortgage—*Suit to sell mortgaged property under mortgage.* Where, in a suit to bring certain immovable property to sale under a mortgage, it was found that the predecessor in interest of one of the defendants

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

declaring the defendant entitled to retain possession of the property in suit, if within ninety days he paid into Court the amount of the plaintiff's mortgage-debt, with interest, otherwise the lower Court's decree for redemption on payment of the amount due on the mortgage of 1875 would stand. **MUHAMMAD SAMIUDIN v. MAN SINGH**

I. L. R. 9 All. 125

81. ———— {Unnecessary declaration—Costs. A mortgagee holding two mortgages of the same property sold, under the second mortgage, to the plaintiff, and subsequently under the first mortgage to his son, benami for himself. Held, in a suit against the mortgagee and the benamidars, that the plaintiff was entitled to set aside this second sale and to redeem, but that the mortgagor not being a party, the Court was wrong in introducing into the decree a declaration to the effect that the plaintiff was entitled "as second mortgagee," and had not acquired the equity of redemption belonging to the mortgagor. Such a declaration should in appeal be struck out as embarrassing to the plaintiff's title at the expense of the respondent who resisted. **CHORAMUN SINGH v. MAHOMED ALI** . . . I. L. R. 9 I. A. 21

82. ———— Condition in decree. In a suit for redemption of a mortgage: Held

DEO DAT v. RAM AUTAR . . . I. L. R. 8 All. 502

83. ———— Redemption of usufructuary mortgage—Conditional decree for possession. In a suit to recover possession of certain lands founded on the allegation that the defendants had obtained possession of them from the

rendered any accounts, and inasmuch as no agreement had been made between the parties as to the amount

I. L. R. 1 All 524

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

84. ———— Conditional decree for redemption. A conditional decree fixing a period for payment of money found to be due on

WAN DAS . . . I. L. R. 1 All. 344

85. ———— Decree for redemption allowed in suit for ejectment—Discretion of Court. A Court can in its discretion

BHAIHANKAR v. RUMAL ZUNJAR . . . I. L. R. 20 Bom. 198

86. ———— Suit for sale of mortgaged property without redeeming prior mortgage—Transfer of Property Act (IV of 1882). s. 96. In a suit on a mortgage by a subsequent mortgagee who made prior mortgagees parties thereto, and in which the plaintiff prayed that the amount due to him might be realized by sale of the mortgaged property, the lower Court decreed the suit, but required the plaintiff, before bringing the

to a decree giving him leave to sell the property subject to the prior incumbrances, yet, having regard to the difficulty and complication that would arise under such decree by reason of the fact that one of the defendants, who had purchased the equity of redemption and certain prior mortgages, had obtained upon two of them decrees against the plaintiff, the decree passed by the lower Court was equitable and proper. **BENT MADHUS MOHAPATRA v. SOURENDRA MOHUN TAGORE**

I. L. R. 23 Cal. 795

87. ———— Unregistered Mortgage—





DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

a matter, where the defendant had the undoubted right now asserted by him, and where the result of not recognizing such right would be to extinguish his security. The Court, therefore, passed an order declaring the defendant entitled to retain possession of the property in suit, if within ninety days he paid into Court the amount of the plaintiff's mortgage-debt, with interest, otherwise the lower Court's decree for redemption on payment of the amount due on the mortgage of 1875 would stand. *MOHAMMAD SAMUDDIN v. MAN SINGH*

I. L. R. 9 All. 125

91. ———— {Unnecessary declaration—Costs: A mortgagee holding two mortgages of the same property sold, under the second mortgage, to the plaintiff, and subsequently under the first mortgage to his son, benami for himself *Held*, in a suit against the mortgagee and the banamidars, that the plaintiff was entitled to set aside this second sale and to redeem, but that the mortgagee not being a party, the Court was wrong in introducing into the decree a declaration to the effect that the plaintiff was entitled "as second mortgagee," and had not acquired the equity of redemption belonging to the mortgagor. Such a declaration should in appeal be struck out as embarrassing to the plaintiff's title at the expense of the respondent who resisted. *CHANDANATH SINGH v. MAHOMED ALI* . . . I. L. R. 9 I. A. 21

92. ———— Condition in decree. In a suit for redemption of a mortgage: *Held* with reference to the last paragraph of s. 51 of the Transfer of Property Act that the Court should not

93. ———— Redemption of usufructuary mortgage—Conditional decree for possession. In a suit to recover possession of certain lands founded on the allegation that the defendants had obtained possession of them from the plaintiff as usufructuary mortgagees and that the

rendered any accounts, and inasmuch as no agreement had been made between the parties as to the amount of such . . .

I. L. R. 1 All. 524

DECREE—*contd.*1. FORM OF DECREE—*contd.*(x) MORTGAGE—*contd.*

94. ———— Conditional decree for redemption. A conditional decree fixing a period for payment of money found to be due on

95. ———— Decree for redemption allowed in suit for ejectment—Discretion of Court. A Court can in its discretion pass a decree for redemption in a case in which the plaintiffs have sued in ejectment. *Nilabant Banerjee v. Suresh Chunder Mullick*, I. L. R. 12 Cal. 414; I. L. R. 12 I. A. 171, referred to and followed. *PARSHOTAM BHAIHANKAR v. RUMAL ZUNJAR*

I. L. R. 20 Bom. 186

96. ———— Suit for sale of mortgaged property without redeeming prior mortgage—Transfer of Property Act (IV of 1882), s. 96. In a suit on a mortgage by a subsequent mortgagee who made prior mortgagees parties thereto, and in which the plaintiff prayed that the amount due to him might be realized by sale of the mortgaged property, the lower Court decreed the suit, but required the plaintiff, before bringing the mortgage to sale, to redeem certain prior mortgages.

I. L. R. 23 Cal. 79b

97. ———— Unregistered Mortgage—Mortgage (sued on) inadmissible in evidence for want of registration—Secondary evidence—Mortgage effecting consolidation of prior mortgages—Decree to redeem prior mortgages. In a suit to redeem a mortgage of 1867 which had been lost and admittedly had not

proved, but that he was entitled to redeem the two previous mortgages if they were found to be genuine and valid. *ARUNUGAM PILLAI v. PERIASAMY* . . . I. L. R. 19 Mad. 160

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

See KRISHNA PALLAI v. RANGASAMI PILLAI  
I. L. R. 18 Mad. 402

98. ———— Money decree—*Mortgage being invalid, whether a money decree can be made upon the covenant in the bond.* When a suit is brought upon a mortgage-bond, although the mortgage is held to be invalid on the ground that the requirements of s. 59 of the Transfer of Property Act were not satisfied, the plaintiff is entitled to recover upon the covenant money which the defendant covenanted to pay. *TOTALCHDI P'ADA v. MAHARAJI SHAHA* I. L. R. 20 Cal. 78

99. ———— Interest—*Transfer of Property Act (IV) of 1882, ss 56, 58—Decree for sale—Provision for interest at contract rate until six months from date of decree.* Defendants promised to pay plaintiffs a sum of money for value received, with interest thereon from the date of the promise until demand at the rate of 8 per cent. per annum, and after demand at the rate of 15 per cent. per annum until payment in full, and as further security for such re-payment deposited with plaintiffs the title-deeds of certain immovable property. Demand was made, but was not complied with, whereupon plaintiffs informed defendants by letter that their account earned interest at the higher rate provided for in the promissory note. Plaintiffs now sued for the amount due in respect of principal and interest at the rate of 15 per cent. per annum from the date of their letter till payment, and asked that, in default of payment on a day to be fixed by the Court, the property might be sold. A decree having been passed in plaintiffs' favour, provision was made therein ordering defendants to pay the amount of principal and interest due at the date of the decree, with interest thereon at the rate of 15 per cent. per annum from that date to a date six months thereafter. Objection having been taken to the form of this decree on the ground that payment of interest at the contract rate was only provided for up to the termination of six months from the date of decree, instead of till payment: *Held*, that the decree was correctly drawn. In principle there is no difference between a mortgage decree which has become absolute and ordinary

more money for interest—*See also*  
in th  
Koer  
I. A.  
v. Udit Narain Singh, I. L. R. 21 All. 361, referred to.  
COMMERCIAL BANK OF INDIA v. ATENDRULAYYA I. L. R. 23 Mad. 637

100. ———— Usufructuary mortgage—*Transfer of Property Act (IV) of 1882, ss 1, 67, 66.*  
89—*Usufructuary mortgage, dated 20th April 1882,*

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

said on in 1881. In a suit filed in 1884 on a usufructuary mortgage, dated 20th April 1882, a decree was passed for the payment of the mortgage money, or in default for the sale of the mortgage property. *Held* (semble under the Transfer of Property Act) that the decree for sale was the right decree. *VENKATASAMI v. SETHUPATHY*

I. L. R. 11 Mad. 88

101. ———— Construction of mortgage-bond—*Liability of property other than that mortgaged.* Under a mortgage-bond, a mortgagor stipulated that, if the money advanced should not be repaid at a fixed date, the mortgaged property might be sold; and that, if the property were sold for arrears of Government revenue or for other causes, the mortgagee might, in such cases, recover the money advanced by execution against the person or other property of the mortgagor. *Held*, no sale having taken place under the second stipulation, that the mortgagee could only obtain a decree against the mortgaged properties. *Narain Das v. Sheogargash Singh, I. L. R. 10 Cal. 740,* referred to. *BHSEEDHUR v. SUJAAT ALI*

I. L. R. 16 Cal. 540

102. ———— Second mortgagee—*First and second mortgages—Suit by second mortgagee for sale.* *See also* *101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000*

referred to. *SALIG RAM v. HAR CHARAN LAL*  
I. L. R. 12 All. 548

103. ———— Suit by second mortgagee against purchaser of equity of redemption who had paid off a prior mortgage—*Suit ignoring lien of purchaser of equity of redemption.* One A S purchased the equity of redemption of a property subject to two mortgages, and as part of the transaction paid off the prior mortgage. The mort-

gagor by such purchaser. *Held*, that such omission was not a valid reason for dismissing the plaintiff's suit altogether. *Salig Ram v. Haracharan Lal, I. L. R. 12 All. 548,* distinguished. *KALI CHARAN v. AHMAD SHAH KHAN*

I. L. R. 17 All. 48

104. ———— Rights of persons advancing money to pay off a prior mortgage—*Suit to sell mortgaged property under mortgage.* Where, in a suit to bring certain immovable property to sale under a mortgage, it was found that the predecessor in interest of one of the defendants

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

had advanced money upon a mortgage of the same immovable property in order to save a portion thereof from sale under two prior mortgages: *Held*, that such defendant was entitled to the benefit of the payment so made, and that the proper decree in the suit should be that the plaintiff could only bring that portion of the property in suit to sale on payment to the said defendant of the money advanced as aforesaid, with interest from the date of payment to the date of the receipt of the final decree by the Court of first instance together with proportionate costs; such payment to be made within 90 days from the ascertainment of such amount and the receipt of the final decree by the Court of first instance; otherwise the plaintiff to be absolutely debarred from all right to redeem that particular portion of the property mortgaged. *TULSA v. KNUB CHAND*

I. L. R. 18 All. 581

105. — *Purchaser of mortgaged property paying off prior incumbrances—Sue by puisne mortgagee without offer to redeem prior mortgage.* The purchaser of a portion of certain mortgaged property paid off certain prior

108. — *Suit by puisne incumbrancer—Decree for sale.* In March 1881, A purchased certain land, and in the same month mortgaged it to B. In June, the land was attached in execution of a decree. In August, A discharged the judgment-debt with money borrowed from C, and he hypothecated the land to him to secure repayment of the loan. In 1882, B brought a suit on his mortgage and obtained a decree, in execution of which the land was brought to sale and purchased by him: C was not a party to this suit. In 1886, B sold the land to D under an instrument, which

107. — *Suit on mortgage for an account and for sale—Practice—Decree where puisne mortgagee is a party defendant and asks for an account on the footing of his mortgage—Application to vary decree.* In a suit on a mortgage, for an account and for sale of the mort-

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

gaged property, where a puisne mortgagee who is made a defendant appears and proves his mortgage and asks that the decree sought to be obtained by the plaintiff may also provide for an account on the footing of his mortgage, and for payment of the amount found due to him out of the sale-proceeds, the practice of the Court is, where no issue is raised as between the defendants and no question of priority arises, on proof of the subsequent mortgage, to make a decree directing an account on the footing of each of the mortgages, and fixing one period of redemption for all the defendants. *Ruhindro Bhosun Chatterjee v. Chunnoo Lal Johurry, I. L. R. 5 Calc. 101*, referred to. An application made by the purchaser of the equity of redemption, who had been made a defendant in such a suit and had been served with a summons, but had failed to appear, that the decree which had been made in accordance with the above practice should be varied by limiting it to a decree in favour of the plaintiff alone, on the ground that the Court had no jurisdiction in such a suit to make a decree between co-defendants, was dismissed. *KISSORY MONN ROY v. KALLY CHURN GHOSE, I. L. R. 22 Calc. 100*

106. — *Sub-mortgagee—Mortgage by mortgagee of his rights as such, but without assignment—Rights of sub-mortgagee as against original mortgagee.* R and others mortgaged certain im-

might possibly have attached, if it had not been paid off, the mortgage held by N. K. GANOA *PRASAD v. CHUNNI LAL, I. L. R. 18 All. 113*

109. — *Transfer of Property Act (IV of 1882) s. 36—Suit by sub-mortgagee—Decree for sale.* A sub-mortgagee is entitled to a decree for the sale of the original mortgagor's interest in cases and in circumstances which would have entitled the original mortgagee

110. — *Prior and subsequent incumbrancers—Right of subsequent mortgagee to redeem prior mortgage—Manner in which sub-*

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

and Khara Buzurg. K D, the plaintiff, was the representative of a subsequent mortgagee of the share in Khara Buzurg. K D in 1874 brought the share comprised in his mortgage to sale, and purchased it himself; but without making M R or his representatives parties to his suit for sale.

mortgage sued upon by M J in 1876, but had been exempted from the decree obtained by M R in 1879. In 1892 K D sued for redemption of M R's prior

ed by M M A in Surajpur. MUHAMMAD MAHMUD ALI v. KALYAN DAS. I. L. R. 18 All. 189

111. ———— Decree on first mortgage, a puisne not being joined—Purchase of mortgaged property by decree-holder for inadequate price—Right of puisne mortgagee—Interest A

the purchaser in execution and improved the land at a considerable cost. C now sued the sons and representatives of A and B (both deceased) on his mortgage, and sought a decree for sale. Held, that

(i) that the purchaser was not entitled to allowances for improvements; (ii) that the plaintiff was entitled to interest at the agreed rate to the date of decree. RAOOAYYA CHETTIAR v. PARTHASARATHI NAICKAR. I. L. R. 20 Mad. 120

112. ———— Gujarat Talukhdars Act (Bombay Act VI of 1886), ss. 31 and 32—Mortgage of talukhdars' estate—Validity of mortgage before the Act—Decree upon the mortgage for sale of talukhdars' estate—Sanction of Government to sale. A talukhdar of the Ahmedabad district mortgaged his talukhdari property in 1886. In 1892, the mortgagee sued to enforce his lien by sale of the mortgaged property. The Court passed a decree against the talukhdar personally, holding that it had no power under ss. 31 and 32 of the Gujarat Talukhdars Act to direct a sale of the talukhdari estate. Held, reversing the decree, that the mortgage, having been effected prior to the coming into force of the Gujarat Talukhdars Act, was not invalidated by cl 1 of s. 31 of the Act, and

DECREE—*contd.*1. FORM OF DECREE—*contd.*(w) MORTGAGE—*contd.*

that the Court was bound to pass a decree for sale in default of payment of the mortgage-debt. *Quare*: Whether the property could be sold without the sanction of the Governor in Council, regard being had to the provisions of cl. 2 of s. 31 of the Act. *Nagar Pragi v. Jirabai*, I. L. R. 19 Bom. 80, doubted. DOSHI FULCHAND v. MALEK DASIRAJ. I. L. R. 20 Bom. 585

113. ———— Mistake in decree—Right of suit—Suit to rectify mistake in mortgage decree. A suit lies in a Civil Court to rectify a mistake in a decree. The present plaintiff's predecessor, who was a defendant in a previous mortgage suit, claimed a certain property which was described in the plaint in that suit as property No. 4, but which was by mistake stated in the written statement as property No. 3. The property, which was released, was stated in the judgment and the decree in that suit as property No. 3. The plaintiff brought the present suit to rectify the mistake. Held, that the suit was maintainable. JOGESWAR ATHIA v. GANGA BISNU GHATACK (1904). 8 C. W. N. 473

## (z) NON-SUIT.

114. ———— Suit dismissed as brought with liberty to bring a fresh suit—Civil Procedure Code, s. 373. Where a suit for enforcement of a hypothecation against immovable property

no Court in India had power to make, and not being made under s. 373 of the Civil Procedure Code, and the plaint not having been returned or rejected under Ch. V of the Code, the decision must be set aside. *Watson v. Collector of Rayachoke*, 13 B. L. R. P. C. 48; 13 Moo. I. A. 160, and *Kudrat v. Dinu*, I. L. R. 9 All. 155, referred to. BANWARI DAS v. MUHAMMAD MASIHAT. I. L. R. 9 All. 690

## (y) PAPERS AND ACCOUNTS, SUITS FOR.

115. ———— Suit for delivery of papers—Specific decree. In decreeing a suit for the delivery up of certain nekasi papers, it is not sufficient for the Court to order that the claim be allowed. The decree ought to contain a specific order upon the defendant to deliver up the papers. RAM COOMAR SIRCAR v. KALKE COOMAR DUTT. 10 W. R. 279

116. ———— Suit to recover accounts and papers—Inquiry in execution. In a suit to recover accounts and papers, instead of giving plaintiff a decree with a direction that it should be ascertained in execution what accounts and papers,

DECREE—*contd.*1. FORM OF DECREE—*contd.*(1) PAPERS AND ACCOUNTS, SUITS FOR—*concl.*

if any, were in the hands of the defendant,\* the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts, if any, were in the hands of the defendant, and whether he had wrongfully refused or omitted to deliver them to plaintiff, and, if so, decide the case accordingly. *JUGGER NATH PANEE v. CHUTTUR NARAIN DEB* 17 W. R. 410

## (2) PARTITION.

117. *Partition, suit for—Objection to list of moveable property.* Objection was taken to the accuracy of a list of moveable property of which the plaintiff claimed partition. The lower Appellate Court, without determining whether the list was correct or not, gave the plaintiff a decree for the whole of the articles mentioned in the list, declaring that particular excuses with regard to individual articles might fitly be determined in execution of decree. The lower Appellate Court was bound to have ascertained whether any, and, if any, which of the articles were liable to partition before it pronounced a decree. *SHEO GOBIND v. SHAM NARAIN SINGH* 7 N. W. 75

118. *Decree for moveables in suit for partition of land.* Where the claim in a suit was for the partition of certain immovable property, and for the profits of the property, and defendant in his account took credit for a sum expended in certain jewels, etc., it was held that the things so purchased, being charged

2 N. W. 95

119. *Suit for possession by partition of ny-jate land and for mesne*

aries of the shares of the parties, the interest of each share, and the exact amount due as wasilat. *CROWDER LMDAD ALI v. BOONAD ALI*

14 W. R. 92

120. *Death of one of sharers pending appeal—Alteration of decree on appeal—Death of a co-parcener pendente lite.* The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in

DECREE—*contd.*1. FORM OF DECREE—*contd.*(2) PARTITION—*contd.*

appealed from ought to be varied accordingly. *SAKHARAM MAHADEV DANGE v. HARI KRISHNA DANGE* I. L. R. 8 Bom. 113

121. *Deshgat vatan held by desai.* Where the defendant in a suit for the partition of a deshgat vatan held the hereditary office of desai, and the vatan was property appertaining to the office, the decree for partition was accompanied by a declaration that it was made without prejudice to the right of the desai to any income, payable out of it for the performance of his duties, to which he might be entitled under any law in force. *ADPISHAPPA v. GERTSHIDAPPA* I. L. R. 4 Bom. 494

122. *Suit for partition by a purchaser from a co-sharer—Decree in such suit need not be for a general partition of the entire estate.* When a purchaser from a co-sharer in a joint family estate sues to have his share severed and given to him, the Court is not bound to force the members of the family into a partition of the whole estate. It is, no doubt, open for each and every co-sharer to ask to have his share divided off and allotted to him (in which case he would have to pay court-fees according to his share). But, in the absence of such a request, the Court is not bound to determine what is the share of each of the co-sharers, and to compel him to take that share by making

I. L. R. 23 Bom. 184

*See ABDU KADAR v. BAPURHAI*  
I. L. R. 23 Bom. 188

123. *Provisional decree in suit for partition—Right of appeal.* In a suit for partition of family property, a decree was

accounts and enquiries remaining to be taken and made. *KRISHNASAMI AYYANGAR v. RAJAOPALA AYYANGAR* I. L. R. 18 Mad. 73

124. *Talukhdari estate—Decree of Privy Council.* In a suit commenced in 1865 by a member of a joint family for the declaration of his rights in a talukhdari estate, partition

DECREE—*contd.*1. FORM OF DECREE—*contd.*(i) PARTITION—*contd.*

not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s. 56; and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1863, and also with the addition of villages since acquired out of profits, claiming an account against the talukhdars. The latter alleged, among other defences, that the talukhdari estate was impartible, and brought a cross-suit to establish this, and also that it was held by him according to the rule of primogeniture, the right of other members of the family being only to the profits. *Held*, that, in regard to the order of Her Majesty above mentioned, which was applicable to an estate held subject to the law of the Mitakshara, the talukhdari estate could not be declared to be impartible; also that a declaration in the Judicial Commissioner's decree that a member of the family entitled to a share upon partition should hold it as an under-proprietor under the talukhdar, could not be allowed to stand. **PRITHI PAL v. JOWAHIR SINGH**

I. L. R. 14 Cal. 493  
L. R. 14 I. A. 37

See **SHANKAR BAKSH v. HARDEO BAKSH**

I. L. R. 16 Cal. 397  
L. R. 16 I. A. 71

## (aa) PARTNERSHIP.

125. ——— Suit for dissolution of partnership. In a suit of the nature of one for

decree without satisfactory proof of its having been realized and misappropriated. **MON MONNEE DASSEE v. ICHAMOE DASSEE** . 15 W. R. 352

## (bb) POSSESSION.

126. ——— Possession, suit for—Declaration of proprietary right. In a suit for recovery of possession of land, it was declared that the plaintiff

to possession without any declaration of right as owner. **RADHAKRISHNA SETT v. HARAKRISHNA DAS** . . . . . 1 B. L. R. O. C. 1

127. ——— Co-sharers—Intervenors added as parties. In a suit to recover possession of a certain mouzah, claimed by the plaintiff

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) POSSESSION—*contd.*

as a portion of his dar-fatni talukh, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants, on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed; and on the proofs which they adduced, the plaintiff's claim was dismissed. The plaintiff's claim as against the original defendants, who made no opposition, was decreed in special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit. *Held*, that, upon the one issue common to all the defendants, viz. whether the property claimed was in the plaintiff's talukh or in that of the defendants, the Court could only come to one consistent finding; and that on the finding of the facts in the Court below the suit should be dismissed against all the defendants. **KALIFRASAN SINGH v. JAINARAYAN ROY** . . . . . 3 B. L. R. A. C. 24; 11 W. R. 361

128. ——— Suit by tenant

129. ——— Decree in suit for possession after void sale for arrears of revenue—Act XI of 1859, s. 34. Where the original owner sues to recover possession when a sale for arrears of revenue is found to be null and void, and obtains a decree, the decree is sufficient for the purposes of s. 34, Act XI of 1859, without any special declaration that the sale is annulled; and the order for refund of the purchase-money should be made in execution of the decree. **SHAMU SOONDURKE DOSSEE** . 12 W. R. 276

130. ——— Suit for possession of share where co-sharer is not collusion with

ousted him from his share, and asked for partition of the land and possession of his share. It having been found that the plaintiff was entitled to a small portion only of the share he claimed; *Held*,

DECREE—*contd.*1. FORM OF DECREE—*contd.*(3) PAPERS AND ACCOUNTS, SUITS FOR—*contd.*

if any, were in the hands of the defendant, the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts, if any, were in the hands of the defendant, and whether he had wrongfully refused or omitted to deliver them to plaintiff, and, if so, decide the case accordingly. **JUGGER NATH PANDEY v. CHUTTUT NARAIN DEB** . . . . . 17 W. R. 410

## (2) PARTITION.

117. ——— Partition, suit for—*Objection to list of moveable property* Objection was

declaring that particular excuses with regard to individual articles might fitly be determined in execution of decree. The lower Appellate Court was bound to have ascertained whether any, and, if any, which of the articles were liable to partition before it pronounced a decree. **SHEO GOBIND v. SHAM NARAIN SINGH** . . . . . 7 N. W. 76

118. ——— Decree for moveables in suit for partition of land Where the claim in a suit was for the partition of certain immovable property, and for the profits of the property, and defendant in his account took credit for a sum expended in certain jewels, etc., it was held that the things so purchased, being charged against the plaintiff, belonged to the plaintiff, and a decree declaring his right to obtain them might be supported, although the claim did not refer to moveables. **BULDEO SEHAI v. CHADEE LALL** . . . . . 2 N. W. 95

119. ——— Suit for possession by partition of *nij-jote* land and for mesne profits. Where a suit for possession by partition of *kamut* (*nij-jote*) lands and for *waslat* is decreed, it is the duty of the Judge, in drawing up the final decree after the Ameen's report, to state the boundaries of the shares of the parties, the interest of each share, and the exact amount due as *waslat*. **CROWDERY IMPAD ALI v. BOONYAD ALI** . . . . . 14 W. R. 92

120. ——— Death of one of sharers pending appeal—*Alteration of decree on appeal*—Death of a co-parcener *pendente lite*. The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his co-parceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court; but, before it was decided one of the defendants died. The plaintiff at the hearing of the second appeal claimed a larger share

DECREE—*contd.*1. FORM OF DECREE—*contd.*(2) PARTITION—*contd.*

appealed from ought to be varied accordingly. **SAKHARAM MAHADEV DANGU v. HARI KRISHNA DANGE** . . . . . I. L. R. 6 Bom. 113

121. ——— *Deshgat vatan held by desai*. Where the defendant in a suit for the partition of a *deshgat vatan* held the hereditary office of *desai*, and the *vatan* was property appertaining to the office, the decree for partition was accompanied by a declaration that it was of the *desai* the performer entitled under any law in force. **ADRIASHAPPA v. GURUSHI DAPPA** . . . . . I. L. R. 4 Bom. 404

122. ——— Suit for partition by a purchaser from a co-sharer—*Decree in such suit need not be for a general partition of the entire estate*. When a purchaser from a co-sharer in a joint family estate sues to have his share severed and given to him, the Court is not bound to force the members of the family into a partition of the whole estate. It is, no doubt, open for each and every co-sharer to ask to have his share divided off and allotted to him (in which case he would have to pay court-fees according to his share). But, in the absence of such a request, the Court is not bound to

I. L. R. 20 BOM. 104

See **ABDU KADAR v. BABUBHAI** . . . . . I. L. R. 23 Bom. 188

123. ——— Provisional de-

accounts and enquiries remaining to be taken and made. **KRISHNASAMI AYYANGAR v. RAJAGOPALA AYYANGAR** . . . . . I. L. R. 18 Mad. 73

124. ——— *Talukdhari estate*—*Decree of Prizing Council*. In a suit commenced in 1865 by a member of a joint family for the declaration of his rights in a talukdhari estate, partition

DECREE—*contd.*1. FORM OF DECREE—*contd.*(c) PARTITION—*contd.*

not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s. 66; and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1865, and also with the addition of villages since acquired out of profits, claiming an account against the talukhdar. The latter alleged, among other defences, that the talukhdar estate was impartible, and brought a cross-suit to establish this, and also that it was held by him according to the rule of primogeniture, the right of other members of the family being only to the profits. *Held*, that, in regard to the order of Her Majesty above mentioned, which was applicable to an estate held subject to the law of the Mitakshara, the talukhdar estate could not be declared to be impartible; also that a declaration in the Judicial Commissioner's decree that a member of the family entitled to a share upon partition should hold it as an under-proprietor under the talukhdar, could not be allowed to stand. **PIRTHI PAL v. JOWAHIR SINGH**

I. L. R. 14 Cal. 493

L. R. 14 I. A. 37

See SHANKAR DAKSH v. HARDEO DAKSH

I. L. R. 16 Cal. 397

L. R. 16 I. A. 71

## (aa) PARTNERSHIP.

125. — Suit for dissolution of Partnership. In a suit of the nature of one for dissolution of partnership, it is incorrect to make an absolute decree for a specific sum of outstanding balances without anything to guide the Court in fixing that amount. No amount ought to be decreed without satisfactory proof of its having been realized and misappropriated. **MUN MOHINEE DASSEE v. ICHAMOEY DASSEE**

15 W. R. 352

## (bb) POSSESSION.

126. — Possession, suit for—*Decla-*

owner. **RADHAKRISHNA SETT v. HARAKRISHNA DAS**

1 B. L. R. O. C. 1

127. — Co-sharers—*Intervenors added as parties.* In a suit to recover possession of a certain mouzah, claimed by the plaintiff

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) POSSESSION—*contd.*

as a portion of his dar-patni talukh, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants, on the record in the property in dispute. The application was granted; the added

who made no opposition, was decreed in special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit. *Held*, that, upon the one issue common to all the defendants, viz., whether the property claimed was in the plaintiff's talukh or in that of the defendants, the Court could only come to one consistent finding; and that on the finding of the facts in the Court below the suit should be dismissed against all the defendants. **KALIRABAD SINGH v. JAINARAYAN ROY**

3 B. L. R. A. C. 24; 11 W. R. 361

128. — Suit by tenant for possession of julkurs—*Expiry of lease before decree.* Where a plaintiff sued, while his lease was still running, to recover possession of certain julkurs, and the lease expired after action brought, but before decree: *Held*, that the decree, instead of directing actual possession to be given, should have merely declared his right to possession up to the date on which his lease expired. **UMANUND ROY v. SREENISHEN BANERJEE**

7 W. R. 248

execution of the decree. **SREENMUNT LALL GHOSH v. SHAMA SOONDUREE DOSSEE**

12 W. R. 276

other defendant, and complained that they had ousted him from his share, and asked for partition of the land and possession of his share. It having been found that the plaintiff was entitled to a small portion only of the share he claimed: *Held*, that he was not entitled to the whole share.



DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) POSSESSION—*contd.*

with defendant No. 1 of the portion to which they were entitled. **RUSTUM ALLY v AMER ALLY SOUDAGUE** . . . . . 10 W. R. 487

131. ——— Suit for possession under purchase which turns out to be tainted with fraud on the part of one vendor. Where a plaintiff sued for recovery of possession of property which he said he purchased from two defendants, and it was found as a fact that one of the defendants did not sell, but that the other used fraud in effecting the sale: *Held*, that the decision below

**MOZOOMDAR v. MEHEROONISSA KHATOON** . . . . . 8 W. R. 482

132. ——— Suit by purchaser to have sale in execution of decree set aside

I. L. R. 3 All. 112

133. ——— Suit by purchaser for possession of share of ancestral estate. In a suit for possession of lands under purchase of a share in an ancestral estate, the Judge, in pronouncing a decree for the plaintiff, ought to declare specifically whether the plaintiff is entitled to recover the share in an undivided estate, or specific lands as representing that share. **RANLOCHAN DAS v. MAN-SUR ALI** . . . 1 B. L. R. A. C. 65; 10 W. R. 98

134. ——— Purchaser from one of several divided co-sharers—*Suit for joint possession—Partition when unnecessary* The pro-

remain in absolute possession and enjoyment for her life, and that C was to succeed to the estate after her death. The widow mortgaged 9 out of the 12 thikans, sold one, and granted a perpetual lease of another to the defendant. The plaintiff purchased the plaintiff's share of the thikans. The defendant pleaded, *inter alia*, that the widow's alienations were valid and binding on the plaintiff, and that the plaintiff's remedy was

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) POSSESSION—*contd.*

a partition suit. *Held*, that the plaintiff was entitled

necessary. **ANTAJI v. DATTAJI** . . . . . I. L. R. 19 Bom. 38

135. ——— Suit by purchaser of share in undivided property—*Right to possession.*

**MAHARAJA L. VENKATESH VINAYAK** . . . . . I. L. R. 2 Bom. 676

136. ——— Sale in execution of decree of joint family property—*Right of purchaser—Suit to cancel sale.* G, the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority. The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued G on the mortgage, and obtained a decree. A house, which was part of the family property, was sold in execution, and was purchased by the defendant himself. The plaintiff sued to have the sale set aside and to recover his half share in the house. *Held*, that the plaintiff was entitled to be put into possession of the whole house, the defendant being left to his remedy by a suit for partition. The plaintiff, however, having claimed only the restoration of his half share, the decree was limited accordingly. *Held* also that it

137. ——— Suit by purchaser for share of undivided property—*Sale of joint family property in execution of decree.* A judgment-debtor attached in execution and caused to be

purchaser; and subsequently, and without having himself entered into possession, Y assigned his interest in the purchase to G. G claimed to be put into possession, and obtained a Court's order, directing that possession should be given to him.

judgment-debtor ever had separate occupancy of any definite share of the same. *Held*, that G's proper remedy was by a suit for partition, and that he could not claim to be put into joint possession

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) Possession—*contd.*

with the applicant and the other members of the undivided Hindu family, of the family property. **BALAJI ANANT RAJADIKSHA v. GANESH JANARDAN KAMATI** . . . I. L. R. 5 Bom. 400

(*Contrà*) **INDRASA v. SABU**

I. L. R. 5 Bom. 505 note

138. ——— Suit to set aside sale in execution of decrees on a mortgage to secure two debts—*One debt only binding on tarwad—Declaration of right to possession.* In a suit by members of a Malabar tarwad to set aside a sale in execution of a decree, passed on a mortgage which had been executed by their karnavan and senior anandratans in consolidation of two prior mortgages executed, respectively, to secure two debts, it appeared that one of these debts was binding and the other not binding on the tarwad. *Held*, that the Court should declare the plaintiffs entitled to the property sold notwithstanding the sale, but subject to the charge created to secure the binding debt. **KUNHI MANNAN v. CHALI VADUVATH**

I. L. R. 14 Mad. 494

139. ——— Suit for possession of family property alienated for unjustifiable purpose—*Alienation by life-tenant.* A and B sued D and E for the estate of a relative, C, the deceased husband of D, on the ground that the family to which A, B, and C belonged was undivided. D (who was a Hindu widow without surviving issue) and E pleaded division, and that D had sold and assigned the estate to E. This alienation was not shown to have been made for any purpose.

immediate possession, should not have provided for the re-assignment of the estate from E to D for D's life, but that he was right in declaring that after D's death the property should revert to the plaintiffs as heirs of C. **PERIYA GAUNDAN v. TIRUMALA GAUNDAN** . . . 1 Mad. 208

140. ——— Suit by member of undivided family against manager—*Decree on partition.* A member of an undivided family brought a suit for partition of the family property.

share in the following manner. He assessed what he considered to be the sum received by the first defendant from the estate, deducted from that sum what he considered should have been the gross expenditure of the defendant, and decreed delivery by the defendant of one-fifth of the remainder. *Held*, that such a decree was erroneous. **TARA CHAND v. REEB RAM** . . . 3 Mad. 177

141. ——— Suit by son to set aside sale by father of ancestral property—*Right of purchaser.* Where ancestral property is sold by the

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) Possession—*contd.*

father, the son is entitled to sue for cancellation of such sale, and the decree should not be that the property is ancestral and will pass to the father's heirs on his death, but a decree cancelling the sale so far as it obstructs him in asserting his right and in effect declaring the sale to be invalid, without interfering with actual possession, that may have been obtained by the purchaser. **BABOO ITAM v. GAJADHUR SINGH** Agra F. B. 80; Ed. 1874, 65

142. ——— Suit by member of undivided Hindu family for declaration of his right to a portion of the joint estate sold in execution of decree against another member.

declaring that he was entitled to joint possession along with the execution purchaser as tenant in common. But that, if a division in specie were desired, a suit should be brought for that purpose. **Mahabala v. Timaya**, 12 Bom. Rep. 138, followed. **BABAJI LAKSHMAN v. VASUDEB VINAYAK**

I. L. R. 1 Bom. 95

143. ——— Suit by member of joint undivided Hindu family to recover possession of property alienated by another member—*Position of purchaser from one member*

remained in possession thereof for a considerable time. As a matter of fact, the plots of land belonged—part absolutely and part as to mortgagees in possession—not to B solely, but jointly to him and his father C and others, the members of an undivided family.

I. L. R. 5 Bom. 493

See, also, **KRISHNAJI LAKSHMAN RAJWADE v. SITARAM MURARAY JAKHI** I. L. R. 5 Bom. 498

144. ——— Suit by co-sharers for recovery of possession—*Sale in execution of decree of share of one co-sharer in undivided property.* K and R, two out of five undivided Hindu brothers, sued P (a purchaser at an execution-sale of

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) POSSESSION—*contd.*

and Ras being the amount of their share in the land. *Held*, by the High Court, that the decree could not be maintained, as K and R, being two of several co-partners in undivided property, could not say that they were entitled to a specific share in any portion of that property. They might have sued for a general partition, or for a decree declaring them entitled to joint possession with F. KALLAPA BIR GIRMALLAPA v. VENKATESH VINAYAK

I. L. R. 2 Bom. 670

145. — Suit for ejectment of trespassers—*Co-sharers* Where a tenant has been put into possession of *ijmal* property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others; but no person has a right to intrude upon *ijmal* property against the will of the co-sharers or any of them; if he does so, he may be

plaintiffs possession of their estates jointly with the intruder, as explained in the case of *Huladhur Sen v. Gooroodoss Roy*, 20 W. R. 126. RADHA PRSHAD WASTI v. ESUF

I. L. R. 7 Calc. 414; 9 C. L. R. 78

KAMAL KUMARI CROWDHURANI v. KIRAN CHANDRA ROY

2 C. W. N. 229

liable MIRZA NAWAB v. BAHADOOR ALI. SHAM LAL v. BAHADOOR ALI

7 W. R. 156

147. — Joint ownership—*Decree against joint owner where suit is barred against his co-sharers—Limitation.* The interest of F as co-sharer in certain land was sold in execution of a decree against him. It was purchased by S, who sold it to the plaintiff. The plaintiff sued for possession, and the other co-sharers were made party defendants to the suit, which, however, was held, as against them, to be barred by limitation. *Held*, that the plaintiff was entitled to be put into joint possession of the land with them, although the suit as against them was barred. KRISHNAJI BIR MALJI v. VITHU

I. L. R. 18 Bom. 505

148. — Co-partner's right to joint possession of the whole or any part of the joint estate without necessity for partition—*Joint Hindu family.* A co-partner in a joint Hindu family is entitled to claim joint

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) POSSESSION—*contd.*

possession of a portion, and need not sue for a partition. Where it appeared that the parties to the suit each held parcels of the undivided family property in exclusive possession, and the plaintiff asked for joint possession with the defendants: *Held*, that he was entitled to a decree for joint possession. A co-partner is entitled to a joint benefit in every part of the undivided estate. RAMCHANDRA KASHI PATKAR v. DAMODHAR TRIMBAK PATKAR

I. L. R. 20 Bom. 467

149. — Suit for possession by owners of adjoining estates.—*Right of parties to equal moieties of property decreed, although each had claimed the exclusive title—Decrees dismissing their suits reversed, the evidence being sufficient as to the former, but not the latter right.* In cross-suits between the owners of adjoining estates, each claimed, against the other, to be entitled to, and to be put into possession of, property situate on the boundary between their estates. The High

session having been held by both the one and the other, and of the title of both, to support the conclusion that each had a claim to an equal moiety, to which each should be declared entitled. Each

I. L. R. 11 Calc. 814  
I. L. R. 17 I. A. 62

150. — Suit for exclusive possession of property—*Finding that parties have equal right to possession—Decree for joint possession.* Where the plaintiff claimed exclusive possession of immovable property to which the defendant also claimed to be exclusively entitled:

WAHID ALAM v. SAFAT ALAM I. L. R. 12 All. 556

151. — Suit for exclusive pos-

ANTU SINGH v. MANDIL SINGH I. L. R. 15 All. 412

152. — Joint ownership proved at hearing—*Procedure.* Exclusive possession can only be awarded on proof of exclusive title. PARASRAY v. MIRAJI

I. L. R. 10 Bom. 569

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) Possession—*contd.*

153. ——— Suit by co-owner for exclusive possession—*Procedure*. The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but, finding that the plaintiff had been in exclusive possession, allowed his claim and gave him a decree. On second appeal: *Held*, that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. *NANA v. APPA*  
I. L. R. 20 Bom. 627

154. ——— Suit for possession of land sold in execution as property of third parties. The plaintiff sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share. *Held*, that the decree was right. *NARASIMHA NAIDU v. RAMANATHI*  
I. L. R. 18 Mad. 478

155. ——— Suit by *sur-i-peshgi* lessee for possession in a Civil Court—*Landlord and tenant—Zur-i-peshgi lease—Sub-lease by zur-i-peshgi lessee—Default by sub-lessee, who lets into possession the original lessor and denies the zur-i-peshgi lessee's title—Jurisdiction of Civil Court—Execution of decree—Civil Procedure Code, ss 263 and 264*. Two occupancy tenants granted a *sur-i-peshgi* lease of their occupancy holding to one R L for a term of sixteen years. R L sublet the holding for a term slightly less than his own. The sub-lessees made default in payment of rent. R L distrained their crops. Thereupon the original lessors intervened, claiming the crops as theirs. The question of the distraint having been decided by the Court of revenue against him, R L then brought a suit in a Civil Court asking for payment of both his lessors and his lessees and to be put into actual possession himself. *Held*, that the plaintiff was precluded by reason of the lease granted by him, the term of which had not expired from obtaining actual possession, unless the sub-lessees were ejected, which could only be done through the Court of revenue. But the plaintiff was entitled to

I. L. R. 10 All. 440

156. ——— Decree for possession under *mokurari* lease—*Condition as to payment of rent*. After the sale of a share in an estate under the provisions of Act XI of 1859, a suit was brought

DECREE—*contd.*1. FORM OF DECREE—*contd.*(bb) Possession—*contd.*

to establish a *mokurari* lease, as an incumbrance under a *54*, upon the share in the hands of the purchaser. The *mokurari* lease having been established as to so much only of the lands as were covered by the title proved, the decree below, although no question of apportionment had been raised, was conditional that the whole rent reserved should be paid. *Held*, that this condition should have been omitted, the amount of rent being determinable by a future proceeding if necessary. *ISAMBANDI BROTH v. KANLESWARI PERSHAD*  
I. L. R. 14 Calc. 109  
L. R. 13 I. A. 180

157. ——— Suit for possession and mesne profits—*Direction for inquiry as to mesne profits—Civil Procedure Code, s. 212*. Where, under s. 212 of the Code of Civil Procedure, a Court in a suit for possession of immovable property and mesne profits passes a decree for the property and directs an inquiry into the amount of mesne profits,

I. L. R. 14 All. 531

## (cc) PRE-EMPTION.

158. ——— Pre-emption, suit for—*Decree, conditional, on payment in specified time*. In decreeing a right of pre-emption a Civil Court has no power to make the decree holder's right depend on payment of the purchase-money within a specified time. *AHSAN ALY v. SABORNI BIBEK*  
10 W. R. 53

(Contra) *EWAZ v. MOKUNA BIBI*

I. L. R. 1 All. 132

where it was held the Court was competent to make such a condition, and that, if the decree-holder fails to comply with such condition, he loses the benefit of the decree.

159. ——— Rival suits to enforce the right of pre-emption—*Civil Procedure Code, s. 214*. K and R, two co-sharers of a village instituted separate suits in which each claimed to enforce the right of pre-emption, based on the *wajib-ul-urz*, in respect of the same sale of a share in

cases where two rival pre-emptors of the same decree seek to enforce pre-emption, as each necessarily must do, in respect of the whole property conveyed by one transfer, are defective if they

DECREE—*contd.*1. FORM OF DECREE—*contd.*(cc) PRE-EMPTION—*contd.*

different degrees of pre-emption, the decree, in at least one of the rival suits, must be essentially defective if no provision is made for the contingency of the superior pre-emptor never enforcing his right. The question what should be the form of the decree in such cases can be dealt with only by exercising the vast and flexible jurisdiction possessed by the Courts of equity in adapting their decrees to the exigencies of each case, so as to grant the actual relief required by the parties. *Held*, applying the principles of equity to the present case, that the Court of first instance acted rightly in adding the name of each rival pre-emptor as party defendant in the suit of the other, and in decreeing the claim of

vendee, his suit should have been decreed against the latter in the terms of s. 214 of the Civil Procedure Code; subject, however, to the condition that the decree should not take effect, so far as the enforcement of pre-emption was concerned, in the event of R's enforcing the superior pre-emptive right decreed to him. *KASHI NATH v. MURTA PRASAD*

I. L. R. 6 All 370

See *HULAST v. SNEO PRASAD*

I. L. R. 6 All 455

160. ——— Deposit of purchase-money—Power of Court. A pre-emptor obtained a decree which provided a certain time within which the sum ascertained to be the purchase-money was to be deposited. He appealed against the amount fixed, but failed in his appeal, and during his appeal the time fixed for the deposit expired, and the Judge refused to fix any further time. *Held*, that the plaintiff, in appealing from the original decree, could not escape from the obligation which it imposed, and the lower Appellate Court was not bound by law to insert in its decree any special direction concerning such deposit, unless occasion called for it, although it was competent to have done so. *SNEO PERSHAD LALL v. THAKOOR RAI*

3 Agra 264; s. c. Agra F. B. Ed. 1874, 153

161. ——— Deposit of purchase-money—Appellate Court, Powers of—Civil Procedure Code, 1877, s. 214. The decree of the Court of first instance, in a suit to enforce a right of pre-emption, directed that the sum which that Court had ascertained to be the purchase-money should be

DECREE—*contd.*1. FORM OF DECREE—*contd.*(cc) PRE-EMPTION—*contd.*

date of the ending that While the the decree of without any deposit having been made. The Appellate Court of its own l. *Held*, 3 Agra extent to and its action and order did not contravene the provisions of s. 214 of Act X of 1877. *PATSHADI LALL v. RAM DIAL*

I. L. R. 2 All 744

162. ——— Conditional decree. Where a share in a certain *patti* was sold by the holder of the share to a stranger, and three persons, holding equal shares in the *patti*, were equally entitled under the village administration paper to the right of pre-emption of the share, the decree of the High Court in the suit specified a time within which each party to the suit should pay into Court a proportion of the purchase-money and declared that, if either failed to pay such proportion within time, the other of them making the further deposit within time should be entitled to the share of the defaulter. *MANABIR PARSHAD v. DEBI DIAL*

I. L. R. 1 All 281

163. ——— Allegation by plaintiff that a certain sum is the actual price—Omission to allege readiness and willingness to pay actual price—Discretionary power of Court to grant decree. The Court of first instance dismissed a

to pay any amount which the Court might find to be the actual price. On appeal by the plaintiff, the lower Appellate Court gave him a decree conditional on the payment of such larger amount within a fixed time. *Held*, that it was not necessary to interfere with the exercise of the lower Appellate Court's discretion in the matter, particularly as the defendant had not objected to such exercise in his memorandum of second appeal. *Durga Prasad v. Nawaz Ali*, I. L. R. 1 All 591, distinguished. *NAUBATH SINGH v. KISHAN SINGH*

I. L. R. 3 All 753

## (dd) TRESPASSER.

164. ——— Trespasser, suit against—Decree for damages and not for account. A trespasser is not liable to account, but is liable for damages. Where the lower Appellate Court passed a preliminary decree for an account against

DECREE—*contd.*1. FORM OF DECREE—*contd.*(dd) TRESPASSER—*contd.*

the defendants who were trespassers by reason of their intermeddling with the plaintiff's estate: *Held*, that the defendants were not liable to account, but were liable for damages, and the proper course for the lower Court was to enquire what damages the plaintiff had sustained by reason of the trespasses complained of by the plaintiff. *SEKIZASH ADAR v. NOGENDRA NATH DAS* 4 C. W. N. 105

## 2. CONSTRUCTION OF DECREE.

## (a) GENERAL CASES.

1. ——— Mode of construction—*Execution of decree.* In execution, a decree must be construed by its own terms, and not by the plaintiff. *NUDO KISHORE MOJOMDAR v. ANEND MOHON MOJOMDAR* 17 W. R. 19

2. ——— Decree how construed for purposes of execution. A decree cannot be extended in execution beyond the real meaning of its terms. *BUDAN v. RANCHANDRA BHENJOAYA* I. L. R. 11 Bom. 537

3. ——— Uncertainty in decree—

See *DWARAKANATH HALDAR v. KAMALA KANTH HALDAR* 3 B. L. R. Ap. 128; 12 W. R. 69 and *KALKE DEBEE v. MUDOO SOODUN CHOWDURY* 16 W. R. 171

4. ——— Ambiguous decree—Reference to pleadings in the suit to ascertain meaning of the

*I. L. R. 13 All. 343*, and *Robinson v. Dulerp Singh*, L. R. 11 Ch. D. 798, referred to. *LACHMI NARAIN v. JWALA NATH* I. L. R. 18 All. 344

5. ——— In construing a decree, the terms of which are ambiguous, such construction must, if possible, be adopted as will make the decree a decree in accordance with law, and not a decree such as the Court making it had no power to pass. *ANOLAK RAM v. LACHMI NARAIN* I. L. R. 19 All. 174

6. ——— Duties of executing Court—*Transfer of Property Act (IV of 1882), s. 81*—Decree for sale on a mortgage wrongly allowing interest after date fixed for payment. Where a decree for sale under the *Transfer of Property Act* was

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) GENERAL CASES—*contd.*

10. ——— Where there is no ambiguity in the decree, the executing Court is bound to execute it according to its terms, whether the decree be right or wrong. *Amolak Ram v. Lachmi Narain*, I. L. R. 19 All. 174, and *Badshah Begum v. Hardas*, All. W. N. (1898) 17, referred to. *PIRBU NARAIN SINGH v. RUP SINGH* I. L. R. 20. All. 397

7. ——— A Court executing a decree, the terms of which are ambiguous, should, where it is possible, put such a construction upon the decree as would make it in accordance with law. *Amolak Ram v. Lachmi Narain*, I. L. R. 19 All. 174, *Pirbu Narain Singh v. Rup Singh*, I. L. R. 20 All. 397, and *Maharaja of Bharatpur v. Kanno Devi*, All. W. N. (1898) 164, *quod hoc*, approved. *BAKAR SAJJAD v. UDDI NARAIN SINGH* I. L. R. 21 All. 361

9. ——— Difference between heading and body of decree—*Description of person.* Where a person was described in the heading

10. ——— Decree making further enquiry necessary—*Court executing decree.* Where a decree shows clearly the intention of the Court which makes it, but leaves something undetermined until further enquiry, such enquiry

11. ——— Evidence to explain decree—*Registrar's note of judgment.* A note of the

reference to such a note, that what the decree meant was that he was to be credited, and his partners

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) GENERAL CASES—*contd.*

debited, with certain payments *in toto*, and not with their respective shares only. *SUMAR AHMED v. HAJI ISMAIL HAJI HABIB*. I. L. R. 1 Bom. 158

12. — Discrepancy between decree and judgment—*Limitation of, by judgment*. Where a decree of the Sudder Court was in general terms, *viz.*, "that the appeal be decreed with costs," though the judgment indicated a different

13. — Decree of Appellate Court reversing summary order. The reversal of a decree by an Appellate Court implies an order set-

14. — Statement of claim in the decree of Appeal Court not a part of decree

was to be understood as referring to the claim as stated in the plaint, and not as described in the paper book. *SS. 579 and 587 of the Civil Procedure Code (Act XIV of 1882)* do not require the claim to be stated in the decree, so as to make such statement a part of the decree itself. *SOUDE SURENIVAS AYA v. KRISHNAYA HEONE*. I. L. R. 11 Bom. 177

15. — Decree specifying a certain time for execution—*Construction—Condition—Precedent—Limitation*. The plaintiff obtained a decree on the 26th July 1882, which directed that he should give the defendant possession of certain parcels of land at the end of next Margashirsha (i.e., 9th January 1883), and that, on his doing so, the defendant should remove certain

the specification of the end of Margashirsha had merely the effect of postponing the operation of the decree till that time, and the

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) GENERAL CASES—*contd.*

plaintiff had three years from that date within which he might seek execution. The mention of a term when a particular right is to become enforceable is not a condition precedent, whether the enforcement be otherwise subject to a condition or not. *NARAYAN CHITRO JUYEKAR v. VITHUL PARSHOTAM*. I. L. R. 12 Bom. 23

16. — Construction in execution of an order in Council—*Possession*. An order of Her Majesty in Council was that a decree-holder should recover what was demarcated by "the thakbust map and proceedings of 1839." *Held*, on the construction of the order, that the

17. — Adjustment—*Agreement discharging one of several defendants on adjustment must be certified*. Where, after a decree is passed

under s. 238 of the Civil Procedure Code. *MANOHAR KDAY BANADUR v. MANOHAR MUNAWAR SAHIB* (1903). I. L. R. 31 Mad. 467

18. — *Agreement discharging one of several defendants on adjustment must be certified*. Where after a decree is passed against

*KHAN BANADUR v. MANOHAR MUNAWAR SAHIB* (1903). I. L. R. 31 Mad. 467

19. — Decree for delivery of property to a decree-holder cannot apply for the investigation of his claim under this section, but may do so under s. 332 of the Code, after he has been dispossessed. *SUKHAN SINGH v. BAIJ NATH GOENKA* (1907). 12 C. W. N. 115

20. — *Interpleader suit—Decree—Order—Appeal—Held*, that an adjudication upon the claims of defendants in an interpleader suit is a decree and appealable as such under s. 540 of the Code of Civil Procedure, and not under s. 588 of the Code. *MAHARAJ SINGH v. CHITTA MAL* (1907). I. L. R. 30 All. 22

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) GENERAL CASES—*concl.*

21. — Decree in appeal—*Appeal by some of the parties to a decree—Execution—Civil Procedure Code (Act XIV of 1882), ss. 234, 244, 252—Limitation Act (XI of 1877), Sch. II, Art 179.* Where some of the parties to a decree appeal against it, the decree in appeal is the final decree for the purpose of execution with respect to all the parties. *SHIVRAM v. SAKHARAM* (1908)

I. L. R. 33 Bom. 39

## (b) ACCOUNT, DECREE FOR.

22. — Decree for account, nature of—*Rights of parties insufficiently defined—Parties.* A decree for an account is not a mere direction to enquire and report. It proceeds, and must always proceed, upon the assumption that the party calling for it is entitled to the sum found due. It is a decree affirming his rights only, leaving it to be enquired into how much is due to him from the party accounting. A decree for an account of dealings and transactions of a deceased partner in a Hindu family bank and for a dissolution of the partnership was in this case reversed on the ground that the respective rights of the parties were not sufficiently defined and declared, and that the proper parties were not before the Court. *JANOKEY DOSS v. BINDABUN DOSS* . . . 3 Moo. I. A. 175

23. — Decree for account—*Amendment of clerical error in decree by Appellate Court.* The decree of the Court of first instance directed the commissioner to take an account of the moneys paid by the plaintiff, during the period between 24th January 1865 and the date of the filing of the plaint, for the use and at the request of the defendants, and to allow credit to the defendants for the sums for which the plaintiff had given credit in his particulars of demand, and for all other sums for which the defendants should prove themselves entitled to credit, wherever the same might have become payable. The defendants, in their surcharge to the plaintiff's account, claimed credit for various payments made by them to the plaintiff between 25th January 1865 and 5th July 1865. The plaintiff claimed to appropriate these payments in satisfaction of his claim against the defendants prior to 24th January 1865. The

whole account, prior to 24th January 1865, was

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(b) ACCOUNT, DECREE FOR—*concl.*

to the Appellate Court appears to render the decree correct, the Appellate Court will adopt the latter construction. *HIRJI JINA v. NARAS MULJI*  
I. L. R. 1 Bom. 1

## (c) BUILDINGS, ERECTION OR REMOVAL OF.

24. — Suit for removal of obstruction—*Decree for plaintiff qualified by declaring that parties retain rights exercised prior to obstruction.* In a suit for the removal of a building which the defendants had erected, and which was an obstruction to the plaintiff's right to use a courtyard adjoining their residences, it appeared that the land on which the building stood did not belong to either party, but that all the inhabitants of the mohulla had from time immemorial

it as a sitting place when necessary. *Held*, that this was not a declaration of a right in the defendants to build, but merely a statement that the decree would not operate as an interference with the rights of the parties to have a similar thatched building set up as had existed in former times. *Official Trustee of Bengal v. Krishna Chunder Mozoomdar*, I. L. R. 12 Calc. 239; I. R. 12 I. A. 166, distinguished. *FATEHYAB KHAN v. MUHAMMAD YUSOFF. MUHAMMAD YUSOFF v. FATEHYAB KHAN*  
I. L. R. 9 All. 434

25. — Execution—*Court—Joint decrees—Execution of and liability under—Application by one joint decree-holder for execution—Protection of interest of absent decree-holder—Notice—Civil Procedure Code (Act XIV of 1882), ss. 231, 260—Injunction.* It is not obligatory upon the Court to issue a notice before making an order for execution under s. 231 of the Civil Procedure Code on the application of one of several joint decree-holders. Where, in a contested suit, a decree was made granting a perpetual injunction restraining a party from erecting a pucca

against the judgment-debtor without previous service of notice upon him calling upon him to comply with the order contained in the decree.



DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(c) BUILDINGS, ERECTION OR REMOVAL OF—*contd.*

*Prolap Chunder Dass v. Peary Choudhrai, I. L. R. 8 Calc. 174*, explained: *Held*, also, that the Lower Court had rightly allowed the decree-holder to execute the decree by attachment, although he had applied for the demolition of the building. *Sala Lal v. Bai Parvati Bai, I. L. R. 26 Bom. 233*, referred to. *Per MOOKERJEE, J.*—When a judgment-debtor who has had an opportunity of obey-

to give the judgment-debtor an opportunity to clear or purge his contempt. The practice to be followed in cases under s. 260 of the Civil Procedure Code discussed. *DURGA DAS NANDI v. DEWRAJ AGARWALA (1905)* . . . I. L. R. 33 Calc. 308

## (d) CONSENT DECREE.

29. ———— *Breach of contract by decree-holder.* By a consent decree on a mortgage it was provided that, if the decree-holder received a fixed sum by a fixed date, the whole

days of receiving particulars appraise the same, and, if he approved the transaction and received the price, execute a deed of consent. *Held*, that it was a breach of contract by the decree-holder to

same position as if he had received a tender thereof. *HARENDRA LAL ROY CHOWDHRY v. MAHARANI DAS (1901)* . . . I. L. R. 28 Calc. 557  
s. c. 5 C. W. N. 538  
I. R. 28 I. A. 89

## (e) COSTS.

27. ———— *Decree for costs.* A decree which ordered the defendants, speaking of them collectively, to be paid their costs by the plaintiff, held to mean that each defendant who appeared in the suit as a separate party was to be paid his

*MUNOY RAM CHOWDHRY* . . . 21 W. R. 288

28. ———— *Separate defences.* Where a decree of the High Court directed that the

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(e) COSTS—*contd.*

respondent (the plaintiff) should pay to the appellants (the defendants) the costs incurred by them in the lower Court: *Held*, that the costs referred to were those which were specified in the decree appealed against as the costs incurred by the defendants. If several defendants have served in their defence and the lower Court has specified the costs incurred by each of them, the costs payable under the above directions will be their several costs. If they have joined in their defence, or, though they have served their defence, but the lower Court has specified a single set of costs as the only costs which it will allow or treat as costs in the suit, then the costs payable will be the single set of costs. *RAM CHUNDER SEN v. DOORGA NATH ROY*

2 C. L. R. 152

29. ———— *Decree for usual costs and interest—Costs of previous suit set aside.* Where a decree was passed awarding the plaintiff a claim "with usual costs and interest" without any specification of the costs intended save the mention of some items in the schedule, and without mentioning the rate of the interest or the date from which it should run, it was held that the decree was meant to give all the costs which the successful party had incurred in the prosecution of the suit from the commencement until the date of the final decree, including costs incurred in the abortive part of the proceedings, i. e., in trials set aside, and that the interest was to be at twelve per cent. on the amount of money actually decreed. *BROOKING v. PENN-LAB SEN* . . . 19 W. R. 152

30. ———— *Decree in favour of appellant with costs to the respondent—Deduction from amount due.* When a decree in

from the gross amount decreed, and that the remainder only should be recovered under the decree. *ISSUR CHUNDER MOOKERJEE v. MUNOY RAM CHOWDHRY* . . . 12 W. R. 308

31. ———— *Decree for costs and for*

uting the order for costs in the same manner as any other money-decree. *ADJIN MULLAH MOODEFIN v. CRUICKSHANK* . . . 21 W. R. 289

32. ———— *Decree on mortgage bond—Execution of decree—Costs against judgment-debtors personally.* Certain plaintiffs were the holders of the following decree obtained on a mort-

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(c) COSTS—*contd.*

gage bond: "It is ordered that the delendants shall pay to the plaintiffs the sum of R2,550 and costs R312, total R2,862, within two months from the date of the signing of the decree; interest will run on the said amount at the rate of 6 per cent. per annum up to realization. If the delendants do not pay the amount within the time prescribed, they will lose their right of redeeming the property mortgaged, and possession thereof will be given to the

under the terms of the decree; and this order was upheld by the District Judge on appeal. *Held*,

33. ——— Decree on mortgage—Decree for foreclosure—Order absolute for foreclosure—Mortgagee obtaining possession—Subsequent application by mortgagee to execute order for costs—Civil Procedure Code, s. 220. A decree for foreclosure containing a distinct and separate order for costs was afterwards confirmed by an order absolute for foreclosure, and the mortgagee under such order obtained possession. Subsequently he applied for execution of the order for costs. *Held*, that the costs awarded could not be considered part of the

1 L R 14 Cal. 185, referred to. DAMODAR DAS v. BUDH KUMAR. I. L. R. 10 All. 179

34. ——— Decree under s. 88 of Transfer of Property Act (IV of 1882)—Civil Procedure Code, 1882, ss. 219, 220—Decree apparently awarding costs twice over. A decree drawn up under s. 88 of the Transfer of Property Act, 1882, was properly framed in accordance with the requirements of that section, but, in addition to the prescribed contents of such a decree, contained a clause

latter clause was merely a formal compliance with

RAMJI V. ABUL KAM, All. W. N. (1893) 63, on this point overruled. MAQBUL FATIMA v. ISHTA PRASAD. I. L. R. 20 All. 523

35. ——— Order for costs in remand order directing "costs to abide result"—Execution for such costs when same not specified in Court below—Materials necessary for ascertaining

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(c) COSTS—*contd.*

result of remand for purpose of giving costs. Where an Appellate Court, after setting aside the decree of the lower Court, remanded the case, and the order as to costs provided "cost will abide the result;" *Held*, that, if the result of the remand was entirely in favour of the successful party, he was entitled, as a matter of course, to the costs in question, even if the decree of the lower Court after remand did not contain any such direction. That the only materials that should be placed before the Court to determine the result of the remand, are the judgment and the decree made in the case. FANI BHUSAN ROY CHOWDHURY v. BANIA SUNDARI DEBI.

4 C. W. N. 343

costs, it should be so stated in the decree or order. Where the guardian is simply declared liable for them as the defendant in the case, the liability must be taken to refer to him as the representative of the minor and representing his estate. KUNUL CHANDER SEN v. SURBESWAR DASS GUPTA.

21 W. R. 296

BRJESSTREE DASSIA v. KISHORE DASS

25 W. R. 316

37. ——— Rejection of suit in form *pauperis* by guardian on behalf of minor—Personal liability for costs of suit. Where a guardian obtains permission to sue in form *pauperis* on behalf of a minor, the rejection of the suit supplies no ground for throwing the costs of the suit on the guardian; and where the terms of a decree do not make any such distinct order as to costs, no expression of opinion in a judgment can impart any such liability for costs into the decree. BRJESSTREE DASSIA v. KISHORE DASS. 25 W. R. 316

## (f) DEED, EXECUTION OF.

38. ——— Decree directing execu-

over the title-deeds to the plaintiff. December 1893, leaving two more

convey it to his nephews and interest in the said property. brought this suit to establish found on the evidence the pursuance of the decree

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(f) DEED, EXECUTION OF—*concl.*

by R, and the decree itself had not been registered. Held, that the decree merely vested in the defendants, 1, 2, 3, 4, and 5 the immediate right to have a conveyance of the property executed, but such

MUKERJEE . . . 3 C. W. N. 30

## (g) EJECTMENT.

39. ——— Suit for arrears of rent—*Ejectment in default of payment—Act X of 1859, s. 78.* Where a plaintiff sued for arrears of rent, praying that, if they were not paid, defendant should be ejected, and the Deputy Collector gave him a

MAROMED v. BAHARUOLLAH . 13 W. R. 240

## (h) ENDOWMENT.

40. ——— Construction of a decree as to the appointment of a manager of the

to his fitness, the subordinate Court should appoint. If that Court found him unfit, it was to appoint a tambiran of that adhinam upon its own selection. In execution, the pandara named a tambiran for the office, but died before the inquiry as to his fitness. His successor, as head of the adhinam, petitioned to withdraw the nomination, naming another tambiran. The subordinate Court made an order disallowing the withdrawal, and, after

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(h) ENDOWMENT—*concl.*

NAMBALA TAMBIRAN v. SIVAGNANA DESIKA GNANA SAMPANDRA PANDARA SANNADHI

I. L. R. 17 Mad. 343

L. R. 21 I. A. 71

41. ——— Jujmani right. The phrase "jujmani right" in a decree was construed to mean the right to participate in the offerings made to the idol, and not the offerings or presents which were made to the priest himself. JADUB CHUNDER CHUCKERBUTTY v. BHUBO SOONDHUR DABEE

20 W. R. 331

42. ——— Decree against shobait—*Civil Procedure Code (Act XIV of 1882), ss. 244 and 278—Decree personal against shobait—Claim to attached property on behalf of idol, if may be tried in execution proceedings.* When immovable property

Principle. JOGENDRA NATH SIKKAR v. GOBINDA CHANDRA DUTTA (1908) . 12 C. W. N. 310  
s. c. I. L. R. 35 Calc. 384

43. ——— *Civil Procedure Code (Act XIV of 1882), ss. 244 and 278—Personal decree against shobait—Execution against debutter*

followed. AMAR CHAND KUNDU v. NANI GOPAL MOOKERJEE (1907) . 12 C. W. N. 308

## (i) EXECUTION.

44. ——— Execution of decree—*Uncertified payment out of Court—Subsequent execution by decree-holder—Suit to recover sum paid*

not certified in the manner required by a . . . Code of Civil Procedure, and the decree-holder

paid out of Court to the . . . barred either by s. 244 or by s. 258 of the Code. Sharda v. Ganga Sahai, I. L. R. 3 All. 538, and Periatambi Udayan v. Vellaya Goundan, I. L. R. 21 Mad. 409, followed. GENDU v. NIHAI KUNWAR (1903) . I. L. R. 30 All. 464

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

45. ————— *Practice—Notice*  
*—Application for transmission of decree—Execution—Court which should issue notice—Code of Civil Procedure (Act XIX of 1882), ss. 223 and 248.*  
 The notice under s. 248 of the Code of Civil Procedure may be served by the Court to which the decree is transmitted for execution and not necessarily by the Court which passed it and to which an application is made for transmission under s. 223 of the Court. The Court has a discretion whether or not it will issue a notice before ordering transmission. Ordinarily, in a case like the present, it should be left to the Court, to which the decree is to be transmitted, to issue the notice. *SREENATH ROY v. RAMESH CHANDRA ACHARYA CHAUDHURI (1908) 12 C. W. N. 897*

46. ————— *Execution—Civil Procedure Code (Act XIX of 1882), ss. 223 and 649—*  
*“Court, which passed the decree”—Civil Courts, Act (XIX of 1887), s. 13.* After a decree was obtained in the Court of the Subordinate Judge of Muzaffarpore the Local Government by notification formed Darbhanga, which was included in the Muzaffarpore district, into a separate district. Afterwards the assignee of the decree applied to the Subordinate Judge of Darbhanga for substitution of his name and execution of the decree. The suit, if it had been instituted at the time of the application, would have had to have been instituted at the Darbhanga Court. *Held*, that under the provisions of s. 649 of the Civil Procedure Code the Court at Darbhanga had jurisdiction to entertain the application. *Latchman Pande v. Madan Mukun Shye, I. L. R. 6 Cal. 513, and Jahar v. Kamini Devi, I. L. R. 29 Cal. 238, followed. Kalspada Mukerjee v. Dina Nath Mukerjee, I. L. R. 25 Cal. 315, and Panduranga Mudaliar v. Pithilinga Reddi, I. L. R. 30 Mad. 537, distinguished. UPIT NARAIN CHAUDHURI v. MATHURA PRASAD (1908)*

*I. L. R. 35 Cal. 974  
 s.c. 12 C. W. N. 859*

47. ————— *Question relating to the execution, discharge or satisfaction of the decree—*  
*—Contest between the holder of a decree for an undivided share of joint property and an auction-purchaser pendente lite* One Wilayati Begam obtained a decree for possession of a share in certain joint and undivided zamindari property, and this decree was executed so far as might be by delivery of formal possession. While the suit in which this decree was passed was pending, one Raghunath Das obtained a simple money decree against another co-sharer in the zamindari and in execution thereof brought the property to sale and it was purchased by Nand Kishore. Nand Kishore got

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

unobnoxious to the prohibition contained in s. 244 of the Code of Civil Procedure *Gulzari Lal v. Madho Ram, I. L. R. 26 All. 444, distinguished. Jagan Nath v. and Kano v. to. WILAYA*

48. ————— *Decree—Mistake—*  
*—Step in aid of execution—Limitation Act (XV of 1877), Art. 179—Application against a dead person—*  
*—Bond fide mistake. If an application for execution of a decree be made under the influence of a bond fide mistake against a dead person, though that application cannot be acted upon, still it is an application in aid of execution within the meaning of Art. 179, cl. 4 of the Limitation Act (XV of 1877), which saves the execution of the decree from being time barred. Samia Pillai v. Chockalinga Chettiar, I. L. R. 17 Mad. 76, and Balkrishna Das v. Bidmati Koer, I. L. R. 20 Cal. 335, followed. Madho Prasad v. Kesho Prasad, I. L. R. 19 All. 337, dissented from. BIRIN BEHARI MITTER v. BIRI ZOHRA (1908)*

*I. L. R. 35 Cal. 1047*

49. ————— *Civil Procedure Code (Act XIV of 1882), ss. 258, 244—Satisfaction of decree not certified owing to decree-holder's fraud—*  
*—Application after time to have certified. S. 258 of the Civil Procedure Code prevents an executing Court from taking cognizance of an uncertified adjustment of a decree. Dinobandhu Nundy v. Harunati Dasseer, 8 C. W. N. 395; s. c. I. L. R. 31 Cal. 480, explained. Ramdayal v. Ram Hari, I. L. R. 20 Cal. 32, and Baurgulu v. Bapanna, I. L. R. 15 Mad. 302, followed. Where, however, the judgment-debtors complained that the decree-holder had by fraud kept them in ignorance till*

*Kumar Sanyal v. Kali Dass Sanyal, I. L. R. 19 Cal. 683, followed. GADADHAR PANDA v. SHYAM CHURN NAIK (1908) 12 C. W. N. 465*

50. ————— *Execution of decree—Sale in execution—Non-payment by purchaser of deposit required by law—Fresh sale—Claim*

*Required by s. 200 of the Code of Civil Procedure, and the property was subsequently—but not “forthwith”—put up again to auction and sold for*

DECREE—*contd.*2 CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

on the second sale. *Intizam Ali Khan v. Narain Singh*, I. L. R. 5 All. 316, followed. *AMIR BEGAN v. BANK OF UPPER INDIA* (1908)

I. L. R. 30 All. 273

51. *Decree-holder bidding for property with permission—Right to set-off amount due to decree-holder against purchase-money.* The first paragraph of s. 294 of the Civil Procedure Code (Act XIV of 1882) requires the permission of the Court to enable the holder of a decree to bid for property. If he gets that permission and gets it without qualification, then the amount due on the mortgage may, if he so desires, be set off. But it may be one of the terms on which the permission is granted that the

52. *Question relating to the execution, discharge or satisfaction of a decree—Appeal—Auction-purchaser representative of judgment-debtor, not of decree-holder.* A purchaser at an auction sale in execution of a decree is the representative

therefore a judgment-debtor's application under s. 310A of the Code of Civil Procedure had been allowed, it was held, that no appeal by the auction-purchaser would lie, inasmuch as no appeal was given by s. 588, nor did the case fall within the purview of s. 244 of the Code. *Bashir-ud-din v. Jhora Singh*, I. L. R. 19 All. 140, followed. *Kuber Singh v. Sahib Lal*, I. L. R. 27 All. 263; *Gulzari Lal v. Madho Ram*, I. L. R. 26 All. 447; *Maganlal Mulji v. Doshi Mulji*, I. L. R. 25 Bom. 631, and *Raynor v. The Mussorie Bank, Limited*, I. L. R. 7 All. 681, referred to. *Intizam Begam v. Dhumman Begam*, I. L. R. 29 All. 275, dissented from. *ANANDI KUNWARI v. AJUDHIA NATH* (1908)

I. L. R. 30 All. 379

53. *Decree for possession of immovable property—Sale of property decreed—Right to execute decree.* If a decree-holder holding a decree for possession of immovable property sells a portion of such property, the sale does not, without express provision to that effect,

54. *Execution of decree—Attachment—Right to attach profits not yet due.* Held, that a mere right to receive profits, the profits in question not having yet accrued due, is not a debt. *Baroda*  
Calc. 31.

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

*Shah, I. L. R. 28 Cal. 483; Syed Taffazzool Hossain Khan v. Raghoonath Pershad*, 11 Moo. I. A. 40; *Jones v. Thompson*, 27 L. J. Q. B. D. 234; and *Webb v. Stenton*, 11 Q. B. D. 518, referred to. *SHER SINGH v. SRI RAM* (1908)

I. L. R. 30 All. 248

55. *Limitation Act (XV of 1877), Sch. II, Art. 178—Execution of decree—Limitation—Terminus a quo.* Although the grant of a certificate is a necessary preliminary to an application under s. 318 of the Code of Civil Procedure, such application will be barred under Art. 178 of the second schedule to the Limitation Act, 1877, if not made within three years of the date of the certificate, that is to say, the date of the confirmation of sale. *Basappa v. Marya*, I. L. R. 3 Bom. 433, and *Kashinath*  
R. 17 Bom.  
Singh,  
SINGH  
30 All. 380

56. *Execution of decree—Limitation Act (XV of 1877), Sch. II, Art. 179 (5)—Date of issuing notice.* Held, that the expression "the date of issuing notice under the Code of Civil Procedure, s. 248," as used in Art. 179 (5) of the second schedule to the Limitation Act,

57. *Receiver—Appointment of receiver to realize amounts of decree.* Where a decree-holder had in execution of his decree attached two decrees held by the judgment-debtor against third parties; Held, that s. 603 of the Code of Civil Procedure gave power to the Court to appoint a receiver to realize the amounts of the attached decrees, where it appeared that by so doing the interests of both decree-holder and judgment-debtor would be better protected. *PARTAB SINGH v. DELHI AND LONDON BANK* (1908).

I. L. R. 30 All. 393

58. *Sale proclamation—Service, it should be in every part of the property—Value, statement of, if material—"Property."* The statement in the sale proclamation of a value which proves to be inadequate is an irregularity, but not a material irregularity. Such statements are made without much consideration and it is well known that purchasers do not take

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

ly from the rest. Though it is a sound rule to follow, viz., to serve a separate proclamation in each of the villages embraced in the same process when they are at such a distance from one another that there is no moral certainty of communication to a person interested in the one of what is publicly done in the other, the fact that the processes were not served in each does not necessarily constitute an infringement of the provisions of s. 274 of the Civil Procedure Code. *Tejpara Sundari v. Durga Churn Pal*, I. L. R. 11 Calc. 74, referred to. *Pedro Antonio v. Jalbhoy Adeshur*, I. L. R. 12 Bom. 368, commented on. *ABDUL KASHIM v. BENODE LAL DHONE* (1907)

12 C. W. N. 757

59. ———— Execution of decree—Purchase at auction sale by decree-holder—Suit by decree-holder to obtain possession of property so purchased. Where the decree-holder himself purchases property at an auction sale in execution of his own decree, but fails to obtain possession, his remedy is by application under s. 244 of the Code of Civil Procedure: he cannot bring a separate suit for possession. *Seru Mohan Bania v. Bhagoban Din Pande*, I. L. R. 6 Calc. 642, and *Kishore Mohun Roy Chowdhury v. Chunder Nath Pal*, I. L. R. 14 Calc. 644, distinguished. *Madhusudan Das v. Gobinda Priya Chowdhurani*, I. L. R. 27 Calc. 34, *Kattayat Pathumayi v. Raman Menon*, I. L. R. 26 Mod. 740, and *Kahan Singh v. Thakur Das*, All. W. N. (1916) 87, followed. *Prosunno Coomarr Sanyal v. Kuli Das Sanyal*, I. L. R. 19 A. 169, referred to. *SHEO NARAIN v. NUR MUHAMMAD* (1908) . . . . . I. L. R. 30 All. 72

60. ———— Refund of money realized in execution of a decree afterwards reversed in appeal—Limitation—Execution of decree stayed by injunction—Procedure. On the 7th October 1901 an *ex parte* decree on a mortgage was made

ing certain money deposited in Court to their credit. After this decree was passed, the appellants withdrew out of this amount Rs. 9,041. The decree was set aside on the 9th July 1904. The s. . . . . 1904 favour was a Decen

the respondents applied for a refund of the difference (Rs. 9,041) between the sum realized by the plaintiffs and the sum finally decreed. Held, (i) that the plaintiffs were at liberty to proceed either by application or by suit. *Shaman Furshad Roy Chowdhury v. Hurro Furshad Roy Chowdhury*, 10 Moo. I. A. 203. *Collector of Meerut v. Killa Prasad*, I. L. R. 28 All. 665, and *Shiam*

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(ii) EXECUTION—*contd.*

*Sundar Lal v. Kaiser Zamani Regam*, I. L. R. 29 All. 143, referred to; and (ii) that the application was not barred by limitation. *Harish Chandra Shaha v. Chandra Mohan Das*, I. L. R. 25 Calc. 113, distinguished. *PITHAL DAS v. JANNA PRABAD* (1908) . . . . . I. L. R. 30 All. 476

61. ———— Application for execution—Service of notice on the judgment-debtor after the decree was barred—Limitation—Held, that an . . . . . aft . . . . . in . . . . . did *Duchit v. Gria Kant Lahiri*, I. L. R. 8 Calc. 51, and *Narendra Nath Pahari v. Bhopendra Narain Roy*, I. L. R. 23 Calc. 374, distinguished. *Biteshur Mallick v. Maharajah Mahlab Chandra Bahadur*, 10 W. R. (F. B.) 8, referred to. *UNED ALI v. ABDUL KARIM CHATRAKSHI* (1908) . . . . . I. L. R. 35 Calc. 1080

62. ———— Shebait's—Claims to attached property by shebait's—Civil Procedure Code (Act XII of 1882), ss. 244, 278. Judgment-debtors, in their capacity as shebait's, can maintain an application under s. 244 of the Code of Civil Procedure and get an adjudication of the question raised by them. Where judgment-debtors make . . . . .

s. 244 of the Code of Civil Procedure. *PUNCHUNN Bundopadhyay v. Rabio Ribi*, I. L. R. 17 Calc. 711, referred to. *JOGENDRA NATH SARKAR v. GOBINDA CHANDRA DUTT* (1908) . . . . . I. L. R. 35 Calc. 384  
s.c. 12 C. W. N. 310

63. ———— Civil Procedure Code (Act XII of 1882), ss. 244 and 553—Reversal of decree on appeal, effect of—Separate suit, maintainability of. S. 244 of the Civil Procedure Code does not apply in its entirety to proceedings had under s. 553 of the Code for restitution of property taken in . . . . .

appeal.  
*Purshad Chunder*

I. L. R. 35 Calc. 285

64. ———— Limitation—Application in continuation of previous proceedings in execution. On the 7th December 1900 . . . . . of . . . . .

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

for a fresh sale. On that date, no steps having been taken by the decree-holder, the case was ordered to be stayed off "for the present." On the decree-holder again applying, which was still *oid*. *Held*, that execution, but the former proceedings, and was not barred by limitation. *Dukhiram Srimani v. Jogendra Chandra Sen*, 5 C. W. N. 347, distinguished. *Rahim Ali Khan v. Phil Chand*, I. L. R. 18 All. 452, referred to. *MUJIB-ULLAH v. UMED BIBI* (1908)

I. L. R. 30 All. 400

65. ———— *Execution—Civil Procedure Code (Act XIV of 1882), s. 241—Transfer of Property Act (IV of 1882), s. 93.* An application for redemption or foreclosure of a decree nisi is not an application in execution under the Civil Procedure Code, but must be made in Court under the Transfer of Property Act; and until a decree nisi is made absolute there is no decree capable of execution. Where a decree nisi is contem-

## (j) FORFEITURE.

66. ———— *Stipulation involving forfeiture—Penalty—Consent decree.* A consent decree provided that the defendant should retain possession of certain land in perpetuity on payment of a fixed annual rent to the plaintiff, but that the plaintiff might re-enter in case the defendant failed to pay the rent. The rent was not paid, and the transferee of the plaintiff's interest under the decree sued for possession. The defendant contended that the above clause in the decree was a penal stipulation which the Court would not enforce. *Held*, that the doctrine of penalties was not applicable to stipulations contained in decrees, and that the plaintiff was entitled to recover. *SHRIKULI TIMAPA HEGDA v. MAHABLYA* . . . I. L. R. 10 Bom. 435

## (k) HEIR.

67. ———— *Liability of heir of mortgagor from assets—Assets of estate.* A decree declaring the heir of a mortgagor liable to pay the mortgage-debt, out of such assets as he had received

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(k) HEIRS—*contd.*

from the estate of his father (the mortgagor) was held not to include assets which came to him after paying through the hands of another heir (his brother) in right of inheritance from that brother. *HAJEE ALI v. ALI NURKEE* . . . 12 W. R. 240

## (l) HINDU WIDOW.

68. ———— *Hindu widow—Construction of order made by Settlement Officer awarding estate to a Hindu widow—Transfer by widow, effect of.* The plaintiffs obtained a declaratory decree that they were the reversioners and heirs apparent,

to the deceased husband. All parties had proceeded, so far as to the present appeal, on the view that the surviving widow had the widow's estate only. But an order made in the course of the settlement operations in 1865 had conferred the estate of the deceased on the three widows as well as on his mother, in equal shares of one-fourth each. *Held*, that there was nothing in this order to show an intention to give to the mother and widows anything more than an interest, such as that which a Hindu widow takes; and that the inheritance would devolve in due course of law, an alienation which the widow had made operating only for her lifetime. *MUNYALAL CHAONRI v. GADRAJ SINGH* . . . I. L. R. 17 Cal. 248

## (m) INJUNCTION.

69. ———— *Decree for an injunction—Sale of the land—Subseq.*

was in the circumstances of the case no bar to the plaintiff's suit. *JAMSETJI MANEKJI v. HARI DAYAL* (1907) . . . I. L. R. 32 Bom. 181

## (n) INSTALLMENTS.

70. ———— *Money payable by instalments—Provisions for default in payment.* A decree, of which the terms had been arranged by *solehnamah* between the parties, for payment of money by instalments with interest at six per cent.,

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(n) INSTALLMENTS—*concl.*

was construed to provide also for three contingencies, viz., non-payment at due date (a) of the

of (c), execution might issue for that instalment with interest at twelve per cent. from the date of the decree. The decree-holder having accepted payment of the first instalment on the footing of (c) —*Held*, that he had not, by any admission or settlement, precluded himself from insisting on the above construction as to (b) **BALKISHEN DAS v. RUN BAHADUR SINGH**

I. L. R. 10 Calc. 305; 13 C. L. R. 418  
I. L. R. 10 I. A. 182

71. — *Construction of decree for money payable by instalments—Term making the entire sum payable on default in payment of some of the instalments at certain dates* A decree for money payable by yearly instalments made the full amount payable on both the first instalment being unpaid on the due date and two consecutive instalments being in default and unpaid at the same time. Defaults were made, and questions as to the rate of interest, on what amounts and for what periods, by reason of the debtor's delay in payment were raised.

having been paid, though not at due date, and applied in payment of interest, he was not entitled to such execution because the contingency on the happening of which he would have been entitled thereto had not happened **SHAM KISHEN DAS v. RUN BAHADUR SINGH**

I. L. R. 15 Calc. 761

## (o) INTEREST.

72. — *Modification of decree on appeal—Omission to give interest.* Where the lower Court gave a decree for Rs 11 with interest and the Sudder Court modified that decree by giving Rs 1,353:—*Held*, that the Sudder Court must have meant to give that sum with interest also. **ROSSOOL MAHOMED v. BASSOO BEWA**

8 W. R. 163

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(o) INTEREST—*contd.*

entire sum of money covered by the bond" —*Held*, that the decree meant something more than the principal, and could only mean the principal together with the interest accruing thereon. **ALFH AHMED SHAHAZADANUSHEFN v. RANU SINGH**  
18 W. R. 277

74. — *Mortgage-decree directing accounts, etc., to be taken and report given—Tender of principal and interest before report—Refusal to accept tender and subsequent charge of interest.* A decree directed accounts to be taken of what was due for principal and interest under a mortgage, such interest to be allowed "up to the time of payment hereinafter mentioned, or until six months from the date of the decree," whichever first should happen, and further directed the plaintiff to pay what should be reported due for principal and interest up to the date of payment, and costs with interest at six per cent. from the date of taxation until payment, within six months after the Registrar should make his report. The plaintiff tendered a sum sufficient to cover the principal and interest due, but insufficient to cover costs at a time prior to the drawing up of the Registrar's report. *Held*, that the payment of principal and interest "hereinafter mentioned" referred to a time after the Registrar had made his report, because the sum to be paid was a sum reported to be due by the Registrar, and that, therefore, a tender, made before the Registrar's report was given, was not a sufficient tender to stop interest from the date of the tender. **ADMINISTRATOR GENERAL OF BENGAL v. AHMED BEGG**

I. L. R. 9 Calc. 33

75. — *Execution—Claim of interest not provided by the decree—Acquiescence.* A mortgage decree ordered payment of Rs 1,415-10-6 before March 1886, but contained no provision as to interest. In execution of this decree, the defendant presented several applications (*darikhasts*), the last of which was in 1898, whereby he sought to recover Rs 2,570-4-5 as principal and interest and in default to have the amount realized by sale of the property. On the 2nd March, and again on the 7th August 1900, the judgment-debtor got the sale postponed saying that he would satisfy the decree. On the 12th October 1900 the plaintiff again asked for execution.

At last on the 20th Sept. 1900 the sale was ordered.



DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(i) EXECUTION—*contd.*

for a fresh sale. On that date, no steps having been taken by the decree-holder, the case was ordered to be struck off "for the present." On the 13th January 1906, the decree-holder again applied asking that the property, which was still under attachment, might be sold. *Held*, that this was not a fresh application in execution, but merely an application to revive the former proceedings, and was not barred by limitation. *Dukhiram Srimani v. Jogendra Chandra Sen*, 6 C. W. N. 347, distinguished. *Rahim Ali Khan v. Phul Chand*, I. L. R. 18 All 432, referred to. *MUJIB-ULLAH v. UMED BIBI* (1903)

I. L. R. 30 All. 409

65. — *Procedure—Civil Procedure Code (Act XIV of 1882), s. 244—Transfer of Property Act (IV of 1882), s. 93.* An application for redemption or foreclosure of a decree *nisi* is not an application in execution under the Civil Procedure Code, but must be made in Court under the Transfer of Property Act; and until a decree *nisi* is made absolute there is no decree capable of execution. Where a decree *nisi* contemplated an account being taken, but was silent as to how that account was to be taken, and the Court has declined to modify the decree by inserting such a direction, it would be out of the question to compel a party in execution-proceedings to do that which he is not directed to do by the decree. *Ajudhia Pershad v. Baldeo Singh*, I. L. R. 21 Calc. 818, and *Nandram v. Babaji*, I. L. R. 22 Bom. 771, followed. *JERANGEN COWASSI v. THE HOPE MILLS, LIMITED* (1903) . . . I. L. R. 33 Bom. 273

## (j) FORFEITURE.

66. — *Stipulation involving forfeiture—Penalty—Consent decree.* A consent decree provided that the defendant should retain possession of certain land in perpetuity on payment of a fixed annual rent to the plaintiff, but that the plaintiff might re-enter in case the defendant failed to pay the rent. The rent was not paid, and the transferee of the plaintiff's interest under the decree sued for possession. The defendant contended that the above clause in the decree was a penal stipulation which the Court would not enforce. *Held*, that the doctrine of penalties was not applicable to stipulations contained in decrees, and that the plaintiff was entitled to recover. *SHIREKULI TIMAPA HEGDA v. MAHABLYA* . . . I. L. R. 10 Bom. 435

## (k) HEIR.

67. — *Liability of heir of mortgagor from assets—Assets of estate.* A decree declaring the heir of a mortgagor liable to pay the mortgage-debt out of such assets as he had received

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(k) HEIRS—*contd.*

## (l) HINDU WIDOW.

68. — *Hindu widow—Construction of order made by Settlement Officer awarding estate to a Hindu widow—Transfer by widow, effect of.* The plaintiffs obtained a declaratory decree that they were the reversioners and heirs apparent, expectant on the future death of a widow who, at the time of suit, had survived two co-widows, and that they, the plaintiffs, would be entitled to inherit at her death the estate that had belonged to the deceased husband. All parties had proceeded, as far as to the present appeal, on the view that the surviving widow had the widow's estate only. But an order made in the course of the settlement operations in 1893 had conferred the estate of the deceased on the three widows as well as on his mother, in equal shares of one-fourth each. *Held*, that there was nothing in this order to show an intention to give to the mother and widows anything more than an interest, such as that which a Hindu widow takes; and that the inheritance would devolve in due course of law, an alienation which the widow had made operating only for her lifetime. *MUNNALAL CHAUDRI v. GAJRAJ SINGH* . . . I. L. R. 17 Calc. 248

## (m) INJUNCTION.

69. — *Decree for an injunction to protect land—Sale of the land—Subsequent suit by the purchaser for an injunction—Execution of the decree—Effect of.* A decree for an injunction to protect land was obtained and the land was sold. The purchaser then brought a suit for an injunction to restrain the execution of the decree. *Held*, that the decree was not subject to the provisions of the Act relating to the execution of decrees for injunctions. *Obtained an*

decree for an injunction to protect land. The land was sold. The purchaser then brought a suit for an injunction to restrain the execution of the decree. *Held*, that the decree was not subject to the provisions of the Act relating to the execution of decrees for injunctions. *Obtained an*

## (n) INSTALLMENTS.

70. — *Money payable by instalments—Provisions for default in payment.* A decree, of which the terms had been arranged by solahnamah between the parties, for payment of money by instalments with interest at six per cent.,



DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(o) INTEREST—*contd.*

darkhast, promised to pay it, and on the strength of that representation and promise he obtained from the Court adjournments from time to time. He must be treated as having contracted an obligation to pay interest on the decretal amount from the 12th October 1900. *NARAYAN v. RAOJI* (1901) 1 L. R. 28 Bom. 393

76. — *Mortgage Bond—*

— *Undue influence—Decree on mortgage bonds in the form provided by ss. 86 and 88 of the Transfer of Property Act (IV of 1882)—Stipulations in bonds amount to penalties—Compound interest—Increased interest on default—Compensation for breach of contract—Interest after date fixed for payment, power to give—Interest at contract rate after such date.* Compound interest at a rate exceeding the rate of interest on the principal money, being in excess of and outside the ordinary and usual stipulation, may be regarded as in the nature of a penalty. Where a stipulation in a mortgage bond for increased interest on default is retrospective, and the increased interest runs from the date of the bond, and not merely from the date of the default, it is always to be construed as a penalty, because an additional money payment becomes in that case immediately payable by the mortgagor. But the increased interest is not therefore to be disallowed altogether, for by s. 74 of the Contract Act reasonable compensation not exceeding the amount of the penalty is to be received by the party complaining of the breach of the contract. Where two mortgage bonds were executed each providing for interest, compound interest, and on default increased interest from the respective dates of the execution of the bonds, and on the date of the execution of the second bond the amount due on the first bond with interest was included in the principal of the second bond; the High Court in a decree on the bonds held that the increased interest by way of compensation on the first bond should run only from the date of execution of the second bond, and that on the second bond should run only from the date of default on that bond, and allowed compound interest at the same rate only as that at which simple interest was stipulated for in the bond, and the Judicial Committee affirmed that decree. *Heli*, also, that the decree of the High Court which was in the form provided by ss. 86 and 88 of the Transfer of Property Act (IV of 1882) was right in allowing interest after the time fixed for payment, until realization, at the Court rate of interest and not at the mortgage rate. The scheme and intention of the Transfer of Property Act was that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest and costs due on a fixed day, and that after the expiration of that day, if the property should not be redeemed, the matter should pass from

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(o) INTEREST—*contd.*

the domain of contract to that of judgment, and the rights of the mortgagee should thenceforth depend, not on the contents of the bond, but on the directions in the decree. Neither of the cases *Rameswar Koer v. Mehdi Hossein Khan*, L. R. 25 I. A. 179; 1 L. R. 26 Cal. 39; and *Maharaja of Bharatpur v. Kenno Dei*, L. R. 23 I. A. 35; 1 L. R. 23 All. 181, is an authority for the contention that interest at the mortgage rate can be given after the date fixed for payment, until realization. In the former case the question was not raised, and in the latter case, although interest after the fixed date was given, it was not at the mortgage rate, but at the Court rate of interest. Ss. 86 and 88 of the Transfer of Property Act contain no directions for interest beyond the date to be fixed by the Court up to which the account is directed to be taken; but it has long been the uniform practice of the Calcutta High Court to give such interest, and the power

## (p) MAINTENANCE.

77. — *Maintenance, decree for—Arrears of maintenance—Prospective decree for contingent arrears.* Where a decree gave a certain sum per mensem to the plaintiff, and declared that the decree-holder should realize that amount monthly from the judgment-debtor—*Held*, that the decree merely recognized and declared the decree-holder to be entitled to the certain monthly allowance, but did not authorize her in execution of the decree to claim and obtain any arrears that might at any time fall due. *JULEBIA CHITTA KOER v. BHAGEE KOER* . . . 6 N. W. 41

## (q) MESNE PROFITS.

78. — *Mesne profits, decree for—Indefinite decree—Mesne profits after institution of suit.* Where a plaintiff clearly asked in his claim for mesne profits subsequent to the institution of the suit, a decree in effect (though obscurely worded) for his full claim will extend to such profits. *SKINNER v. ALDWELL* . . . 2 N. W. 3

79. — *Order Procedure Code, 1859, ss. 196, 197.* Where the words of

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(g) MESNE PROFITS—*contd.*

mesne profits claimed. TOONDUN SINGH v. POKLIZ  
NARAIN SINGH 20 W. R. 54

80. *Ascertainment, date of—Interest on mesne profits.* A decree for interest upon mesne profits from the date on which they are ascertained was held to mean from the date they are ascertained by the Court, and not by an ameen. DOOGA SOONDERI DEBIA v. SIBRA-SUREE DABIA 10 W. R. 391

81. *Execution of decree—Interest on mesne profits.* A decree stated that mesne profits were to be recovered "with interest from the date of their ascertainment." *Held*, that the Court executing this decree had no authority to allow interest year by year upon the collections which ought to have been received. HURRO DURGIA CHOWDHRAIN v. SURUT SUNDARI DEBI I. L. R. 8 Cal. 332

82. *Decree for possession and mesne profits—Local enquiry.* A decree declared the plaintiff entitled to the possession of land with waslat from a date named, directing "the amount thereof to be ascertained on local enquiry," and to bear interest from the date of its ascertainment until payment, without saying more. *Held*, that the decree-holder was entitled to waslat until the date of delivery of possession to him. *Semle*: It was not necessary for the judicial officer who made the enquiry to hold a Court on the spot. FAKHARUDDIN MAHOMED ASBAN v. OFFICIAL TRUSTEE OF BENGAL I. L. R. 8 Cal. 178  
10 C. L. R. 176  
L. R. 8 I. A. 197

83. *Liability for mesne profits—Intervenor.* In a suit for possession and waslat, N was originally the answering defendant; but when the suit had to be determined, U intervened of her own accord, and her name was, at her own request, substituted in the decree for that of N. *Held*, that, on the wording of the decree, U was the person responsible for mesne profits and costs under the decree. UDEIKA DASSIA v. CHIRUP-JEEB PERSHAD BOSE 13 W. R. 61

84. *Decree of Privy Council reversing decree declaratory of title—Mesne profits realized before reversal of decree.* Objections having been successfully raised under s. 246, Act VIII of 1869, against a decree-holder's attachment of a tenure, as the property of his judgment-debtor, he brought a regular suit, and obtained a declaratory decree that the property belonged to his debtor. He then took out execution attached, sold, and himself purchased the property in question. The objector in the meantime appealed to the Privy Council, and, having obtained a decree reversing the declaratory decree, took out execution against the opposite party for costs and waslat. The opposite party objected, but the

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(g) MESNE PROFITS—*contd.*

Judge allowed the execution to proceed, and deputed an ameen to ascertain the amount of mesne profits collected. *Held*, that the decree of the Privy Council could not be held to include restitution of everything that the decree holder would have enjoyed had the property not been sold in execution. GOPAL CHUNDER CHUCKERBUTTY v. OODDY LALL DEY 12 W. R. 411

85. *Declaratory decree—Separate suit—Mesne profits, meaning of—Decree awarding mesne profits.* In 1878 the plaintiff obtained a decree declaring that he was entitled to receive, every year, from the defendant 12 per cent. of the rents and profits of a certain inam village. The decree also awarded mesne profits from the date of the institution of the suit. In 1884 the plaintiff sought, in execution of this decree, to recover his share of the profits of the village for the years 1882-83 and 1883-84. *Held*, that the plaintiff could not proceed to enforce his rights under the decree by way of execution. His remedy was by a suit on the right established by the decree. The decree had merely declared the right of the plaintiff to a certain share of produce, and payment was ordered of mesne profits computed according to certain principles. Such an award was not an award of a periodical payment in *eternum*. The very word "mesne" implied a terminus *ad quem* as well as a *quo*, and, in the absence of a special order, the terminus was the date of the decree. VINAYAK AMBIT DESHPANDE v. ARAJI HAISTARAY I. L. R. 12 Bom. 416

86. *Interpretation of decree awarding "future mesne profits"—Civil Procedure Code, 1882, s. 211.* A decree for possession of immovable property was passed by the District Judge of Mirzapur on the 12th of November 1887 in favour of a plaintiff declaring that "the plaintiff is also entitled to mesne profits." That decree was affirmed by an order of Her Majesty in Council, dated the 11th of May 1895, without variation in respect of the order as to mesne profits. Possession of the immovable property to which the decree related was obtained by the decree-holder on the 30th of November 1895. *Held*, that the decree of the Privy Council was to be construed as a decree awarding mesne profits up to the date when possession was obtained and from the date of the institution of the suit. FAKHARUDDIN MAHOMED ASHAN v. OFFICIAL TRUSTEE OF BENGAL, I. L. R. 8 Cal. 178 L. R. 8 I. A. 197, and Paranj Chand v. Roy Radha Kishen, I. L. R. 19 Cal. 132, referred to. BHAJI BAHADUR SINGH v. BHUP INDR BAHADUR I. L. R. 19 All. 296

*Held*, by the Privy Council on appeal, that mesne profits were recoverable up to 11th May 1895 and (see s. 211 of the Civil Procedure Code, 1882) for a further period not exceeding three years until

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(g) MESNE PROFITS—*contd.*

recovery of possession. BHUP INDR BAHADUR SINGH v. BIRAJ BAHADUR SINGH

L. R. 27 I. A. 209

## 87. ———— Decree for mesne profits—

Decree silent as to the time down to which mesne profits were given—Construction of such decree—Civil Procedure Code (Act X of 1877), s. 211. A decree, dated 2nd July 1878, awarded possession

(Act X of  
as giving  
three year  
RAM v. KI

NARAYAN GOVIND MANIK v. SONO SADASHIV  
I. L. R. 24 Bom. 346

## (r) MONEY.

88. ———— Decree for money—Civil Procedure Code, 1877, s. 320—Rules prescribed by the Local Government under s. 320—Meaning of "decrees for the recovery of money." Held, that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation on such land, is a decree for money within the meaning of the rules prescribed by the Local Government under s. 320 of Act X of 1877. *BRACH V. RATI RAM* I. L. R. 4 All. 116

## (s) MORTGAGE.

89. ———— Decree on bond pledging immovable property—Right to execute.

90. ———— Civil Procedure

and he obtained a decree in the following terms: "Decree for plaintiff in favour of his claim and costs against defendant." Held, that the decree was to be regarded as simply for money and not for enforcement of lien. *THAMMAN SINGH v. GANGA RAM* I. L. R. 2 All. 342

DECREE—*contd.*2 CONSTRUCTION OF DECREE—*contd.*(s) MORTGAGE—*contd.*

91. ———— Suit for money and for lien on immovable property—Civil Procedure Code, 1877, s. 206. Where the plaintiff by his claim sought for a decree for money and enforcement of

was a decree for money only, and did not enforce the charge on the property. *MULUK FAKIR BULSHAH v. MANOHUR DAS*, 2 N. W. 79, followed. *HARSUKH v. MOGHRAJ* I. L. R. 2 All. 345

## 92. ———— Decree enforcing hypothe-

within a fixed time, and that, in the event of default, the plaintiff should be at liberty to bring such property to sale. The Court made a decree ordering the defendant to pay the plaintiff the amount claimed and costs, with interest, "in accordance with" such agreement. Held (*TURNER, J.*, and *OLDFIELD, J.*, dissenting), that such decree was a mere money-decree, and not one which gave the plaintiff a lien on such property. *JANKI PRASAD v. BALDEO NARAIN* I. L. R. 3 All. 218

## 93. ———— Money-decree.

The oblige of a bond for the payment of money, in which immovable property was hypothecated as collateral security, sued the obligor upon such bond claiming to recover the moneys due thereunder from the obligor personally and by the sale of the hypothecated property. He obtained a decree in such suit in these terms. "That the claim of the plaintiff, with cost of the suit and future interest at eight annas per cent. per mensem, be decreed." Held, by the majority of the Full Bench, that such decree was not merely a money-decree, but was also one for the enforcement of a lien. *JANKI PRASAD v. BALDEO NARAIN*, I. L.

Per Se  
Bulsh  
*Thamman Singh v. Ganga Ram*, I. L. R. 2 All. 342  
followed. *DEBI CHARAN v. PIRBHU DIN RAM*  
I. L. R. 3 All. 388

## 94. ———— Money-decree.

six per cent. per annum." The fourth page contained the following order: "The claim for Rs. 10,614.

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) MORTGAGE—*contd.*

11-0 be decreed by enforcement of hypothecation and auction-sale of talukh M; it is further decreed that the defendants do pay the plaintiff Rs. 1,002-0-6 costs of the suit." *Per* OLDFIELD, J. (STUART, C. J. dissenting).

document, and such decree was not a mere money-decree, but one enforcing the hypothecation of immovable property. *Per* STUART, C. J.—That, construing such decree with reference to the plaint and judgment in the suit in which it was made, and not with reference to the Court's signatures, such decree was not a mere money-decree, but one enforcing the hypothecation of immovable property. *RAM PRASAD RAM v. RAGHUNANDAN RAM*

I. L. R. 3 All. 239

95. ——— Decree on mortgage bond—*Right to execution against property of judgment-debtor other than that mortgaged.* In a suit upon a bond under which certain lands were mortgaged, the decree ordered "that the amount claimed together with costs be caused to be paid by the defendants to the plaintiffs in this way, that the property of the defendant be sold to satisfy the decree, the proceeds of the sale to be applied to the discharge of the debt, and the balance to be paid to the plaintiff." Held, that, under the circumstances, it must be presumed

*See* *MOONZORAD DOWLAH v. MEHIDI BROUN*, 7 C. L. R. 267

98. ——— Mortgage decree—*Right of debtor to pay off mortgage debt at once so as to avoid payment of high rate of interest.* Where a plaintiff sued upon a mortgage, bearing interest at Rs. 8 per cent. per mensem, it was directed that the usual mortgage-decree should be made. Held, that the defendant was entitled, at any time before the expiration of the usual six months ordinarily allowed by such decree, to satisfy the decree by payment of the principal and interest. *CHOTOLAT v. MILLER*

*See* *MOONZORAD DOWLAH v. MEHIDI BROUN*, 7 C. L. R. 268

97. ——— Practice—*Decree for redemption directing payment of mortgage-debt within a specified time—Computation of time allowed for payment when the decree is affirmed on appeal.* Where a decree of a lower Court is confirmed on appeal, and that decree directs something to be

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) MORTGAGE—*contd.*

done within a specified time, time is to be counted from the date of the appellate decree. Where,

stances of the case, that it was the intention of the Appellate Court that the term of two months allowed for payment should be counted from the date of its own decision, and not from the date of the original decree. *DAULAT JAGJIVAN v. BUKKANDAS MANEKCHAND*, I. L. R. 11 Bom. 172.

99. ——— Consent decree—*Decree in foreclosure suit—Redemption, extension of time for—Appeal, consent decree on—Interest—Transfer of Property Act (IV of 1882), ss. 86, 87.* The plaintiffs obtained a decree for foreclosure. On appeal, the lower Appellate Court made a decree in terms of s. 86 of the Transfer of Property Act, ordering the defendant to pay the amount due with interest and costs calculated up to the 23rd February 1890, or in default to be foreclosed his right to redeem. Upon second appeal on the 30th January 1891, it was "ordered and decreed with consent of the parties that the defendants be allowed one month's time to redeem," and in other respects the appeal was dismissed. On the 28th February 1891 the defendant deposited in Court a sum calculated so as to include interest up to that date, but subsequently objected to pay interest after the 28th February 1890. Held by *PETHERAM, C.J.*, and *BEVERLEY, J.* (MACPHERSON, J. dissenting), that the effect of the consent decree was to extend the time for redemption to the 28th February 1891, and that interest should be allowed to that date. *RAJIKUNESSA BIBI v. TARNI CHURN SARKAR*, I. L. R. 20 Cal. 279

99. ——— Decree absolute for foreclosure—*Transfer of Property Act (IV of 1882), ss. 87 and 88—Whether time to redeem would run from the date of the preliminary decree or from the date of the decree of the Appellate Court, when it simply confirms the decree of the first Court.* Where in a suit on a mortgage, the decree of the Appellate Court simply dismisses the appeal, leaving the decree of the first Court untouched, the time for redemption would run from the date of the decree of the first Court. *BIOLA NATH BHUTTACHARJEE v. KANTI CHUNDRA BHUTTACHARJEE*, I. L. R. 25 Cal. 311

1 C. W. N. 671

100. ——— Decree for possession after expiry of period of grace—*Transfer of Property Act (IV of 1882), s. 53—Right of redemption.* On default made in payment on a simple mortgage, a Court, instead of decreeing the proper relief

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) MORTGAGE—*contd.*

had made a decree (which, however, had afterwards

suit brought by the mortgagor for an account to be rendered by the mortgagee, and for re-delivery of possession, alleging that the account would show payment of the debt already made out of the rents and profits:—*Held*, that the decree for possession did not amount to a decree for foreclosure or preclude redemption, the possession of the decree-holder having only been as mortgagee, and having involved liability to account to the mortgagor. *PAPANNA RAO v. VIRA PRATAPA H. V. RAMACHANDRA RAO*, I. L. R. 19 Mad. 249

L. R. 23 I. A. 32

*Held*, that the decree was in reality a decree for sale, and could be executed as such. *ANNA PILLAI v. THANGATHAMMAL*, I. L. R. 20 Mad. 78

102. ————— Decree on mortgage—Interest up to date of payment—Transfer of Property Act (IV of 1882), ss. 88 and 97—Civil Procedure Code (Act XIV of 1882), Sch. II, Form 109—Construction of decree—Ambiguity. Where there is no ambiguity in a decree, the duty of the executing Court is to carry the orders of the decree into effect, as being conclusive between the parties, whether it may or may not be disputable in point of law. It is competent for a Court passing a mortgage decree to give interest beyond the date fixed for payment and up to the date of realisation. Having regard to the universality of the long established practice to grant such interest, its continuance for years after the Transfer of Property Act was passed, the manifest justice of it, the lack of any apparent reason for upsetting the practice, the conformity with it of s. 97, which is *pari materia* with s. 88, the presumption that s. 88 was framed

s. 88 of the Transfer of Property Act should not be so construed as to limit the power of the Court to grant interest only up to the date fixed for payment. *Amolak Ram v. Lachmi Narain*, I. L. R. 19 All. 174, overruled. *Achalabala Bose v. Surendra Nath Dey*, I. C. W. N. 559; *Subbaraya v. Ponnamani*, I. L. R. 21 Mad. 364; and *Bakar Sayyad Ali v. Usat Narain Singh*, I. L. R. 21 All. 361, approved. *Rameswar Koer v. Syed Mahomed*

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(a) MORTGAGE—*contd.*

*Mehdi Hossain Khan, 2 C. W. N. 633*, referred to. *MAHARAJAH OF BHARATPUR v. RANI KANNO DEI* (1900)

I. L. R. 23 All. 181; 5 C. W. N. 137; s.c. I. L. R. 28 I. A. 35

103. ————— Execution—Mortgage—Mitakshara family—Civil Procedure Code (Act XIV of 1882), s. 218, notice under—Order for substitution of the heirs of the deceased judgment-debtor—Sale proclamation—Order of sale—Postponement—Estoppel *Res judicata*. *Held*, that a legal representative of a deceased judgment-debtor, who was the managing member of a family governed by the Mitakshara system of Hindu Law, having allowed execution to proceed actively for nearly a year without the slightest objection, having twice successfully obtained stay of sale from Court on the plea that he would satisfy the decree, if time were

permitted by the ordinary principle of estoppel to say that the decree is incapable of execution against him. *Sadasiva Pillai v. Ramalinga Pillai*, I. L. R. 2 I. A. 219; 15 B. L. R. 383; 24 W. R. 143, referred to. *Held*, further, on the principle of *res judicata*, that the orders of the Court directing the issue of processes of attachment and sale proclamation were binding on the said legal representative, and that he was precluded from questioning the validity of the said orders. *Mungal Pershad Dicht v. Gya Kant Lahiri*, I. L. R. 8 I. A. 123; I. L. R. 8 Cal. 51; 11 C. L. R. 113; *Lalshmanan Chetti v. Kuttayan Chetti*, I. L. R. 24 Mad. 669; *Bhola Nath Dass v. Prasulla Nath Kundu Chowdhry*, I. L. R. 28 Cal. 122; and *Sheoray Singh v. Kameshar Nath*, I. L. R. 24 All. 232. *COVENTRY v. TULSHI PERSHAD NARAYAN SINGH* (1904)

I. L. R. 31 Cal. 822

104. ————— Ex parte decree—Mortgage—

Property Act having been made *ex parte*. *Held*, that there is inherent jurisdiction of the Court to set it aside. *Bibi Tashman v. Harihar*, I. L. R. 32 Cal. 253, followed. *Held*, further, that, if the decree be a personal decree for a large sum, it ought not to have been made *ex parte*. A decree can only be

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(s) MORTGAGE—*contd.*

path. **ABDUL SATTAR v. SATYA BHUSAN DASS**  
(1908) . . . . . I. L. R. 35 Calc. 767

105. ———— **Estoppel by conduct—Sale—Execution—Right of purchaser—Mortgage.** In execution of a money-decree certain property was purchased. The said property was subject to a mortgage, but not a mortgage executed by the judgment-debtor, although the judgment-debtor would himself have been estopped from denying liability under the mortgage on account of his conduct in the mortgage transaction. *Held*, that the purchaser was equally bound as the judgment-debtor inasmuch as the right, title and interest of the judgment-debtor had passed to the purchaser, and his purchase was therefore subject to the mortgage. **Poresh Nath Mukerji v. Anath Nath Deb, I. L. R. 9 Calc. 265; Mahomed Muzaffer Hassein v. Keshori Mohun Roy, I. L. R. 22 Calc. 909; Ram Coomarr Koondu v. Macqueen, I. L. R. 1 A. Sup. 40, 11 B. L. R. 46; Sorat Chunder Dey v. Copal Chunder Laha, I. L. R. 20 Calc. 296, L. R. 19 I. A. 203; Porter v. Incell, 10 C. W. N. 313, referred to. PRAYAG RAJ v. SINDHU PRASAD TEWARI (1908) . . . . . I. L. R. 35 Calc. 877**

106. ———— **Future interest—Construction of decrees on mortgage—Decree under ss. 86, 88, Transfer of Property Act (IV of 1882)—“Future interest”—Power to give interest after date fixed for payment—Interest to date of realization of mortgage debt.** In a suit for foreclosure a conditional decree was made under ss. 86 and 88 of the Transfer of Property Act (IV of 1882) for the sum due for principal and interest on the mortgage, and for costs, for redemption on payment of the amount so due, “with future interest at 7 annas per cent. per mensem from the date of suit, on or before the 18th March 1897,” and for sale on default of payment; and the decree was made absolute on 25th June 1898. *Held*, on the construction of the decree, that on such default the plaintiffs were entitled in execution to “future interest at 7 annas per cent. per mensem,” after the date fixed for redemption, and up to the date of realization of the entire amount. **Maharajah of Bharatpur v. Kanno Dev, I. L. R. 23 All. 131, L. R. 23 I. A. 35, and Sunilar Keer v. Rai Sham Krishen, I. L. R. 34 Calc. 159, L. R. 34 I. A. 9, followed. GOKULDAAS v. GHASIRAM (1907) . . . . . I. L. R. 35 Calc. 221**  
s.c. I. L. R. 35 I. A. 28

## (t) PAYMENT INTO COURT.

107. ———— **Payment of money, decree for, “in accordance with written statement”—Interest.** A decree for money directed that its amount should be payable “according to the terms of the judgment-debtor’s written statement.” In his written statement the judgment-debtor had promised to pay interest on the judg-

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(t) PAYMENT INTO COURT—*contd.*

ment-debt if the same were not discharged by a certain day. *Held*, having regard to the decision of the Full Bench in **Debi Charan v. Purbhu Din, I. L. R. 3 All. 388**, that the judgment-debtor having failed to discharge the judgment-debt by such day, he was bound by the terms of the decree to pay interest on its amount. **RAM NANDAN RAI v. LAL DHAN RAI . . . . . I. L. R. 3 All. 776**

108. ———— **Payment of money into Court, decree for—Performance of order—Departmental rules directing all moneys to be paid into the treasury—Rule No. 9, High Court Rules, and Circular No. 4, 1881, p. 37—Bengal Act VIII of 1869, s. 52.** Where a decree directs the payment of money into Court within a limited time, it is a sufficient compliance with such decree if the judgment-debtor bring the money into Court within that time, and diligently take the necessary steps required by the Departmental Rules for its actual payment into the treasury. **GUSADHUR PAUREE v. NAIK PAUREE . . . . . I. L. R. 8 Calc. 528**

109. ———— **Deposit of decretal amount—Time fixed ending on a holiday—Payment on opening day—Decree at variance with compromise petition—Interpretation—Execution.** If the law or a Court directs a thing to be done within a period fixed by it and it is impossible of performance on the last day fixed for no fault of the party required or directed to do the act it will be recognised as properly done, if it is done on the next day it is possible of performance. A suit was compromised on the terms that the “defendant No. 1 will

stand of “to the effect of the order of the Court.” That the defendant had the option either of paying it to the plaintiff’s pleader or of depositing it into Court to the credit of the plaintiff.



DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*

## (u) POSSESSION.

110. ——— Decree for possession—*Modification on review of decree charging estate with payment of debt—Conditional possession.* The plaintiff had brought a suit to obtain possession of one-third of the property of a deceased person, and on appeal to the High Court obtained a decree. After a review of its judgment, the High Court decreed that the plaintiff should hold possession of the one-third share, subject however, as owner thereof, to the payment of a proportionate share of the debts of the deceased person. *Held*, that the plaintiff was not deprived of the possession which had been adjudged to him by the original decree by non-fulfilment of the terms of the decree passed on review of judgment. **ALI HOSSEIN KHAN v. DWARKA DASS** 5 N. W. 134

111. ——— *Imperfect decree—Omission to ascertain amount of rent.* Where the final decree upon a suit for possession declared that the defendant had a right of occupancy on payment of a proper rent, and was liable for rent from the date of suit, without defining the rate of rent—*Held*, that the decree was imperfect, and that another suit was necessary for the determination of the proper rent, i.e., to carry out the decree. **KALEE NARAIN SINGH BEROOA v. CHUNDER NARAIN BUESREE** 23 W. R. 228

112. ——— *Civil Procedure*

made an order that the ameen was to ascertain the extent of the moveable property. In execution,

*Held*, that it was not necessary to constitute this order as giving in execution what had not been given in the decree, i.e., alternative damages, but that the enquiry ordered was obviously necessary in order to guide the Court in the exercise of its discretion under Act VIII of 1859, s. 200, and that the order must be assumed to have been made for lawful purposes and with a view to such further order as might seem just. **BHOORUX MOHINEE DEBIA v. GOBIND CHUNDER MOJOONDAR**

19 W. R. 82

113. ——— Decree for possession of a village—*Right of the holders of such a decree to the possession of village account books and other papers relating to the management of the village—Title-deeds.* The plaintiffs as managers of a temple obtained a decree for the

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(u) POSSESSION—*contd.*

books and other documents relating to the management of the village. The defendants refused. Thereupon the plaintiffs presented a dakhast in execution, praying (*inter alia*) for the delivery of those books and documents. The Subordinate Judge rejected this application on the ground that it was beyond the terms of the decree. *Held*, on appeal to the High Court, that the plaintiffs were entitled to the possession of the account books and documents in question, as being essential to the proper and effectual enjoyment and management of the village awarded by the decree. Such books and documents were properly to be regarded as accessory to the estate and as claimable by those to whom it had been awarded. The title-deeds of an estate, counterpart leases, and other documents of the like kind, such as *kabulats* in India, ought to be regarded as accessory to the estate, and to pass with it whether the transfer is made a conveyance, a decree, or a certificate of sale. **BHAYANI DEVI v. DEVRAY MADHAVRAY** I. L. R. 11 Bom. 485

## (v) PRE-EMPTION.

114. ——— Decree for pre-emption—*Payment of purchase-money—Tender and deposit.* When a person obtained a decree declaring him entitled to the right of pre-emption with regard to certain lands, and ordering the payment of the

8 N. W. 48

115. ——— *Conditional decree—"Final" judgment and decree.* The Court

appeal was instituted when the decision of the lower Appellate Court was affirmed by the High Court. **EWAZ v. MOKUNA BIBI** I. L. R. 1 All. 132

DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(c) PRE-EMPTION—*contd.*

116. *Conditional decree—"Finality" of decree—Holiday—Limitation Act, XV of 1877, s. 5.* A decree in a suit to enforce a right of pre-emption directed that the purchase-money should be paid within a certain period from the date the decree became "final." The period of limitation prescribed for an appeal from this decree expired on a day when the Court was closed. *Held*, that the decree did not become "final" before the day the Court re-opened. *Ewas v. Moluna Bibi, I. L. R. 1 All 132*, followed. *RAM SAHAI v. GAYA, I. L. R. 7 All 107*

117. *Conditional decree—"Final" judgment and decree—Execution of decree.* Where the plaintiff in a suit for pre-emption was granted a decree, subject to the payment of the purchase-money, within a fixed period, and failed to comply with the condition imposed on him by the decree:—*Held*, that he had lost the benefit of the same. When a direction contained in a decree referred to the time at which such decree should become final:—*Held*, that such decree became final on being affirmed by the lower Appellate Court, where, although a decree was referred by the lower Appellate Court, allowed to him. *OANGA PERSHA*

118. *Execution of conditional decree.* The decree of the original Court in a suit to enforce a right of pre-emption dated the 18th February 1879, directed that, on the day the decree was affirmed by the lower Appellate Court, the plaintiff should pay the purchase-money within a fixed period, and failed to comply with the condition imposed on him by the decree:—*Held*, that he had lost the benefit of the same. When a direction contained in a decree referred to the time at which such decree should become final:—*Held*, that such decree became final on being affirmed by the lower Appellate Court, where, although a decree was referred by the lower Appellate Court, allowed to him. *OANGA PERSHA*

119. *Conditional decree—Civil Procedure Code (Act X of 1877), s. 214—Computation of period specified for payment of purchase-money—Holiday.* The decree in a suit to enforce a right of pre-emption, dated the 12th

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DECREE—*contd.*2. CONSTRUCTION OF DECREE—*contd.*(c) PRE-EMPTION—*contd.*

December 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but that, if such money was not so paid, the suit should stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday: the plaintiff paid the purchase-money on the 12th January.

The plaintiff was compelled with the condition imposed on him by the decree. *Semble*: That if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final. *DABI DIN RAI v. MUHAMMAD ALI, I. L. R. 3 All 850*

120. *Decree for pre-emption conditioned on payment within fixed time—Omission to state consequence of non-payment—Limitation.* Where in a suit for pre-emption the decree, while decreeing the plaintiff's right to pre-emption upon payment of the purchase-money, omitted to state the consequence of non-payment:—*Held*, that the plaintiff, unless he had paid the pre-emptive price before the expiry of the said month, could not enforce his decree for pre-emption. *Kodai Singh v. Jaisri Singh, I. L. R. 13 All 376*, referred to. *Bandhu Bhagat v. Shah Muhammad Taqi, All W. N. (1892) 40*, dissented from. *JAI KISHEN v. BROLA NATH, I. L. R. 14 All 529*

## 3 ALTERATION OR AMENDMENT OF DECREE

1. *Duty of Court to amend decree—Limitation—Civil Procedure Code, 1882, s. 206.* There is no limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. *KALU v. LATU, I. L. R. 21 Cal. 259*

2. *Power to amend decree—Decree differing from judgment.* It is a power which all Courts possess to amend their decrees.

... and ...

6 M

DECREE—*contd.*3 ALTERATION OR AMENDMENT OF DECREE—*contd.*

3. ———— *Decree differing from judgment.* Every Court has a right to correct its formal records in such a way, if needed, as will make them represent truly the decision which was intended to be judicially expressed. *LUCAS v. STEPHEN* 9 W. R. 301  
*PEARSEE MOHUN DUTT v. GOOROO DASS DUTT* 20 W. R. 401

4. ———— *Civil Procedure Code, 1882, s. 206—Application to bring decree into accordance with the judgment—Decree erroneous, but in accordance with judgment.* Where a decree

5. ———— *Power of Court to recall order.* Every Court has power to recall its own order on being satisfied that the order was obtained through fraud or misrepresentation or suppression of facts. *SHEO PURSHON CHOWRY v. COLLECTOR OF SARUN* 13 W. R. 258

*HANEDA BIBI v. NOOR BIBEE* 9 W. R. 394

6. ———— *Power of Judge to amend decrees proprio motu.* Without an appli-

*20 W. R. 204*

7. ———— *Confirmation of decree by High Court on appeal.* After a decree has been confirmed by the High Court on appeal, the Subordinate Court has no power to make any alteration in it. *ONRAET v. SANKAR DUTT SINGH* 5 B. L. R. Ap. 60 : 14 W. R. 28

*BHANUSHANKAR GOPALEAM v. RAGHUNATH RAM MANOALRAM* 2 Bom. 106 : 2nd Ed., 101

8. ———— *Confirmation of decree by High Court on appeal—Mistake.* A

from whom *A* was to obtain his costs, and it was held that no execution could be taken out under the decree. *A* therefore applied to the Judge who passed the original decree to amend the decree, and the decree was amended by inserting the costs, *A* then applied for execution, which the Judge refused to grant, as *A* had power to amend the decree.

DECREE—*contd.*3. ALTERATION OR AMENDMENT OF DECREE—*contd.*

*S. G. GOLUCK CHUNDER MUSSUNT v. GUNGA NARAIN MUSSUNT* 20 W. R. 111 : 16 W. R. 111  
*ZUHOOR HOSSEIN v. SVEDUN* 11 B. L. R. 367 note : 11 W. R. 142

9. ———— *Court to amend decree—Confirmation of decree by High Court on appeal.*

10. ———— *Civil Procedure Code, s. 206—Power of lower Court to amend decree affirmed on appeal.* Where a decree for possession of immovable property passed by a lower Appellate Court, omitted to specify the plots of land to which it related, and was upheld by the High Court by a decree which likewise gave no specification of those plots, and the lower Appellate Court subsequently, on the decree-holder's application, amended its decree, under s. 206 of the Civil Procedure Code, by inserting the required specification :—*Held*, that, inasmuch as the effect of the amendment was not to alter the effect of the High Court's decree, but only to give effect to the decree as it was intended to be.

*SARAN v. PERSINBAR RAI* 1 L. R. 10 All. 61

11. ———— *Civil Procedure Code, 1882, s. 206—Jurisdiction of Court to amend its decree after appeal.* Under s. 206 of the Code of Civil Procedure, a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal. *SUNDARA v. SUBBANNA* 1 L. R. 9 Mad. 354

12. ———— *Amendment of decree after confirmation of decree on appeal. Quare.* Whether the rule in *Sundara v. Subbanna*, 1 L. R. 9 Mad. 354, as to the amendment of decrees, viz., that a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal, is correct. *CHATHAPPAN v. PYDEL* 1 L. R. 15 Mad. 403

*See PYDEL v. CHATHAPPAN* 1 L. R. 14 Mad. 150

13. ———— *Decree for costs—Execution of decree.* In the lower Appeal Court, the plaintiff obtained a decree which directed parties

DECREE—*contd.*3 ALTERATION OR AMENDMENT OF  
DECREE—*contd.*

Court in cross second-appeals without writing a judgment. There was no point taken in either of the appeals as to costs. The plaintiff subsequently applied to the High Court for the amendment of the decree under s. 206 of the Civil Procedure Code (Act XIV of 1882). It was contended for the defendant that the application should have been made to the lower Appeal Court. *Held*, that the only decree which existed for the purposes of execution after the High Court confirmed the decree of the Court below was the decree of the High Court into which that of the lower Court became incorporated. The application was, therefore, properly made to the High Court. *Held*, further, that, that being so and there having been no appeal by either party against the order as to costs, the Court might properly look at the judgment of the Court below with a view to making the decree as to costs agree with it. **SHIVLAL KALIDAS v. JUMARLAL NATHLI DESAI** I. L. R. 18 Bom. 542

14. — *Power of Court of first instance to amend its decree after appeal.* In a suit for land with mesne profits, the District Munsif delivered judgment for the plaintiff, and recorded therein a finding that he was entitled to mesne profits as from a certain date, it having previously been arranged that the amount, if any, awarded for mesne profits should be determined in execution. In the decree no mention was made of the date from which the mesne profits were to be calculated, but it was stated merely that the amount was to be determined in execution. The case went on appeal before the District Judge, who modified the decree in certain particulars unconnected with mesne profits. With a view to execution, the plaintiff applied to the Court of first instance

that the jurisdiction of the Court of first instance to amend the decree under s. 206 was ousted by the confirmation of his decree on appeal. **PICHURAYANGAR v. SESHAYANGAR**

I. L. R. 18 Mad. 214

15. — *Power of Court of first instance to amend appeal—Civil Procedure Code, s. 551.* On the hearing of an appeal by a

It was drawn up by the District Judge for the Court of first instance to be signed by the District Judge.

the District Court. The appeal had in fact been dismissed under s. 551 of the Code of Civil Procedure. Plaintiff then petitioned the District Court to review its order refusing to amend. This was

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DECREE—*contd.*

*Held*, (i) that the case was governed by the ruling of the Full Bench in **Pichurayyengar v. Seshayyengar**, I. L. R. 18 Mad. 214, where it was held that the jurisdiction of a Court of first instance to amend a decree under s. 206 was ousted by the confirmation of that decree on appeal; (ii) that the decision referred to applies equally to second appeals dismissed under s. 551 of the Code of Civil Procedure, and to the second appeals tried after notice to the respondent. **MUNISAMI NAIDU v. MUNISAMI REDDI** I. L. R. 22 Mad. 293

16. — *Decree affirmed on appeal—Jurisdiction—Civil Procedure Code, ss. 579, 623, 624—Review of judgment.* The effect of s. 579 of the Civil Procedure Code is to cause the decree of the Appellate Court to supersede the decree of the first Court even where the appellate decree merely affirms the original decree.

is necessary, so far as to not the purpose of executing the appellate decree. The only Court which has jurisdiction to amend the appellate decree is the Court of Appeal. So held by the Full Bench (MAHMOOD, J., dissenting) **Shohrat Singh v. Bridgman**, I. L. R. 4 All. 376, explained and followed. **Kisto Kinkur Roy v. Burrodacant Roy**, 14 Moo. I. A. 465, discussed. The insertion of the word "not" in the last line but one of the judgment and also in the head-note in **Shohrat Singh v. Bridgman** was a clerical error. *Per MAHMOOD, J.*

tion. In such a case the lower Court continues to have jurisdiction to entertain an application for amendment of its own decree under s. 206 of the Code; and such application is not governed by any article of the Limitation Act, and may be made at any time. It may be granted under s. 205, even when an application for review of judgment is

issued for that this

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objection was allowed by the High Court on appeal. The decree-holders applied to the High Court to amend its decree, but the application was refused; and they then made a similar application to the first Court to amend its original decree, which had been affirmed on appeal. This application was made on the 11th of June 1896.

such amendment, the original decree having been superseded by the High Court's appellate decree. *Held* by MAHMOOD J. (contra) that the Court below had jurisdiction to make such amendment, and could make it any time; that the High Court's decree could not be amended, because the former order refusing amendment had become final and operated as *res judicata*; that the amendment of the original decree under s. 206 was not barred by s. 624; and that it would be denying justice on account of technicalities to hold that the original decree, though affirmed on appeal, could be neither executed nor amended. MUHAMMAD SULAIMAN KHAN v. MUHAMMAD YAR KHAN

I. L. R. 11 All. 287

See MUHAMMAD v. SULAIMAN KHAN v. FATIMA . . . I. L. R. 11 All. 314

17. — Finding in judgment not embodied in decree—Amendment of decree—Appeal against amendment decree—Time how calculated. In a suit for a declaration of title to land and for possession, which was based upon a will alleged to have been made in plaintiff's favour, the Subordinate Judge, finding the document to be a forgery, dismissed the suit. The fourth defendant had been made a party, inasmuch as he claimed a portion of the land as alienee. Though the case for the plaintiff failed, the Subordinate Judge, on the above finding, dealt in his judgment with an issue which had been framed regarding the validity or otherwise of the alleged alienation to the fourth defendant. He held that it had been made for no consideration, and found the issue against the fourth defendant. The decree dismissing the suit, which bore date the 22nd of June 1896, contained no reference to the finding against the fourth defendant on that issue. The fourth defendant applied for a review of the judgment, complaining that, as the suit had been dismissed, the reference in the judgment to the alleged alienation in his favour was unnecessary, and might, if permitted to stand, operate against him as *res judicata* in any subsequent suit that might be brought, and praying that the finding might be either expunged or modified in his favour. Upon this being refused, fourth defendant applied, under s. 206 of the Code of Civil Procedure, that the decree might be brought into conformity with the judgment, and an order was made on 27th October 1896, adding to the decree a clause to the

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effect that the issue referred to had been found against the fourth defendant. On 12th December 1896, the fourth defendant applied to the High Court to amend the decree, and the High Court, *Held*, that the judgment, though affirmed on appeal, could be amended, and that the decree could be expunged or modified in his favour.

again—The fourth defendant was, in fact, no finding except with regard to the question of consideration. *Per* SUBRAMANIAM AYYAR, J.—That where a decree which is at variance with the judgment is brought into conformity with the latter under s. 206 of the Code of Civil Procedure, the date of the rectification is immaterial with reference to the calculation of the time in which any appeal may be preferred against such decree. But where a decree is wrongly varied, a party affected by such variation should be entitled to calculate the time during which an appeal may be preferred as commencing from the date of the variation. PARAMESHBAYA v. SESHAGIRIAPPA . . . I. L. R. 22 Mad. 864

18. — Compromise after decree—Power of High Court to amend or review decree—Civil Procedure Code, s. 623—Proceeding in execution barred by time—Limitation Act—Act XI of 1877, Sch. II, Art. 179. The High Court has no power to alter its own decree, except under the provisions of either s. 206 or s. 623 of the Code of

tained an order. This order was reversed by the High Court. Hence this appeal. *Held*, that the order directing the amendment of the decree in the terms of the compromise was beyond the powers

for execution of the decree, that the period of limit-

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ation commenced from the date of the primary, and not of the amended, decree of the High Court. Execution was, therefore, barred by limitation. Instead of attempting the alteration in the decree, the High Court could properly have made the compromise a rule of Court, and have stayed all proceedings against the defendant, who was a party to it, except for the purpose of enforcing it against him. KOTACHIRI VENKATA SUBBAMIA RAO v. VELLANKI VENKATARAMA RAO

I. L. R. 24 Mnd. 1  
L. R. 27 I. A. 107  
4 C. W. N. 725

18. *Proceedings to set aside decree—Application for review.* The proper course for a party desiring to set aside a decree passed against him by a competent Court, which he alleges to have been obtained by fraud, is to apply to the Court which passed the decree to review and alter it, and not to bring a suit for declaration of his right by setting aside such decree. MEWA LALL THAKUR v. BHUJHUN LALL . 13 B. L. R. Ap. 11

20. *Court passing decree.* A decree should be amended, if necessary, by the Court which passed it. BHUGOONUTTY CHEURN HALDAR v. NIROFONAH DABEE

1 W. R. Mis. 8

BANGSEERAM SHANA v. JUDGERNATH SHANA  
W. R. 1884, Act X, 11

NILKONUL ROY v. ROHINEE DOSSIA  
13 W. R. 330

21. *Amendment made by wrong Court.* But where the amendment was made by the Court executing it, the High Court disallowed the error as a ground of appeal, as no injustice had been done by it. BANGSEERAM SHANA v. JUDGERNATH SHANA . W. R. 1884, Act X, 11

22. *Mode of obtaining correction of error—Review.* Any error that may have occurred in the execution of a decree

BUNSEEDHUR v. KUDDEY LALL  
1 N. W. Ed. 1873, 198

DWARKA PERSHAD v. BANKUT NURSEYA  
2 N. W. 184

RAM NATH v. GOWHUR . 2 W. R. 230

AKBUR ALI v. MULLICK MURDOON BUKSH  
25 W. R. 83

23. *Court executing decree.* A Court executing the decree of a superior Court has no power to alter the terms of the decree. RAO OOMRAO SINGH v. SUTUN LALL  
1 N. W. Pt. 6, p. 77 : 1873, 188

SHRO PERSHAD v. SHIVA RAM . 2 N. W. 58

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24. *Appellate Court.* It is not competent to the Appellate Court in a matter arising in execution to add to, or alter, the decree. BECHARAM PAUL v. BHUGWAX CHUNDER GHOSH . 5 C. L. R. 522

25. *Execution of decree—Mode of payment of decree.* In a case of execution of decree pending in a Munsif's Court, the Judge is not the person to sanction a proposition for

payable under the decree, including interest. GOOMAN SINGH v. MAKHUN SINGH . 2 N. W. 145

26. *Time for amendment—Clerical error in decree.* A clerical error in the decree appealed against was ordered to be rectified at the hearing of the appeal. HIRJI JINA v. NARAN MULJI . I. L. R. 1 Bom. 1

27. *Kistbundi—Instalment decree.* A kistbundi is part of, or incidental to, the decree of the Court, and cannot be altered after the decree is finally given unless for the purpose of the correction of errors. LALL MAHOMED v. SHONA JOLLA GHAZEE  
2 W. R. S. C. C. Ref. 3

28. *Omission to award costs—Clerical error.* An omission to award costs cannot be considered merely as a clerical error, but must be rectified by way of review within the prescribed time. RAM SAHAY SINGH v. ROOKHNOO SINGH . 15 W. R. 414

29. *Decree awarding costs.* A decree which contains a distinct specification of costs, whether rightly or wrongly calculated, cannot be amended in appeal. BISOY GOBIND NAIK v. KALEE PROSSUNNO NAIK . 18 W. R. 284

30. *Decree of High Court on appeal from Recorder of Rangoon—Order for execution of conveyance.* The High Court, on appeal from a judgment of the Recorder of Rangoon, ordered the defendant to execute within six months the conveyance of the mortgaged property to the plaintiff.

and the plaintiff within three months, to give effect to the mortgage.

and the plaintiff within three months, to give effect to the mortgage. The defendant was ordered to execute within six months the conveyance of the mortgaged property to the plaintiff. 11th July 1872 the Recorder of Rangoon ordered the defendant to execute within six months the conveyance of the mortgaged property to the plaintiff. The High Court, on appeal from a judgment of the Recorder of Rangoon, ordered the defendant to execute within six months the conveyance of the mortgaged property to the plaintiff.

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it, and accordingly on the 12th July 1872 the Court executed the conveyance. *Held*, that the Recorder had no power to pass the order of the 18th March 1872, and that the defendant could not be required to execute the conveyance. **AZEEMULLAH MOODEN v. CRUIKSHANK** 11 B. L. R. 67

31. ——— Decree of predecessor—*Amendment of clerical error.* Where a Judge finds that a decree passed by his predecessor contains something or bears a construction evidently not contemplated by the judgment of that Judge, he is quite competent to alter the decree so as to bring it into conformity with the judgment. The limitation for reviews does not apply to an application for alteration of a clerical error in a decree. **MONDOSUPUN GHOSH v. ROMANATH GHOSH** 12 W. R. 65

32. ——— Modification of decrees in execution—*Power of Court to make alteration in directions.* Where a decree, which has been passed on a mortgage bond, is to the effect that the decreeholder is entitled to have his lien satisfied by the sale of the rights and interests of the judgment-debtor in all the properties hypothecated, the High Court cannot modify its terms and direct the Court which is charged with the execution to sell

33. ——— Mode of amendment—*Notice to parties—Presence of parties.* A decree should not be amended except in the presence of the parties concerned, or after service of notice on them to attend. **KISHEN DYAL SINGH v. SUNKAR DUTT** 2 W. R. MIs. 15

**BULORAM DOSS v. JOGENDRO NATH MULLIC** 19 W. R. 349

34. ——— Ex parte decree—*Absence of party—Recall of ex parte decree.* If a Judge makes an *ex parte* order, unless in cases in which he is expressly empowered to make such an order, the party who has not been heard has a right to apply to the Court to set it aside, and if the is at **SHEO**

13 W. R. 232

35. ——— Uncertainty in decree—*Evidence to amend uncertainty in decree.* In the execution of a decree for the possession of land, if it is found that the boundaries described in the plaint are no longer in existence, it is allowable to take the evidence of witnesses to ascertain their former position. **KALKE DABEZ v. MUDOO SOODNY CHOWDARY** 16 W. R. 171

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36. ——— Evidence to amend uncertainty in decree—*Execution.* Where a decree is so uncertain that it is impossible to execute

given in the execution department to amend any uncertainty in the decree. The law allows certain matters to be ascertained in execution, but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution without leaving it to the Court of execution to decide what the Judge intended to decree. The necessity of certainty in decrees discussed. **DWARAKANATH HALDAR v. KAMALA KANTH HALDAR** 3 B. L. R. Ap. 128; S. C. 12 W. R. 99

37. ——— Decree for maintenance—*Charge on estate—Necessity to alter amount of maintenance.* A decree against the proprietor of an estate for a monthly maintenance, so long as it remains, creates a debt payable out of the estate and liable to be met out of any portion passing to the son. If new circumstances arise requiring that the original allowance ought not to be continued, the proper course would be to apply for a review to the Court which made the decree. The propriety of the sum allowed cannot be questioned in execution. **PAN KULLEE KOREY COURT OF WARDS** 18 W. R. 474

38. ——— Alteration of decree by subsequent agreement. Petitioner, a decreeholder, attached the defendant's property in execution. Subsequently to the attachment, petitioner's vakil presented a *razinama* petition to the Court on behalf of his client, praying that the

that the vakil had presented the former petition fraudulently and without authority, applied to

**VENKATARAMMANNA v. CHAVELA ATCHIAMMA** 6 Mad. 127

39. ——— Mistake in decree—*Discovery of mistake on appeal.* A compromise set up by the defendants in the present suit having been rejected, a decree was given to the plaintiff for the sum of Rs. 2,913, awarded in the original suit. That decree was upheld on appeal; but as it was alleged that on the facts stated in the

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plaint in the original suit, the plaintiff's mother's share of the dower was an eighth, and not a third, the Privy Council held that plaintiff ought not to benefit by that mistake, if it was a mistake; and they accordingly left it to the lower Court to enquire into that point, and to let execution go for the eighth or the third share, according as the fact might turn out. *ABDOOL ALI v. MOZUFFER HOSSEIN CHOWDHURY*. 18 W. R. P. C. 22

40. — Irregular alteration of order in favour of Government. A pauper suit for possession was decreed with means profits to be ascertained in execution, costs being also awarded, including the value of stamps due to Government, which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when the amount of

to appear, and, on their refusing to do so, altered its original order with respect to the payment of the stamps due.

41. — Decree of Special Commissioners under Act IX of 1859—*Revision of, by Government*. Held, that a decree of the Court of special commission under Act IX of 1859, though adjudging a right to the plaintiff other than that sued for, cannot for this reason be treated as a nullity, and as one conferring no right; that the appropriation in satisfaction of the decree once made, a proprietary right in the assigned villages would arise in the plaintiff under the decree, of which also could not afterwards be lawfully deprived on any such allegation as that of incorrect valuation, the Government under the circumstances having no power of revision. *KHANZADEE v. COLLECTOR OF BOULANDSHUR*. 1 Agra 57

42. — Application to amend by person not party to the suit—*Application by Government to protect revenue—Commission to specify costs in decree in pauper suit*. A instituted a suit in

the suit, and the

the decree amended in that respect. Held, that the application must be refused on the ground

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43. — Alteration without notice—*Decree in accordance with judgment—Notice to parties*. The Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of Rs. 1,282. Subsequently, on application by the decree-holder, and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under s. 206 of the Civil Procedure Code, altered the decree and made it for a sum of Rs. 1,460. The decree-holder took out execution, and the judgment-debtor objected that the decree was for Rs. 1,282 and had been improperly altered. The Court granting the objection.

I. L. R. 8 All. 377

44. — Observations by MAHMOOD, J., on the amendment of decrees and s. 206 of the Civil Procedure Code. *TARSI RAM v. MAN SINGH*. I. L. R. 8 All. 492

45. — Irregularity—*Suit for possession of immovable property—List of properties sued for appended to plaint—Omission to specify in decree properties decreed*. The plaintiff in a suit claimed possession of villages said in the plaint to be "detailed below." No details of the villages were given in the plaint itself, but a separate paper containing a list of villages was filed with the plaint. The plaintiff obtained a decree for possession of "all the villages detailed below."

of villages attached to the plaint into the decree, and awarding the decree-holder possession of the villages named in such list. *S. A. No. 310 of 1882, decided on the 11th August 1882, followed. Debi Charan v. Pirbhui Dutt Ram, I. L. R. 3 All. 388, referred to. MUHAMMAD SULAIMAN v. MUHAMMAD YAR*. I. L. R. 8 All. 30

46. — Interest—*Amendment of decree—Judgment awarding interest for period prior to suit—Decree directing interest to be paid from date of suit*. The judgment in an appeal awarding interest to be paid from date of suit.

judgment, within the meaning of s. 206 of the Civil



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Procedure Code, was involved in the additional order contained in the decree. **KOLAI RAM & PALA RAM** . . . I. L. R. 7 All. 765

47. ———— *Separate adjudication—Order amending decree.* A District Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say he accepted the appeal, and that the decree, as it stood, failed to give effect to the judgment. *Held*, on appeal under the Letters Patent, that an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was, therefore, a separate adjudication, and was not appealable under s. 593. Also that, in saying that by "dismiss" his predecessor had meant "decree," the Judge had altered the decree in a manner not warranted by the terms of s. 206; that he had, therefore, exercised his jurisdiction "illegally and with material irregularity" within the meaning of s. 622 of the Code; and that the High Court was consequently competent to reverse his order. **SURTA & GANGA**

I. L. R. 7 All. 876

Reversing judgment of **OLDFIELD, J.** (differing from **MAHMOOD, J.**), in **SURTA & GANGA**

I. L. R. 7 All. 412

48. ———— *Order for payment by instalment—Civil Procedure Code, 1859, s. 194—Interest—Discretion of Court.* The discretion vested in Courts by s. 194 of Act VIII of 1859 should not be exercised without sufficient reason. **MOHESYON BUKSH SINGH & THIRABOO CHOWDHRY** 2 May 68

49. ———— *Civil Procedure Code, 1859, s. 194.* It should not be applied to an action for money due on an instalment bond, the terms of which had been broken. **LUCHMENAATH DOOGUR & HARADHUN MOOKERJEE** 2 May 95

50. ———— *Civil Procedure Code, 1859, s. 194.* *Held*, that, when not ordering the amount of the decree to be paid by instalments has arisen from any error or omission, or it is otherwise requisite for the ends of justice, the Court which passed the decree has power to review it and to make an order for payment by instalments. Otherwise the Court has no power to make such an order subsequent to the decree without the consent of the judgment-creditor. **RAVICHAND DALICHAND & MOTILAL NARDHANAM**

4 Bom. A. C. 77

51. ———— *Civil Procedure Code, 1859, s. 104 (1877, s. 210).* *Quære:* Whether "a decree for the payment of money" means merely what is commonly known as a money-decree, or includes a decree in which a sale is ordered of im-

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moveable property, in pursuance of a contract specifically affecting such property, within the meaning of s. 194 of Act VIII of 1859 and s. 210 of Act X of 1877. Where a Court, on the ground that the defendant was "hard pressed," directed the amount of a decree to be paid by instalments extending over ten years, and allowed only one-half of the usual rate of interest:—*Held*, that there was no "sufficient reason" for directing payment of the amount of the decree by instalments, and that such Court had exercised its discretion injuriously to the plaintiff by the length of the period over which instalments were extended, and by allowing a rate of interest less than the ordinary rate. **BINDA PRASAD & MADHO PRASAD** . I. L. R. 2 All. 129

52. ———— *Civil Procedure Code, 1877, s. 210.* *Held*, that the provisions of s. 210 of Act X of 1877 are not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the property hypothecated by such bond. In such a suit, therefore, the Court cannot direct that the amount of the decree shall be payable by instalments. **HARDEO DAS & HUKAM SINGH** . . . I. L. R. 2 All. 320

53. ———— *Civil Procedure Code, 1877, s. 210—Decree for money.* There is nothing in s. 210 of Act X of 1877, or elsewhere in that Act, authorizing a Court to direct that the amount of a decree should be paid within a fixed time from its date. *Semble* That the provisions of s. 210 of Act X of 1877 are not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the "nankar" allowance hypothecated by such bond. **BACHCHU & MADAD ALI** . . . I. L. R. 2 All. 649

*See* **TATA CHARLU & KONADULA RAMACHANDRA REDDI** . . . I. L. R. 7 Mad. 152

54. ———— *Civil Procedure Code, Act XIV of 1882, s. 210, Decree under—Right to execution.* On the 23rd February 1878, an application was made for execution of a decree,

consent of the decree-holder, applied for time to pay the balance due till the 8th September 1881, and that application was also struck off. On the

direction that the decretal amount be paid by instalments as stipulated in the petitions; and that,

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this being so, there was a decree passed on that date under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution.  
**JHOTI SAHU v. BHUBUN GIR** 14

I. L. R. 11 Calc. 143

55. ———— *Limitation Act,*

1877, Art. 175—Application for execution of decree—*Civil Procedure Code, s. 210.* An application to execute a decree, dated 30th August 1890, was made on 25th May 1891. While the application was pending, the judgment-debtor presented a petition to be allowed to pay the debt by instalments, and the decree-holder consenting to this, the Court made the following order:—"According to the application of both parties, it is ordered that the case be struck off, and the decree returned." The details of the instalments mentioned in the petition were endorsed on the decree by one of the

not one recognizing or sanctioning the arrangement within the meaning of s. 210 of the Civil Procedure Code, inasmuch as the Court, at the time it made the order, had no power to make any order for instalments, any application for that purpose being then barred by Art. 175 of Act XV of 1887. **Jhoti Sahu v. Bhubun Gir, I. L. R. 11 Calc. 143**, dissented from. **ABDUL RAHMAN SODAGUR v. DOLLARAM MARWARI** . I. L. R. 14 Calc. 346

56. ———— *Specific performance—*

*Practice—Liberty to apply—Relief after judgment—Damages—Review—Alternative relief.* On the 27th April 1886, a plaintiff brought a suit praying for specific performance of a contract, or in the alternative for damages, and, on the 24th November 1886, obtained therein a decree for specific performance with the usual liberty to apply. On the 6th December 1886, the plaintiff discovered that it was out of the defendant's power to specifically perform his contract, and he thereupon, on the 13th April 1887, applied to the Court which had granted the decree for a re-hearing of the suit on the question of damages, asking that, in lieu of the decree for specific performance, a decree for damages, when assessed, might be entered up. *Held*, that he was entitled to ask for such relief. **PEARISUNDARI DASSEE v. HARI CHARAN MOZUMDAR CHOWDHRY** . I. L. R. 15 Calc. 211

57. ———— *Decree in favour*

*of plaintiff—Rectification of decree on application of defendant—Practice—Objection taken at hearing that application made to Court was not the application of which notice had been given to opposite party—Preliminary point.* The plaintiffs sued in 1877 for specific performance of an agreement, dated 27th September 1871, by which certain landed properties were to be divided, as specified in the agree-

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DECREE—*contd.*

ment between them and the defendants. The case came on for hearing on the 13th September 1878. The defendants did not appear, and a decree *ex parte* was made, which declared that the plaintiffs were entitled to have the agreement of the 27th September 1871 specifically performed, and referred the suit to the commissioner for the preparation of conveyances, etc. The decree was sealed on the 9th October 1878. No further steps were taken by any of the parties for six years, and in September 1884 the matter was first brought before the commissioner. He then directed the defendants to lodge with him all the title-deeds of the properties which by the agreement were to go to the plaintiffs as their share. The defendants thereupon applied that the plaintiffs should be directed to lodge

contained no direction to him in respect thereof. The defendants on the 10th November 1884 gave notice to the plaintiffs that they would apply to the Court—(1) "to set aside or vary its order of the 13th September 1878, so far as it related to the

counts to be taken. This motion was not brought on until the 10th September 1885, on which day it was dismissed with costs; the Judge holding

remained unperformed by them, by giving up to the defendants possession of certain properties and by accounting for the rents thereof, etc., etc. At the hearing of this motion, counsel for the defendants asked that the decree should be rectified, by directing that the agreement should be specifically performed by the plaintiffs and defendants respectively. *Held*, that the defendants were entitled to have the decree rectified. The fact that the decree declared that the plaintiffs were entitled to have the agreement of the 27th September 1871

of decree in cases of this nature. The Court has

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inherent power over its own records so long as those records are within its power, and it can set right any mistake in them. Counsel for the plaintiffs contended that the defendants were not entitled, in the present motion, to ask for a rectification of the decree, inasmuch as their notice of motion did not intimate that the point would be raised. *Held*, that such an objection ought to be taken at once as a preliminary point. As it was not made until the argument of counsel for the defendants was concluded, it should be taken that the form of the motion as made to Court was acquiesced in. The objection was then too late. *KARIV MANOMRIN v. RAJOOVA*. I. L. R. 12 Bom. 174

58. ——— Decree for redemption within specified time—*Appeal against decree—Power of Court in execution to extend time for redemption allowed by decree—Special ground for enlarging time* The plaintiffs sued for the redemption of certain mortgaged property. On the 1st March 1880, a decree was passed declaring the plaintiffs entitled to redeem on payment by them to the defendants of Rs 49-11-0 within three months from the date of the decree. Against this decree the defendants (the mortgagees) appealed on the ground that a much larger sum than Rs 49-11-0 was due to them on the mortgage. The plaintiffs also filed an objection to the decree.

months as ordered by the decree. On the 12th October 1886, they presented an application for execution, and paid into Court the Rs 49-11-0. The lower Court granted their application, and

plaintiffs on the 12th October 1886. *Held*, also, that, even if the Court had power to enlarge time, the fact that the defendants had paid the sum of Rs 49-11-0 into Court would afford no ground for refusing to execute the decree. *ISHWARNAK v. CHANDRAMA MANAPPAI*. I. L. R. 13 Bom. 106

59. ——— Extending time for payment mentioned in decree—*Decree conditioned on payment of a sum certain within a fixed time—Payment after time specified in decree* A Court, having framed a decree conditioned on the payment by the plaintiff of a sum certain within a specified time, has no power to extend the time for payment after the period mentioned in the decree has elapsed. *Har Narain Singh v. Chaudhrain Bhagwant Kuar*,

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1. L. R. 13 All. 300, referred to. *RAM LAL DUBE v. HAR NARAIN*. I. L. R. 13 All. 400  
*See KODAI SINGH v. JAISRI SINGH*  
I. L. R. 13 All. 376

60. ——— Time fixed by decree for assumption of character of sannyasi—*Enlargement on appeal of that time* The plaintiff sued for a declaration of his right as heir of a muth and for possession of the property of the muth, and obtained a decree, which was, however, made contingent upon his assuming the character of a sannyasi, which he had been directed to do on being

which he was to become a sannyasi pending the disposal of the appeal preferred by the defendant. On the plaintiff's appeal:—*Held* the Court had power to extend the time as prayed. *RANGA-CHARIAR v. YOGNA DIKSHATUR*  
I. L. R. 13 Mad. 524

61. ——— Power of Court to rectify its own mistake in order—*Civil Procedure Code (Act XIV of 1882), s. 370—Insolvency of plaintiff* On the 3rd of August a case came on for hearing. Prior to that date, the plaintiff in this suit had been adjudicated an insolvent, and did not appear, but the official assignee appeared and applied for a postponement. The Court accord-

ed that the suit and gave security for the defendants' costs. The time for complying with the order was subsequently extended, and the plaintiff in the meanwhile obtained an order allowing the insolvency proceedings to be withdrawn. The defendant now applied that the suit should be dismissed pursuant to the terms of the above order. The plaintiff objected, as he was now no longer an adjudged insolvent, and was ready to prosecute the suit.

order, and, as a consequence, refusing the defendant's application. *LEKHRAJ CHUNILAL v. SHANILAL NARBONDAS*. I. L. R. 16 Bom. 404

62. ——— Interest given by amendment in decree which was not given by the judgment—*Civil Procedure Code, ss. 206, 209, 623—Superintendence of High Court* The plaintiffs sued for recovery of a certain sum of money and interest up to date of suit and for interest during the suit and subsequent to decree until satisfaction thereof. The Court in its judg-

DECREE—*contd.*3. ALTERATION OR AMENDMENT OF DECREE—*contd.*

ment awarded the plaintiffs a specified sum of Rs. 10,000 and ordered that the rest of the plaintiff's costs be paid by the defendant of interest during the pendency of the suit and after decree until the satisfaction of the debt. *Held*, that it was illegal for the Court to decree the claim for interest by way of amendment of its decree, and that the order so amending the decree was open to revision. *HASAN SHAH v. SHEO PRASAD*. I. L. R. 15 All. 121

63. — Alteration of decree made by predecessor—*Competency of Judge before taxation to reconsider an order as to costs made by his predecessor in office—Certificate of pleader's fee.* A Subordinate Judge, in granting the application of a plaintiff before him for permission to withdraw with leave to file a fresh suit in the same matter, made an order as to costs in favour of the defendants in the following terms:—"As the case has not been contested to the bitter end, half the pleader's fees are allowed and the process expenses, etc., incurred in the case, except those already refused to the defendants. For travelling and incidental expenses defendants to put in a bill in one week; this to be subject to the decision of the Court after hearing both parties. The application under s. 373 of the Code of Civil Procedure is granted with leave to the plaintiff to bring a fresh suit for the same matter. Costs allowed to defendants as above." The Judge who had made the above order having been transferred before taxation was completed;—*Held*, that it was competent to his successor at taxation and before granting payment of the pleader's fees to consider whether the certificate given by a pleader as to the fee paid to him in the case was according to rule, and to disallow payment of any fee not duly certified as paid. *DICK v. DICK*. I. L. R. 15 All. 169

64. — Decree in terms of an award ordering (inter alia) delivery of moveable property—*Loss of part of such moveable property and consequent failure to deliver—Application to insert in decree an order to pay value of such moveable property in event of failure to deliver—Civil Procedure Code (XIV of 1882), ss. 206-8.* A partition suit brought by a son

this decree it was ordered that in satisfaction of the plaintiff's claim the defendant should pay to him Rs. 1,05,000 in the manner therein stated, viz., Rs. 40,000 to be paid forthwith and the balance of Rs. 65,000 to be paid "upon the plaintiff's delivering to the defendant certain specified property, which included two vessels or *lugows*, called respectively the *Narsi* and *Sambul*." In no event was

DECREE—*contd.*. ALTERATION OR AMENDMENT OF DECREE—*contd.*

defendant to be required to pay the Rs. 65,000 before the 15th November 1890. At the date of the decree the vessel *Sambul* was at sea on a voyage, and on the 18th June 1890, while still on the voyage, she was lost. On the 15th November 1890, the plaintiff's attorneys demanded payment of the balance of Rs. 65,000. They offered to deliver the other properties specified in the decree, but stated that the vessel *Sambul* had been lost. They offered to pay its value, which they estimated at Rs. 1,000. The defendants, however, demanded the delivery of the *lugows*, which they stated to be worth a very large sum. The defendants having, under the circumstances, refused to pay the Rs. 65,000, the plaintiff applied for execution of the decree, which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative if delivery of the vessel *Sambul* could not be made, such delivery having become impossible. *Held*, that the rule must be discharged. The objection was

it was to be stated a sum to be paid to the defendant in case some of the property could not be delivered to him. If such an objection had been made the Court might possibly have remitted the award or refused to file it. No such objection, however, was taken and the award was filed and a decree obtained in accordance with the award. The award could not be modified by the Court, nor could the decree, which must be in accordance with the award. *AMEEN BIN ESSA KHALIFFA v. ESSA BIN KHALIFFA*

I. L. R. 17 Bom. 657

65. — Rectifying decree—*Practice—Clerical error.* By a written agreement the defendants agreed to purchase from the plaintiff certain land comprising 5,280 square yards or thereabouts at the rate of Rs. 1.6 per square yard. The sum of Rs. 1,000 was paid on the date of the agreement in part payment of the price.

obtaining specific performance as prayed and costs." The decree was

THE DECREE WAS IN

DECREE—*contd.*3 ALTERATION OR AMENDMENT OF DECREE—*contd.*

as earnest On 6th November 1897, the plaintiff gave notice of motion to rectify the decree by altering the figure R4,475 to R4,775. On motion to rectify the decree:—*Held*, that the decree should be rectified. **PHEROZSHA PESTONJI RANDERIA v SUN MILLS** . . . I. L. R. 22 Bom. 370

## 68. —

Code (Act  
Consent

in petition

intention of parties. Where, the parties to a suit having entered into a compromise, a decree was ordered to be entered up in terms of the petition of compromise, but, owing to some ambiguity in the petition of compromise, a passage, which was not contained in the petition, was inserted in the decree

articles:  
a true

ought

The

judgment here (ordering a decree to be entered up in terms of the petition of compromise) was not such a judgment as is contemplated by s. 206, Civil Procedure Code, there being no expression of judicial opinion on the merits of the case. **RAMESHWAS PRASAD NARAIN SINGH v CHANDRESHWAR PRASAD NARAIN SINGH** (1933) 7 C. W. N. 860

## 67. — Limitation—Civil Procedure

Code (Act XIV of 1882), s. 206—Limitation Act (XV of 1877), Sec. II, Art 179(3) A decree was passed on 31st December, 1892, and no appeal was prosecuted by either party therefrom. Defendant No. 2, however, filed a petition for amendment of the decree in respect of the costs, which was granted.

by limitation: *Held*, that it was not barred. The order passed by the Court determining the amount of costs must be treated as a continuation or completion of the judgment, and the amendment made was therefore substantially made on review of judgment, and Art 179 (3) of Sec II to the Limitation Act applied. **VENKATA JOOAYYA v VENKATA SIVAHADRI JAGAPATIRAZU** (1900)

I. L. R. 24 Mad. 25

## 68. — Omission in judgment—

Civil Procedure Code (Act XIV of 1882), ss 206, 622—Omission in judgment—Decree in conformity with judgment—Amendment of decree under s. 206—Remedy by appeal—Inadmissibility of revision petition—Limitation Act (XV of 1877), s. 5 Defendants in a suit held certain land on lease from plaintiff, who alleged that they had encroached upon his land and by that means held more than the area to which they were entitled. Issued for possession of the excess, and also claimed arrears of rent. Defendants denied the alleged

DECREE—*contd.*3. ALTERATION OR AMENDMENT OF DECREE—*contd.*

encroachment, and pleaded that if it should be proved they were willing to pay increased rent. They also admitted liability in respect of the arrears of rent. The encroachment was proved, and the District Munsif gave judgment declaring defendants liable for increased rent in proportion, a decree being drawn up in similar terms. Both judgment and decree omitted to award the amount admittedly due as arrears of rent. Plaintiff thereupon presented a petition to the District Munsif, who ordered the decree to be amended so as to render defendants liable for the said arrears. This order was passed more than one month from the date of the decree. Upon a petition being preferred by defendants in the High Court against the District Munsif's order of amendment: *Held*, that the petition was not admissible, inasmuch as it was open to the petitioner, under s. 5 of the Limitation Act, to appeal against the decree as amended, notwithstanding that a month had expired from the date of the decree. **NANDA RAI v. RAGHUNANDAN SINGH**, I. L. R. 7 All 232, considered. **VISVANATHAN CHETTI v. RAMANATHAN CHETTI** (1901) . . . I. L. R. 24 Mad 646

## 69. — Amendment of

decree—Limitation Act (XV of 1877), s. 5, and Sch. II, Art. 152—Appeal—Limitation—Sufficient cause for non-presentation of appeal within time Where the original decree was signed on the 6th July 1903, and the plaintiffs applied, on the 22nd instant to have the same amended in respect of the name of a party, which had been incoorrectly recorded, the amendment was allowed which had the effect of amending the decree. *Held*, that the amendment was not barred by the Limitation Act.

## 4. EFFECT OF DECREE.

1. — Decree made with jurisdiction—*Estoppel* A decree made with jurisdiction

2. — Illegal decree—*Void decree*. Where a Court has jurisdiction over the subject-matter of a suit its judgment or decree, even though irregular or illegal, cannot be said to be null and void. **PHOOL KOOR v SHEO SURUN SINGH** . . . 12 W. R. 489

DECREE—*contd.*4. EFFECT OF DECREE—*contd.*

3. — Decree made without jurisdiction. A decree without jurisdiction is of no effect in creating any charge on immovable property. *LUCMEELNATH SINGH v. MAHO DASS SAROO* 2 N. W. 70

4. — Decrees, priority of. A decree takes priority over other decrees in respect of the date on which it was passed, and not in respect of the priority of the debt which it enforced. *GHEHAN v. KUNJ BEHARI* I. L. R. 9 All. 413

5. — Effect of a decree obtained by an attaching creditor in a suit against successful intervenors or claimants—*Civil Procedure Code (Act VIII of 1859), ss 240, 270, 271.* In 1872 the plaintiff obtained a money-decree against two brothers, P and K. In execution of that decree, he attached their one-half share in certain fields in 1874. The attachment was removed at the instance of two claimants, S and B. In 1875 the plaintiff sued the claimants and obtained a decree in his favour in 1878. Meanwhile, in December 1874, after the plaintiff's attachment had been removed, one P obtained a decree against one of the brothers, P. In 1867, while the plaintiff's suit against S and B was pending, P's right, title and interest in the one-half share of the fields belonging to himself and K was sold in execution of P's decree and purchased by the defendant. In 1881 the plaintiff again attached the one-half share belonging to the two brothers under his decree of 1872. Thereupon the defendant, relying on his purchase of 1876, applied for the removal of the attachment. It was removed from P's one-fourth share and maintained on K's share, which was in due course sold. The plaintiff now sued to establish his right to sell P's one-fourth share under his decree of 1872. *Held*, also, that, though the effect of the decree obtained by the plaintiff in his suit against the claimants, S and B, was to efface entirely their obstruction to his attachment of 1874, to reinstate that attachment as in full force *ab initio*, and to restore the state of things that had been disturbed by the order of release, yet the plaintiff could not succeed in the present suit, as the sale to defendant was valid, & that the plaintiff taking debtor *BEHARI* I. L. R. 10 Bom. 400

6. — Effect of setting aside a decree on the ground of fraud and collusion. A filed a suit against B in which a consent decree was passed. This decree was set aside in a

DECREE—*contd.*4. EFFECT OF DECREE—*contd.*

undecided. *Held*, refusing the application, that A's decree, though set aside, was not reversed. The decree obtained by B left A's decree legally declaration that avail nothing suit who were v. RAHMABAI I. L. R. 10 Bom. 338

7. — Decree determining rights of rival religious sects—*Decree whether executory or declaratory—Limitation—How far a sect*

certain temple in the village, or to public worship in a certain street, or to procession in the streets of the village, and it was directed that, if the defendants continued to make the image an object of public worship it should be removed. In 1888 various members of the Vadagalai sect, asserting that the members of the Tengalai sect had acted in contravention of the decree in the above suit, filed an execution petition therein, praying that various members of the Tengalai sect be arrested, and "that the image of their priest, which they

executed against the parties to the present petition *SADAGOPACHARI v. KRISHNAMACHARI* I. L. R. 12 Mad. 350

8. — Decree for redemption not providing for payment in fixed time. A decree for redemption, which does not provide for payment of the mortgage-debt within a fixed time or for foreclosure in case of default, operates of itself as a foreclosure decree if not executed within three years *MALOGI v. SAOAJI* I. L. R. 13 Bom. 567

9. — Decree directing separate amounts with separate sets of proportionate costs to be recovered against defendants—*Transfer of the decree in writing to one of the*

proportionate costs be recovered against A. Subsequently A took a transfer of the decree in writing and applied for execution of the decree against N to the extent of the sum decreed against him. The

**DECREE—concl'd.****4. EFFECT OF DECREE—concl'd.**

application having been rejected under s. 232, cl. (b), of the Civil Procedure Code (Act XIV of 1882): *Held*, reversing the order, that a 232, cl. (b), of the Civil Procedure Code (Act XIV of 1882) was not applicable. Though the direction against *N* and the separate direction against *A* were contained on one and the same piece of paper and were passed in the same suit, still for all that they were decrees for separate sums of money and might equally well have been passed in separate suits. The fact of their being on one piece of paper cannot control the matter. *ANANT VINAYAK v. NAGAPPA SUBRAYA* (1907) I. L. R. 32 Bom. 195

**5 REVIVAL OF DECREE.**

**I. ——— Jurisdiction to revive decree.** In a suit for recovery of a sum of money

the amount due from him, and praying to be put in possession, the lower Courts restored the decree and passed an order in his favour. *Held*, that the lower Courts had no jurisdiction to revive a decree at the instance of the judgment-debtor. *NILAMBAR SEN v. KALI KISHOR SEN*

3 B. L. R. Ap. 94: 12 W. R. 28

**DECREE-HOLDER.**

*See* MORTGAGE . I. L. R. 31 Calc. 737

*See* SALE IN EXECUTION OF DECREE—  
SETTING ASIDE SALE—GENERAL CASES  
I. L. R. 29 Calc. 548

*See* SALE IN EXECUTION OF DECREE—

——— breach of contract by—

*See* DECREE—CONSTRUCTION OF DECREE  
—CONSENT DECREE  
I. L. R. 28 Calc. 557

——— death of—

*See* SALE IN EXECUTION OF DECREE—IN-  
VALID SALES—DEATH OF DECREE-  
HOLDER BEFORE SALE  
I. L. R. 3 All. 759

——— liability of—

*See* EXECUTION OF DECREE—LIABILITY  
FOR WRONGFUL EXECUTION.  
3 B. L. R. A. C. 413  
12 B. L. R. 208 note  
I. L. R. 3 Bom. 74

**DECREE-HOLDER—concl'd.**

——— liability of—concl'd.

*See* SALE IN EXECUTION OF DECREE—  
WRONGFUL SALES.

5 B. L. R. Ap. 71, 73 note

3 B. L. R. A. C. 413

5 N. W. 211

7 W. R. 355

——— meaning of—

*See* EXECUTION OF DECREE—APPLICATION  
FOR EXECUTION AND POWERS OF COURT.  
I. L. R. 2 Mad. 216  
I. L. R. 16 Calc. 639

——— minor—

*See* LIMITATION ACT, 1877, ss. 7, 8  
I. L. R. 26 Calc. 465

——— purchase by—

*See* SALE IN EXECUTION OF DECREE—  
SETTING ASIDE SALE—IRREGULARITY  
—GENERAL CASES.

——— rival—

*See* CIVIL PROCEDURE CODE, 1882, s. 244  
11 C. W. N. 433

**DEDICATION.**

*See* BURNING GHAT . 10 O. W. N. 104

*See* DEBUTTER . 10 C. W. N. 1000

*See* ENDOWMENT . 9 C. W. N. 154

*See* HINDU LAW—ENDOWMENT.  
I. L. R. 38 Calc. 1003

*See* MAHOMEDAN LAW . 10 O. W. N. 449

*See* MORTGAGE . 9 C. W. N. 914

——— of mosque for use of a particu-  
lar sect—

*See* MAHOMEDAN LAW  
I. L. R. 35 Calc. 294

**DEDUCTION OF TIME IN CALCULATING LIMITATION PROSECUTED IN COURT WITHOUT JURISDICTION.**

*See* LIMITATION ACT, 1877, s. 14 (1871,  
s. 15; 1859, s. 14).

**DEED.**

	Col.
1. EXECUTION . . .	3352
2. ATTESTATION . . .	3354
3. CONSTRUCTION . . .	3357.
4. PROOF OF GENUINENESS . . .	3364.
5. RECTIFICATION . . .	3370
6. CANCELLATION . . .	3370.

*See* BENAMIDAR . I. L. R. 35 Calc. 551  
*See* DOCUMENT.

**DEED—contd.**

## attestation of—

See EVIDENCE ACT, s. 68

3 C. W. N. 395

I. L. R. 18 Mad. 20

I. L. R. 28 Cal. 222

3 C. W. N. 228

## construction of—

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

See GRANT—CONSTRUCTION OF GRANTS.

See LEASE—CONSTRUCTION.

See MORTGAGE—POSSESSION UNDER MORTGAGE. I. L. R. 25 All. 287

See SETTLEMENT—CONSTRUCTION.

## decision as to genuineness of—

See CIVIL PROCEDURE CODE, 1882, s. 214

—QUESTION IN EXECUTION OF DECREE.

I. L. R. 21 All. 356

I. L. R. 22 Bom. 475

I. L. R. 23 Cal. 839

See REGISTRATION ACT, s. 77

I. L. R. 24 Cal. 668

See RES JUDICATA—MATTERS IN ISSUE.

3 Mad. 120

12 B. L. R. P. C. 304

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I. L. R. 4 All. 85

I. L. R. 21 Cal. 430

## effect of—

See ONUS OF PROOF—DEED, EFFECT AND OPERATION OF.

I. L. R. 25 Cal. 78

I. L. R. 24 L. A. 186

1 C. W. N. 594

## enforcing or cancelling—

See ONUS OF PROOF—DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE

## execution of—

See HUSBAND AND WIFE

6 C. W. N. 809

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

I. L. R. 21 Bom. 126

See PARDANASHIN WOMEN

I. L. R. 28 Cal. 548

## of assignment—

See DEBTOR AND CREDITOR.

I. L. R. 26 Bom. 577

## of gift—

See MAHOMEDAN LAW—GIFT.

I. L. R. 35 Cal. 271

**DEED—contd.**

## of sale—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

## registration of—

See REGISTRATION ACT (III of 1877).

## suit to set aside—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

See DECREE—FORM OF DECREE—DEEDS, SUITS TO SET ASIDE.

See DURESS. 7 B. L. R. P. C. 830  
7 Mad. 378

See LIMITATION ACT, 1877, SCH. II, ARTS. 91, 92, 93 (1871, ARTS. 92, 93)

See ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE.

## 1. EXECUTION.

1. ——— Completion of deed of sale—

Deed of sale. A deed of sale is complete on

2. ——— Proof of execution—Admissi-

executed the deed, and said that the mark was not hers. All the attesting witnesses were dead. A witness was called who knew the handwriting of one of the attesting witnesses, and who swore that the signature of that witness to the attestation clause of the deed was genuine. *Held*, on the authority of *Whitlock v. Musgrove*, 2 Cr. & M. 511, that the deed was admissible in evidence, its execution by G being sufficiently proved.

ABDULLA PARU V. GANNIBAI

I. L. R. 11 Bom. 890

3. ——— Evidence Act (I of 1872), s. 68—Attesting witness—Scribe of a deed—Transfer of Property Act (IV of 1882), s. 59. *Held*, that a deed may be legally proved by the evidence of the scribe thereof who has signed his name, but not explicitly, as an attesting witness, on the margin, and has been present when the deed was executed. *Muhammad Ali v. Jafar Khan*, All. W. N. (1897) 145, followed. *RADHA KISHEN V. FATEH ALI RAM*. I. L. R. 20 All. 532

4. ——— Proof of execution—Evidence Act (I of 1872), s. 68—Transfer of Property Act (IV of 1882), s. 59—Attesting witness—Mortgage—Writer of the deed.



DEED—*contd.*I. EXECUTION—*contd.*

witness to prove the execution of the deed. He need not be described in the deed as an attesting witness *Radha Kissen v. Fatch Ali Ram*, I. L. R. 20 All 532, referred to. *RAJ NARAIN GHOSE v. ABDUL RAHIM* (1901) 5 C. W. N. 454

5. ——— Signature—Execution of deed—Registration—Admission of Signature before Registrar—Denial of execution—Registrar, jurisdiction of, to register—Certificate of registration. When the executant of a deed admits his signature to the deed before the Registering Officer, but denies its execution: *Held*, that the Registering Officer can regard this as an admission of the execution, and has jurisdiction to register the deed; also, that the Court cannot go behind the certificate in these circumstances. *Scoble*: that, where a person signs his name on a blank paper, with an endorsement in his own handwriting that "the mortgage bond or Rs21,750 on account of *Hundis* executed by me is correct," it shows that he gave authority to engross on the paper the deed that is written on it, and the deed is therefore valid. *YULE v. RAM KHELWAN SARAI* (1901) 8 C. W. N. 329

6. ——— Transfer of Property Act (IV of 1882), s. 59—Mortgage-deed signed by the mortgagor attested by one witness and containing an acknowledgment by the Sub-Registrar, whether valid—Indian Succession Act (X of 1865), s. 50—Mortgage being invalid, whether a money decree can be made upon the covenant in the bond. The requirements of s. 59 of the Transfer of Property Act are not satisfied when a mortgage-bond is signed

invalid on the ground that the requirements of s. 59 of the Transfer of Property Act were not satisfied, the plaintiff is entitled to recover, upon the covenant, money which the defendant covenanted to pay. *TOPALUDDI PEADA v. MAHARAJI SHAHA* I. L. R. 26 Calc. 78

7. ——— Security-bond attested by only one witness—Signatures of the Sub-Registrar and the identifier on the back of the bond whether sufficient to render mortgage valid. A security-bond, by which an interest in specific immovable property has been transferred to another person for the purpose of

by which the liability of a surety was created was signed by the mortgagor only on the front page, and not attested by two witnesses, but on the back of the bond it contained the signatures of

DEED—*contd.*I. EXECUTION—*contd.*

the Sub-Registrar and of the identifier, a suit is not maintainable, inasmuch as the bond is not a valid one under s. 59 of the Transfer of Property Act. *Nitye Gopal Sircar v. Narendranath Mukherjee*, I. L. R. 11 Calc. 429, distinguished. *GIRINDRA NATH MUKERJEE v. BEJOY GOPAL MUKERJEE* I. L. R. 26 Calc. 246 3 C. W. N. 84

8. ——— Attestation of mortgage-bond—Meaning of the word "attested"—Evidence Act (I of 1872), s. 70—Admission of execution. The attestation required by s. 59 of the Transfer of Property Act is an attestation by witnesses of the execution of the document, and not of the admission of execution. The word "admission" in s. 70 of the Evidence Act relates only to the admission of a party in the course of the trial of a suit, and not to the attestation of a document by the admission of the party executing it. *Girindranath Mukerjee v. Bejoy Gopal Mukerjee*, I. L. R. 26 Calc. 246, followed. *ABDUL KARIM v. SALIMUN* I. L. R. 27 Calc. 190

9. ——— Mortgage-deed attested by only one witness. Where a mortgage-deed was executed, but there was only one attesting witness, it was *held*, not to create any charge on the property, because it was a mortgage within s. 53 of the Transfer of Property Act, and because such a transaction was expressly excluded from the operation of a 100 of the Act, and that the provisions of s. 59 not having been complied with, the mortgage could not be proved. *RAM KUMAR BIBI v. SRINATH ROY* I. L. R. 81

10. ——— Evidence Act (I of 1872), s. 63—Attestation of marksman. The attestation of a marksman to a mortgage-bond is a sufficient attestation within the meaning of s. 59 of the Transfer of Property Act and s. 63 of the Evidence Act. *FRANKESHNA TEWARY v. JADU NATH TRIVEDI* 2 C. W. N. 603

## 2 ATTESTATION.

1. ——— Attesting witness unable to write—Name written or mark added by another person. Where an attesting witness is unable to write, and either makes a mark or has his name written for him in a deed, the style of execution of the attestation cannot invalidate the deed. *AGUM MISRA v. PULLUKDHAREE MISRA* W. R. 1864, 187

2. ——— Effect of deed on witness attesting it—Estoppel. The attesting of a deed of conveyance of property made with full knowledge of the contents of the deed and of the object of the signature may convey the right of the person signing. *SUBIATOOLLAH v. DASSEE BISEE* 1 W. R. 66

3. ——— Reversioner—Consent. A reversioner attesting a conveyance by

## DEED--cont'd.

## 2. ATTESTATION—*cont'd.*

Hindu widow cannot impeach the sale on the ground of waste by such alienation **GORAIL CHUNDRA MANNA v. GOURMONEE DASSEE**

6 W. R. 53

4. \_\_\_\_\_ Evidence of as-

assent to deed. Where a person executes a deed as witness with full knowledge of its contents, such execution may be taken to be evidence of his assent to the statements contained in the deed.

NOORUM v. KNOR; BUKSH. 1 Agra 50

1 Агта 50

**MATADEEN ROY v. MUSSOODUN SINGH**

10 W. R. 293

5. \_\_\_\_\_ The attestation of

d by a relative does not necessarily import

is concurrence. **RAJLAKSHI DEBI v. GOKUL**

DEB T. GORCE

3 B. L. R. P. C. 57; 13 Moo. L. A. 209

**RAM CHENDER PODDAR v. HARI DAS SEN**  
**I. L. R. 9 Calc. 463**

**6.** Evidence of concurrence or consent to deed attested The true rule deducible from the cases of *Rajlaksh Debia v. Gokul Chandra Chowdhry*, 3 B L R. P. C. 57, *Maladeen Roy v. Muvodun Singh*, 10 W. R. 293, and *Ram Chunder Poddar v. Haridas Sen*, 1 L R 9 Calc. 463, is that, though the mere attestation of a deed by a relative does not necessarily import concurrence, yet where it is shown by other evidence that, when becoming an attesting witness, he must have fully understood what the transaction was, his attestation may support the inference that he was a consenting party. The question whether attestation of a document should be held to imply assent is a question of fact which has to be determined with reference to the circumstances of each case. **CHANDER DUTT MISSEER v. BHAGWAT NARAIN**, 3 C. W. N. 207

3 C. W. N. 207

7. \_\_\_\_\_ Sust for posies.

**Estoppel**—In a suit for possession, the fact of plaintiff having been a subscribing witness to a pottah which is set up by the defendant is not conclusive against the former. *HOSSEINIEE KHANUN v. TITUN LALL*, 14 W. R. 293.

14 W. R. 293

### 8. — Necessity of attestation—

*Maurau pottah* Documents of the description of a maurau pottah are not required by law to be attested. GRISH CHUNDER ROY v. BHUGWAN CHUNDER ROY . . . 13 W. R. 19

13 W. R. 18

9. \_\_\_\_\_ Sufficiency of attestation—

Transfer of Property Act (II) of 1882, s 59—Attestation of \_\_\_\_\_  
"attested" \_\_\_\_\_  
gave after \_\_\_\_\_  
acknowledg \_\_\_\_\_  
was signed \_\_\_\_\_  
witnesses \_\_\_\_\_

for the mortgage-debt, it appeared from the evi-

vidence that none of the attesting witnesses has

actually seen the execution of the deed by

## DEED—contd.

## 2. ATTESTATION—concl'd.

the mortgagor, but must have attested merely on the mortgagor's admission of his signature. The lower Courts held that this was not sufficient under s. 69 of the Transfer of Property Act (IV of 1882), and that the mortgage was therefore invalid. On appeal to the High Court: *Held*, that the attestation was sufficient. A mortgage-deed is attested within the meaning of s. 69 where the attesting witnesses sit in the presence of the

RAMJI HARIBHAI v. Bai PARVATI (1902)

I. L. R. 27 Bom. 91

10. \_\_\_\_\_ Time of attestation—*Ev.*

*—Evidence Act (I of 1872), ss. 70, 114—Transfer of Property Act (IV of 1882), s. 59—Mortgage-deed, proof of—Attesting witness.* Where a mortgage-deed, on the face of it, showed that it was attested by two

attested by two

his presence, but he was not able to remember whether the mortgagee signed also in the presence of the writer, and it appeared that the writer's signature preceded that of the other witness: *Held*, that, under the circumstances, it might fairly be presumed that both signed as attesting witnesses after the execution of the document by the defendant. That such a presumption may be raised is supported by s. 114 of the Evidence Act. *Burgoyne v. Shouler*, 1 Rob Eccl Rep 5, relied on. JOGENDRA NATH MUKHOPADHYA v. NITAI CHURN BUNDOPADHYA (1903) C. W. N. 384

C. W. N. 384

11. ——— Witness writing name of executant—Transfer of Property Act (IV of 1882), s. 59—Mortgage-bond, proof of—Witness writing the name of executant, whether an attesting witness—Practice—Remand Where a lady executed a mortgage-deed by putting her finger-mark to the same, and a person who saw her put the finger-mark wrote her name at her request and the words "by the pen of" preceding his name written by himself: Held, that he was an attesting witness, and the words "by the pen of" preceding his name were a mere matter of surplusage, and the document was executed by the lady and could not be regarded as having been executed by him on her behalf "Attestation" means that what is said to be attested happened in the presence of the attesting witnesses. Case where, on objection being taken at a late stage that a mortgage-bond was not attested, as the law required, by two witnesses, the suit, instead of being dismissed, was sent back to enable plaintiff to adduce further evidence to prove that at least two of the persons whose names appeared on the face of the document were attesting witnesses. *DISANOOZE DEBI C. BOX BEHARI KAPUR* (1902).

## DEED—contd.

## 3. CONSTRUCTION.

1. ——— Danger of deciding case upon a document by construction put on another document in another suit. The danger pointed out of deciding one case relating to a bond by the construction placed in another suit on another and a different bond. BHAGWANT SINGH v. DARYAO SINGH . I. L. R. 11 All. 418

2. ——— Intention of parties—*Right at time of execution*. In construing a document the situation of the parties and their rights at the time of the execution must be looked at. DINO NATH MUKERJEE v. GOPAL CHANDRA MOOKERJEE . 8 C. L. R. 57

3. ——— Evidence of intention. The intentions of parties in deeds must be taken from the words they use, where those words are plain. RADHAJEEBUN MOSTOOFEE v. BISSEEN MOSTOOFEE . 2 May 178

4. ——— In construing deeds, where their terms are doubtful, it should be ascertained in what manner the terms of the deed were understood and acted upon by the parties during the years immediately succeeding the grant. SHUNKER LALL v. POORUN MULL . 2 Agra 150

5. ——— Native documents—*Mode of construing*. Native deeds and contracts ought to be construed liberally, regard being had to the real meaning of the parties, rather than to the form of expression. In this view a person was held to be a manager, who was in a deed inaccurately and erroneously described as a proprietor or heir. HUNGOONAN PERSHAD PANDEY v. BABOOEE MUNDRAJ KOONWEREE . 8 Moo. I. A. 393; 18 W. R. 81 note

6. ——— Deed of sale—*Evidence of price of land*. In construing a deed of sale where the terms are doubtful, the price paid is a strong indication of the true meaning.

7. ——— Use of general words in document—*Limit on implication*. *Per MAHMOOD, J.*—When general words are used in a document, they must be understood in a general sense, unless they are accompanied by any expression limiting or restricting their ordinary meaning, or unless such limitation or restriction arises from necessary implication. SHEORATAN KUAR v. MAHIPAL KUAR . I. L. R. 7 All. 258

8. ——— Circumstances attending execution—*Conduct of parties after execution*. If, in order properly to apply and understand the provisions of a deed, it be necessary to enquire into the circumstances under which it was executed, a Court may rightly make such enquiry. The conduct of the parties after the making of an instrument affords a clue to their intentions in

## DEED—contd.

## 3. CONSTRUCTION—contd.

regard to its effect only where they are voluntary actors in the execution of the conveyance, not where it is made against their will by coercion of a Civil Court. LOOTF ALI v. BUDROOL HUK . 21 W. R. 119

9. ——— Construction irreconcilable with other documents. If a particular construction of a document renders a contract evidential by it inoperative, and another construction renders it operative and is reconcilable with other portions of the documents, the first should give way to the second. DHIRAJ MAHTAB CHAND BANARJEE v. HURDEO NARAIN SAHOO . 18 W. R. 119

10. ——— "Sontan"—"Issue"—*Male issue*. . . . .  
agreement  
family,  
not mal  
CHARJEE v. SETAMONEE BHUTTACHARJEE . 7 W. R. 320

11. ——— Absolute conveyance—*Properly in possession and expectancy*. When several persons join in a conveyance and convey "the whole and entire property absolutely," they must be taken to have exercised every power which they possess, and to have parted with their whole interest, whether in possession or expectation. KISHEN GEER v. BUSOET ROY . 14 W. R. 379

12. ——— Covenants as to title and quiet possession—*Protection against dispossession*. In a kotala by which certain landed property was conveyed, the vendor bound herself in the following terms: "If any one objects to my sale and gives you any sort of trouble, I will arrange it, and if I fail to do so, I will restore the purchase money; in default you may realize it by an action." Held, that it was intended to provide not only against defect in the power of the vendor as a Hindu widow, but against any disturbance of the purchaser, and to protect him against dispossession. BISSESSUREE DEBYA v. GOBIND PERSHAD TEWARI . 21 W. R. 398

Varied on appeal by decision of Privy Council by making more parties liable under the decree. BISSESSUREE DEBYA v. GOBIND PRASAD TEWARI . I. L. R. 3 I. A. 194; 26 W. R. 32

13. ——— Interest passing to purchaser—*Deed of sale*. It was held that the words "the arrears of past years due by assams" in a deed of sale did not pass to the purchasers decrees for arrears of rent held by the vendors. BALAM DAS v. DWARAKA DAS . 7 N. W. 88

14. ——— Ikramnamah, construction of—*Rent charge*. The defendants' ancestor granted to A and B an ikramnamah in the following terms:—"In consideration of Rs. 4,952 due by me to you, and in lieu thereof, I do hereby grant and alienate

DEED—*contd.*3. CONSTRUCTION—*contd.*

to A and B out of the whole and entire profits of my proper share in mouzah X the sum of Rs600 per annum, in equal proportion, free from all incumbrances, and constitute them part owners thereof. The said A and B shall be at liberty to make joint-collection with me, and to receive and enjoy in perpetuity Rs600; or upon division and partition of as much land as may yield to them Rs600, to make separate collection as from their own property. If in any way by sale, etc., the said mouzah shall cease to be my property, I agree to set apart, upon partition and division for A and B, as much land as may yield Rs600 in another of the mouzahs owned by me exclusively, and to that also the same conditions as above shall be applicable." A applied to have his name registered as owner of a share in the mouzah sufficient to yield an income of Rs300 per annum. *Held*, that, under the ikararnamah, A had only a rent charge on the property. MAHOMED ZAHIR ALUM v. CRUNDER CUMAR

5 C. L. R. 449

15. ——— Maxim, *expressio unius est exclusio alterius*—*Mistake in deed*—*Suit to reform deed*. The plaintiff sold to the defendant a field containing a well. The deed was registered as follows:

the amount of the tax on the well from the plaintiff for 1871, as the well stood entered in the Government books in the plaintiff's name. The plaintiff sued to recover the amount from the defendant. *Held*, that, under the deed of sale, the defendant

should have arisen from a mistake, his only remedy was a suit for reforming the deed so as to make it in accord with the actual agreement between the parties at the time of the sale. Amount and value of proof required of the plaintiff in such a suit pointed out. GULABHAI MONDAR v. DAYASHAI GOVARDHANDAS

10 Bom. 51

16. ——— Mistake in boundaries in deed—*Intention of parties*. Where by mistake a part only of the premises intended to be mortgaged is described in the deed, and would alone pass under a bill of sale in execution to the auction-purchaser—*Held*, that the Court ought to interfere for the rectification of the instrument, and that, regard being had to the intention and subsequent dealings of the agreeing parties, it ought to be construed as if it had expressly and fully mortgaged and conveyed the entire premises in question. PUDDOMONKE DASSEE v. DWARKANATH BISWAS

25 W. R. 335

17. ——— "Fasli year"—"Agricultural year"—N. W. P. Land Revenue Act (XIX of 1873), s. 3, cl. 8—*Inconsistent clause*.

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DEED—*contd.*3 CONSTRUCTION—*contd.*

The practice, adopted by patwaris in some parts of the North-Western Provinces, of applying the term "fasli year" to the "agricultural year" as defined in Act XIX of 1873, s. 3, cl. 8, is erroneous. Where parties to a deed describe a date as being in such and such a "fasli" year, they must be taken, in absence of evidence of mutual mistake, to refer to the calendar fasli year. In interpreting a document, a clause which is inconsistent in any construction thereof with the remaining provisions of the document must be rejected. YAD RAM v. AMIR SINGH, W. N. ALL. (1882) 174, and SHEOBARAN SINGH v. BISHESWAR DAYAL SINGH, W. N. ALL. (1892) 236, referred to. CHATARBHUT v. DWARKA PRASAD I. L. R. 18 ALL 388

18. ——— Construction of *razinama* disposing of estate with words "naslan bad naslan." In cases decided on the construction of documents, in which the expressions *mokurari istemrari*, *istemrari mokurari*, have been considered upon the question whether an absolute interest has been conferred by such documents, or not, it has been taken for certain that, if the words "naslan bad naslan" had been added, an absolute interest would have been clearly conferred. Accordingly, in construing a *razinama* between parties dividing family estate and expressly declaring that the shares should descend "naslan bad naslan"—*Held*, that the insertion of these words was conclusive in itself; the expressed object of this *razinama* pointing to the same construction, viz., that the estate taken under it was absolute. HARINAR BAKSH v. UMAN PRASHAN

I. L. R. 14 Calo. 298

L. R. 14 I. A. 7

19. ——— *Malikana*—*Heritable charge*—*Suit for arrears of malikana allowance*. B sold

retain possession himself or to sell it to some one else, and he is to pay Rs25 of the Queen's coin to me

words "as malikana" in the deed of sale could not be rejected as surplusage; that they showed an intention that the payment of the Rs25 should

W. R. 102, Bhoolee Singh v. Nirmoo Dehoo, 10

DEED—*contd.*3. CONSTRUCTION—*contd.*

W. R. 302, Hurmuzi Begum v. Hirday Nairan, I. L. R. 5 Calc. 921, Mahomed Karanattollah v. Abdool Majeed, 1 N. W. 205, Kooldeep Naram Singh v. Government, 14 Moa. I. A. 247, Tulshi Pershad v. ...  
Calc. 1  
569, an  
N. W.

I. L. R. 3 All. 301

20. ——— Debtor and creditor—Assignment or appropriation of rent till payment of debt—Intention to appropriate rent as distinguished from the lands—*Avaj* (money)—Usufructuary mortgage—Right to take *kabulats* from tenants and make recoveries. Where under an instrument a debtor allotted to his creditor his *avaj* on account of *deshpande hak* and *inam* recoverable from the

document, mean moneys or sums. *Held*, further, that the language of the instrument showed a clear intention to appropriate rents as distinguished from the lands themselves. *Held*, also, that, even if the transaction were regarded as a mortgage, it could only be a usufructuary mortgage, which would confer no right to have the property sold. HANMANT RAMCHANDRA DESHPANDE v. BABAJI ABRAJI DESHPANDE I. L. R. 16 Bom 172

21. ——— Construction of documents of sale and of agreement for re-sale—Sale, with right reserved of re-purchase within a period, distinguished from mortgage. A document purport-

I. L. R. 12 All. 301  
I. L. R. 17 A. 88

22. ——— Sale-deed or deed of gift—Mahomedan law, gift. A deed which purported on the face of it to be a deed of sale contained a recital that the consideration had been received by the vendor and returned as a gift to the vendee. The words used were—“Hath \*\*\* nawasi apne ki bar katali karke zar-i-saman tamam vo kaimal wasul pakar laksh diya aur hiba kardiya.” The deed was stamped as a sale-deed and was duly registered, but no possession was given under it, and there was apparently no evidence external

DEED—*contd.*3 CONSTRUCTION—*contd.*

to the deed that any consideration has passed between the parties. *Held* by EDGE, C.J., and TYRRELL and KNOX, JJ., that in the absence of any evidence external to the deed itself of the intention of the parties, the deed in question must be taken to be a deed of sale. *Per* MAHMOOD, J., *contra*. The lower Appellate Court having found that no consideration had passed, the deed must be considered as a deed of gift, though wearing the appearance of a sale-deed and, possession not having been given, under Mahomedan law the gift was invalid. ANOAN LAL v. MUHAMMAD HUSAIN I. L. R. 13 All. 409

23. ——— Deeds releasing future and contingent interests—Agreement excluding a possible question between the parties as to the effect of words in a will, under which they took their rights. Three brothers, under their father's will, were entitled, each on attaining full age, to the testator's residuary estate in equal shares. When all had attained full age, two having been minors at the testator's death, they effected a separation of their interests derived from the will, and executed to one another instruments of compromise and partition containing words relating to possible claims which they gave up. One of the two younger brothers afterwards died, having taken, under the will of the other younger one, all the estate of the latter who had died without issue before him. The eldest then attempted to raise the question whether, on the one hand, the brothers had taken under their father's will absolute interests, or on the other, interests that were divested, and went over to a surviving brother in the event of death

24. ——— Title under a will followed by a family arrangement adding to the property devised. The will of a proprietor, who died in 1861, disposed of a zamindari, and of one village within it, as two distinct properties, giving the zamindari to the testator's two widows, and, on the other hand, giving the village in equal shares, in perpetuity, to the two brothers of his junior wife. Neither of the two brothers took possession of their respective moieties on the testator's death, and the whole village was treated for some time as part of the zamindari, the profits of it being received by, or on behalf of, the widows. In 1869 one of the brothers died leaving a son, who succeeded

the son of the other brother

DEED—*contd.*3. CONSTRUCTION—*contd.*

satisfaction in lieu of his moiety. The junior widow having died, the senior got possession of the village, alleging that the surviving brother had merely been appointed to act as manager of it on behalf of herself and her co-widow. *Held*, that under the will the claimant had been originally entitled to one-half of the village including its rents, from the testator's death; and that to this half had been added the other, with title, in 1869, in pursuance of the transaction in regard to it. An order given by the widows in that year making over the village was not a revocable one; and the interest in the additional half conferred upon the claimant was commensurate with what was already his own. No writing was then necessary to vest the other half in him. Such a transaction was

V.L.

1. 22. 11, 11 Mar. 289  
L. R. 25 I. A. 84

25. ——— Trust—Beneficiary—Proviso for forfeiture of interest in case of insolvency—*Insolvency and withdrawal of petition in insolvency.* By a deed of settlement executed by the plaintiff's father, certain property was conveyed to trustees upon trust to recover the income thereof and to pay it to the settlor for life, and after his death to his seven sons, in equal shares, for the maintenance of them and their respective families. The deed provided that, in case any beneficiary became insolvent, "or do or suffer anything whereby his share or any part thereof would through his act or

of the family of such persons. In July 1894, the plaintiff, who was one of the sons of the settlor, filed his petition in insolvency; but on the 5th December 1894, he withdrew it. *Held*, that the forfeiture clause did not take effect, and that the plaintiff was entitled to be paid by the trustees his share of the income of the trust property. *HOSURJI NOWROJI DAVUR v. DADABHOY NOWROJI DAVUR*. I. L. R. 20 Bom. 310

26. ——— Sale-deed with counter-deed undertaking to re-transfer land in event of payments being made. In a document described as a sale-deed, plaintiff's father professed to give, "in absolute sale," certain lands to the defendant, inasmuch as he was unable to pay a debt owing by him to the defendant. On the same day defendant executed a counter-deed in which he referred to the said sale-deed and undertook to get the said lands transferred to plaintiff's father in the event of the latter paying the said debt within a certain time, together with interest till date of payment; and in that event to cancel the said sale-deed and deliver the same to plaintiff's father. The counter-deed further pro-

DEED—*contd.*3. CONSTRUCTION—*concl.*

vided the plaintiff's father should pay the principal and interest of the said debt by instalments, and that, in default of payment of any instalment,

to the sale-deed, after getting the counter-deed cancelled. *Held*, that on their true construction the documents showed nothing more than an intention to secure repayment of the debt; that though the provisions for payment by instalments and of the whole amount in default of instalments were contained in the counter-deed signed only by the transferee of the land, they were equivalent to a covenant by the transferor so to repay, because the two documents being parts of one transaction, both parties were bound by or could take advantage of every stipulation, whether contained in one or other of the deeds, as would have been the case if the transaction had been embodied in a single document. *Held*, therefore, that the transferee had a right to recover the debt (with interest) from the transferor personally; and that the provision entitling the transferee to credit the loan to himself in default of payment could not be construed as negating that right. Two documents relating to the transfer and re-transfer of land which were so connected as to constitute one transaction having been executed in the year 1882, prior to the passing of the Transfer of Property Act:—*Held*, that transaction should be regarded as having been entered into with reference to the law as propounded in the course of *Malbar decisions* commencing in 1858 and referred to in *Thimbasamy Madelly v. Hosain Routhen*, L. R. 21 A. 241. I. L. R. 21 Mad 1, and that the documents must be construed accordingly. *RAMAYYA v. KRISHNAMMA*. I. L. R. 23 Mad. 114

27. ——— Absence of reservation—*Deeds of mortgage and sale—Sale certificate—Absence of words of exception or reservation.* Where deeds of mortgage and sale, and a sale certificate, in respect of shares of a *zamindari*, contain no words of exception or reservation, and are otherwise apt for the purpose, they convey all the interest in the *zamindari* which was possessed by the former owners, including profit rentals of bazars built on lands not shown to have been severed therefrom. *ASUGAR REZA KHAN v. MAHOMED MENDI HOSSEIN KHAN* (1903)

I. L. R. 30 Cal. 556; L. R. 30 I. A. 71;  
a.c. 7 C. W. N. 482

## 4. PROOF OF GENUINENESS.

1. ——— Mode of proof—*Evidence as to similarity of handwriting.* When it becomes necessary to establish the genuineness of a writing, the testimony of the writer or of some person who saw the paper or signature written is not, as a matter of law, the only mode of proof. Evidence

DEED—*contd.*4. PROOF OF GENUINENESS—*contd.*

as to the similarity of handwriting is just as good in point of admissibility as the testimony of the subscribing witnesses. *GRISH CHUNDER ROY v. BHUGWAN CHUNDER ROY* 13 W. R. 191

2. — *Suspicion—Unregistered deeds.* Deeds, though unregistered (registration not

See *BHUGWAN DOSS v. HUNNOOWAN PERSHAD SARKOO* 18 W. R. 184

3. — *Inadequacy of consideration—Evidence of want of genuineness in deed—Party wanting deed said to be executed by him declared a forgery.* Where a deed has been proved and attested in due form, a Court is not justified, without any evidence of its fabrication, in finding from such evidence an inadequacy of the con-

4. — *Attestation by Registrar and proof by witnesses—Evidence of genuineness.*

5. — *Registration of deed—Proof of genuineness.* Registration of a deed does not affect the question of *bond fides*, nor is a conveyance to be considered *bond fide* simply because there is proof of its execution and some statement that money was on the occasion actually paid by the vendee into the hands of the vendor in the presence of witnesses unacquainted with the circumstances of the parties and the relation they bear to each other. *BROOBY CHUNDER BUREAL v. NAGOREE DOSSIA* 15 W. R. 15

*MUTHOOBOOLLAR v. TORAGOODDEEN* 15 W. R. 305

6. — *Registration—Registered document, proof of execution of.* Mere registration of a document is not in itself sufficient proof of its execution. *Kristo Nath Kcondoo v. Brown*, 1 L. R. 14 Cal. 176, 180, dissented from *SALAMATUL FATIMA alias BISI HOSSAINI v. KOYLASHPOOTI NARAIN SINGH* 1 L. R. 17 Cal. 903

7. — *Kabuliat—Prima facie proof of genuineness.* A Subordinate Judge having set aside the decision of a Munsif on the ground, *inter alia*, that it was improbable that the defendant would have executed a *kabuliat* in

DEED—*contd.*4. PROOF OF GENUINENESS—*contd.*

which his rent was suddenly raised to about three times the rate at which he had formerly paid, the Munsif's order was set aside. *See also* *13 W. R. 191*

8. — *Proof of execu-*

selves to be, they admitted execution of a deed presented for registration, yet where the execution of a document is in issue, the circumstance of its having been registered does not dispense with the necessity for independent proof of its genuineness. *FEZAL ALI v. BIA BISI CHOWDHRAI* 7 C. L. R. 276

See *KRIPANATH TOLLAPATTUR v. BHASHAYE MOLLAN* 6 W. R. 105

9. — *Validity of transfer—Benami transactions.* A transfer by registered deed, admitted to have been executed, but alleged to have been benami and merely colourable, was held on the evidence to have been valid and effective in the absence of evidence showing the contrary. *UMAN PRASHAD v. GANDHART SINGH* 1 L. R. 15 Cal. 20

L. R. 14 I. A. 127

10. — *Deed on two pieces of paper of different dates—Suspicion of forgery.* Where the Judge of first instance doubted the authenticity of a deed, it being written on two pieces of stamped paper of different dates: *Held*, under the circumstances, not to be a paper deduction. *KURALI PRASAD MISSEER v. ANANTHAN NAJRA* 8 B. L. R. 490; 16 W. R. P. C. 16

11. — *Evidence of intention with which documents were executed to ascertain their bond fides—Proceedings against third person.* A and B, two undivided Hindu brothers, 14. their mother C, and third share in the

recover A and B were in the joint property of A and C, the plaintiff gave in evidence proceedings taken by A jointly with his brother B in 1856

documents, as it was important to ascertain how A

DEED—*contd.*4. PROOF OF GENUINENESS—*contd.*

subsequently demeaned himself with regard to the property, his share or interest in which he purported to convey by those documents. *GIRDHAR NAOJI-SHET v. GANTAT MAROBA* . 11 Bom. 129

12. ——— Deeds not intended to operate according to their tenor—*Nullity of transaction apart from fraud.* Documents, principally a pottah and a kohala, executed between a Mahomedan parda-nashin lady and one of her relations, purported to represent, the one a patni lease from her of her lands, and the other a sale of her house and ground from the date of the execution. That she received the consideration was not proved, but had it passed, it would have been distributed between the two deeds, which formed part of one and the same transaction. From the acts of the parties it was established that her intent was to deprive her heirs, not herself, and that she had no intention to part with the property in *presenti*, as the deeds represented that she did. *Held*, that, the latter not being intended to operate according to their tenor, the whole transaction was a nullity. *JIRUN NISSA v. ASOAL ALI*

I. L. R. 17 Cal. 937

13. ——— Deed of sale—*Evidence that deed is not intended to have the ordinary operation.* When a conveyance has been duly executed and intended to have the ordinary operation, it should be a *mera sham*, and in order to establish this proof, it needs to be shown for what purpose other than the ostensible one the deed was executed. *RANGA AYYAR v. SRINIVASA AYYANGAR*

I. L. R. 21 Mad. 56

14. ——— Discussion of evidence and its effect—*Evidence of want of genuineness in deed.* Case in which evidence was discussed and its true effect pointed out, and in which it was held, reversing a decree of the High Court, that an *akramamah* relied on by the respondents was fabricated. It was connected with other documents already found to be forgeries, its contents did not dispel suspicion, it was not established by credible witnesses, nor supported by evidence of possession under it. *COOMARI RODESHWAR v. MANROOF KOER* . I. L. R. 13 I. A. 20

15. ——— Alterations in documents—*Evidence of want of genuineness.* A person who presents a document as evidence in an altered and suspicious state must explain the existing state of the document, unless there is corroborative proof strong enough to rebut the presumption which arises against an apparent falsifier of evidence.

DEED—*contd.*4. PROOF OF GENUINENESS—*contd.*

document. *KHOOR KOONWUR v. MOODNARAIN SAHON* . 1 W. R. P. C. 38; 0 Moo. I. A. 1

18. ——— Production when most likely to be challenged—*Evidence of genuineness of deed.* The production of a pottah in the presence of the party most interested in challenging its genuineness is a fact legally of the utmost importance in determining its genuineness. *GUNZE BISWAS v. SREEPOOAL PAUL CHOWDHRY* 8 W. R. 395

17. ——— Failure to raise objection to deed in former suit—*Evidence of genuineness of deeds.* Where no issue was raised in former suits as regards certain pottahs filed in those suits, the *bona fides* of such pottahs cannot be regarded as a *res judicata*; yet (*per* JACKSON, J.) where the pottahs (about half a century old) were put forward in suits to which the representatives of the present litigants were parties and no objection was raised then or since, their conduct was held to amount to

18. ——— Delay in bringing forward—*Evidence of want of genuineness.* In dealing with documents which purport to have been executed many years before they are brought into Court, and of which the fact of execution is denied, the Court will not only require credible and satisfactory testimony as to the actual making, but will look very much at the indications of its having or not having been published contemporaneously with or soon after its preparation, and will regard with strong suspicion a deed which has neither seen the light nor been acted upon until after the lapse of many years from the date it bears. *RADHAMADHUR GOSSAIN v. RADHABULLUR GOSSAIN* 2 Ind. Jur. O. S. 5

19. ——— Agreement not brought forward in former suit—*Evidence of want of genuineness.* Suit for the recovery of a debt upon an agreement which was not brought forward or

20. ——— Lapse of time between production and necessity for proving—*Evidence of bona fides—Admission.* A sued B in 1841 to recover possession of certain villages in Gujrat. B produced a deed purporting to be a conveyance by way of mortgage by A's ancestors of their sixteenth share in villages to B's ancestors. A at



## DEED—contd.

## 4. PROOF OF GENUINENESS—contd.

first denied the genuineness of the deed, but the suit of 1841 having been withdrawn by consent with a view to arbitration, took no steps to have the question decided until the deed was again produced (from the records of the Court, where it remained meanwhile) in the present suit brought in 1859 by *A* against *R* to recover the same village. *Held*, in the absence of evidence to show that the defendants had by their conduct during the interval admitted that the deed was not genuine, or that

relied upon by them. *It is*, also, that the High Court sitting in special appeal will not examine the evidence with a view to determine whether such a document be genuine or not; nor will it consider the question whether there is any evidence to connect the plaintiffs with the parties to the deed, when the suit appears to have been conducted in the Courts below as if this was admitted. *DEVAJI GOYANI v. GODADHAI GODEBHAI*

2 Bom. 28; 2nd Ed. 27

21. ——— Property after execution of deed treated as vendor's—*Deed of sale*. Where it was shown that for twenty years the plaintiff had enjoyed the profits of an estate made over to her by her husband for her maintenance, and subsequently conveyed to her by a deed purporting to be a deed of sale in part payment of dower; *Held*, that the deed of sale or *hibba-bil-awaz* was not vitiated merely by the fact of the property being managed by the lady's husband or his agents, or that in the mutiny it was attached and released as her husband's property, and was subsequently recorded in his name. *LADO BEGUM v. ANPUL alias AMERROOLISSA*

2 Agra 153

22. ——— Custody of deed—Evidence of genuineness of deed—*Ancient deed—Possession*. Where a *kohala* upwards of thirty years old was produced from proper custody and offered in evidence, but rejected by the lower Appellate Court as not genuine, because evidence had not been

ous to require such proofs and to overlook the evidence of possession under the *kohala*. *ANUND CHUNDER POOSHALL v. MOOKTA KESHEE DEBIA*

21 W. R. 130

23. ——— Failure to prove payment of consideration—*Evidence of want of bond fides of deed—Purchase by pleader*. In a suit to recover possession with mesne profits of property alleged to have been purchased by the plaintiff from *A* where the defendant *U* was a daughter of *A*'s

## DEED—contd.

## 4. PROOF OF GENUINENESS—contd.

sister, *R*, who claimed the property through her son, *V*, the question was whether the plaintiff had obtained the property by a valid deed of sale. The plaintiff was a pleader, and while a suit was in progress in which on behalf of his step-mother and another client he contended that *V* had no property at all in the mouzah, he obtained a conveyance from *A*, whose sole title was derived from *V*, which conveyance nominally made to *S T* was never asserted by the plaintiff until seven years later, when he commenced the present suit. The evidence for the payment by the plaintiff of the consideration-money was so unsatisfactory that the High Court ammonished him and examined him. *Held*, that it was somewhat dangerous to allow the plaintiff, a

consideration-money was very unsatisfactory and at variance with his previous deposition, and that, though the mere *factum* of his deed was proved, it was not a *bond fide* conveyance. *USHERPOONISSA BEGUM v. GRIDHAREE LALL*

19 W. R. 118

24. ——— Deed fraudulent against decree-holder—*Deed of sale*. *Held*, that the

1 Agra 41

## 5. RECTIFICATION.

1. ——— Rectification of instrument—*Specific Relief Act (I of 1877), s. 31*. A mort-

the mortgagee, or that there was any mutual mistake of the parties as to the amount stated as that for which the security was given, a suit under

1 LUSHAW

L. R. 14 I. A. 18

## 6. CANCELLATION.

1. ——— Cancellation of deed for fraud and collusion—*Equitable conditions*. Upon the cancellation of instruments of hypothecation and sale on proof of fraud and collusion between the grantee, who had advanced money, and the

**DEED—con'd.****6. CANCELLATION—cont'd.**

but only of sums shown to have been paid to the

2. \_\_\_\_\_ Ground for cancellation—  
*Mahomedan law*—Plea that the deed was inoperative  
according to the personal law of the parties. *Idl.*

*I. L. R.* 20 All. 460

3. \_\_\_\_\_ Voluntary transfer—Undue  
influence—*Contract Act (IX of 1872), s. 16.*  
In a transaction between two persons where one  
is so situated as to be under the control and influence  
of the other, the Courts in this country have to  
see that such other does not unduly and unfairly  
exercise that influence and control over such per-  
son for his own advantage or benefit, or for the  
advantage or benefit of some religious object in  
which he is interested, and will call upon him to  
give clear and cogent proof that the transaction  
complained of was such a one as the law would

confined to cases only between guardian and ward,  
attorney and client, father and son, but the relief  
thus granted stands upon a general principle, apply-  
ing to all variety of relations in which dominion  
may be exercised by one person over another. The  
plaintiff, who on the death of the widow of his  
brother became entitled to the estate of the deceased,  
found himself resisted in his claim by wealthy rela-

tives. His

if succeeded. While the litigation for mutation  
of names in respect of the

plaintiff was left as poor as he was when he first came  
into the defendant's hands. Plaintiff sued for can-  
cellation of the deed of endowment, on the ground

**DEED—concl'd.****6. CANCELLATION—concl'd.**

that the same had been obtained from him by the  
exercise of undue influence and by means of fraud

**DEED OF GIFT UNACCOMPANIED  
BY DELIVERY OF POSSESSION.**

*See TRANSFER OF PROPERTY ACT, s. 123.*

*I. L. R.* 34 Cal. 653

**DEFAMATION.**

*See ABATEMENT OF SUIT—APPEALS.*

*I. L. R.* 26 Bom. 597

*See CHARGE—FORM OF CHARGE—SPECIAL  
CASES—DEFAMATION.* 9 Bom. 451

*See COMPLAINT—INSTITUTION OF COM-  
PLAINT AND NECESSARY PRELIMINARIES.*

*I. L. R.* 10 All. 39

*I. L. R.* 14 Mad. 379

*See CRIMINAL PROCEDURE CODE, ss 198,  
342.* 8 C. W. N. 615

*See DAMAGES—SUITS FOR DAMAGES—  
TORTS.*

*See JURISDICTION OF CIVIL COURT—  
COSTS.* *I. L. R.* 15 Bom. 599

*See JURISDICTION OF CIVIL COURT—  
CASTE.* *I. L. R.* 26 Bom. 174

*See LABEL.*

*See LIMITATION ACT, 1877, ART 24 (1859,  
s 1, CL 2).* 2 Agra 47

*See MALICIOUS PROSECUTION.*

*I. L. R.* 19 Bom. 717

*See PENAL CODE, ss 499-502.*

*See PENAL CODE.* 8 C. W. N. 305  
9 C. W. N. 911

13 C. W. N. 1087

*See PRIVILEGED COMMUNICATION.*

1 Agra 33

*I. L. R.* 7 Mad 36

*I. L. R.* 12 Mad. 374

*I. L. R.* 14 Mad. 51

7 C. W. N. 246

*See SLANDER.*

*See RIGHT OF SUIT—WITNESS.*

*I. L. R.* 10 Mad. 67

*I. L. R.* 10 All. 425

*I. L. R.* 15 Cal. 264

DEFAMATION—*contd.*

See WITNESS—CIVIL CASES—PRIVILEGES  
OF WITNESSES I. L. R. 10 ALL 425  
I. L. R. 10 Mad. 87  
I. L. R. 11 Mad. 477  
I. L. R. 15 Calc. 264

— suit for.

See SECRETARY OF STATE.

I. L. R. 27 Bom. 189

See SPECIAL APPEAL—SMALL CAUSE COURT  
SUITS—DAMAGES . 4 B. L. R. Ap. 59  
12 W. R. 372

— trial de novo.

See CRIMINAL PROCEDURE CODE, s. 350  
13 C. W. N. 550

1. ——— Form of defamation—*Written or spoken defamation*—Penal Code, s. 499. The Penal Code makes no distinction between written and spoken defamation. QUEEN v. PURSORAM DOSS . . . 2 W. R. Cr. 36

Upheld on review . . . 3 W. R. Cr. 45

2. ——— Penal Code, s. 499, explanation 4—*Words per se defamatory*. Explanation 4 of s. 499 of the Penal Code does not apply where the words used and forming the basis of charge, are *per se* defamatory; though when the meaning of words spoken or written is doubtful, and evidence is necessary to determine the effect of such words and whether they are calculated to harm a particular person's reputation, it is possible that the principle enunciated in the explanation might and would with propriety be applied. QUEEN EMPRESS v. MCCARTHY . . . I. L. R. 9 ALL 420

3. ——— Defamation of a deceased person—*Suit by surviving member of family of deceased*—Cause of action—*Damage to reputation of family of deceased by reason of defamation of deceased*. A suit for defamation can only be brought by the person who has been defamed. The fact that the defamatory statement has caused injury to other persons does not entitle them to sue. Asmt brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased . . .

4. ——— Suit by father in his own right for defamation of daughter . . .

A suit for defamation can only be brought by the person actually defamed, if the person is *sui juris*, and if not *sui juris*, then under the provisions of the Civil Procedure Code, by his guardian or next friend. DAWAN SINGH v. MAKIP SINGH, I. L. R. 10 ALL 425, and PARNATH v. MANNAR, I. L. R. 8 Mad. 175, distinguished. Subbairar v. Krishnaiyer, I. L. R. 1 Mad. 352, and Luckumsey Rowji v. Hurbun Nursey, I. L. R. 5 Bom. 580, referred to. DAYA v. PARAM SURE I. L. R. 11 ALL 104

DEFAMATION—*contd.*

5. ——— Imputation on a wife—*Suit by husband*—*Right of suit*. In a suit for damages for defamation, it appeared that the words complained of were spoken by the defendant to the plaintiff in the presence of a third party, and were to the effect that the plaintiff's wife had committed adultery with a pariah and that her children had been born to the pariah. Held, that the suit was not maintainable by the plaintiff. BRAHMANNA v. RAMAKRISHNAN . . . I. L. R. 18 Mad. 250

6. ——— Liability for defamation—*Failure to prove bonâ fide charge*. The mere failure of a complainant in proving a *bonâ fide* criminal charge does not make him liable to an action for damages for defamation. BROJONATH ROY v. KISHEN LALL ROY . . . 5 W. R. 282

MOHENDRONATH DUTT v. KOYLASH CHUNDER DUTT . . . 6 W. R. 245

7. ——— Malice—*Unprivileged publication*. The law will infer malice where a statement is deliberately false in fact and injurious to the character of another, and the publication is not privileged. PETER v. DUFOUR . . . 6 W. R. 92

8. ——— Nature of defamation—*Penal Code, s. 499*—“*Publishing*” defamatory matter—*Filing petition in Court*. The act of filing in Court a petition containing imputations concerning

The criminal law of this country with regard to defamation depends on the construction of a 499 of the Penal Code, and not on what may be the English law on the same subject. GREENE v. DELANEY . . . 14 W. R. Cr. 27

9. ——— Untrue statement—*Penal Code, s. 499*. The accused, an inspector of police, was sent to enquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the Banias of the village were trying to get him punished from an ill-feeling. He added: “I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath.” Commitment of the accused for trial for defamation under s. 499 of the Penal Code supported under the circumstances of the case. In the matter of the petition of RAJ-NARAIN SEIN . . . 6 B. L. R. Ap. 42

S O. RAJNARAIN SEIN v. DEGOBUR PAUL  
14 W. R. Cr. 22

10. ——— Expression of suspicion—*Slander by a railway guard*—*De minimis non curat lex*. A railway guard, having reason to

their tickets. As a reason for demanding the production of the plaintiff's ticket, he said to him in the

DEFAMATION—*cont'd.*

presence of the other passengers, "I suspect you are travelling with a wrong (or false) ticket," which was the defamation complained of. The guard was held to have spoken the above words *bono fide*. *Held*, that the plaintiff was not entitled to a decree for damages. **SOUTH INDIAN RAILWAY COMPANY v. RAMAKRISHNA**. I. L. R. 13 Mad. 34

11. ——— **Privilege—Penal Code, s. 499, excep. 10—Privilege—"Mala fides."** The complainant, a Brahman, who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved of by the accused, who formed a faction of the caste; and they after an interval of six months distributed in the bazar to all classes of the public printed papers in which the complainant was described as a *doshi* or sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice. *Held*, that the accused had not acted in good faith, and that the publication was not under the circumstances privileged and protected by Penal Code, s. 499, excep. 10, and that the accused were accordingly guilty of defamation. **THIRAGARAYA v. KRISHNASAMI**. I. L. R. 15 Mad. 214

12. ——— **Privileged communication—Excommunication from caste—Presumption of bona fides.** Plaintiff was a Hindu widow of the Modh Wania caste. Defendant was the head of the caste. He received anonymous letters imputing bad conduct to the plaintiff. He was requested to call a caste meeting to consider the matter; he did so, and placed the letters before the meeting, and it was then resolved to warn the plaintiff. The warning was, however, unheeded. So a second meeting was called by the defendant. Plaintiff sent her brother and sister's husband to the meeting in order that they might defend her. But they offered no explanation on her behalf. Witnesses were then heard and ten persons selected to decide what should be done. Defendant was one of those ten, and he communicated to the general meeting the decision they had come to, namely, that the plaintiff should be excommunicated. The meeting unanimously adopted this decision, and the defendant announced the decision of the caste to the *gor* for him to promulgate. The plaintiff thereupon sued to recover from the defendant Rs. 249 as damages for defamation. *Held*, that the defendant was not guilty of defamation. He acted in the matter honestly, and as he was bound to act in the interest of the caste, and in discharge of his duties as leader of the caste. *Per RANADE, J.*—The defendant's act was privileged. Defendant was the head of the caste, and the caste men assembled were interested in the matter along with the defendant. Anonymous letters were received and the defendant had a duty to perform. The matter was discussed at a properly convened meeting, where the plaintiff's near relations were duly summoned and were in fact present. The occasion was lawful and properly

DEFAMATION—*cont'd.*

exercised to protect mutual interests. The privilege was, therefore, complete, and good faith was to be presumed, unless express malice could be shown. **KESHAYLAL v. RAI GIRJA**. I. L. R. 24 Bom. 13

13. ——— **Good faith—Privilege—Letter written by guru outlawing member of his caste—Penal Code, s. 499 B,** the guru or spiritual guide of the caste to which K belonged, issued a letter or *ajna patra* to K's fellow-villagers to the effect

that K was a *doshi*, and B prayed that the statements contained in the letter were privileged, having been made in good faith and for the public good, and that the case came within one of the exceptions to s. 499 of the Penal Code. It was admitted by K that B had no enmity towards him or his wife, and that it was the custom of the guru to settle such matters as those that had arisen in connection with his wife, and it was proved that the letter was issued after B had made an inquiry into the truth of the allegation. The lower Court convicted. *Held*, that the conviction was wrong, it being clear that the statements contained in the letter had been made in good faith for the protection

were justified by the authority with which B was vested as spiritual head of the community, and that therefore the case came within the seventh exception to s. 499. **BASUNATI ADRIKABINI v. BUDRAM KOLITA**. I. L. R. 22 Cal. 46

14. ——— **Publishing order of priest excommunicating person from caste—Privileged communication.** The *gomashta* of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one and treated him with disrespect. *Held*, that the letter contained no expressions defamatory *per se*. If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged; and if not, then the mere statement that the complainant did not obey one, whom he was not bound to obey, was not a defamatory imputation. **ANONYMOUS**. 6 Mad. Ap. 47

15. ——— **Publishing order of priest excommunicating person from caste—Penal Code, ss. 500, 503, 508—Injury—Privilege—Unnecessary publication.** N having attended a Hindu widow marriage (legalized by Act XV of 1857)

DEFAMATION—*cont'd.*

purification from S. S also sent by post a registered

object of divine displeasure, and defamation *Held*, that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N was guilty of defamation. *QUEEN v. SANKARA*  
I. L. R. 8 Mad. 381

16. ————— *Illegal declaration that one is outcasted.* According to the usage of certain Nambudris, a caste enquiry is held when a Nambudri woman is suspected of adultery, and if she is found guilty, she and her paramour are put out of caste. An enquiry was held into the conduct

entitled to recover damages. *VALLABHA v. MADU. SUDANAN* . . . I. L. R. 12 Mad 495

17. ————— *Publication—Penal Code, s. 499—Communication of defamatory matter to complainant only—"Making"* *Held*, by the Full Bench (DUTTOIR, J., dissenting), that the action of a person who sent to a public officer by post in a closed cover a notice . . .

terms of s. 499 of the Penal Code. *QUEEN-EMPRESS v. TAKI HUSAIN* . . . I. L. R. 7 All. 205

18. ————— *Penal Code (Act XLV of 1860), s. 499 and 500—Sending a notice containing defamatory matter to the complainant* The mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm or knowing or having reason to believe that it will harm the reputation of the person" to whom it is addressed. When the accused sent by post a notice to the complainant, containing certain false imputations, and

I. L. R. 18 Bom. 205

DEFAMATION—*cont'd.*

19. ————— *Privilege—Penal Code, s. 499, excepts 8 and 10—Letter written to protect religious interests of writer* A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within excepts 8 and 10 of s. 499 of the Penal Code. *REG. v. KASHINATH BACHAM BAGUL* . . . 8 Bom. Cr. 168

20. ————— *Good faith—Penal Code, s. 499, except 8—Privileged communication—Justification—Practice—Cross-examination of complainant* *Held*, on the evidence in this case in which the question was whether a person accused of defamation . . .

of defamation intends to bring evidence to prove the truth of the defamatory matter, his advocate should cross examine the complainant upon every matter upon which evidence is intended to be brought. If he does not do so, it is a subject of serious consideration whether he should subsequently be allowed to tender proof as to the material incidents of which he was not cross-examined. *QUEEN-EMPRESS v. DHUM SINGH* . . . I. L. R. 6 All. 220

21. ————— *Statement in pleading made in good faith—Penal Code, s. 500, except (9).* A pleader or moolhtear relying upon the statements of his client, and in good faith introducing into a pleading a defamatory statement will

a person who has no such employment, and does not act in good faith. *QUEEN v. CHRISTIE*  
3 N. W. 473

22. ————— *Statement made by an accused person in an application to a Court—Statement made in good faith for the protection of*

statement ten within the limited exception to s. 499 of the Indian Penal Code. *Queen-Empress v. Balkrishna Yethal, I. L. R. 17 Bom. 573; In re Nagari Trikamji, I. L. R. 19 Bom. 340; Queen v. Purnoram Dass, 3 W. R. Cr. 45; Greene v. Delaney, 14 W. R. Cr. 27, and Abdul Hakim v. Tej Chandar*

DEFAMATION—*contd.*

*Mularji, I. L. R. 3 All. 815*, referred to. *ISURI PRASAD SINGH v. UMRAO SINGH*  
I. L. R. 22 All. 234

23. ——— Privilege of counsel or pleader—*Penal Code (Act XLV of 1860), ss. 499 (except 2) and 500—Prosecution by witness—Construction of statute.* A pleader, in addressing a mamlatdar on behalf of his client, who was charged under s. 123 of the Bombay Land Revenue Code (Bombay Act V of 1879) with wilfully removing boundary marks, commented on some of the witnesses for the prosecution, and called them loafers. Thereupon one of those witnesses prosecuted the pleader for defamation. The Magistrate held that there was no justification for the offence, and convicted the pleader, and sentenced him to pay a fine of Rs 15 under s. 500 of the Penal Code. *Held*, reversing the conviction and sentence, that in the absence of express malice (which was not to be presumed) the pleader was protected by except 2 to s. 499 of the Penal Code. *Held*, also, that, in considering whether there was good faith (i.e., due care and attention), the position of the person making the imputation must be taken into consideration. In the case of an advocate, where express malice is absent, a Court having due regard to public policy would be extremely cautious before depriving him of the protection of except 2 to s. 499 of the Penal Code. *Semle*. S. 499 of the Penal Code should be construed without reference to the English law. *In re NAGARAJ TRIVANJY I. L. R. 19 Bom. 340*

24. ——— Newspaper libel—*Penal Code, s. 500—Act XXV of 1867, ss. 5, 7—Burden of proof.* On the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV of 1867, to the effect that he was the printer and publisher of the newspaper was produced in evidence by the complainant. The editor having been acquitted in the first instance

the contrary, the declaration was *prima facie* proof of publication by the editor. *Held*, also, that it would be a sufficient

ment of the newspaper during his absence to a competent person. *RAMASWAMI LOKANADA*  
I. L. R. 9 Mad. 387

25. ——— Intention to injure reputation—*Absence of actual injury to good name.* To sustain a charge of defamation, it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the

DEFAMATION—*contd.*

imputation made by him would harm the reputation of the complainant. *QUEEN v. THAKUR DAHS*  
6 N. W. 86

26. ——— Reason to believe truth of statements—*Penal Code, s. 499—Good faith.* In dealing with the question of good faith, the proper point to be decided is not whether the allegations were true, but whether the accused had reasonable grounds to believe that they were true.

27. ——— Newspaper criticism on advertisement—*Penal Code, s. 499—Publication—Liability of publisher of newspaper.* M, a medical man and editor of a medical journal published monthly, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed. "The advertisement was published with the approval of his brother officers serving in the same province, and we have no hesitation in pronouncing his proceedings in this matter unprofessional." *Held*, that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the "judgment of the public," and M had expressed himself in good faith, he was not liable.

with the approval of his brother officers serving in the same province, and we have no hesitation in pronouncing his proceedings in this matter unprofessional." *Held*, that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the "judgment of the public," and M had expressed himself in good faith, he was not liable.

*Kally Doss Matter, 5 W. R. Cr. 41.* The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not. *EMPRESS OF INDIA v. McLEOD*  
I. L. R. 3 All. 342

28. ——— Ambiguous expressions—*Intentions—Penal Code, s. 499—Good faith.* C was put out of caste by a panchayat of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated certain statements applying equally to C or such woman. Such statements were defamatory within the meaning of s. 499 of the Penal Code.

DEFAMATION—*cont'd.*

purification from *S.* *S.* also sent by post a registered post-card of similar purport to *N.* In consequence of the interdict of *S.* *N.* was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. *N.* charged *S.* with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation *Held*, that the first two charges were unfounded, but that *S.*, by communicating the sentence of excommunication by a registered post-card to *N.* was guilty of defamation. *QUEEN v. SANKARA*  
I. L. R. 6 Mad. 361

16. ——— *Illegal declaration that one is outcasted* According to the usage of certain Nambudris, a caste enquiry is held when a Nambudri woman is suspected of adultery, and if she is found guilty, she and her paramour are put out of caste. An enquiry was held into the conduct of a certain woman so suspected, she confessed that the plaintiff had had illicit intercourse with her, and thereupon they were both declared outcastes, the plaintiff not having been charged nor having had an opportunity to cross-examine the woman or to enter on his defence and otherwise to vindicate his

in making that declaration, the plaintiff was entitled to recover damages. *VALLABHA v. MADU-SUDANAN* . . . I. L. R. 12 Mad. 495

17. ——— *Publication—Penal Code, s. 499—Communication of defamatory matter to complainant only—"Making"* *Held*, by the Full Bench (*DUTTOIT, J.*, dissenting), that the action of a person who sent to a public officer by post in a closed cover a notice under s. 424 of the Civil Procedure Code, containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was not such a making or publishing of the matter complained of as to constitute an offence within the terms of s. 499 of the Penal Code. *QUEEN-EMRESS v. TAKI HUSAIN* . . . I. L. R. 7 All. 205

18. ——— *Penal Code (Act XLV of 1860), ss. 499 and 500—Sending a notice containing defamatory matter to the complainant* The mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm or knowing or having reason to believe that it will harm the reputation of the person" to whom it is addressed. When the accused sent by post a notice to the complainant, containing certain false imputations, and the complainant thereupon prosecuted the accused on a charge of defamation. *Held*,  
defamation.

*RAJ*

DEFAMATION—*cont'd.*

19. ——— *Privilege—Penal Code, s. 499, excepts. 8 and 10—Letter written to protect religious interests of writer.* A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within excepts 8 and 10 of a 499 of the Penal Code. *REG. v. KASHINATH BACHAJI BAGUL* . . . 8 Bom. Cr. 188

20. ——— *Good faith—Penal Code, s. 499, excep. 8—Privileged communication—Justification—Practice—Cross-examination of complainant.* *Held*, on the evidence in this case in which the question was whether a person accused of defamation was protected by the eighth exception to s. 499 of the Penal Code, that the accused had failed to establish that he acted in good faith. *Abdul Halim v. Tej Chandar Mukarji*, I. L. R. 3

*DRUM SINGH* . . . I. L. R. 10 All. 220

21. ——— *Statement in pleading made in good faith—Penal Code, s. 500, excep. (9).* A pleader or mookhtear relying upon the statements of his client, and in good faith introducing a defamatory statement, will

22. ——— *Statement made*

to the court by the

to the court by the

DEFAMATION—*contd.*

*Mukarji, I. L. R. 3 All 815*, referred to. *ISURI PRASAD SINGH v. UMRAO SINGH*

I. L. R. 22 All 234

23. ——— Privilege of counsel or pleader—*Penal Code (Act XLII of 1860), ss. 499 (except 9) and 500—Prosecution by witness—Construction of statute.* A pleader, in addressing a mamlatdar on behalf of his client, who was charged under s. 125 of the Bombay Land Revenue Code (Bombay Act V of 1879) with wilfully removing boundary marks, commented on some of the witnesses for the prosecution, and called them loafers. Thereupon one of those witnesses prosecuted the pleader for defamation. The Magistrate held that there was no justification for the offence,

In the case of an advocate, where express malice is absent, a Court having due regard to public policy would be extremely cautious before depriving him of the protection of except. 9 to s. 499 of the Penal Code. *Seemle*: S. 499 of the Penal Code should be construed without reference to the English law. *In re NAOALJI TRIKALJI* I. L. R. 19 Bom. 340

24. ——— Newspaper libel—*Penal Code, s. 500—Act XXV of 1867, ss. 5, 7—Burden of proof.* On the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV of 1867, to the effect that he was the printer and publisher of the newspaper was produced in evidence by the complainant. The editor having been convicted by the Magistrate

publication. *Held*, that, in the absence of proof to the contrary, the declaration was *prima facie* proof of publication by the editor. *Held*, also, that it would be a good

poet person *KANASAMI v. LOKANADA*  
I. L. R. 9 Mad. 387

25. ——— Intention to injure reputation—*Absence of actual injury to good name.* To

DEFAMATION—*contd.*

imputation made by him would harm the reputation of the complainant. *QUEEN v. THAKUR DASS*  
6 N. W. 86

26. ——— Reason to believe truth of statements—*Penal Code, s. 499—Good faith.* In dealing with the question of good faith, the proper

27. ——— Newspaper criticism on

which *H* solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed —"The editor"

judgment of the public," and *M* had expressed himself in good faith, *M* was within the third and sixth exceptions, respectively, to s. 499 of the Penal Code. *Held*, also, that *M* came within the ninth exception to that section. The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is a publication of such defamatory matter at Allahabad. See *Queen v. Kally Doss Mitter*, 5 W. R. Cr. 41. The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not. *EXPRESS OF INDIA v. McLEOD* I. L. R. 3 All 342

28. ——— Ambiguous expressions—*Intentions—Penal Code, s. 499—Good faith.* *C* was put out of caste by a panchayat of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circu-

made certain statements applying equally to *C* or such woman. Such statements were defamatory within the meaning of s. 499 of the Penal Code.



DEFAMATION—*contd.*

*Held*, that, if such persons were careless enough to

intended such language to apply to such woman

were protected; but, inasmuch as they did not so content themselves, but went further and made false and uncalled-for statements regarding *C*, they had rightly been held not to have acted in good faith. *EMPRESS OF INDIA v. RAMANAND*

I. L. R. 3 All. 664

29. ——— Investigation by police—*Penal Code (Act XLV of 1860), s. 500—Privilege of witness.* A statement made in answer to a question put by a police-officer under Criminal Procedure Code, s. 161, in the course of investigation made by him, is privileged, and cannot be made the foundation of a charge of defamation. *QUEEN EMPRESS v. GOVIND PILLAI* I. L. R. 16 Mad. 235

30. ——— Words used by Judge during case in Court—*Privilege of Judge—Right*

AYYAN . . . . . I. L. R. 17 Mad. 87

31. ——— Statements in judicial proceeding—*Good faith—Privileged communication.* The law of defamation which should be

admittedly referring to the complainant, occurred :

regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith. *ABDUL HAKIM v. T. CHANDAR MUKARJI* . I. L. R. 3 All. 915

32. ——— Statement made by accused person in Court not in the ordinary course of proceedings—*Penal Code, s. 499—Privilege of party.* A person who was being defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was

DEFAMATION—*contd.*

now charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court: *Held*, that the occasion was not privileged; the words complained of, being used maliciously and not in the ordinary course of the proceedings, were uttered maliciously; and the conviction was right. *HAYES v. CHRISTIAN*

I. L. R. 15 Mad. 414

33. ——— Statement by witness—*Penal Code, s. 500—Privilege of witness.* *M S* was convicted under s. 500 of the Indian Penal Code of defaming *S S* by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. *Held*, that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury and not for defamation. *MANJAYA v. SETHA SHETTI* . . . . . I. L. R. 11 Mad. 477

34. ——— *Penal Code (Act XLV of 1860), s. 500—Privilege.* A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding. *QUEEN-EMPRESS v. BABAJI* I. L. R. 17 Bom. 127

*QUEEN-EMPRESS v. BALKRISHNA VITHAL*  
I. L. R. 17, Bom. 573

admittedly referring to the complainant, occurred :  
"Has his (the complainant's) character been enquired into? Does not one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true

36. ——— Statements made by persons in the course of their evidence as wit-

Justice and were relevant to the issue in the case under enquiry; *Held*, that such persons could not

DEFAMATION—*contd.*

be prosecuted for defamation in respect of those statements. *WOOLFEN BISH v. JESARAT SHIKH*

I. L. R. 27 Cal. 263

37. ——— Defamatory statement made by a person examined in the course of an official or departmental inquiry—*Witness—Privilege—Qualified privilege—Criminal Procedure Code (1882), ss. 191 and 197—Penal Code (XLV of 1860), ss. 211 and 500—Falsely charging a person with an offence.* The complainant was Deputy Collector and first class Magistrate of Bijapur. Certain petitions said to emanate from the accused were received by Government charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to enquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the police, who brought the accused before him. In answer to questions put

reported the result of his enquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation under

trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first

I. L. R. 10 Bom. 41

DEFAMATION—*contd.*

38. ——— Imputation made in good faith by a person for the protection of his interest—*Penal Code (Act XLV of 1860), s. 499, excep. 9—Privileged communication.* In order to substantiate a decree under the ninth exception to s. 499 of the Penal Code (Act XLV of 1860), it is sufficient to show that the imputation was made in good faith and for the protection of the interest of the accused. Any one in the transaction of business

The ship was mortgaged to the Bank of Bengal for Rs. 50,000. In March 1890, the complainant desired to send the vessel to Jeddah with pilgrims and freight. For this purpose he entered into an agreement with S, the agent of the Bank, to pay Rs. 5,000 to the Bank as a condition precedent to the vessel being allowed by the mortgagees to go on her intended voyage. The sum was to be paid out of the freight and passage-money collected by the complainant. On the 9th April 1890, on which day the vessel sailed, the complainant promised to pay the sum in the evening. This he did not do. Thereupon S wrote to the complainant demanding immediate payment of the amount, and also sent for him five or six times, but the complainant neither called at S's office nor made the payment. On the 12th April S wrote to B, the complainant's partner, as follows:—"P (i.e., the complainant) has

tendered the money to the Bank's solicitors. Thereupon S wrote to B on the 13th April, with-

12th April 1890 S was convicted by the Magistrate under s. 500 of the Penal Code and sentenced to pay a fine of Rs. 200. Held, reversing the conviction and sentence, that the imputations complained of were made in good faith, and for the protection of interest of the accused, and therefore fell under the ninth exception to s. 499 of the Penal Code. *QUEEN-EMPRESS v. SLATER* I. L. R. 15 Bom. 351

39. ——— Publication—*Penal Code (Act XLV of 1860), s. 500—Publication of defamatory matter in a newspaper—Responsibility of the editor and proprietor of a newspaper.* The editor and proprietor of a newspaper, who prints his paper containing a defamatory article in one city and permits copies of the paper to be sent by the printer to persons in another city, is responsible, in the absence of proof to the contrary, for the publication of the defamatory article in the latter city. *QUEEN-EMPRESS v. GIRJASHANKAR KAYASTH*

I. L. R. 15 Bom. 222

DEFAMATION—*contd.*

40. \_\_\_\_\_ Penal Code (Act  
XLV of 1860), s. 499—Mode of publication defa-

is true and made for the public good, but on considering the manner of the publication (*eg.* in a newspaper) it may hold that the particular publication is not for the public good, and is therefore not privileged. Q. U. F. E. M. P. R. S. J. A. N. A. R. D. H. A. N.  
DAMODHAR DIESHIT. I. L. R. 19 Bom. 703

41. ————— Re-publication of defamatory matter already published—*Penal Code (Act XLV of 1860), s. 499—Dismissal of complaint—Criminal Procedure Code (Act X of 1832), s. 203.* A complaint was filed, under s 499 of the Indian Penal Code, against the managing editor, and printer of the *Andhra Pradesh*, alleged to be the author of the article, in which the plaintiff was named as the person to whom the editor and printer were indebted.

publication. It is therefore dismissed the complaint under s. 203 of the Code of Criminal Procedure (Act X of 1882). *Held*, that the order of dismissal was improper. The Penal Code (s. 499) makes no exception in favour of a second or third publication as compared with a first. If the complaint is properly laid in respect of a publication which is *prima facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law. *In re HOWARD*

L. L. R. 13 Rom. 167

43. — Subject of defamation—  
 Penal Code (Act XLV of 1860), ss 500 and 501—  
 Construction of defamatory poem—Opinion of ex-  
 perts—Weight to be attached to by jury—Intention.  
 In a prosecution for libel under s 500 of the Indian  
 Penal Code, where the subject-matter of the  
 defamation was contained in a poem published  
 in a newspaper, and purporting to be a contribu-  
 tion, the accused, who was the editor, printer,  
 and publisher of the newspaper, refused to  
 give up the name of his correspondent, and  
 took the plea that the poem was a satire on  
 ultra purists, and did not refer to any indi-  
 vidual, and that some of the stanzas contained in  
 the poem would be inconsistent, if the poem were read as  
 referring to an individual, and that, therefore, the  
 construction for which the prosecution contended  
 would involve illogicalities, and in support of his plea  
 the accused produced evidence that the poem was  
 a satire on ultra purists.

**DEFAMATION—*cont'd.***

the prosecution. That it was not necessary that the whole world should read it as a libel, but the question was whether those who knew the parties by putting a reasonable construction on the poem, would consider it to refer to the complainant. That the opinion of experts was not binding on the jury, for it is with the jury, and not with those witnesses, that the determination of the case rested.

must see whether the natural result of the act was not to harm the reputation of the persons attacked.  
**EMPRESS v. KALI PRASANNA KANYABISHARAD**  
 1 C. W. N. 465

1 C. W. N. 465

43. — Justification—Express malice.—Evidence of complainant having previously acted as alleged in the libel—Penal Code (Act XLV of 1860), s. 499. In a prosecution for defamation under s. 500 of the Penal Code, the alleged libel accused the complainant, who was a judicial officer, of (i) having, upon a particular occasion, used abusive language to certain respectable native litigants appearing before him in Court, and (ii) having

manner. This latter accusation was contained in a postscript. The complaint filed by the complainant in the Court of the committing Magistrate, and the charge sheet in which the Magistrate committed the defendant for trial, covered the whole of the document complained of except the postscript.

defendant was said to have injured, and, *secondly*, because it must be gathered from the document complained of as a whole whether it showed a malicious intention or not. **LADSMAN v. HEARSEY**

I. L. R. 7 ALL 908

14. \_\_\_\_\_ Malice, want of—Penal Code.  
s. 199, except 9—Good faith—Tampering with  
\_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ watch.

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complainant might be made to sit in the Court. Accordingly the Subordinate Judge directed the complainant to sit in the Court. The complainant thereupon lodged a complaint against the accused before a First Class Magistrate, charging the accused

DEFAMATION—*contd.*

with having defamed him. The Magistrate convicted the accused of the offence, and inflicted upon him a fine of Rs 25, or, in default, sentenced him to one month's simple imprisonment. The accused made an application to the Sessions Judge at Thana to call for the record of his case and if he thought proper to make a reference to the High Court. The Sessions Judge, having called for the record and examined it, was of opinion that, as no malice or bad faith appeared on the part of the accused in making the imputation, the case of the accused fell within excep. 9 of s. 499 of the Penal Code, and that the accused had committed no offence. He accordingly referred the case, under s. 438 of the Criminal Procedure Code (Act X of 1882), to the High Court. *Held*, that the view of the Sessions Judge was correct. The conviction and sentence were accordingly set aside. **QUEEN-EMPRESS v. PURSHOTAM KALA**. I L. R. 9 Bom. 269

45. — **Onus probandi—Act XVIII of 1862, s. 27—Good faith.** S. 27 of Act XVIII of 1862 required proof of the existence of the circumstances relied on as a defence, before good faith could be presumed in a case of defamation. The onus of proving good faith is on the person making the imputation.

46. — **Reasonable and probable cause—Malice.** *Held*, that, in cases of defamation, the onus of proof is on the person making the imputation.

person making the statement. **ALTAF HOSSEIN v. TASUDDOOK HOSSEIN**. 3 Agra 87

47. — **Suit for defamation—Police officer's report—Words spoken in judicial proceeding.** A suit for damages for defamation of character is cognizable by a Civil Court, even though the words on which the suit is founded were spoken in a judicial proceeding. In such a suit a police officer's report may be evidence that the words were spoken.

**HENDRO CHUNDER CHUCKERBUTTY v. SURBO ROHIA DABIA**. II W. R. 534

48. — **Evidence of falseness of charge.** In a suit for damages for defamation.

**HOONDOD v. KAILASH KAMINER DOSSIA**. 12 W. R. 372

49. — **Answers to Police officer—Action for damage—Investigation—Police officer—Witnesses—Fricilege.** No action for damages lies

DEFAMATION—*contd.*

against a person for what he states in answer to a question.

**JAGDANNATH DASS (1901)**

I. L. R. 28 Calc. 784: s.c. 5 C. W. N. 604

50. — **Charge—Publication—Malice, omission to apologise no proof of—Penal Code (Act XLI of 1860), ss. 499 and 500—Criminal Procedure Code (Act V of 1898), s. 222.** Where an accused person was convicted of defamation under s. 500 of the Penal Code upon a charge which set out that the defamation was committed on or about the 12th day of April, and afterwards, by describing the complainant as a *Brithial Bania*: *Held*, that the charge was not a proper charge, inasmuch as it did not set forth the particular occasions on which the defamation was said to have been committed, so as to show that the accused was guilty of the offence.

*Just* receipt to him, in which he was described by the designation of *Brithial Bania*. *Held*, that the delivery of such a receipt was not a publication such as would render the accused liable to punishment for defamation.

51. — **Imputation on a wife—Criminal Procedure Code (Act V of 1898), s. 2 (h), Chap. XV, Part B, ss. 191, 195, 196, 198, 199, and s. 345—Penal Code (Act XLI of 1860), s. 499, Expl. I—Defamation of wife—Complaint by husband—Aggrieved party.** *Held* by the Full Bench (KANADE J., dissenting), that, under the provisions of the Criminal Procedure Code (Act V of 1898), a husband is entitled to be complainant where the alleged offence is defamation, imputing unchastity to his wife. **CHHOTALAL LALLUBHAI v. NATHUBHAI BECHAR** (1909). I. L. R. 25 Bom. 151

52. — **Municipal officers—Indian Penal Code (Act XLI of 1860), s. 500—Criminal Procedure Code (Act V of 1898), s. 198—Person aggrieved.** *Held*, that a complaint by a person aggrieved by the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the

assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the

DEFAMATION—*contd.*

officers, his conduct and administration had been impugned by the articles. *Held*, that, assuming for the purposes of the question under consideration that the statements complained of were defamatory of the subordinate officers of the Municipal Health Department, they were not defamatory of the complainant; and that the complainant was not a "person aggrieved" within the meaning of s. 198 of the Code of Criminal Procedure. *BRACHAMP v. MOORE* (1902) I. L. R. 28 Mad. 43

53. ———— **Proof necessary in charge of defamation**—*Penal Code (Act XLV of 1860), ss 499, 500.* To constitute the offence of defamation, as defined in s 499 of the Penal Code, it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. *GOBINDA PERSHAD PANDEY v. GARTH* (1900)

I. L. R. 28 Calc. 63; s.c. 5 C. W. N. 819

54. ———— **Statement in pleadings**—*Penal Code (Act XLV of 1860), ss 499, 500*—*Statement made in a plaint*—*Pleadings, statement of parties in, whether privileged*—*Parties and witnesses, distinction between statements made by.* Statements made by parties to the suit in the pleadings are not privileged, and a charge for defamation is maintainable in respect of them. *Angola Ram Shaha v. Nema Chand Shaha*, I. L. R. 23 Calc. 567, followed. *Nathji Mulshwar v. Lalbhai Ravidat*, I. L. R. 14 Bom. 97, dissented from. *KALI NATH GUPTA v. GOBINDA CHANDRA BASU* (1900)

5 C. W. N. 293

55. ———— **True statements**—*Penal Code (Act XLV of 1860), ss 499, 500*—*True statement that complainant had been convicted of theft and sent to jail*—*Conviction—Validity.* An accused, who was

cation of the result of proceedings in a Court of Justice. *SINGARAJU NAOACHUSRAJAY* (1902)

I. L. R. 28 Mad. 461

56. ———— **Voluntary statement by witness**—*Privilege of witness—False evidence*—*Penal Code (Act XLV of 1860), s 509—Evidence Act (I of 1872), s 132.* A witness, who being actuated by malicious motives makes a voluntary and irrelevant statement not elicited by any question put to him while under

DEFAMATION—*contd.*

examination to injure the reputation of another, commits an offence punishable under s. 500 of the Penal Code. *Mohar Sheikh v. Queen Empress*, I. L. R. 21 Calc. 392, followed. *Woolfun Bibi v. Jemarat Sheikh*, I. L. R. 27 Calc. 262, discussed. *HAIDAR ALI v. ABRU MIA* (1905)

I. L. R. 32 Calc. 756  
s.c. 9 C. W. N. 971

57. ———— **Statement made to protect one's interests**—*Penal Code (Act XLV of 1860), s. 499, Except. (9), ill. (a)*—*Statement as to interference—Bond fides—Special privilege—Civil action, proper remedy by.* K, a creditor of J, of the firm of J. S. & Co. found his claims against J resisted, until he sued and got decrees against him. K came to know that V, a member of J's firm, had

persons, who had dealings with the firm to G. S.

being to collect the outstandings and defeat the creditors." (ii) That the other members were not entitled to collect the outstandings and were not in a position to give an effectual discharge to persons making payments. (iii) That K was taking steps to have all the other members declared insolvent. It is found that the firm of J. S. & Co., was without capital, and that subsequently to writing the letter K did file a petition of insolvency against the other members of the firm, though

was to defeat creditors was merely a statement of

reason of injury inflicted on complainant's business by specific allegations made with respect to that business) can more properly be dealt with in the Civil than in the Criminal Court. *CASSEY KOREM v. JONAS HADJEE SEEDICK* (1903) 9 C. W. N. 195

58. ———— **Hindu widow—Complaint by brother**—*"Person aggrieved"*—*Jurisdiction—Criminal Procedure Code (Act V of 1893), s. 193.* Where the alleged offence was defamation imputing unchastity to a Hindu widow: *Held*, that her brother, with whom she was residing at the time was a "person aggrieved" by such

DEFAMATION—*contd.*

59. ———— **Answers to questions put by Court**—No prosecution lies for, in respect of answers given by a party to questions asked by Court. It is contrary to public policy that a person bound to state the truth in answer to questions put to him by a Court should be liable to be prosecuted for defamation in respect of answers so given, though untrue and not given in good faith. *Manjaya v. Sesha Shetty, I. L. R. 11 Mad 477*, followed. *ALRAJA NAIDU, In the matter of (1906) : I. L. R. 30 Mad. 222*

60. ———— **Express malice—Penal Code (Act XLV of 1860), s. 500—Privileged communication—Bond fides—Social position of accused to be considered—Malice** Where the accused told his friend E and subsequently at the instance of E wrote to the superior officer of the complainant to the effect that the complainant and the wife of E had been seen behaving on a certain night in such a manner and under such circumstances as to render unavoidable the conclusion that acts of impropriety took place between them, and it was found that the accused honestly believed in the truth of the statements: *Held*, that the accused could not be convicted of an offence under s. 500, Indian Penal Code, unless express malice was proved by the prosecution. That though a person in a higher social position than the accused, would have probably acted differently under the circumstances, it did not follow that the accused was therefore actuated by malice in acting as he did. *GRANT v. EMPEROR (1900) : 11 C. W. N. 390*

61. ———— **Fair comment—Indian Penal Code (Act XLV of 1860), s. 499, Exceptions 3, 6, 9, as 52, 500—Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith, test of—Malice, interpretation of the term** The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect) such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment which is the subject of the complaint. For whether fair comment is to be regarded as falling under a branch of the law of privilege or not, it cannot excuse an injury arising, not from the mere act of criticism but from a state of mind in the critic which is in itself unjustifiable and the excuse may be so forfeited either by reason of an evil intent in him, or by reason of mere recklessness in making an unwarrantable assertion. For then the comment would not be fair comment at all. Apart from extrinsic evidence of malice, protection must be withheld even from what purports to be criticism, if it states as a fact to be inferred from the book criticised an imputation for which the book itself contains absolutely no foundation whatever. The

DEFAMATION—*contd.*

right of fair comment involves two essentials, first that the imputation should be comment on the work criticised, and second that it should be "fair"—

libility but due care and attention. But how far erroneous actions or statements are to be imputed

be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment. The object of Exception 6 to s. 499 of the Indian Penal Code (Act XLV of 1860) is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this

made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him: he is also bound in the words of the exceptions to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. *EMPEROR v. ABDULL WADOOD (1907) : I. L. R. 31 Bom. 293*

62. ———— **Witness, statement by—Penal Code (Act XLV of 1860), s. 499—Indian Evidence Act, ss 105 and 132—How far witness protected when giving evidence.** If a witness whilst giving evidence makes a statement concerning any person which amounts to defamation, he may be prosecuted under s. 499 of the Indian Penal Code in respect of such statement, and it lies upon him to show that the statement which he has made falls within one or other of the exceptions to s. 499 of the Code or that he is protected from prosecution by the proviso to s. 132 of the Indian Evidence Act, 1872. *So held*

## DEFAMATION—contd.

by *Woolfun Bibi v. Jesarath Sheikh*, I. L. R. 27 Cal.  
J.  
Mu  
gu  
[1891] A. C. 107; *Norendra Nath Sircar v. Kamal-*  
*basini Dasi*, L. R. 23 I. A. 18; *Robinson v. Cana-*  
*basini*, L. R. 23 I. A. 18; *Robinson v. Cana-*  
*basini*, L. R. 23 I. A. 18.

*Woolfun Bibi v. Jesarath Sheikh*, I. L. R. 27 Cal.

*Bom 573*; *In re Nagarj Trikamji*, I. L. R. 19 Bom. 340; *Angada Ram Shaha v. Nemai Chand Shaha*, I. L. R. 23 Cal. 567; *Abdul Hakim v. Tej Chandra Mukerji*, I. L. R. 3 All. 815; *Bank of England v. Vagliani Brothers*, [1891] A. C. 167; and *Norendra Nath Sircar v. Kamalbasini Dasi*, L. R. 23 I. A. 18, referred to by *AIKIN, J.* Per *RICHARDS, J.*—A prosecution for defamation under s. 499 of the Indian Penal Code will not lie against a witness in respect of any statement made by him in the course of giving evidence, even if such statement may not be relevant to the matter under inquiry. *Baboo Guneech Dutt Singh v. Mugneeram Chowdhry*, 11 B. L. R. 321, followed. *Daukins v. Lord Rokeby*, L. R. 7 H. L. 744; *Abdul Hakim v. Tej Chandra Mukerji*, I. L. R. 3 All. 815; and *Jewri Prasad Singh v. Umrao Singh*, I. L. R. 22 All. 231, referred to *EMPEROR v. GANGA PRASAD* (1907) I. L. R. 29 All. 885.

83. — Suit by husband—Damages for loss of reputation caused by defaming a wife—Suit for slander brought by a husband whether maintainable—Special damages—Cause of action. A instituted a suit against B for defamation. The words used alleged unchastity on the part of A's wife. A alleged (a) special damage, (b) that the words were defamatory in themselves, (c) that he himself was defamed and was therefore entitled to sue. Held, that the words used defamed A as well as his wife and therefore A could maintain an action. Held, further, that the words used by B were defamatory in themselves and did not amount to mere verbal abuse and that therefore A was entitled to damages without proving special damage. *Girish Chunder*

also, that the cause of action having arisen in the mofussil the suit was not governed by the rule laid

## DEFAMATION—contd.

down in *Bhooni Moni Dossi v. Natobar Biswas*, I. L. R. 28 Cal. 452. *SUREKA TELI v. BIPAD TELI* (1906) I. L. R. 34 Cal. 48.

64. — Pleader, privilege of—Improper questions in cross-examination based on wrong inference from defective memory—Privilege—Good faith—Absence of express malice—Penal Code (Act XLY of 1860) ss 52 and 499, Exception (9). A pleader acting upon his own recollection of the evidence given by a witness two years before, in another case in which he was a pleader, but drawing a wrong inference therefrom that the witness had been disbelieved by a particular Court, and had admitted to having been so disbelieved, and putting questions to him conveying such an imputation, after being warned that his impression was wrong, cannot, in the absence of actual malice, be convicted of defamation. A pleader, especially in the mofussil, where instructions are very commonly inaccurate and misleading, is as much justified in acting on his own recollection as on specific instructions, and the fact that he has drawn a wrong inference does not, in the absence of actual malice, deprive him of the protection of the ninth exception to s. 499 of the Penal Code. When a pleader is charged with defamation, in respect of words spoken or written, while performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable, unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as a pleader for an indirect purpose. *In re Nagarj Trikamji*, I. L. R. 19 Bom. 340, and *Emperor v. Purneshottamas Ranchhodan*, 9 Bom. L. R. 1237, followed. *URENDRA NATH BACCHI v. EMPEROR* (1900) I. L. R. 38 Cal. 375.

## DEFAULT.

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See DEFENDANTS.

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See LIMITATION ACT, 1877, s. 3  
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See PARTIES—ADDING PARTIES TO SUITS  
—DEFENDANTS.

See PARTIES—STRIKING OFF PARTIES—  
DEFENDANTS.

See PARTIES—SUBSTITUTION OF PARTIES  
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See RES JUDICATA—PARTIES—CO-DEFEN-  
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— Privilege.—An accused person is privileged in respect of questions put in good faith for the purpose of defending himself.—Publication. The rule of English Law "that no action of libel or slander lies whether against Judge, counsel, witnesses, or parties for words written or spoken in the ordinary course of any proceeding before any Court, or Tribunal, recognised by law," will also apply to an accused person in respect of questions put by him in good faith for the purpose of defending himself. A party receiving a notice is entitled to reply to the notice and state his reasons, and such reply is privileged so long as it is confined to the matter in hand and is relevant, provided the reply is not published by the person making it. Where such reply is a mere acknowledgment that the party had made the imputations complained of in the notice, relief can be claimed only in respect of the original imputations. *PACHAIPERENAL CHETTIAR v. DASU THANDAM* (1905). I. L. R. 31 Mad. 460



## DEFINITION.

See PENAL CODE (ACT XLV OF 1860), s. 173 . . . I. L. R. 31 All. 803

See PENAL CODE (ACT XLV OF 1860), s. 231 . . . I. L. R. 30 All. 93

## DEKKHAN AGRICULTURISTS' RELIEF ACTS.

## XVII of 1879.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—JURISDICTION . . . I. L. R. 13 Bom. 424

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See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS . . . I. L. R. 17 Bom. 227

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See JURISDICTION—QUESTION OF JURISDICTION—WHEN IT MAY BE RAISED . . . I. L. R. 13 Bom. 424

See JURISDICTION—QUESTION OF JURISDICTION—WRONG EXERCISE OF JURISDICTION . . . I. L. R. 7 Bom. 448

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See REVIEW—PROCEDURE ON RE-HEARING OF CASE . . . I. L. R. 11 Bom. 591

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL . . . I. L. R. 13 Bom. 424

## XXII of 1882.

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 . . . I. L. R. 8 Bom. 340

See STATUTES, CONSTRUCTION OF . . . I. L. R. 8 Bom. 340

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 623 . . . I. L. R. 18 Bom. 347

I. L. R. 18 Bom. 286

XVII of 1879—*Civil Procedure Code* (Act XIV of 1882), ss. 373 and 622—*Civil Procedure Code* (Act V of 1908), s. 115—*Redemption suit*—Sale really a mortgage—S. 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) not applicable—Oral evidence inadmissible—Application for withdrawal of suit—Suit allowed to be withdrawn with liberty to bring a fresh suit—Material irregularity Under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) the plaintiffs brought a redemption suit alleging that the document, though in the form of a sale-deed,

DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

was really a mortgage. The suit was not governed by s. 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The defendant contended that oral evidence was not admissible to prove that the sale-deed was really a mortgage. After

or otherwise of oral evidence and that s. 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not applicable. The Court passed an order for the withdrawal of the suit with liberty to bring a fresh suit. Held, that the Court acted with material irregularity in passing the order. The Court should not allow a suit to be withdrawn after the parties are ready for trial if such withdrawal may operate to the prejudice of the defendant. A plaintiff cannot be allowed to withdraw a suit in order that he may wait and see if the law is not altered at some future date in such a way as to enable him to obtain a decree against the defendant who is ready for trial and prepared to resist the claim and certain of success on the law in force. *MAHIPATI v. NATRU* (1903) . . . I. L. R. 33 Bom. 722

Ch. II.—*Suit based on dispossession of an existing possession—Incidental reference to a mortgage in plaint.* A suit based on a dispossession of an existing possession does not fall within Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879). An incidental reference to a mortgage in the plaint does not affect the question, when . . . to recover possession from a person . . . *Ravi*, (1904)

## XVII of 1879, XXIII of 1881,

lived and carried on business as money-lenders at . . . to the Dekkhan Agric.

district the said Act was in force. Both at Aconia and at Kopargaon they, in course of their business, acquired land which they cultivated. In 1882, the plaintiff brought this suit against them in the Subori debt they the Court of the Subordinate . . .

Judge held that the defendant . . . and that he had no jurisdiction to try the suit. His decree was reversed by the District Judge, who held that the defendants earned their livelihood only

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

partially, and not principally, from agriculture, and that the lower Court had jurisdiction. The defendants appealed to the High Court, and contended that the definition of "agriculturist" to be applied in the case was that contained in Act XXIII of 1881, which was in force when the suit was instituted, and not that in Act XXII of 1882, which was in force at the date of the trial. *Held*, that, having regard to the very special nature of the legislation embodied in s. 12 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) for the benefit of a particular and very limited class, it was intended by the Legislature that a person claiming the benefit of that section at the trial should fill the character of an agriculturist as then defined by law. **SHANILAL v. HIRACHAND**, I. L. R. 10 Bom. 367

1. — s. 2—Definition of "agriculturist"—Agriculturist also owner of the inam villages and a pensioner—Income from villages, owing to mortgage, together with pension less than income from other sources. Where an owner of inam villages, the revenue from which, together with his income from other sources, is not agricultural, may

non-agricultural sources to less than the income he derived from agriculture. *Held*, that, although his income from the inam villages and from other

2. — cl (2) and s. 11—Jurisdiction—Courts of Small Causes. The effect of the extension of s. 11 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), by the first section of it, to all India is simply to impose upon any person in any part of India who brings a suit of the nature mentioned in the Act, the burden of proving that he is not an agriculturist.

sarily be in some one of the said four districts. The word "agriculturist," as defined in s. 2, cl (2) refers to an agriculturist residing within any one of the said four districts only, and not to one residing in any other district. On the 25th February 1879, a suit was filed for Rs5 in the Small Cause Court at Nadiad, in the district of Ahmedabad, against two defendants, one of whom was an agriculturist residing within the local limits of the Subordinate Judge's Court at Umreth, and not within those of

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

— s. 2—*contd.*

the Small Cause Court at Nadiad, and not within those of

Small Cause Court in the case of a defendant who was an agriculturist and resided in a place in the district of Ahmedabad, and not in any one of the four districts mentioned in the Act. **PURSHOTAM LALCHAI v. BHAVANJI PARTAB**

I. L. R. 4 Bom. 380

3. — Time intervening between application to Conciliator and grant of certificate—Conciliator's certificate when necessary—Limitation. The necessity to procure the Conciliator's certificate before the entertainment of a suit to which an agriculturist is entitled is a condition

sary before bringing a suit against an agriculturist to obtain a declaration that certain property was liable to be sold in execution. In computing the period of limitation for such a suit, the time intervening between the application to the Conciliator and the grant of a certificate by him must be excluded. **DEEGARAN MONIRAM v. SHRIPATI**

I. L. R. 8 Bom. 411

4. — Agriculturist—A person who is an agriculturist in 1871 but is not one when the suit is brought in 1905 cannot claim the benefit of the Act. In 1871, the defendant executed a mortgage in plaintiff's favour. It was provided that the mortgage was not to be redeemed before 1886. The defendant was an agriculturist at the date of the mortgage, but he was not one when the suit was brought. In 1879, the term "agriculturist" first received a legal definition in the Dekkhan

the liability incurred by the defendant was to pay back the money borrowed by him; and that liability was incurred when the money was borrowed in 1871. *Held*, further, that in 1871, the defendant, whatever may have been his occupation in fact, could not have been an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act, which was enacted in 1879. *Held*, also, that the defendant was not entitled to the benefit of the Act. **MAHADEV NARAYAN v. VINAYAK GANGADHAR** (1909). I. L. R. 33 Bom. 378

5. — "Agriculturist"—Interpretation—"Earns his livelihood"—Sources of income. In ascertaining whether a man who has two or more sources of income of which the

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 2—*contd.*

the income derived from agriculture is larger or smaller than the rest. All the sources must be taken to be the means of his livelihood, and if the income from agriculture exceed the other incomes he must be deemed to be earning his livelihood principally by agriculture. *Dugarlopirav Baburav v. Balkrishna Bhalechandra*, I. L. R. 19 Bom. 255, explained. *CHUNILAL v. VINAYAK* (1909)

I. L. R. 33 Bom. 376

s. 3—*Land-revenue—Suit for land-revenue not a suit for rent.* A suit for land-revenue does not fall under s. 3 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). *The liability*

KASHINATH BAPUJI DANI (1900)

I. L. R. 25 Bom. 244

s. 3, cl. (3)—

See PLEADER—AUTHORITY TO BIND CLIENT . I. L. R. 11 Bom. 591

See VALUATION OF SUIT—SCITS—REDEMPTION, SUIT FOR I. L. R. 11 Bom. 591  
I. L. R. 13 Bom. 489

1. ——— cl. (w)—*Application of Act to non-agricultural classes—Special Judge, revisional*

under certain conditions. The plaintiff sued to recover Rs 50 as money spent by him on account of the defendant. The suit was filed in the Court of the first class Subordinate Judge at Satara, where both parties resided. The Subordinate Judge passed a decree in plaintiff's favour. The Special Judge, in revision, reversed this decree, and dismissed the suit. The plaintiff thereupon applied

2. ——— *Accounts—Duty of*

Court to take accounts in mode directed by Act. It being obligatory upon the Court to take accounts in the mode directed in the Dekkhan Agriculturists' Relief Act (XVII of 1879), which requires annual rests, and that not having been done, the decree was reversed by the High Court on appeal, and the case sent back to the lower Court to take accounts

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 3—*contd.*

according to the Act. *HANMANT RANCHANDRA v. BARAJI ABRAJI DESHPANDE*

I. L. R. 16 Bom. 172

3. ——— cl. (x)—*Suit to recover rent—Question of title incidentally decided—Analogy with the decisions under the Small Cause Courts Acts—Appeal to the District Court—Revision by the Special Judge—Subordinate Judge, jurisdiction of.* In a suit to recover a sum of Rs 30 as rent under s. 3

The point then arose as to whether the decision of

to the District Court from the decree of the Subordinate Judge who decided the suit. *SHRIDHAR GANESH NARAYAN* . I. L. R. 16 Bom. 128

Act (XVII of 1879) In districts in which the Act is in force this clause is applicable to cases in which neither party is an agriculturist. The word "mortgaged" in cl. (z) of s. 3 of the Act applies only to immoveable property. A suit was brought to redeem an ornament pledged for a sum below Rs 500. The suit was filed in the Court of the first class Subordinate Judge at Satara, where Act XVII of 1879 is in force. The Subordinate Judge passed a decree for redemption of the pledge. *Held*, that, though neither of the parties was an agriculturist,

v. *HIRANAND SURATRAM* . I. L. R. 15 Bom. 30

5. ——— *Plaintiff—Mortgagor—Assignee.* The provision in s. 3, cl. (z), of Act XVII of 1879 is not limited to an agriculturist who is himself the original mortgagor; so that, where the plaintiff, though an assignee, is an agriculturist, he is entitled to the benefit of ss. 12, 13, and 14 of the Act. *ANNASJI WAGH v. BAPUCHAND JETHRAM* . I. L. R. 7 Bom. 520

6. ——— *Redemption, suit for—Possession of a defendant not as a mortgagee—Suit in ejectment—Appeal—Jurisdiction of the District Court.* In a redemption suit governed by the provisions of Ch. II of the Dekkhan Agriculturists' Relief Act (XVII of 1879), one of the

**DEKKHAN AGRICULTURISTS' RELIEF ACTS—contd.**s. 3—*concl'd.*

defendants being sued merely as a person in possession; *Held*, that the suit as against that defendant was one in ejectment. A suit in ejectment is not governed by cl. (3), s. 3 of the Dekkhan Agriculturists' Relief Act, and an appeal against the decree in such suit lies to the District Court. **SANKHARAN v. SHRIHATI** I. L. R. 18 Bom. 183

ss. 3, 15A—

See MORTGAGE—CONSTRUCTION.

I. L. R. 28 Bom. 252

s. 4—*Jurisdiction of second class Subordinate Judge—Transfer of case—Institution of suit—Civil Procedure Code, 1882, s. 48—Presentation of plaint.* The plaintiff sued to establish his title to, and recover, a moiety of a cash allowance payable to him from the Mamlatdar's treasury at Satara. The claim was valued at Rs 455-4. The plaint was filed in the Court of the first class Subordinate Judge at Satara, who transferred the case for trial to the Joint Subordinate Judge of the second class. The latter Judge dismissed the suit on the merits, holding that the plaintiff had no right to the moiety of the allowance which he sought to recover. This decision was reversed on appeal by the Assistant Judge on the ground that the Joint Subordinate Judge of the second class had no jurisdiction to hear the suit under s. 4 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). *Held*, that the requirements of s. 4 of Act XVII of 1879 were sufficiently complied with by the suit having been filed in the Court of the Subordinate Judge of the first class. He was competent under s. 23 of Act XIV of 1869 to transfer the suit to the Joint Subordinate Judge of the second class, who was deputed to assist him. **MANAJI BAHIRJI v. NARAYANRAO MADHAVRAO** I. L. R. 19 Bom. 48

s. 7.

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES

I. L. R. 5 Bom. 184

*Defendant summoned for examination—Payment of batta* It is not necessary to pay *batta* to any agriculturist defendant summoned to be examined under s. 7 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The *batta* is not payable by the plaintiff and the suit is not liable to be dismissed on failure to pay it. **GANOASHANKAR v. BADHUR MADHUBAI** (1908) I. L. R. 33 Bom. 349

s. 11.

See PLAINT—RETURN OF PLAINT.

I. L. R. 23 Bom. 879

1. *Agriculturist.* The Dekkhan Agriculturists' Relief Act (XVII of 1879) is not limited in its application to suits for sums not exceeding Rs 500. The effect of the reference, in s. 11 of the Dekkhan Agriculturists' Relief Act, to cl. (v) of s. 2 is to make all suits of the kinds therein

**DEKKHAN AGRICULTURISTS' RELIEF ACTS—contd.**s. 11—*concl'd.*

described, when brought against an agriculturist, cognizable by the local Courts, and by them only. S. 11 extends to the whole of British India as to

moved for a postponement of the hearing in order that a commission might issue to take evidence at Sholapur, alleging that by the evidence thus obtained they would be proved to be agriculturists within the meaning of the Dekkhan Agriculturists' Relief Act, and consequently under s. 11 could only be sued at Sholapur. *Held*, that the commission

must have gained his livelihood by farming, for at least one full agricultural season, to have acquired the condition of an agriculturist under the Act. **TULSIDAS DHUVJI v. VIRBASAPAI**

I. L. R. 4 Bom. 624

2. ss. 11, 12—*Suits instituted after November 1897.* The provisions of ss 11 and 12 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) are applicable only to suits instituted upon and after the 1st November 1879. **SUNVASI v. TUKARAM** I. L. R. 4 Bom. 358

1. s. 12—*Act XXIII of 1881, s. 4—Act XXII of 1882, s. 3—Definition of "agriculturist"—Change in the definition—Effect of a change of status on the rights of parties to litigation—Effect of change of law.* A change in the law does not generally affect any proceeding begun when it comes into force. But a change of status or legal capacity generally operates at once to extinguish, diminish, or vary the extent to which a party may claim the aid or protection of a Court. The plaintiff, who was earning his livelihood

as agriculturist was changed by s. 3 of Act XXII of 1882. *Held*, that, if the plaintiff was not an agriculturist within the meaning of Act XXII of 1882 at the time of adjudication, he had no right to redeem on the special terms of s. 12 of Act XVII of 1879, as he had lost, *pendente lite*, the specific personal character on which the right depended. **Shamlal v. Hirachand**, I. L. R. 10 Bom. 367, followed. **PADGAYA SOMSHETTI v. BAJI BABAJI** I. L. R. 11 Bom. 469

2. *Mortgagee overpaid—Decree—Suit for account and redemption.* In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment by him of the balance due to the mortgagor, with

DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*s. 12—*contd.*

would not only lead to the redemption of the mortgaged property, contrary to the terms and conditions of the contract, but would in many cases oblige the mortgagee to refund the money which rightly came into his hands under the contract

mortgage-bond he was not bound to account, and that s. 12 of the Act did not apply. The Subordinate Judge overruled the objection, and on taking the account found a balance due from the defendant to the plaintiff. He accordingly made a decree in favour of the plaintiff for the land and the amount. The District Judge confirmed the decree of the first Court. *Held*, that the decree of the lower Court must be varied by omitting the direction ordering the defendant to pay the balance to the plaintiff. *JANOJI v. JANONI* I. L. R. 7 Bom. 185

3. — ss. 12, 13—Mortgage—Agriculturist mortgagee—Suit for account and redemption before the time fixed for payment—Under the

to redeem is co-extensive with the right to foreclosure, and is consequently postponed until the time fixed for the payment of the mortgage debt, does not apply to cases falling under that Act. *BABAJI v. VITHU* I. L. R. 6 Bom. 734

4. — Usufructuary mortgage—Redemption—Payment of the amount found due on taking accounts S 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is imperative and the amount due in a suit for redemption of a usufructuary mortgage in which the provisions of s. 12 of the Act have been complied with is the amount which is found to be due upon taking accounts in the manner provided by s. 13. *DADABHAI v. DADABHAI* (1908) I. L. R. 32 Bom. 516

5. — ss. 12, 13 and 71A—Application of the sections to a suit instituted before the Act came into force in a particular district—Retrospective effect—Taking an account between parties Ss. 13 and 71A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) have no retrospective effect. S. 12 of the Act is retrospective only so far as it regulates procedure. That part of the section which relates to taking an account between the parties

DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*s. 12—*contd.*

is not retrospective. *FATMA BIBI v. GANESH* (1907) I. L. R. 31 Bom. 630

6. — ss. 12, 15—Suit on bond the execution of which is admitted—Consideration—Burden of proof—Practice—Procedure. In cases to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) applies, where a suit is brought upon a bond the execution of which is admitted by the defendant, no strict rule can be laid down as to the party upon whom the burden of proof rests. If the parties adduce no evidence, the Court must be content with the evidence of the parties themselves, and endeavour, in the language of s. 15 of the Act, to "satisfy itself." If it cannot "satisfy itself as to the amount which should be allowed on account of principal or interest, or both," it may, under that section, direct, of its own motion, that such amount

the debtor from the necessity of proving failure of consideration, although admitted in the bond on which he is sued, and the execution of which he admits. *MAHOMED SANTOJI v. VITHU HARI*

I. L. R. 9 Bom. 520

s. 13.

See MORTGAGE—ACCOUNTS.

I. L. R. 14 Bom. 19

1. — Contract, effect of adjudication on, by Court—Merger of contract in decree—Revision of decree—Opening of account. Where a contract has been made the subject of adjudication by the Civil Court, and a decree has been passed, the contract is thereupon merged in the decree and s. 13 of Act XVII of 1879 furnishes no warrant for the revision of the decree and opening of the account between the agriculturist debtor and his creditors from the commencement of the transac-

2. — cls. (b) and (d), and s. 15—Suit for redemption—Account—Principal debt how ascertained—Reference to arbitration In a redemption suit Act (XVI account, the law money actually advanced cannot be made in favour either of one side or the other. If there are no materials from which the Court can satisfy itself as to the amount which should be allowed on account of principal, whether under

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—contd.

s. 13—contd.

cl. (l) or cl. (d) of s. 13 of the Act, it is open to it to have recourse to arbitration under the provisions of s. 15. *Mahadu v. Rajaram, P. J. (1887) 216*, considered. *Malaji v. Pithu, I. L. R. 9 Bom. 520*, referred to. *Dhondi v. Laxshman*

I. L. R. 19 Bom. 553

1. ——— s. 15B—Mortgage—Conditional sale—Foreclosure—Instalments. The applicant, an agriculturist mortgagor, sued the defendant, the mortgagee, for redemption on the terms provided by the Dekkhan Agriculturists' Relief Act, 1879. The account was made up, and the mortgagor was directed to pay the sum found to be due within six months, or to be for ever foreclosed. He failed to pay within the time fixed, and afterwards applied under s. 15B of the Act, as amended by Act XXII of 1882, to be allowed to pay the amount of the decree by instalments. *Held*, that the order asked for could not be made. An order for foreclosure, when

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—contd.

s. 15B—contd.

In execution of a decree for the sale of mortgaged property a portion of the property was sold and the rest was ordered to be sold by the Collector to whom the decree was transferred for execution. In the meanwhile the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) having been made applicable to the district, the mortgagor applied to the Court for payment by instalments under s. 15 (b) of the Act. The application was refused by the Court on the ground that the decree having been transferred to the Collector, it had no power to grant instalments. *Held*, on appeal by the mortgagor, reversing the order of the lower Court, that payment by instalments could be decreed. The application for payment by instalments having been made within one month from the time the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) was made applicable, no question of limitation arose. *Per Russell, Acting C. J.*—The term 'decree' in s. 15 (b) of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) refers to 'decree nisi' as well as to 'decree absolute.' *Per Beaman, J.*—There is a perceptible difference between the case of a 'decree absolute' for sale and for foreclosure. Theoretically the latter leaves nothing more to be done; there is nothing left to be paid by any one, no further step to be taken by the creditor or the Court. All is over. But that is not so when a decree for sale is made absolute. The amount for which the decree was passed is still payable, and though, strictly speaking, it may not be payable by the "mortgagor," it is payable out of what, but for the decree absolute, would be still his property. *MANCHERJI THAKORDAS (1906)* . I. L. R. 31 Bom. 120

5. ——— Decree on mortgage

—Direction to pay interest—Application to cancel direction. A decree on a mortgage was passed by the first class Subordinate Judge of Thana. The decree contained a direction for the payment of interest. After the decree was passed the Dekkhan

modify in the particular manner there described the terms of the payment. *GOKALDAS v. GOVIND (1907)* . I. L. R. 32 Bom. 98

6. ——— s. 15B, cls. (1) and (2)—Decree of mortgage—Payment by instalment—Sale on default

founded on any new transaction of the parties, except on some special ground, such as fraud or inevitable accident. *LADU CHIMAJI v. BABAJI KHANDJI* . I. L. R. 7 Bom. 532

2. ——— Decree for redemption—Order for the payment of money within a certain period—Application after expiry of such period for payment by instalments—Alteration of decree. In a redemption suit under the Dekkhan Agriculturists' Relief Act (Act XVII of 1879), the Court having passed a decree for the payment of the mortgage amount within certain period, and the decree being confirmed in second appeal, the mortgagor, after the expiration of the time for redemption specified in the decree, applied to the High Court for an order for the payment of the amount by instalments under s. 15B of the Dekkhan Agriculturists' Relief Act. *Held*, that such an order could only be made in the course of the proceedings under the decree, that is, by the Court which carries out the decree. *Golapuri v. Pandurang, P. J. (1886) 142*, referred to. *BHAGIRATHIBAI v. HARI RAJI CHITUNKAR*

I. L. R. 19 Bom. 318

3. ——— Sub s. (1)—Suit on mortgage—Decree—Payment of interest not compulsory—Discretion in Court. The terms of sub-s. (1) of s. 15B of the Dekkhan Agriculturists' Relief Act (XVII of 1879) do not make it compulsory on the Court to award interest. There is a discretion in the Court as to whether or not interest should be allowed. *NATHU LAXMAN v. VAHIR (1907)*

I. L. R. 31 Bom. 450

4. ——— Extension of the Act to the district—Decree on mortgage for sale—Order for sale in execution—Application for payment by instalments—Decree nisi—Decree absolute.

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

## s. 15B—*concl'd.*

*in payment of an instalment—Application to make the decree absolute—Extension of the provisions of the Dekkhan Agriculturists' Relief Act (XXII of 1879) to the District—Application for payment by instalments. The Court of the first class Subordinate Judge of Dharnar passed a decree on a mortgage, which directed payment of the debt by instalments, and on default of the payment of one instalment the debt to be recovered by the sale of the mortgaged property. The judgment-debtor having failed to pay an instalment the decree-holder applied for the decree to be made absolute. In the meanwhile the provisions of the Dekkhan Agriculturists' Relief Act (XXII of 1879) were extended to the District.*

matter should be re-considered afresh in execution with a view to substitute some new scheme of instalments. *Held*, further, that the second clause of s. 15B refers only to those cases where directions for payment have already been given under the first clause of that section. **SHANKAR SHAMRAO v SHANKARGAUDAYA (1903)**

I. L. R. 32 Bom. 445

1. — s. 15D—Act as amended by Act XXII of 1882, s. 6—Several mortgage bonds—Suit for account—Jurisdiction of Subordinate Judge. A suit brought under s. 15D of the Dekkhan Agriculturists' Relief Act (XXII of 1879 and XXII of 1882) must include all the mortgages affecting the land. If the total amount of the debt exceeds Rs. 500, the case does not fall under Ch II of the Act. If it exceeds Rs. 5,000, the first class Subordinate Judge alone has jurisdiction (see s. 24 of Act XIV of 1869). **BAKASI v HARI**

I. L. R. 16 Bom. 351

2. — Dekkhan Agriculturists' Relief Amendment Act (XXII of 1882)—Suit for account—Subsequent suit for redemption—Civil Procedure Code, 1882, s. 43. Under s. 15D of the Dekkhan Agriculturists' Relief Act (XXII of 1879) as amended by Act XXII of 1882, an agriculturist mortgagor can sue for an account upon a mortgage, without at the same time asking for redemption. Such a suit will not bar a subsequent suit for redemption. The section was expressly intended to remove the bar created by s. 43 of the Code of Civil Procedure (Act XIV of 1882). **LALCHAND v. GIRJAPPA**

I. L. R. 20 Bom. 469

s. 16—Mortgage—Suit by a mortgagor for account only—Execution of a money-decree obtained by mortgage. Under the Dekkhan Agriculturists' Relief Act, XXII of 1879, s. 16, an

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

## s. 16—*concl'd.*

agriculturist mortgagor has no right to sue his mortgagee in a mere action for account. **HARI v. LAKSHMAN**

I. L. R. 5 Bom. 614

1. — s. 20—Mortgage decree—Decree in suit on mortgage—Payment by instalments—

The word in s. 20 XVII of agriculturist personally, and do not include a decree for the recovery of money by the sale of mortgaged property. The effect of that section must be taken to be an enlargement of the indulgence granted by s. 210 of the Civil Procedure Code (Act X of 1877), but only in those cases to which the latter section applies. By s. 210 of the Civil Procedure Code, the

decree-holder. In the case of a debt secured by a mortgage the agriculturist's remedy lies in a suit, not for an account, but for redemption; and the only decree which can be made in such a suit, in the absence of any special provision in the Act, is the ordinary decree for payment of the whole amount within six months, or, in default, for foreclosure. **HURDOO DAS v. HUKIM SING, I. L. R. 2 All. 320**, approved. **SHANKARAPPA DARGO PATEL v. DANAPPA VIRANTAPA**

I. L. R. 5 Bom. 604

2. — Act XXII of 1879, s. 15D—Payment of decree by instalments—Default—Whole sum payable on default—No second

or in the course of the execution. But it does not authorize a variation of any order once so made. Nor does s. 20 of Act XXII of 1879 authorize a series of instalment orders, each one varying from the preceding. A decree was made payable by instalments, with a proviso that in default of payment of any one instalment, the whole amount remaining due should be recoverable at once. The judgment-debtor made default. Thereupon the decree-holder sought to recover the whole amount of the decree. The judgment-debtor then applied for a fresh order for payment by instalments. The Court of first instance refused but the Subordinate Judge on appeal granted the application. The judgment-debtor paid into Court the amount of instalments which had become due under the second order. The decree-holder took out the money so paid in. *Held*, that the Subordinate Judge on appeal had no power to make a fresh order for payment by instalments varying the original order. *Held*, also, that the judgment-

**DEKKHAN AGRICULTURISTS' RELIEF ACTS—contd.**

s. 20—conclld.

creditor, by taking out the money paid into Court by the judgment-debtor as instalments due under the second order for instalments, did not bind himself to abide by that order. **BALKRISHNA INDRABHAN I. ABASI BIN BAHIRJI MORE**

I. L. R. 12 Bom. 326

3. ——— *Civil Procedure Code (Act XII of 1852), s. 13—Suit on a promissory note—Issue as to payment by instalments—Finding in the negative—Extension of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the District—Application for instalments—Res judicata.* In a suit instituted in the Court of the first class Subordinate Judge of Ahmedabad on a promissory note an issue was raised as to whether the amount sued for should be made payable by instalments and the finding was in the negative. The suit was decreed on the 21st July 1903. The Dekkhan Agriculturists' Relief Act (XVII of 1879) was extended to the Ahmedabad District on the 15th August 1905. Thereupon the defendant having applied for payment by instalments, the application was dismissed on the ground that the question of instalments was *res judicata*. *Held*, that s. 13 of the Civil Procedure Code (Act XIV of 1852) was not applicable. S. 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) contemplates that even when a decree has been passed, which does not allow of instalments, the Court should have power to allow instalments in execution. **BAI DIWALI V. PATEL GARDHAR** (1905)

I. L. R. 32 Bom. 391

ss. 21 and 22—Attachment in execution prior to the Act coming into operation—Right of holder of decree obtained prior to Act. Neither a 21 nor a 22 of the Dekkhan Agriculturists' Relief Act, 1879, applies to a decree made previously to the 1st day of November 1879, the day on which the Act came into force; and the holder of such a decree may arrest or imprison his agriculturist judgment-debtor, as well as attach and sell his immovable property not specifically mortgaged. **DIPCHAND V. GOKALDAS**

I. L. R. 4 Bom. 363

s. 22

See LIMITATION ACT, 1877, ART 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS

I. L. R. 10 Bom. 91

1. ——— *Immovable property—Standing crops—Attachment* Standing crops are immovable property within the meaning of s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), as well as within the Code of Civil Procedure, and not liable to attachment and sale in execution of money-decrees, unless specifically pledged. **SADU V. SANBHUT**

I. L. R. 6 Bom. 592

**DEKKHAN AGRICULTURISTS' RELIEF ACTS—contd.**

s. 22—contd.

2. ——— *Dekkhan Agriculturists' Relief Act Amendment Act (XXII of 1882), s. 9—Mortgage by agriculturist—Subsequent money decree against mortgagor—Effect of sale of his equity of redemption in execution—Immovable property—Suit for redemption—Bar—Mortgagee mortgaged* 1872. In

(the mortgagor), who was then represented by his widow, the plaintiff. In execution of this decree R's equity of redemption was sold on the 10th February 1883, and was bought by the son of the defendant (the mortgagee). On the 12th April 1883, the sale was confirmed; and on the 10th November 1883, the purchaser took formal possession of the land. In 1891 the plaintiff (widow and heir of the mortgagor R) brought this suit to redeem the mortgage and to recover possession of the land, contending that, under s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1872), the sale of the equity of redemption was a nullity. The lower Court dismissed the suit, holding that, although the sale might be illegal, so long as the certificate of sale remained in force, it was a bar to the plaintiff's right to redeem. *Held*, that, the plaintiff being found to be an agriculturist, the Dekkhan Agriculturists' Relief Acts (XVII of 1879 and XXII of 1882) applied. The provisions of those Acts applied, although the decree and order for sale under which the sale took place were made before the Acts were passed. The Act expressly forbids the immovable property of an agriculturist to be sold in execution, and an equity of redemption is immovable property within the contemplation of the Act. The sale, therefore, on the 10th February 1883, of the equity of redemption in the mortgaged lands was illegal and a nullity, and was no defence to the plaintiff's suit to redeem the mortgage. **MANALAVU V. KUSAJI**

I. L. R. 18 Bom. 739

3. ——— *Mortgage—"Specifically mortgaged"—What amounts to a mortgage—Covenant to pay produce of land—Transfer of Property Act (IV of 1882), s. 58.* Bhiku, an agriculturist (father of defendants 3 to 6), borrowed in 1866 a sum of money from the plaintiff's mother, Yesubai, under a bond, whereby he mortgaged his house as security and also covenanted to pay each year to Yesubai half the produce of certain land as interest and the other half in reduction of the principal, and in case of default she was to be at liberty to let the land to others and take the profits. Yesubai subsequently sued to recover the debt, and obtained a decree directing the sale of

covenant to pay the produce did not amount to a "specific mortgage" of the land, and that conse-



# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

## s. 15B—*concl'd.*

*in payment of an instalment—Application to make the decree absolute—Extension of the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the District—Application for payment*

Dharmar District and the Subordinate Judge thereupon

the Act ;

the Dekkhan

1879) to which

intended that when a decree allowing instalments had already been obtained, the whole matter should be re-considered afresh in execution with a view to substitute some new scheme of instalments. *Held*, further, that the second clause of s. 15B refers only to those cases where directions for payment have already been given under the first clause of that section. *SHANKAR SHAMRAO v. SHANKARGAUDAYA* (1903)

I. L. R. 32 Bom. 445

1. — s. 15D—*Act as amended by Act XXII of 1882, s. 6—Several mortgage bonds—Suit for account—Jurisdiction of Subordinate Judge.* A suit brought under s. 15D of the Dekkhan Agriculturists' Relief Act (XVII of 1879 and XXII of 1882) must include all the mortgages affecting the land. If the total amount of the debt exceeds Rs. 500, the case does not fall under Cl. II of the Act. If it exceeds Rs. 5,000, the first class Subordinate Judge alone has jurisdiction (see s. 21 of Act XIV of 1869) *BAJAJI v. HARI*

I. L. R. 16 Bom. 351

2. — *Dekkhan Agriculturists' Relief Amendment Act (XXII of 1882)—Suit for account—Subsequent suit for redemption—Civil Procedure Code, 1882, s. 43.* Under s. 15D of the Dekkhan Agriculturists' Relief Act (XVII of 1879) as amended by Act XXII of 1882, an agriculturist mortgagor can sue for an account upon a mortgage, without at the same time asking for redemption. Such a suit will not bar a subsequent suit for redemption. The section was expressly intended to remove the bar created by s. 43 of the Code of Civil Procedure (Act XIV of 1882) *LALCHAND v. GIRJAPPA*

I. L. R. 20 Bom. 469

a. 16—*Mortgage—Suit by a mortgagor for account only—Execution of a money decree obtained by mortgage.* Under the Dekkhan Agriculturists' Relief Act, XVII of 1879, s. 16, an

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

## s. 16—*concl'd.*

agriculturist mortgagor has no right to sue his mortgagee in a mere action for account. *HARI v. LAKSHMAN*

I. L. R. 5 Bom. 614

1. — s. 20—*Mortgage decree—Decree in suit on mortgage—Payment by instalments—Civil Procedure Code (Act X of 1877), s. 210.* The words "decree passed against an agriculturist" in s. 20 of the Dekkhan Agriculturists' Relief Act, XVII of 1879, mean a decree passed against an agriculturist personally, and do not include a decree for the redemption of a mortgage.

Court may, after the passing of a decree in money suits, order the amount to be paid by instalments, provided the decree-holder consents. By s. 20 of Act XVII of 1879 the Court may make the same order in similar suits, without the consent of the decree-holder. In the case of a debt secured by a mortgage the agriculturists' remedy lies in a suit, not for an account, but for redemption; and the only decree which can be made in such a suit, in the absence of any special provision in the Act, is the ordinary decree for payment of the whole amount within six months, or, in default, for foreclosure. *HURDOO DAS v. HUKIM SING*, I. L. R. 2 All. 320, approved. *SHANKARAPPA DARGO PATEL v. DANAPPA VIRANTAPPA*

I. L. R. 5 Bom. 804

2. — *Act XXII of 1882, s. 15B—Payment of decree by instalments—Default—Whole sum payable on default—No second order for instalments—Inevitance—Effect of taking out of Court instalments paid in under second order.* S. 15B of the Dekkhan Agriculturists' Relief Act (XXII of 1882) allows the Court to order payment of a decree by instalments either in its decree or in the course of the execution. But it does not authorize a variation of any order once so made. Nor does s. 20 of Act XVII of 1879 authorize a series of instalment orders, each one varying from the preceding. A decree was made payable by instalments, with a proviso that in default of payment of any one instalment, the whole amount remaining due should be recoverable at once. The judgment-debtor made default. Thereupon the decree-holder sought to recover the whole amount of the decree. The judgment-debtor then applied for a fresh order for payment by instalments. The Court of first instance refused but the Subordinate Judge on appeal granted the

judgment Judge on appeal had no power to make a fresh order for payment by instalments varying the original order. *Held*, also, that the judgment-

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 20—*contd.*

creditor, by taking out the money paid into Court by the judgment-debtor as instalments due under the second order for instalments, did not bind himself to abide by that order. **BALEKRISHNA INDRABHAN v. ARAJI BIN BAHUJI MONE**

I. L. R. 12 Bom. 326

3. *Civil Procedure Code (Act XIV of 1882), s. 13—Suit on a promissory note—Issue as to payment by instalments—Finding in the negative—Extension of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the District—Application for instalments—Res judicata.* In a suit instituted in the Court of the first class Subordinate Judge of Ahmedabad on a promissory note an issue was raised as to whether the amount sued for should be made payable by instalments and the finding was in the negative. The suit was decreed on the 21st July 1903. The Dekkhan Agriculturists' Relief Act (XVII of 1879) was extended to the Ahmedabad District on the 15th August 1903. Thereupon the defendant having applied for payment by instalments, the application was dismissed on the ground that the question of instalments was *res judicata*. Held, that s. 13 of the Civil Procedure Code (Act XIV of 1882) was not applicable. S. 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) contemplates that even when a decree has been passed, which does not allow of instalments, the Court should have power to allow instalments in execution. **BH DIWALI v. PATEL GIRDHAR** (1903)

I. L. R. 32 Bom. 391

ss. 21 and 22—Attachment in execution prior to the Act coming into operation—Right of holder of decree obtained prior to Act. Neither s. 21 nor s. 22 of the Dekkhan Agriculturists' Relief Act, 1879, applies to a decree made previously to the 1st day of November 1879, the day on which the Act came into force, and the holder of such a decree may arrest or imprison his agriculturist judgment-debtor, as well as attach and sell his immovable property not specifically mortgaged. **DIFCHAND v. GOKALDAS**

I. L. R. 4 Bom. 363

s. 23

See Limitation Act, 1877, Art 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS

I. L. R. 10 Bom. 91

1. Immovable property—Standing crops—Attachment. Standing

**PROJEC. SADDI v. SAMBHU**

I. L. R. 6 Bom. 592

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 22—*contd.*

2. *Dekkhan Agriculturists' Relief Act Amendment Act (XXII of 1882), s. 9—Mortgage by agriculturist—Subsequent money decree against mortgagor—Effect of sale of his equity of redemption in execution—Immovable property—Suit for redemption.* R, an agriculturist, mortgaged the land in dispute to the defendant in 1872. In 1875 the defendant (the mortgagor) sold the land to the plaintiff (the widow, t R's equi

February 1883, and was bought by the son of the defendant (the mortgagee). On the 12th April 1883, the sale was confirmed; and on the 10th November 1883, the purchaser took formal possession of the land. In 1891 the plaintiff (widow and heir of the mortgagor R) brought this suit to redeem the mortgage and to recover possession of the land, contending that, under s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1872), the sale of the equity of redemption was a nullity. The lower Court dismissed the suit, holding that, although the sale might be illegal, so long as the certificate of

the sale took place were made before the Acts were passed. The Act expressly forbids the immovable property of an agriculturist to be sold in execution, and an equity of redemption is immovable property within the contemplation of the Act. The sale, therefore, on the 10th February 1883, of the equity of redemption in the mortgaged lands was illegal and a nullity, and was no defence to the plaintiff's suit to redeem the mortgage. **MAHALAXI v. KOSAJI**

I. L. R. 18 Bom. 739

3. *Mortgage—"Specifically mortgaged"—What amounts to a mortgage—Covenant to pay produce of land—Transfer of Property Act (IV of 1882), s. 58.* Bhiku, an agriculturist (father of defendants 3 to 5), borrowed in 1866 a sum of money from the plaintiff's mother, Yesubai, under a bond, whereby he mortgaged his house as security and also covenanted to pay each year to Yesubai half the produce of certain land as interest and the other half in reduction of the principal, and in case of default she was to be at liberty to let the land to others and take the profits. Yesubai subsequently sued to recover the debt, and obtained a decree directing the sale of the land. In execution of this decree, the land was sold on the 5th June, 1896, and was bought by the plaintiff who now sued for possession. It was contended on behalf of the defendants that the covenant to pay the produce did not amount to a "specific mortgage" of the land, and that conse.

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contl.*

s. 22—*concll.*

quently the sale to the plaintiff was invalid under s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). *Held*, that the land was specifically mortgaged for the repayment of the debt and that the sale was valid and the plaintiff was entitled to recover possession. *BALSHET V DHONNO RAMKISHNA* (1901) I. L. R. 28 Bom. 3

ss. 39, 46, 47, 48—*Village conciliator—Proceedings before a conciliator—Certificate of a conciliator—Exclusion of the time occupied in proceedings before a conciliator in computing the period of limitation*

a dispute must be the one appointed for the local area in which the agriculturist is residing, and not for the district in which the land in dispute is situated. The plaintiff was an agriculturist residing in the Kopergaon taluk. He purchased the house in dispute from the defendant on the 30th January 1872, but did not get possession. On the 12th December 1883, the plaintiff applied to be put into possession under s. 39 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the conciliator or appointed for the Khatav taluk, where the house in dispute was situate. The proceedings before the conciliator lasted until the 19th February 1884, on which day a certificate under a 46 of the Act was granted to the plaintiff. On the 20th February 1884, the plaintiff brought this suit to recover possession of the house. The defendant pleaded limitation. The plaintiff contended that, under s. 48 of Act XVII of 1879, the time occupied in the proceedings before the conciliator should be deducted in computing the period of limitation. *Held*, that the plaintiff was not entitled to such deduction as the conciliator, before whom the proceedings had been ins'

the local area as required therefore, in application. *Held*, also, that the certificate obtained by the plaintiff was not such a certificate as is required by s. 47 of the Act. *Held*, further, that the want of a proper certificate was not fatal to the suit. As soon as a defect in a certificate becomes apparent the proper course is for a Court to stay proceedings to enable the plaintiff to make good the defect by producing the requisite certificate. *NYAMTULA V. NANA VALAD FANUDSHA* I. L. R. 13 Bom. 424

ss. 41, 43, 44, and 46—*"Amicable settlement"*—*"Finally disposing of the matter"*—*Instalment—Interest*. The expression "finally disposing of the matter" in ss. 43 and 44 of Act XVII of 1879 means no more than the expression "amicable settlement" in ss. 41 and 46. An agreement for the settlement of a plaintiff's claim to be paid

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contl.*

ns. 41, 43, 44, and 46—*concll.*

a mortgage-debt at once or to have the property sold by an arrangement for the payment of the debt by instalments with power to the plaintiff in default of payment of any instalment to take or retain possession until the debt has been satisfied out of the produce of the estate is an "amicable settlement," and therefore one "finally disposing of the matter," which, if duly presented, must be filed by the Court. Where the sum due upon such an agreement is partly made up of interest, a provision to pay interest on any instalment remaining unpaid does not make the agreement illegal. *VASUDEV PANDIT V. NARAYAN JOSHI* I. L. R. 9 Bom. 15

1. s. 44—*Agreement of compromise*. Under s. 41 of Act XVII of 1879, the plaintiff presented to the subordinate Court of Talegaon an agreement compromising the amount of a decree obtained by the plaintiff against the defendant in the Small Cause Court at Poona. The agreement stipulated that the plaintiff was to receive, in full satisfaction of the amount of the decree (which was for Rs. 15-1), the sum of Rs. 40 to be paid by yearly instalments of Rs. 4 each, and that, in default, the plaintiff was to recover the whole amount of the decree by executing it. The Subordinate Judge refused to file the agreement, being of opinion that it did not finally dispose of the matter. The case being referred to the High Court: *Held*, that the agreement was one finally disposing of the matter within the meaning of s. 44 of Act XVII of 1879, and that, therefore, the Subordinate Judge of Talegaon was bound to receive it, and to proceed as directed in that section. *LAKSHMINCHAND V. ANJUNA*

I. L. R. 8 Bom. 77

2. Expression "show cause". *Meaning of—Civil Procedure Code, 1882, s. 535*. The expression "show cause" in para. 2, s. 41 of the Dekkhan Agriculturists' Relief Act

MAHIPATI HADADEKAR I. L. R. 20 Bom. 203

3. Agreement filed under section and becoming a decree—*Default in payment of instalments due under decree—Application to make decree absolute under s. 89 of Transfer of Property Act (IV of 1882)*. On the 21st October 1894, the plaintiff and the defendant entered into an amicable agreement before a conciliator for payment of a mortgage-debt due to the former by annual instalments. The agreement was forwarded to the Court on the 21st December

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 44—*contd.*

instalments, the first of which became due on the 25th January 1895, and which also was not paid, the plaintiff applied for execution by sale of the mortgaged property. The application was made on the 6th September 1897, and it was struck off the file for some formal defect on the 18th November 1897. Subsequently, on the 10th October 1898, the plaintiff having applied for an order absolute for sale under s. 89 of the Transfer of Property Act, questions arose as to the applicability of the section to agreements filed in Court under s. 44 of the Dekkhan Agriculturists' Relief Act and as to limitation. *Held*, that agreements filed under s. 44 of the Dekkhan Agriculturists' Relief Act, if relating to sale of mortgaged property, are subject to the provisions of s. 59 of the Transfer of Property Act. BHAGAWAN RAMJI MARWADI v. GAUN. I. L. R. 23 Bom. 644

4. *Pensions Act (XXIII of 1871), s. 4—"Suit"—Execution proceedings—Payment of annuity charged on Saranjām lands—Liability of the son of the grantor to make the payment—Partition of family property—Income of a Saranjām village—Conciliation agreement—Decree.* A conciliation agreement was filed in Court on the 16th June 1882 under s. 44 of the

stopped making any more payment. R, the son of N who had died, then filed a *darbāst* to enforce the payment of 1899-1900. J objected to this *darbāst* on two grounds: (i) that a certificate under the Pensions Act (XXIII of 1871) was necessary; and (ii) that A's interest having terminated with his death, the Saranjām must be considered as a fresh grant to the son who was not liable to continue the payment. *Held*, (i) that a certificate under the Pensions Act (XXIII of 1871) was not necessary for the word "suit" in s. 4 of the Act does not include execution proceedings. *Vajiram v. Ranchothy*, I. L. R. 16 Bom. 731, followed. *Held*, (ii)

and pay to them Rs 50-0-6 per annum. A consent decree can only be set aside upon the same grounds as an agreement can be set aside, e.g., fraud or mistake or misrepresentation. *Per BATT, J.*—A Court executing a decree cannot question the jurisdiction of the Court which passed it. "The present application in no way affects property fall-

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 44—*contd.*

ing within the purview of the Pensions Act, but seeks enforcement against the general assets of the judgment-debtor, whose liability under the decree is not made a charge on the Saranjām or cash allowance at all. That liability appears to have been imposed and accepted not as effecting

ant for the purpose of discharging that liability." TRIMBAKRAO v. BALVANTRAO (1905)

I. L. R. 30 Bom. 101

ss. 46, 47—*Conciliator's certificate obtained in the name of one co-parcener—Suit on behalf of the family—The remaining co-parceners joining as plaintiffs to the suit—Hindu Law—Manager—Powers to represent the family.* In a suit brought on behalf of a joint Hindu family the conciliator's certificate required by s. 46 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was obtained in the name of one of the co-parceners alone; but all the co-parceners joined as plaintiffs and admitted in the plaint that the certificate had been obtained on behalf of the joint family. It was objected to this suit that as the certificate was in the name of one of the plaintiffs the suit could not lie. *Held*, overruling the objection, that the certificate obtained by one of the co-parceners, who was either the managing member of the family at the time the certificate was obtained or who, though not manager, obtained it with the consent and on behalf of the joint family, acting as its agent, was sufficient to support the suit. The rule of Hindu law is that a joint family is represented in all transactions or concerns with the outside world by its *Karta* (manager), provided these are for the benefit or necessity of the family; and that any co-parcener who does not occupy that position of manager can represent and bind the family in such transaction or concerns, provided he was either previously authorised to represent it or, in the absence of such authority, the other co-parcener subsequently by words or conduct ratified his acts. VITHU DHONOR v. BABAJI (1903)

I. L. R. 32 Bom. 375

s. 47.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—DEKKHAN AGRICULTURISTS' RELIEF ACT.

I. L. R. 8 Bom. 20

I. L. R. 21 Bom. 63

1. *Code of Civil Procedure (XIV of 1882), s. 525—Construction—Arbitration award—Conciliator's certificate.* Where a matter has been referred to arbitration, without the intervention of a Court of Justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 47—*concl'd.*

certificate, apply for the filing of the award under s. 525 of the Code of Civil Procedure the provisions of which are not superseded by s. 47 of the Dekkhan Agriculturists' Relief Act, 1879. *GANGADHAR SAKHARANI v. MAHADU SANTAJI*

I. L. R. 8 Bom. 20

2. ——— as. 47, 48—*Application for execution of decree—Conciliator's certificate* The presentation to any Civil Court of an application for execution of a decree passed before 1st November 1879 (the date on which the Dekkhan Agriculturists' Relief Act came into force), to which any agriculturist residing within any local area for which a conciliator has been appointed is a party, is no legal presentation at all, if the application be not accompanied by the conciliator's certificate. *MANOHAR v. GEELARA*

I. L. R. 6 Bom. 31

s. 48.

*See* LIMITATION ACT, 1877, ART. 170—*PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.*

I. L. R. 10 Bom. 108

s. 49.

*See* PARTIES—*SUBSTITUTION OF PARTIES—PLAINTIFFS* I. L. R. 19 Bom. 202

*See* RULES UNDER ACTS—*DEKKHAN AGRICULTURISTS' RELIEF ACT*

I. L. R. 10 Bom. 189

s. 53.

*See* REVIEW—*POWER TO REVIEW.*

I. L. R. 19 Bom. 113, 118

I. L. R. 20 Bom. 281

1. ——— *Special Judge.*

to grant a review of a decree or order once made by him on the ground of the discovery of new evidence *BABAJI BIN PATLOJI v. BABAJI BIN MAHADU*

I. L. R. 15 Bom. 659

2. ——— *Revisionary power of the Special Judge—Cases in which failure of justice appears to have taken place—Discretion of Court* Under s. 53 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), the Special Judge has a revisionary power in all cases where a failure of justice appears to have taken place. It is for him to decide whether the finding on a question of fact by a Subordinate Judge is of that nature, and in doing so he is entirely within his jurisdiction. *SHIDHU v. BALI*, I. L. R. 15 Bom. 186, dissented from. *GURUBASAYA v. CHANDMALAPPA*

I. L. R. 18 Bom. 288

# DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*

s. 53—*contd.*

3. ——— *Agriculturist—Plaintiff proved or admitted to be an agriculturist—Special Judge, revisional jurisdiction of—Dekkhan Agriculturists' Relief Act, s. 73.* The plaintiff alleging that she was an agriculturist, sued for redemption under Ch II of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The Subordinate Judge raised an issue as to her status, and on that issue found that she was not an agriculturist. He, however, proceeded with the trial of the case, and on the merits dismissed her claim. She thereupon applied to the Special Judge, who took up the case in revision, reversed the decree

passed was one not under Ch. II of the Dekkhan Agriculturists' Relief Act, but under the general provisions of the Civil Procedure Code (Act XIV of 1882). By s. 53 the Special Judge has jurisdiction only over decisions and orders passed by a Subordinate Judge under Ch. II. *PER PARSONS, J.*—It is only when the plaintiff is admitted and proved (not merely when he claims) to be an agriculturist that the Court has jurisdiction to try a suit under Ch. II of the Act. The question of status ought to be raised and decided as a preliminary issue. *LAKSHMAN BALAJI v. RANCHANDRA PARASHRAM*

I. L. R. 23 Bom. 321

4. ——— *Power of Special Judge to vary decree—Review—Mortgage—Profits in lieu of interest—Provision that mortgage not to be redeemed until unsecured loan paid off—Mortgage applied to chief Act, B gave his loan certain*

compound interest at 11-8 per cent. per mensem. The bond further provided that the mortgage should not be redeemed until the latter sum of Rs 50 with interest should be paid off. B sued for redemption of the mortgage. The first Court found that the mortgage had been paid off, and ordered redemption on the plaintiff paying Rs 50 with interest, which, under the rule of damdupat, increased the amount to Rs 100. The plaintiff applied to the Special Judge for review, on the ground that he had already paid the Rs 50. The Special Judge did not review the case on that ground, but, acting under the power given him by ss 53 and 54 of the Dekkhan Agriculturists' Relief Act, varied the decree by

DEKKHAN AGRICULTURISTS' RELIEF ACTS—*contd.*s. 53—*contd.*

ordering redemption on payment of Rs50 only, holding that, as the mortgage had been long since paid out of profits, the balance of such profits should be applied to payment of the interest due on the Rs50. On appeal to the High Court: *Hild*, that the Special Judge had jurisdiction *pro tanto motu* under the provisions of s. 53 to vary the decree of the lower Court while not reviewing the case on the ground applied for by the plaintiff. *Hild*, also, that the Courts, while inquiring into the merits of a case under s. 12 of the Dekkhan Agriculturists' Relief Act, had authority under s. 13 to treat the original advance of Rs100 and Rs50 as a single transaction and to set aside the agreement of the parties to treat part of the loan as a mortgage loan and part as an unsecured loan, and to deal with the whole case (as in substance it was) as an advance on a mortgage. *BALEKRISHNA INDRABHAN v. MAHADEO BARAJI KULKARNI*

I. L. R. 22 Bom. 520

5. ——— s. 53, 54—*Special Judge, powers of, in revision—Withdrawal of suit—Mistake in filing suit.* A Special Judge, appointed under

Relief Act  
exercise of  
tiff to with-  
a new one,

merely on the ground that he has made some mistake in filing the suit. *MCKTAJJI BHAGOJI v. MANAJI*

I. L. R. 12 Bom. 684

6. ——— *Special Judge—Revisional powers—Question of fact—Criminal Procedure Code (Act X of 1882), s. 435.* Under ss. 53, 54 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), the Special Judge can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles that possessed by the High Court under the Code of Criminal Procedure (Act X of 1882), and ought if it be held to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases. *SHIDHU BIN SUBHANA JADHAV v. BALI BIN MURARI JADHAV*

I. L. R. 15 Bom. 180

s. 58

See REGISTRATION ACT, s. 17.

I. L. R. 10 Bom. 239

1. ——— *Signed balance of account—Evidence.* A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot, therefore, be admitted in evidence, unless written by, or under the superintendence of, and attested by, a village registrar, as required by s. 56 of Act XVII of 1879. *KANJI LADHA v. DHONDE KONDADI*

I. L. R. 8 Bom. 729

2. ——— *Account adjusted and signed by two debtors, one of whom was an agriculturist—Suit against one agriculturist—Evidence—*

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*Inadmissibility of unregistered khata for any purpose.*

the amount due to the plaintiff, and also an agreement to pay interest. The defendant, who was an agriculturist, had struck off the amount and the

1879 did not apply, and that the khata sued on

one who was not an agriculturist. *DINSHA KUTARJI v. HARGOVANDAS GOVABDHANDAS*

I. L. R. 13 Bom. 215

3. ——— *Dekkhan Agriculturists' Relief Amendment Act (XXIII of 1886), s. 9—Proviso added to s. 56 of Act XVII of 1879—Its applicability to instruments executed before it came into force—Statute, construction of.* The general rule is that Acts are prospective, not retrospective, in their operation. To this rule there are two exceptions—(a) when Acts are ex-

is not retrospective in its operation, as it involves not merely a change of procedure but also a change of existing rights. The plaintiff purchased a house from the defendant, who was an agriculturist, under a deed of sale dated 23rd June 1886. The deed was registered under the Registration Act (III of 1877) On the 1st December 1886, the plaintiff sued to recover possession of the house. The defendant pleaded that the sale-deed was invalid for want of consideration. Both the lower Courts

suit, but before the suit came to a hearing, the plaintiff was entitled to the benefit of the proviso

DEKKHAN AGRICULTURISTS' RELIEF ACTS.—*contd.*s. 56—*contd.*

4. *Agreement executed before a village conciliator—Agreement evidencing an intention to create a mortgage—Admissibility and validity of such agreement—Evidence.* On the 1st December 1891, defendant executed before a village conciliator a *kabuliat* to the following effect:—"I admit Rs100 are due from me to the plaintiff (under a mortgage). I also owe him Rs135 under a consent decree and Rs130 as a fresh advance, in all Rs1,435. I agree to pay on this sum interest at 13 annas per cent. per mensem. For the purpose of the mortgage mentioned at Junnar, years If I take the money and the sale pay the deficiency. I have already put the plaintiff in possession of the property herein mentioned. The village conciliator forwarded this *kabuliat* to the plaintiff."

Defendant to execute a mortgage in terms of the *kabuliat* and for a personal decree against the defendant for the amount due. *Held*, that the *kabuliat* did not of itself create a mortgage, but only evidence the intention of the parties to create one. It did not, therefore, fall under s. 56 of the Dekkhan Agriculturists' Relief Act, and was admissible in evidence to prove the contract entered into. *Held*, also, that the plaintiff was entitled to a decree directing the defendant to execute a mortgage in terms of the *kabuliat*. *MAHADAY v. MAHIDU*

I. L. R. 22 Bom. 788

s. 60.

See REGISTRATION ACT, s. 17.

I. L. R. 19 Bom. 239

s. 63 (A).

See TRANSFER OF PROPERTY ACT, s. 59.

I. L. R. 33 Bom. 44

1. *Limitation Act, 1877, Sch. II, Art. 59—Non-agricultural principal—Agriculturist's surety—Contract of guarantee—Contract Act, ss. 126-137.* On the 11th September 1880, a suit was instituted against a non-agricultural principal and agriculturist surety for Rs850, being principal and interest due on a bond dated the 6th August 1877 and payable on demand. The action being barred against the principal debtor under the Limitation Act, XV of 1877, Sch. II, Art. 63, the question was referred to the High Court, whether, under s. 72 of the Dekkhan Agriculturists' Relief Act, XVII of 1879, the agriculturist surety was still liable for the amount sued for. *Held*, that, although the suit was barred as against the principal debtor

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under Art. 59, Sch. II of the Limitation Act, yet the surety, being an agriculturist, was still liable, inasmuch as s. 72 of the Dekkhan Agriculturists' Relief Act, which extends the period of limitation, applies to suits by principals.

considered in connection with the effect of s. 72 of the Dekkhan Agriculturists' Relief Act, XVII of 1879. *MAHARAJA v. KRISHNARAY I. L. R. 5 Bom. 647*

2. *Limitation—Surety—Principal.* A as principal, and B and C as sureties, obtained a lease from D of certain land, dated 30th July 1880. A, B, and C were agriculturists within the meaning of Act XVII of 1879, and the lease was registered under s. 56 of that Act. On 1st March 1881, D sued A, B, and C to recover to rent under the lease. *Held*, that, under s. 72 of Act XVII of 1879, as amended by Acts XXIII of 1881 and XXII of 1882, the extended limitation did not apply to the surety, even though the principal debtor was an agriculturist. The words "not merely a surety for the principal debtor (which enact the exception to the extended limitation given by that section) are not restricted to the case in which the principal debtor is a non-agriculturist. The lessee, however, having been

ation Act, XV of 1877, the period of limitation applicable to the surety was six years from the date of default by the principal debtor to pay rent. *KESU SHIVRAO v. VITHU KANAJI*

I. L. R. 9 Bom. 320

3. *Agriculturist co-defendant sued as surety merely to principal debtor on an unregistered money-bond—Limitation Act, 1877, Arts. 67, 115.* Where an agriculturist, who was surety for the principal debtor, was made co-defendant, the period of limitation was not extended. *Held*, that in such

4. *Written instrument—Limitation.* On the 7th April 1883, an agriculturist in the Dekkhan passed a writing "Receipt borrowed for the money. To-day I have taken Rs300 more, making Rs1,345 in all. For that I will give you a bond fifteen days hence. I have received the money." This document was duly registered under s. 58 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). In June 1897, the creditor sued to

**DEKKHAN AGRICULTURISTS' RELIEF ACTS—concl'd.**

s. 72—concl'd.

recover the principal and interest due under this document. *Held*, that the document sued upon was a "written instrument" within the meaning of s. 72, cl (1), of the Dekkhan Agriculturists' Relief Act, and that the suit was, therefore, not barred, having been brought within twelve years from the date of the document. *Held*, also, that the document—

ANANT v. RAMKRISHNARAO NARAYAN

I. L. R. 24 Bom. 334

s. 73.

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I. L. R. 19 Bom. 113, 116

See STATUTES, CONSTRUCTION OF.

I. L. R. 21 Bom. 922

s. 74.

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I. L. R. 21 Bom. 93

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**DELIVERY ORDER—contd.**

1. ——— Document of title—Consideration. A document in the following terms:—"Allahabad, 27th January 1886. Commercial Transport Association received from C M ——— bales of ——— which the Commercial Transport Association, in consideration of it ——— when paid to their agent at Howrah, hereby agree and contract to deliver safely at Howrah, is a mere delivery order and not a document of title, at all events as between European parties. The claimant under it must prove consideration, and a consideration past at the time it came into the claimant's hands as between himself and his immediate indorser will not support a claim on such a document. ASSARAM BARTHAN v. COMMERCIAL TRANSPORT ASSOCIATION 2 Ind. Jur. N. E. 113

2. ——— Effect of endorsement of—Vendor's lien—Contract Act (IX of 1872) s. 108 The plaintiff was a broker ——— in cotton ———

as to candy, dc. On the 30th January 1883, in his capacity as broker, he effected a contract for the sale of the same 100 candies of cotton by the defendants to L & Co. at R202 per candy. L & Co. sold the cotton to D, and D again sold it back to the defendants at R101 per candy. The defendants then sold it to H, by whom it was sold to K, and K finally sold it to B & Co. at R191 per candy. B & Co. obtained possession of the cotton from the plaintiff on or about the 24th April on payment of R101 per candy, for which they had contracted to buy it from K. The delivery order for the cotton had been sent on the 20th April by the plaintiff to the defendants, who, upon receipt ——— wrote ———

1. ——— party, please s. ——— for the cotton direct, and before parting with cotton, if necessary." The delivery order was then endorsed by the defendants to their vendees (L & Co.), who in turn endorsed it to D, by whom it was endorsed to the defendants. By subsequent endorsements it came ultimately to B & Co., who, as above mentioned, got delivery of the cotton from the plaintiff on payment of R191 per candy. The plaintiff, who had sold to the defendants at R200 per candy and who received from B & Co. only R191 per candy, sued the defendants in the Small Cause Court for the difference. The defendants contended that after the receipt of the letter written by them to the plaintiff he was bound not to deliver the cotton to L & Co., or to any subsequent endorsee of the delivery order, until he had obtained payment of the full price (R200 per candy) which the defendants had agreed to pay him for it; that the delivery to B & Co. was not a delivery authorized by the defendants; that the payment made by B & Co. to the plaintiff was not a payment made by, or on behalf of, the defendants; that the plaintiff's cause of action, if any, against the

**DELIVERY ORDER—concl.**

defendants was for the full price of the cotton; and that, as that exceeded R2,000, the Small Cause Court had no jurisdiction. Held, that the defendant's letter to the plaintiff was ineffectual to control or alter the course of the delivery order, and that the plaintiff was bound to deliver the cotton to B & Co. on payment by them of the price of R191 per candy. The defendants, having re-purchased the cotton after it had passed through several hands, sold it for R191 per candy to H, from whom it ultimately passed to B & Co. The plaintiff's lien, therefore, as regarded H and his sub-vendees, was confined to the price at the above rate, and B & Co. were entitled to the goods as against the defendants on payment of that price. The defendants' letter, therefore, of the 20th April 1883—however the plaintiff might have been bound to act on it as regarded L & Co., to whom the cotton was sold at R202 per candy, and the other sub-vendees prior to the re-purchase by the defendants—could only, as regards subsequent purchasers, prevent delivery to them before payment of the price at which the defendants had re-sold the goods, viz., R191 per candy. That price was actually paid to the plaintiff before he did deliver the goods, and credit was given to the defendants in the account. By the English common law a delivery order is regarded as a mere token of authority to deliver; and before the wharfinger has attorned, it does not, independently of statute or custom ——— chaser to ———

1. ——— to a delivery order than it had by English common law, and under that Act [s. 90, illus. (c), and ss. 95 and 98] the giving of a delivery order by a vendor to a vendee does not of itself give the vendee such a possession of the goods as to defeat the vendor's lien. The exception to this rule contained in excep. (1) to s. 108, which provides that a seller may give to a buyer a better title than he had himself where he is, by consent of the owner, in possession of documents ——— to ——— con

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I. L. R. 33 Calc. 846

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**DEMURRAGE.**

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Delay caused by inability of captain to deliver goods. Where a purchaser engaged to take delivery of cargo from a ship at a certain rate per diem, and, in the event of failure, to pay demurrage, and the contract contained a stipulation in the following terms: "But should

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and that there was no longer to be any period under the contract within which delivery was to be taken of the cargo. GILLANDERS, ARBUTHNOT & Co. v. OBHOY CHURN NUNDY . 23 W. R. 139

**DEMURRER.**

See CIVIL PROCEDURE CODE, 1882, s. 539

I. L. R. 33 Calc. 789

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See REGISTRATION ACT (III OF 1877)

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**forfeiture of—**

See PENALTY . I. L. R. 36 Calc. 980

**bond— in full discharge of mortgage**

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 83, 84

I. L. R. 36 Calc. 640

**in Court—**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 244, 251.

11 C. W. N. 465

**of costs of appeal—**

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR  
APPEALING . I. L. R. 1 Calc. 142

I. L. R. 2 Calc. 128, 272

23 W. R. 220

I. L. R. 6 All. 250

I. L. R. 10 Calc. 557

I. L. R. 14 Mad. 391, 393 note

**of debt.**

See SALE IN EXECUTION OF DECREE—  
SETTING ASIDE SALE—GENERAL CASES,  
I. L. R. 30 Calc. 425

See TRANSFER OF PROPERTY ACT, s. 83.

I. L. R. 14 Mad. 48

I. L. R. 17 Mad. 297

I. L. R. 25 All. 176

**of Government securities—**

See LIMITATION ACT, 1877, SCH. II, ART.  
145 . 7 C. W. N. 479

**of mortgage-money—**

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES . I. L. R. 27 Bom. 23

**of rent.**

See BENGAL TENANCY ACT, s. 61.

I. L. R. 21 Calc. 186, 690

I. L. R. 25 Calc. 289

See BENGAL TENANCY ACT, s. 171.

13 C. W. N. 1175

DEPOSIT—*concl'd.*

of rent—*concl'd.*

See BENGAL TENANCY ACT, s. 174.

See BENGAL TENANCY ACT, SCH. III, ART.

2(a) . I. L. R. 29 Calc. 283

See INTEREST . 11 C. W. N. 283

I. L. R. 35 Calc. 84

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

of revenue.

See LIMITATION ACT, 1877, SCH. II, ART.

145 . 2. W. R. 162

3 R. L. R. Ap. 67

I. L. R. 18 Calc. 234

I. L. R. 20 Calc. 51

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

of security by person entitled to certificate.

See APPEAL—CERTIFICATE OF ADMINISTRATION

order refusing to accept—

See APPEAL—ORDERS.

I. L. R. 19 All. 140

to stay sale—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE

## DEPOSIT OF MONEY.

See BANKERS . I. L. R. 8 Calc. 70

See CONTRACT—CONDITIONS PRECEDENT

I. L. R. 14 Bom. 498

See LIMITATION ACT, 1877, SCH. II, ART.

59 . I. L. R. 13 Bom. 338

See LIMITATION ACT, 1877, ART. 60 (1869, s. 1, CL. 9).

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR . 13 R. L. R. 142

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS

I. L. R. 50 Calc. 262

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION . I. L. R. 4 Calc. 6

## DEPOSIT OF TITLE-DEEDS.

See HINDU LAW—CONTRACT—LIEN.

7 Bom. O. C. 45

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . I. L. R. 19 All. 78

L. R. 23 I. A. 106

See LIEN . 7 Bom. O. C. 45

See LIMITATION . 10 C. W. N. 270

DEPOSIT OF TITLE-DEEDS—*concl'd.*

See LIMITATION ACT, 1877, SCH. II, ART. 147 . I. L. R. 14 Bom. 269

See MORTGAGE . I. L. R. 33 Calc. 410

See NEGOTIABLE INSTRUMENTS ACT, s. 13 . I. L. R. 17 Mad. 85

See REGISTRATION ACT, 1877, s. 43. I. L. R. 11 Calc. 168

1. Equitable mortgage—Security—Lien. The firm of *C N & Co.*, Calcutta, had an account with a Bank of which *R* was manager, under an arrangement that the bank should discount bills accepted by *C N & Co.* to a certain amount, and that *C N & Co.* should keep in the Bank a certain fund as security for the bills.

unless security were given for the amount then due to the Bank. *A*, the only partner in the firm of *C N & Co.*, then in Calcutta, verbally promised on 24th November to deposit with the Bank the title-deeds of the premises in which *C N & Co.* carried on their business; and in consideration of such promise, *R* discounted further bills from 24th to 29th November. *A* sent to *R* a letter on 25th November as follows: "In pursuance of the conversation the writer had with you yesterday, we now deposit the title-deeds of landed house property, as security against our discount account." The letter en-

1870, suspended payment and by the usual order their estate and effects vested in the Official Assignee, who thereupon, finding that the Bank claimed a lien on the deeds, brought a suit against the Bank for recovery of them. *Held*, that the Bank was entitled to retain the deeds as security both for the balance of the discount account existing at the time of the promise to deposit, and also for the bills discounted between the 24th and 29th November. *Scoble*: The Bank was entitled to hold the deeds actually deposited as if they were the deeds which formed the subject of the verbal promise to *R. MILLER & CO. CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA*

6 R. L. R. 701

IBRAHIM AZIM v. CHUKHLANK

7 B. L. R. 663. 16 W. R. 203.

3. Memorandum given after deposit—Security for loan. The defendant.

DEPOSIT OF TITLE-DEEDS—*cont'd.*

deposited certain title-deeds with the plaintiff as security for the repayment of Rs. 200 lent him by the plaintiff at the time the deposit was made. On the evening of the same day, the defendant, by way of further security, gave to the plaintiff a promissory note for the amount of the loan, and enclosed thereto the following memorandum:

DUTT v. SHANILAL KHETTER

11 B. L. R. 405; 20 W. R. 150

4. *Return of deeds to satisfy debts as to title.* Where the plaintiff had advanced to the first defendant Rs. 38,000, and had agreed to advance Rs. 27,000 more, the whole Rs. 65,000 to be secured by a mortgage of the first defendant's immovable property, and the first defendant had deposited with the plaintiff the title-deeds of his immovable property, for the purpose of enabling him to get a mortgage-deed prepared, and had agreed to execute such mortgage-deed on payment to him by the plaintiff of the balance of the Rs. 65,000, and the title-deeds were afterwards returned by the plaintiff to the first defendant for the purpose of enabling him to clear up certain doubts as to his title to some of the premises comprised in the deeds, and such deeds were not subsequently returned by the first defendant, nor were others deposited in lieu thereof, and the balance of the Rs. 65,000 was not paid by the plaintiff to the first defendant: *Held*, that there was an equitable mortgage to the plaintiff to secure Rs. 38,000, so far as concerned the property comprised in the deeds.

DATTA JAIJAS v. JIVJAS BHATNAGI

I. L. R. 1 Bcn. 237

5. *Contract of mortgage—Letter stating terms of equitable mortgage, effect of—Equitable mortgagee, his proper remedy* A and B executed a joint and several promissory note in favour of the plaintiff. On the same day A deposited with the plaintiff the title-deeds of his property as collateral security, and received conjointly with B a part of the consideration-money for the promissory note. Shortly afterwards A advanced a letter to the plaintiff to this effect: "As collateral security for the due payment of Rs. 10,000 (sic) by a promissory note of even date I enclose herewith the title-deeds of my property

DEPOSIT OF TITLE-DEEDS—*cont'd.*

mortgage which had been completed upon deposit of title-deeds. *Held*, also, that the existence of the letter would not prevent the plaintiff from giving any other evidence in proof of his claim. *Kodarnath Dutt v. Sham Lal Khattri*, 11 B. L. R. 405, followed. *Held*, further, that the plaintiff was not entitled upon the transaction to a conveyance of the legal estate his proper remedy being by sale of the mortgaged property. *Oo Noun v. Moussa Hroon Oo*

I. L. R. 13 Calc. 322

6. *Legal mortgage unregistered—Claim by mortgagee, who has failed to register mortgage-deed, to have an equitable mortgage by virtue of deposit of title-deeds previously to execution of mortgage-deed.* The plaintiff having consented to lend Rs. 10,000 to the defendant, the latter deposited with him, on the 2nd April 1883, the title-deeds of a certain property. On receiving them, the plaintiff told the defendant that he would take them to his attorney, have a deed drawn

by attorney, and the deed had been prepared. At the time the deeds were handed over to the plaintiff (i. e., the 2nd April 1883), there was no existing debt due by the defendant to the plaintiff. On the 6th April 1883, the mortgage-deed was executed, and on the same day the money was advanced by the plaintiff to the defendant. The plaintiff stated that he "had advanced the money on the security of the title-deeds on the same day." He did not say how long before the execution of the deed the money had been paid, but the deed itself recited that the Rs. 10,000 were paid immediately before the execution of the mortgage. The mortgage-deed was not registered. The plaintiff stated that he knew that it required registration, but that it was left unregistered at the request of the defendant, who did not wish to be "exposed in the eyes of the public." The plaintiff sued for a declaration that he was entitled to an equitable mortgage upon the said property, and for the sale thereof, in default of the payment of the mortgage-debt. He contended that the loan had been made on the security of the title-deeds which had been deposited on the 2nd April; that he had, no doubt, intended to obtain a legal mortgage, but that he had abandoned that intention by consenting to leave the mortgage-deed unregistered, and had on the 6th April elected to rely upon his equitable mortgage. *Held*, that the plaintiff had no equitable mortgage. At the time when the deeds were deposited, there was no antecedent or existing debt, nor was any oral agreement made that the title deeds should stand as a security for future advances, nor was any advance, in fact, made until the mortgage-deed was about to be executed. There could be no doubt that, if the defendant had not been ready to execute the deed, no advance would have been made. The money was really advanced on

registration admissible in evidence of the equitable

DEPOSIT OF TITLE-DEEDS—*contd.*

the security of the mortgage-deed, though, at the time the money was advanced, the plaintiff had the title-deeds in his possession. *JATTA BHIMA v. ABDUL VYAD OOSMAN*. I. L. R. 10 Bom. 834

7. ———— *Lien—Mahomedan law—Trust.* S purchased the muttah of E, and paid part of the consideration-money, when the parties came to complete, the vendors had not the title-deeds, but they promised to deliver them in a few days, and arranged that the remaining part of the purchase-money should be retained by the purchaser, and they handed over to him the title-deeds of another muttah called T, to be held as security for their delivering to the purchaser the title-deeds of muttah E in order to perfect his title. The pur-

created a lien, and bound the muttah T for the advances made by S. *Semle*: By the Mahomedan law such a deposit for a security in respect of a contingent loss would be in the nature of a trust, not a power. *VARDEN SETH SAM v. LUCKPATHY ROYJEE LALLAH*. 9 Moo. I. A. 303

8. ———— *Payment of mortgage-debt by third person at request of mortgagor—Deposit of mortgage-deed and documents of title with such third person at request of mortgagor—Effect of transaction—Equitable mortgage—Right of suit.* The first defendant held a mortgage as a security for a loan of Rs 350. On the 23rd June 1893, the mortgagors themselves paid him the day, paid was d so

endorsed, together with another document of title, was thereupon handed over to the plaintiff by direction of the mortgagors. The plaintiff subse-

mortgage from the defendant. But held, also, dismissing the appeal, that the plaintiff had no right of suit against the defendant. The defendant's mortgage was at an end. It was paid off, and nothing remained for the defendant to do but to retransfer the property to the mortgagors.

DEPOSIT OF TITLE-DEEDS—*contd.*

mortgagors, handed over the endorsed mortgage-deed and the other document of title to the plaintiff, a new mortgage, viz., an equitable mortgage by deposit of title-deeds, was effected by the mortgagors in favour of the plaintiff. What rights that deposit gave against the mortgagors depended on the agreement between them. *KHUSHAL SADASHIV v. PENAMCHAND JESURJI*

I. L. R. 22 Bom. 164

9. ———— *Transfer of Property Act, s. 59—Deposit of title-deeds in Calcutta—Immoveable property in mofussil.* It is not necessary to the validity of a mortgage by deposit of title-deeds, under s. 59 of the Transfer of Property Act (IV of 1882), that the property to which the title-deeds relate should be situated within the limits of one of the towns where such mortgages are allowed. *Varden Seth Sam v. Luckpathy Royjee Lallah*, 9 Moo. I. A. 303, and *Manekji Framji v. Rustomji Nasrwanji Mistry*, I. L. R. 14 Bom. 269, referred to. *MADHO DAS v. RAN KISHEN*

I. L. R. 14 All. 238

10. ———— *Transfer of Property Act (IV of 1882), s. 59—Mortgage by deposit of title-deeds before the coming into force of Act IV of 1882.* Up to the 1st of July 1882, being the date of the coming into force of Act IV of 1882, there was no difference between the law in the mofussil and that prevalent in the Presidency towns

red to. *HIMALAYA BANK v. QUARRY*

I. L. R. 17 All. 252

11. ———— *Transfer of Property Act (IV of 1882) s. 59—Immoveable properties situated partly outside the limits of Calcutta—Transaction in Calcutta—Form of decree on mortgage—*

the transaction having taken place in Calcutta,

practice of the Court, the appropriate remedy in such a mortgage suit is a decree for sale. *SRINATH ROY v. GODADHUR DAS*. I. L. R. 24 Calc. 348

1 C. W. N. 225

**DEPOSIT OF TITLE-DEEDS—concl'd.**

12. ————— *Further advances*  
*—Equitable mortgage on title-deeds already deposited*  
*under previous mortgage.* The defendants had  
 executed a mortgage in favour of the plaintiff,  
 and handed him the title-deeds of the mortgaged  
 property. Subsequently the plaintiff advanced a  
 further sum to the defendants who agreed that the  
 plaintiff should retain the title-deeds already held by  
 him as security for the repayment of the further  
 advances. There was no fresh deposit of the deeds.  
*Held*, that the plaintiff was entitled to be declared  
 an equitable mortgagee in respect of such further  
 advance. *Ex-parte Kensington, 2 F. & B. 79*, ap-  
 plied. *In re Beetham, 18 Q. B. D. 380*, referred to.  
**GIRENDRO COOMAR DUTT v. KUMUD KUMARI DAS**  
 I. L. R. 25 Calc. 611  
 2 C. W. N. 356

**DEPOSITARY.**

See LIMITATION ACT, 1877, SCH. II, ARTS.  
 48, 49 AND 145 I. L. R. 26 Bom. 430

See LIMITATION ACT, 1877, SCH. II, ART  
 145 I. L. R. 18 Calc. 234  
 I. L. R. 20 Calc. 61

**DEPOSITION**

See COMMISSION—CRIMINAL CASES.  
 I. L. R. 19 Bom. 749

See EVIDENCE—CIVIL CASES—DEPOSI-  
 TIONS I. L. R. 25 Calc. 751

See EVIDENCE—CRIMINAL CASES—DEPO-  
 SITIONS

See EVIDENCE ACT, ss 32, 33  
 See LIMITATION ACT, 1877, s 19  
 I. L. R. 18 Mad. 220  
 I. L. R. 20 Mad. 239

**— of witnesses, reading over—**

See CRIMINAL PROCEDURE CODE, s. 360.  
 13 C. W. N. 942

See FORGERY I. L. R. 36 Calc. 955  
 See JURY 13 C. W. N. 197

**Proof of—Proof of a previous deposi-**  
*tion, exhibited without objection—Identity of witness*  
*—Admissibility in evidence* Where the deposition  
 given by the petitioner in a previous case was  
 sought to be proved in a subsequent case:  
*Held*, that the mere putting in of the previous  
 deposition will not be sufficient proof of the same,  
 but that it was necessary to prove that the present  
 petitioner was the person who was examined in the  
 previous suit. The fact that the document was not  
 objected to when it was only made an exhibit made  
 no difference. **SHEIKH FAKIR MAHOMED v. SHEIKH**  
**UZIR ALI (1903)** 13 C. W. N. 409

**DEPUTY COLLECTOR, JURISDIC-  
TION OF.**

See BENGAL DRAINAGE ACT, s. 44.  
 6 C. W. N. 869

See COLLECTOR.

See FALSE EVIDENCE—GENERALLY.  
 I. L. R. 27 Calc. 820

**DEPUTY COLLECTOR, JURISDIC-  
TION OF—concl'd.**

**Suit for restoration of specific**  
**moveable property—Madras Rent Recovery**  
**Act (Madras Act VIII of 1865), s. 49. A raiyat**

had no jurisdiction to entertain the suit under the  
 Rent Recovery Act, s. 49. **RAJAH OF VENKATAGIRI**  
**v. YERRA REDDI** I. L. R. 16 Mad. 323

**DEPUTY COMMISSIONER.**

See DISCHARGE OF ACCUSED  
 18 W. R. Cr. 49

See GUARDIAN I. L. R. 34 Calc. 569

1. ————— **Jurisdiction—Criminal Proce-**  
**dure Code, 1872, s. 36—Commitment to Deputy**  
**Commissioner as Court of Session when he could**  
**only act as Magistrate.** The prisoner was commit-  
 ted to the Court of Session for trial on the 21st day  
 of December 1872, and the record was sent to the  
 Deputy Commissioner of Jalaun Under the Code of  
 Criminal Procedure, Act X of 1872, which came into  
 force on the 1st day of January 1873, the Deputy

tioner, disregarding the commitment, took the case  
 up afresh as a Magistrate of the district under  
 s. 36 *Held*, that this was clearly illegal, and

14 W. R. 219

2. ————— **Assistant Commissioner,**  
**Chota Nagpore.** An Assistant Commissioner in  
 Chota Nagpore (exercising the powers of a Sudder  
 Ameen) has no jurisdiction to try a suit valued at  
 Rs. 800. The suit is cognizable by a Deputy Com-  
 missioner who has the powers of a Principal Sudder  
 Ameen. **DHODHELA v. MUNARAN TEWARY**  
 7 W. R. 356

3. ————— **Non-Regulation Province—**  
**Criminal Procedure Code, 1861, ss 14, 112—Appel.**  
 A Deputy Commissioner in a Non-Regulation

tion in a case in which he had no jurisdiction.  
**QUEEN v. BOPON DHOOM** 18 W. R. Cr. 1

4. ————— **District Court—Insolvent judg-**  
**ment-debtors—Civil Procedure Code, 1862, ss 311,**  
**360—Application to have judgment-debtor declared**  
**insolvent—Costs.** The Court of the Judicial Com-  
 missioner, and not that of a Deputy Commissioner, is  
 the "District Court" in Chota Nagpore under ss. 2

**DEPUTY COMMISSIONER—cont'd.**

and 344 of the Civil Procedure Code. A Deputy Commissioner, therefore, invested by the local Government with powers under s. 360 of the Code, has no jurisdiction, apart from any transfer by the "District Court," to entertain an application by a judgment-creditor under s. 344 to have his judgment-debtor declared an insolvent. *In re Waller, I. L. R. 6 Mad. 430*, and *Purbhudas Pelti v. Chugan Raichand, I. L. R. 8 Bom. 196*, followed. The question of jurisdiction not having been raised in the lower Court, the order was set aside without costs. *JOYNAKAYAN SINGH v. MUDHOO SUDH SINGH* . . . . . I. L. R. 18 Calc. 13

5. ————— *Magistrate of first class, duty of, to commit to Sessions person accused of dacoity—Criminal Procedure Code (Act V of 1898), s. 30—Object of conferring special powers on District Magistrates—Jurisdiction* A Magistrate of the first class who is holding an inquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Session or to discharge him. He has no authority to make over the case to a District Magistrate who is a Deputy Commissioner specially empowered under s. 30, Code of Criminal Procedure, to try such cases. But where it was found that an accused person who had been convicted by the District Magistrate in a case thus made over to him had not been prejudiced at the trial, the High Court maintained the conviction. *AMIR KHAN v. KING-EMPEROR (1902)*

7 C. W. N. 457

**DEPUTY COMMISSIONER, AKYAB.**

Insolvency—*Civil Procedure Code, 1877, s. 6 and ss. 344-360*. The Deputy Commissioner of Akyab sitting as District Judge has power to entertain applications under Ch. XX of Act X of 1877. S. 6 (d) of that Act interposes no obstacle in the way of the Deputy Commissioner dealing with such applications, nor does the exercise of power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section. *In the matter of ABDEL HAMIED*

I. L. R. 4 Calc. 94; 2 C. L. R. 485

**DEPUTY COMMISSIONER OF POLICE, CALCUTTA.**

confession signed by—

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . . . . . I. L. R. 1 Calc. 207

power of—

See CALCUTTA POLICE ACT, s. 5  
I. L. R. 20 Calc. 670**DEPUTY MAGISTRATE.**See APPEAL IN CRIMINAL CASE—ACQUITTALS, APPEALS FROM  
I. L. R. 26 Mad. 478

See FALSE (RABOE) I. L. R. 33 Calc. 30

See MAGISTRATE, JURISDICTION OF.

**DEPUTY MAGISTRATE—cont'd.**

power of, to administer oath.

See FALSE EVIDENCE—GENERALLY.  
I. L. R. 14 Calc. 853**DESERTION.**See BURMESE LAW—DIVORCE.  
I. L. R. 19 Calc. 469

See DIVORCE ACT, s. 3, CL. 9, s. 14 AND s. 37.

I. L. R. 4 Calc. 280; 3 C. L. R. 484

I. L. R. 3 Calc. 485; 1 C. L. R. 552

5 B. L. R. Ap. 153

I. L. R. 5 All. 71

I. L. R. 22 Mad. 323

See HINDU LAW—HUSBAND AND WIFE.  
I. L. R. 13 All. 128**DESIGN.**See INVENTIONS AND DESIGNS ACT, s. 51.  
I. L. R. 25 All. 493  
I. L. R. 28 All. 98**DESTRUCTION.**

of articles unfit for human food—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III of 1899), s. 502, 505  
I. L. R. 30 Calc. 421**DETENTION OF ACCUSED BY POLICE.**

See POLICE CUSTODY 11 C. W. N. 554

1. ————— *Criminal Procedure Code, 1892, s. 61 (1872, s. 124, para 1; 1861 60, s. 152)*. S. 152 of the Code of Criminal Procedure, 1861, does not apply to cases in which there has not been a continuous detention of twenty four hours. *INDROBUR v. QUEEN* . . . . . 1 W. R. Cr. 5

2. ————— *Criminal Procedure Code, s. 167—Remand of prisoners in custody of the police*. The right construction of s. 167 of the Code of Criminal Procedure is that in proceedings before the police under Ch. XIV, the period of remand cannot exceed in all fifteen days, including one or more remands. *QUEEN-IMPRESS v. ENGADU*  
I. L. R. 11 Mad. 98

3. ————— *Remand of prisoners in police custody* Under s. 167 of the Code of Criminal Procedure, the period for which a Magistrate can authorize the detention of a prisoner in police custody—  
one o

I. L. . . . . *In re KRISHNAH PANDURANG JOURNALAR* . . . . . I. L. R. 23 Bom. 32

4. ————— *Detention in police custody by order of Magistrate—Sufficient reasons, recording of—Criminal Procedure Code (Act V of 1898), s. 167*. A Magistrate should not order the detention of an accused person in police-custody, except for some special reason, which should be recorded in writing [s. 167, sub-s (3), Criminal Procedure Code]. It would not be a sufficient

**DETENTION OF ACCUSED BY POLICE—*concl'd***

reason for sanctioning such detention that the accused was wanted by the Police for individually pointing out the places through which he passed on his way to commit a dacoity, or for the purpose of obtaining his identification in the village. *AMIR KHAN v. KING-EMPEROR* (1902) 7 C. W. N. 457

**DETENTION OF GOODS.**

*See DAMAGES, SUIT FOR.*

I. L. R. 34 Cal. 51

**DEVASTHAN COMMITTEE.**

*Powers of appointment and dismissal of Moktesars—Powers exercisable in the interests of the Devasthan—Dismissal of Moktesar—Good and sufficient cause—Burden of proof.* The powers of appointment and dismissal of Moktesars with which a Devasthan Committee are vested are exercisable not in their own interests, but in the interests and on behalf of the Devasthan, of which they are trustees. They are not at liberty to appoint or dismiss arbitrarily, capriciously or for private reasons of their own, but only on grounds justified by the interests of the institution. When a Moktesar is dismissed by a Devasthan Committee, the burden of proof is on him to show that the Committee did not act in a *bona fide* belief that the dismissal was necessary in the interests of the Devasthan, but had been actuated by some other improper motive. *BHAVANISHANKAR v. TIMMANNA* (1906) I. L. R. 30 Bom. 505

**DEVIATION.**

*See BUILDING* I. L. R. 33 Cal. 287

**DEVOLUTION.**

*See HINDU LAW* I. L. R. 31 Bom. 453

**DEWAN.**

*See CRIMINAL PROCEDURE CODE, s. 45* (1872, s. 90)

I. L. R. 4 Cal. 803; 3 C. L. R. 67

**'DHARMAM,' BEQUEST TO.**

*See HINDU LAW—WILL.*

I. L. R. 30 Mad. 340

**DHATURA.**

*See PENAL CODE (ACT XLV OF 1860), ss. 362, 325, 328.*

I. L. R. 30 All. 588

**DIGNITY, SUIT TO ESTABLISH RIGHT TO.**

*See RIGHT OF SUIT—DIGNITIES.*

**DIOWAR OF GHAT TASRA IN JHE-RIA.**

*See SERVICE TENURE.* 12 C. W. N. 193

**DIOWAR OF RAMOURH.**

*See SERVICE TENURE* 12 C. W. N. 178

**DIGWARI TENURE.**

*Right of a Digwar to grant mokurrari lease—Sub-soil rights—Suit by landlord—Government whether a necessary party.* The position of Digwars of Ghat Tasra, in Manbhumi, is analogous to that of the Ghatwals of Birbhum. *Bukronath Singh v. Nilmoni Singh*, I. L. R. 5 Cal. 359, and *Nilmani Singh Deo v. Bakranath Singh*, I. L. R. 9 Cal. 187, referred to. The tenure consisting of mouzaha Tasra and Baharaband, has all along been a Digwari tenure, ancient and hereditary, held subject to the payment of a fixed rent to the landlord and on condition of the performance of certain police or public services, for the due discharge of which the holder has been responsible to the Government which alone has exercised the power of appointment to, or dismissal from, the office. A Digwari tenure—

the plaintiff was not entitled to the declaration prayed for. *Held*, further, that Government was a necessary party to the suit. *BROJANATH BOSE v. DURGA PRASAD SINGH* (1907)

I. L. R. 34 Cal. 753

**DILUVION.**

*See BENGAL TENANCY ACT, s. 170.*

9 C. W. N. 888

*See LIMITATION ACT, 1877.*

I. L. R. 29 Cal. 518

*See LIMITATION ACT, 1877, SEC. II, ART. 142 (1871, ART. 143).*

I. L. R. 8 Cal. 725

*See ONES OF PROOF—LIMITATION AND ADVERSE POSSESSION.*

*Alluvion—Erection by Landlord—Rent, suspension of—New tenants on reformed land.* When land has been lost to a holding by diluvion and subsequently restored by alluvion, and then settled with persons other than the tenants of the holding, the tenant is not entitled to a suspension of the entire rent on the ground that the landlord had evicted him from a portion of the demised premises. *Dhunput Singh v. Mahomed Kazim Isphahani*, I. L. R. 24 Cal. 296, *Harro Kumar Ghoshdhrani v. Purna Chandra Sarbogyia*, I. L. R. 28 Cal. 188, and *Kali Prasanna Khosnabish v. Mathura Nath Sen*, I. L. R. 34 Cal. 191, distinguished. *RAI CHAMAN SHAR MAZUMDAR v. ADMINISTRATOR-GENERAL OF BENGAL* (1909)

I. L. R. 36 Cal. 856

**DIRECTORS.**

*See BANKERS* I. L. R. 16 All. 88

*See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.*



**DIRECTORS—*concl'd.***

See COMPANY—WINDING UP—LIABILITY  
OF DIRECTORS AND OFFICERS.  
I. L. R. 29 Calc. 688

See LIMITATION ACT, s. 10.  
I. L. R. 18 Bom. 119

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6 C. W. N. 193

1. ——— Acquittal—Warrant of release.  
A prisoner is entitled to be discharged from custody  
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nounced, and no formal warrant of release is neces-  
sary. ANONYMOUS . . . 5 Mad. Ap. 2

2. ——— Want of evidence—Discharge  
—Acquittal Where there is no *prima facie* case

3. ——— Omission to draw up charge  
—Discharge—Acquittal. Where no charge in writ-  
ing has been drawn up, and the prisoner has not  
been asked to make his defence, the Magistrate, if he  
thinks that no offence has been proved, can only  
discharge, and not acquit the prisoner. QUEEN v.  
SHERIFF . . . 6 W. R. Cr. 13

4. ——— Investigation by Magistrate  
—Criminal Procedure Code, 1861, ss. 171 and 225.  
Where, under s. 171 of the Criminal Procedure  
Code, a case was sent up for investigation by a

s. 202 of that Act the Magistrate must . . .  
examine the accused, and under s. 207 to examine . . .

19 W. R. Cr. 10

6. ——— Improper discharge without  
enquiry—Charge of false evidence—Criminal  
Procedure Code, 1872, s. 473. A Joint Magistrate,  
having directed a recusant witness in a trial before  
him to be put on his trial for giving false evidence  
subsequently, on the 9th May, on hearing the

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directing the discharge of the accused witness.

Court of Session or of some proceeding before a Magistrate other than such enquiry in respect of an offence which the enquiring Magistrate was not competent to try, and that in either case the Joint Magistrate had no authority to discharge the accused. *QUEEN v DUDRAJ DOSADH*

22 W. R. Cr. 83

7. ——— Complaints sent up by Civil Court and referred by Sessions Judge to Magistrate—*Improper discharge*. Where a Sessions Judge directed a Magistrate to make an enquiry into the matter of some complaints made by a Munsif against certain persons, and the Magistrate recorded the opinion that there was evidence enough to incriminate one of the accused, but dismissed

20 W. R. Cr. 50

8. ——— Sufficient grounds—*Criminal Procedure Code, 1872 s. 195*. As to the meaning of the words "sufficient grounds" for committing an accused for trial in s. 195 of the Criminal Procedure Code, and when he may be discharged. *LUCHMAN v JUALA*

I. L. R. 5 All. 181

9. ——— Warrant cases—*Criminal Procedure Code, 1872, Ch. XVII*. In cases triable under the provisions of Ch. XVII of Act X of 1872, the Magistrate should not discharge the accused person until after trial as prescribed in that chapter. *In the matter of NZWAR*

7 N. W. 230

10. ——— Discharge without evidence—*Criminal Procedure Code, 1872, s. 215*. In a warrant case in which, although the complainant's witnesses and the accused were present, the Deputy Magistrate discharged the accused on the report of a police officer: *Held*, that his decision was illegal, as he was bound to take the evidence of the complainant before discharging the accused. *AZEEM ALI v HERNAM DASS*

24 W. R. Cr. 9

11. ——— Obligation to hear evidence before discharge—When a Magistrate has referred a case for police investigation and the police arrest certain persons and send in evidence against them, he is bound to consider that evidence before he discharges them. *In the matter of BEPUTOOLA v NAJIM SHEIKH*

2 C. L. R. 374

12. ——— Power of Sessions Judge to commit—*Criminal Procedure Code, 1861, s. 435*. The discharge by a Deputy Magistrate of a person charged with an offence triable only by a Court of Session is no bar to the Sessions Judge ordering the commitment of such person to the Sessions under s. 435, Act VIII of 1859. *QUEEN v. SREENATH DEY*

15 W. R. Cr. 81

**DISCHARGE OF ACCUSED—contd.**

13. ——— Use by Magistrate of word "acquittal." Where a Magistrate

8 W. R. Cr. 41

14. ——— Effect of discharge—*Criminal Procedure Code, 1861, s. 435*. The discharge of a person accused of an offence triable by the Court of Session is no bar to his being again brought, with a view to commitment, before a Magistrate, who may proceed in such a case without an order from the Judge. S. 435, Code of Criminal Procedure, applies where a Magistrate has not thought fit to commit. *QUEEN v. TILKOO GOALA*

8 W. R. Cr. 81

15. ——— *Criminal Procedure Code (Act XXV of 1861), ss. 250, 251, 255, 435—Act VIII of 1859, s. 435—Sessions Judge,*

thereunder, a release by the Magistrate of the accused did not amount to an acquittal under s. 255, but simply to a discharge under s. 250. Under such circumstances, s. 435, Act VII of 1859, empowers a Sessions Judge to direct the commitment of the accused to take their trial. *In re JAGABANDHU MYTI v. GOBERDHAN BEHA*

4 B. L. R. A. Cr. 1

S. C. *QUEEN v. GOBERDHAN BEHA.*

12 W. R. Cr. 65

*In re SNOODHUN MUNDELE*

5 W. R. Cr. 56

16. ——— *Criminal Procedure Code, 1861, s. 250—Power of Sessions Court*. Where an accused person had been discharged by a Magistrate under s. 250 of the Criminal Procedure Code after enquiry into the case, the Court of Session could not, under s. 435, remand the case for further enquiry. *In the matter of the petition of CASPERSE*

9 B. L. R. 337

S. C. *CASPERSE v. RANEROUNGE COAL COMPANY*

18 W. R. Cr. 39

17. ——— *Criminal Procedure Code, 1861, s. 250—Power of Sessions Court*. Where a Magistrate had discharged an accused under s. 250 of the Criminal Procedure Code, and

the petition of JIAT SAHU

9 B. L. R. 339

S. C. *JIAT SAHU v. BHEEKON ROY*

18 W. R. Cr. 39

18. ——— Commitment by Magistrate after discharge—*Sessions case. Per GLOVER, J.*—In a case triable by the Sessions Court

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improper discharge—

See CRIMINAL PROCEDURE CODE, s. 436.  
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re-opening of proceedings after—  
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8 C. W. N. 163

1. ——— Acquittal—Warrant of release.  
A prisoner is entitled to be discharged from custody  
immediately on the judgment of acquittal being pro-  
nounced, and no formal warrant of release is neces-  
sary. ANONYMOUS . . . 5 Mad. Ap. 2

2. ——— Want of evidence—Discharge  
—Acquittal. Where there is no *prima facie* case

discharge, and not acquit the prisoner. QUEEN v  
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4. ——— Investigation by Magistrate  
—Criminal Procedure Code, 1861, ss. 171 and 225  
Where, under s. 171 of the Criminal Procedure  
Code, a case was sent up for investigation by a

5. ——— Re-trial by Magistrate after  
discharge and acquittal by Deputy Com-  
missioner—Criminal Procedure Code, 1861, ss. 202,  
207, 225. Where a Deputy Commissioner held a  
proceeding in which the accused was charged with

6. ——— Improper discharge without  
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Procedure Code, 1872, s. 473. A Joint Magistrate,  
having directed a recusant witness in a trial before  
him to be put on his trial for giving false evidence  
subsequently, on the 9th May, on hearing the

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directing the discharge of the accused witness.

Magistrate other than such enquiry in respect of an offence which the enquiring Magistrate was not competent to try, and that in either case the Joint Magistrate had no authority to discharge the accused. **QUEEN v. DUDRAJ DOSADH** 22 W. R. Cr. 83

7. ———— **Complaints sent up by Civil Court and referred by Sessions Judge to Magistrate—*Improper discharge.*** Where a Sessions Judge directed a Magistrate to make an enquiry into the matter of some complaints made by a Munsif against certain persons, and the Magistrate recorded the opinion that there was evidence enough to incriminate one of the accused, but dismissed the complaint against him because the complaint made against him had not been explicit: *Held*, that the Magistrate was wrong to have discharged the accused, and ought to have drawn up a charge against him. **QUEEN v. THAKOOR RAM** 25 W. R. Cr. 35

8. ———— **Sufficient grounds—*Criminal Procedure Code, 1872 s. 195.*** As to the meaning of the words "sufficient grounds" for committing an accused for trial in s. 195 of the Criminal Procedure Code, and when he may be discharged. **LUGHMAN v. JUALA** I. L. R. 5 All. 161

9. ———— **Warrant cases—*Criminal Procedure Code, 1872, Ch. XVII.*** In cases triable under the provisions of Ch. XVII of Act X of 1872, the Magistrate should not discharge the accused person until after trial as prescribed in that chapter. *In the matter of NEWAR* 7 N. W. 230

10. ———— **Discharge without evidence—*Criminal Procedure Code, 1872, s. 215.*** In a warrant case in which, although the complainant's witnesses and the accused were present, the Deputy Magistrate discharged the accused on the report of a police officer. *Held*, that his decision was illegal, as he was bound to take the evidence of the complainant before discharging the accused. **AZEEM ALI v. HURNAM DASS** 24 W. R. Cr. 9

11. ———— **Obligation to hear evidence before discharge—**When a Magistrate has referred a case for police investigation and the police arrest certain persons and send in evidence against them, he is bound to consider that evidence before he discharges them. *In the matter of BERTTOOLLA v. NAJIM SHERKH* 2 C. L. R. 374

12. ———— **Power of Sessions Judge to commit—*Criminal Procedure Code, 1861, s. 435.*** The discharge by a Deputy Magistrate of a person charged with an offence triable only by a Court of Session is no bar to the Sessions Judge ordering the commitment of such person to the Sessions under s. 435, Act VIII of 1859. **QUEEN v. SREENATH DEY** 15 W. R. Cr. 61

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13. ———— **Use by Magistrate of word "acquittal."** Where a Magistrate used the words "acquittal and discharge" when he

8 W. R. Cr. 41

14. ———— **Effect of discharge—*Criminal Procedure Code, 1861, s. 250.***

Judge. 8 435, Code of Criminal Procedure, applies where a Magistrate has not thought fit to commit. **QUEEN v. TILKOO GOALA** 8 W. R. Cr. 61

15. ———— **Criminal Procedure Code (Act XXV of 1861), ss. 250, 251, 255, 435—Act VIII of 1859, s. 435—Sessions Judge,**

thereunder, a release by the Magistrate of the accused did not operate as a discharge. *In the matter of NEWAR* 7 N. W. 230

s. c. **QUEEN v. GOBERDHAN BERA.**

12 W. R. Cr. 65

*In re SNOODHUN MUNDLE* 5 W. R. Cr. 58

16. ———— **Criminal Procedure Code, 1861, s. 250—Power of Sessions Court.** Where an accused person had been discharged by a Magistrate under s. 250 of the Criminal Procedure Code after enquiry into the case, the Court of Session could not, under s. 435, remand the case for further enquiry. *In the matter of the petition of CASPERSZ* 9 B. L. R. 337

s. c. **CASPERSZ v. RANEEOUNGE COAL COMPANY**

18 W. R. Cr. 39

17. ———— **Criminal Procedure Code, 1861, s. 250—Power of Sessions Court.** Where a Magistrate had discharged an accused

s. c. **JIAT SAMU v. BHEEKON ROY**

18 W. R. Cr. 39

18. ———— **Commitment by Magistrate after discharge—Sessions case.** *Per GLOVER, J.*—In a case triable by the Sessions Court

DISCHARGE OF ACCUSED—*contd.*

a Magistrate had power to commit the accused to the Sessions after he had once discharged him.  
**QUEEN v. RAMSODAY CRUCKERBUTTY**

20 W. R. Cr. 19

19. ———— Revival of charge—*Dismissal*

plaint. ANONYMOUS

b Mad. Ap. 31

## 20. ———— Power of Magistrate to revive case after discharge. A Magistrate

## 21. ———— Power to revive

## 22. ———— Revival of charge

after withdrawal Where a Deputy Magistrate, under s. 210, Criminal Procedure Code, permitted

*Held*, that the Magistrate had no jurisdiction to act as he did **QUEEN v. ZUHOORUL HUG**

25 W. R. Cr. 64

## 23. ———— Acquittal by

appeared that the Deputy Magistrate had not framed any charge, but that no failure of justice had been occasioned by his not doing so. *Held*, that the Magistrate had no power to order a re-trial without first setting aside the order of acquittal, and that he had no power to set aside the order of acquittal, as the case had not been appealed to him. *In the matter of JOJA PASILAN*

3 C. L. R. 131

24. ———— Criminal Procedure Code, 1872, s. 216—Omission to prepare charge—Acquittal—Revival of prosecution A Magistrate tried and acquitted a person accused of

DISCHARGE OF ACCUSED—*contd.*

an offence without preparing in writing a charge against him. Such omission did not occasion any failure of justice. *Held*, with reference to s. 216 of Act X of 1872, explanation 1, that such omission did not invalidate the order of acquittal of such person and render such order equivalent to an order of discharge, and such order was a bar to the revival of the prosecution of such person for the same offence. **EMERSON OF INDIA v. GURDU**

I. L. R. 3 All 129

## 25. ———— Revival of prosecution—Place of enquiry or trial—Enticing away

married woman. A person was prosecuted before a Criminal Court in the Punjab for enticing away a married woman, with a criminal intent, an offence punishable under s. 493 of the Penal Code. Such prosecution was legally instituted in such Court, and such offence was properly triable by it. Such Court discharged such person under the provisions of s. 215 of Act X of 1872. Subsequently it appeared that such person was detaining such woman

SINGH . . . . . I. L. R. 3 All 231

26. ———— Criminal Procedure Code, 1872, s. 215—District Judge, power of.

TANGAR . . . . .

## 27. ———— Revival of proceedings—

the accused person *held*, by the Presidency Magistrate, by reason of the absence of the accused person and without pronouncing a judgment. *Held*, that such order was not a judgment, and may be

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Sett v. Sreemutty Probot Kumari Dass. 1 C. W. N. 49, approved of. DWARKA NATH MONDUL v. BENT MADHAB BANERJEE (1901)  
I. L. R. 28 Calc. 652: a.c. 5 C. W. N. 457

28. Criminal Procedure Code (Act V of 1898), s. 203, 435—Refusal by Magistrate to charge accused with offence triable exclusively by Court of Session—"Discharge"—Charge of offence triable by Magistrate—Acquittal—Order by Sessions Court for further inquiry and committal—Legality of such order. Certain persons

a further charge to be framed under s. 477 of the Indian Penal Code; but this the Magistrate declined to do, as, in his opinion, there was no direct evidence that the accused had destroyed or secreted the note. After hearing the evidence for the defence, the Magistrate acquitted the accused under s. 253 of the Code of Criminal Procedure. Application was then made to the Sessions Court to call for the records and direct the committal of the accused for trial for an offence under s. 477 of the Indian Penal Code. The Sessions Court ordered that a further inquiry be made and that the accused be committed for trial.

DISCHARGE OF ACCUSED—*contd.*

no judicial investigation by the Magistrate of the merits of the complaint, and therefore the order of discharge was not a bar to the revival of the same complaint. MIR AHMED HOSSEIN v. MAHOMED ASKARI (1902)

I. L. R. 29 Calc. 728: s.c. 6 C. W. N. 633  
30. Criminal Procedure Code (Act V of 1898), s. 435 (4)—Refusal by Sessions Judge to commit for trial—Subsequent commitment by District Magistrate, after taking up the case *suo motu*—Legality. A second-class Magistrate, after inquiring into a charge of murder discharged the accused. A revision petition was then presented to the Sessions Judge, requesting that the accused might be committed for trial at the Sessions. The Sessions Judge dismissed the petition.

ordered when the Sessions Judge had refused such an order. Nor could he act *suo motu*. The reason for the prohibition in this section was to avoid a con-

**DISCHARGE OF ACCUSED—concl'd.**

in a second trial the same offence was bad in law.  
*QUEEN-EMPERESS v. SIVARAMA*

I. L. R. 12 Mad. 35

33. ——— Discharge when evidence might justify conviction—*Discharge of accused person under s. 209 of Criminal Procedure Code* (Act

cient to put the accused on his trial, and such a case arises when credible witnesses make statements which, if believed, would sustain conviction. It is not necessary that the Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make

**DISCHARGE OF GUARDIAN.**

See GUARDIANS AND WARDS ACT.

I. L. R. 33 Bom. 419

**DISCLAIMER.**

See EVIDENCE . I. L. R. 32 Calc. 710

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12 C. W. N. 525

**DISCOVERY.**

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I. L. R. 6 Bom. 572

I. L. R. 11 Calc. 855

I. L. R. 12 Calc. 285

I. L. R. 5 All. 265

See INTERROGATORIES

I. L. R. 17 Calc. 840

I. L. R. 23 Calc. 117

See NEW TRIAL

6 C. W. N. 609

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS

I. L. R. 14 Calc. 766

I. L. R. 26 Calc. 424

See PRACTICE—CIVIL CASES—INTERROGATORIES .

I. L. R. 10 Bom. 167

I. L. R. 14 Calc. 703

See PRIVILEGED COMMUNICATION

I. L. R. 11 Calc. 655

I. L. R. 21 Calc. 265

See SECRETARY OF STATE.

I. L. R. 27 Bom. 169

— Civil Procedure Code (Act XIV of 1882), s. 59—*High Court Rule 162*—*Practice—Inspection of documents not referred to in the plaint—Right of defendant to inspect list documents before filing his written statement.*—S. 69 of the Civil Procedure Code requires a plaintiff to annex to his plaint a list of documents on which

**DISCOVERY—concl'd.**

he intends to rely at the hearing. It has heretofore been the practice not to order inspection of documents other than those referred to in the plaint or relied on in the list annexed to the plaint till after the written statement is filed. This is not an inflexible rule in all cases, for there may be many cases where it would be imperative to order the plaintiffs to produce and give inspection to the defendant before he has filed his written statement of a document or documents which they may not have mentioned in their plaint or enumerated in the list of documents annexed thereto. *KHETSIDAS v. NAROTUNDAS* (1907) I. L. R. 32 Bom. 152

**DISCRETION.**

See BOMBAY MUNICIPAL ACT

I. L. R. 33 Bom. 334

**DISCRETION OF COURT.**

See CALCUTTA MUNICIPAL ACT, s. 556

13 C. W. N. 129

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REG. VIII OF 1827 .

I. L. R. 13 Bom. 87

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE .

5 C. W. N. 72

See CIVIL PROCEDURE CODE, 1882, s. 584.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS.

I. L. R. 30 Calc. 901

See COSTS—APPEAL .

7 C. W. N. 647

See COSTS—SPECIAL CASES—PAYMENT INTO COURT

I. L. R. 21 Bom. 502

See DECLARATORY DECREE, SUIT FOR—ADOPTIONS.

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I. L. R. 17 Calc. 933

I. L. R. 17 I. A. 107

See DEKKHAN AGRICULTURISTS' RELIEF ACT .

I. L. R. 31 Bom. 450

See DIVORCE ACT, s. 14

I. L. R. 20 Bom. 362

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS .

I. L. R. 19 Calc. 438

See EXECUTION OF DECREE—STAY OF EXECUTION .

5 C. W. N. 716

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5 C. W. N. 106

See INJUNCTION—UNDER CIVIL PROCEDURE CODE.

I. L. R. 28 Mad. 166

SPECIAL CASES—POSSESSION OF JOINT PROPERTY.

I. L. R. 29 Calc. 500

See INSOLVENCY ACT, s. 86.

I. L. R. 19 Bom. 297, 778

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See LIMITATION ACT, 1877, ss. 5, 5A.

7 W. R. 337

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I. L. R. 14 Mad. 61

I. L. R. 20 Bom. 736

I. L. R. 26 All. 329

I. L. R. 31 Bom. 33

See MINOR—CUSTODY OF MINORS

I. L. R. 12 All. 213

See OATHS ACT, s. 11.

I. L. R. 14 All. 141

See OUDH ESTATES ACT, s. 22, cl. (7).

I. L. R. 26 All. 238

See PARDANASHIN WOMEN.

I. L. R. 21 Calc. 568

See PARSIS. I. L. R. 17 Bom. 146

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I. L. R. 21 Calc. 185

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TION IN GRANTING SANCTION.

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3 C. W. N. 753

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7 W. R. Cr. 33

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I. L. R. 9 Mad. 332

I. L. R. 15 Calc. 446

I. L. R. 6 Bom. 264

I. L. R. 18 Bom. 61, 347

I. L. R. 19 Bom. 266, 790

I. L. R. 21 All. 152

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I. L. R. 26 Calc. 37

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I. L. R. 30 Calc. 506

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13 C. W. N. 973

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See FORGERY. I. L. R. 36 Calc. 955

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See CHEATING. I. L. R. 33 Calc. 50

## DISHONOUR, NOTICE OF.

See BILLS OF EXCHANGE.

3 B. L. R. A. C. 196

13 W. R. 420

1 W. R. 75

2 W. R. 214

7 B. L. R. 431, 434 note

I. L. R. 19 Calc. 146

See HINDU LAW—CONTRACT—BILLS OF EXCHANGE.

See HINDI—NOTICE OF DISHONOUR.



**DISHONOUR, NOTICE OF—*concl.***

See MAHOMEDAN LAW—BILLS OF EXCHANGE . 7 B. L. R. 434 *note*

See NEGOTIABLE INSTRUMENTS ACT, s. 98.  
I. L. R. 26 Mad. 239

**DISMISSAL FOR DEFAULT.**

See LIMITATION . I. L. R. 34 Calc. 491

1. ——— Appearance—*Re-admission—Civil Procedure Code (Act XIV of 1882), ss. 556, 558.* An application by a counsel or pleader who is instructed only to apply for an adjournment, which is refused, is not an "appearance" within the meaning of the Code of Civil Procedure. When in such circumstances an

CHANDRA MUKERJEE v. AHAR PRASAD MUKERJEE (1907) . I. L. R. 34 Calc. 403

2. ——— Civil Procedure Code (Act XIV of 1882), ss. 102, 103 and 157—*Dismissal of suits—When plaintiff's pleader declines to proceed, it is dismissal for default within s. 102—Discretion in restoring such suit to file not to be interfered with on revision except on strong grounds.* On the day in which a suit was posted for hearing, the plaintiff's pleader appeared and applied for an adjournment which was refused. The pleader declined to proceed with the suit and the plaintiff, who was present in Court, took no steps. Thereupon the suit was dismissed in these words: "The plaintiff's pleader said that he was not willing to proceed. So the suit was dismissed." The plaintiff subsequently applied for restoration under ss. 103 and 157 and the suit was restored to the file; *Held*, that the dismissal of the suit under the above circumstances was a dismissal for default under s. 102, and that the order restoring the suit was rightly passed. A plaintiff 'fails to appear' within the meaning of s. 102, when his pleader declines to proceed with the suit and it makes no difference that the party himself was present in Court. *Held*, also, that, under the circumstances, the order of restoration should not have been interfered with on revision. GOPALA ROW v. MARIA SUSAYA PILLAI (1906)  
I. L. R. 30 Mad. 274

3. ——— Restoration—*Sufficient cause.* Where the pleader engaged by the former could not attend owing to his wife's illness, and another gentleman who had agreed to take up the case as his substitute was unavoidably prevented from attending the Court, and there being three cases on the day's list above the case, the party himself did not anticipate that the case would be called at an early hour and so failed to be present with his witnesses at the time when the case was called; *Held*, that these facts combined made out a case of sufficient cause

**DISMISSAL FOR DEFAULT—*concl.*****DISMISSAL OF APPEAL.**

See APPEAL—DEFAULT IN APPEARANCE.

See APPEAL—DISMISSAL OF APPEAL.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING . I. L. R. 12 Calc. 658  
3 B. L. R. O. C. 128  
5 B. L. R. 76

See PRIVY COUNCIL, PRACTICE OF—DISMISSAL OF APPEAL FOR WANT OF PROSECUTION

——— on failure to deposit costs of paper book.

See LIMITATION ACT, ART 108  
I. L. R. 23 Calc. 339

See REVIEW—POWER TO REVIEW  
I. L. R. 23 Calc. 339  
I. L. R. 24 Calc. 350  
1 C. W. N. 21

**DISMISSAL OF COMPLAINT.**

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT.

See COMPLAINT—DISMISSAL OF COMPLAINT  
I. L. R. 33 Calc. 415

**DISMISSAL OF SUIT.**

See CIVIL PROCEDURE CODE, 1882, ss. 102, 103, 117 . I. L. R. 33 Bom. 475

See CIVIL PROCEDURE CODE, 1882, s. 158 (1889, s. 148) . I. L. R. 1 Mad. 287  
4 Mad. 56  
8 Mad. 282  
7 N. W. 77  
I. L. R. 23 All. 482

See CONTENT OF COURT—CONTENTS GENERALLY . Marsh. 21

See PARTIAL SUIT—SUITS.  
I. L. R. 15 Bom. 77  
I. L. R. 21 Mad. 113

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

——— effect of—

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.  
I. L. R. 22 Calc. 1011  
I. L. R. 23 I. A. 203

DISMISSAL OF SUIT—*contd.*

effect of—*concl'd.*

See PRACTICE—CIVIL CASES—STAY OF PROCEEDING . I. L. R. 21 Calc. 561

See RECEIVER . I. L. R. 34 Calc. 336

See RES JUDICATA—MATTERS IN ISSUE.  
I. L. R. 24 Calc. 900

for default in appearance.

See CIVIL PROCEDURE CODE, 1882, ss. 98, 99, 100, 102, 103 (1889, ss. 110, 111, 114, AND 217), AND 108.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS 5 B. L. R. Ap. 64

I. L. R. 2 Calc. 222

I. L. R. 9 Calc. 426

I. L. R. 16 Calc. 66

I. L. R. 5 Bom. 466

I. L. R. 8 Bom. 477

I. L. R. 21 Bom. 91

I. L. R. 24 Bom. 251

for insufficient stamp.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN 10 W. R. 207  
14 W. R. 195

I. L. R. 2 All. 689

4 B. L. R. A. C. 139 . 12 W. R. 484

See CIVIL PROCEDURE CODE, 1882, s. 158  
I. L. R. 11 All. 91

See COURT FEES ACT, ss. 10 AND 11.  
I. L. R. 2 Mad. 308

I. L. R. 12 All. 129

I. L. R. 24 Calc. 178 : 1 C. W. N. 243

See COURT FEES ACT, s. 23.  
I. L. R. 12 All. 129

on failure to pay Commissioner's fee.

See COMMISSIONER FOR TAKING ACCOUNTS  
I. L. R. 3 Mad. 259

1. Dismissal of suit against one defendant without trial after first hearing—*Civil Procedure Code, 1882, ss. 32, 45, and 46.*  
The plaintiff sued for damages for the defendant.

of his superiors and played into the hands of the other defendants by passing an illegal order. After issues had been framed, the Judge, without trial, dismissed the suit with costs against the first defendant. *Held*, that the order was illegal. SINGA REDDI v. MADAVA RAO

I. L. R. 20 Mad. 380

2. Want of instructions to the pleader—*Civil Procedure Code (Act XII of 1852), ss. 102, 103, 157 and 158—Adjudged*

VOL. II.

DISMISSAL OF SUIT—*concl'd.*

hearing—Dismissal of suit for want of prosecution—*Remedy.* At an adjourned hearing of a suit, witnesses on behalf of the plaintiff not being in attendance, the plaintiff applied for issue of a warrant against one of them. The Court refused the application, and the pleader for the plaintiff thereupon intimated that he had no further instructions to appear; and the suit was dismissed. Subsequently an application was made under s. 103 of the Civil Procedure Code to set aside the order of dismissal. On objection by the defendant that, inasmuch as the dismissal was under s. 158 of the Code, the remedy of the plaintiff was by way of an application for review: *Held*, that the suit was dismissed under s. 102 read with a 157, and that the application was maintainable under s. 103 of the Code of Civil Procedure. MARIANISSA v. RAM KALPA GORAIN (1907) . I. L. R. 34 Calc. 235

3. —  
iff—A  
which  
v. SHEC

## DISPOSAL OF PROPERTY BY MAGISTRATE.

See CRIMINAL PROCEDURE CODE (Act V of 1898), s. 517

I. L. R. 34 Calc. 347

## DISPOSSESSION.

See BENGAL TENANCY ACT, 6CH III, ART 3.

See CIVIL PROCEDURE CODE, 1882, s. 244.  
8 O. W. N. 49

See CONTRIBUTION, SUIT FOR—  
CO-SHARERS, LIABILITY OF;  
8 C. W. N. 903

JOINT WRONG-DOERS  
8 C. W. N. 68

See CRIMINAL PROCEDURE CODE, s. 522.  
5 C. W. N. 250

See LANDLORD AND TENANT—LIABILITY FOR RENT . . . 5 C. W. N. 353

See LIMITATION ACT (XV OF 1877), s. 9.  
I. L. R. 35 Calc. 209

See LIMITATION ACT, 1877, ART. 142.

See LIMITATION ACT, 1877, SCH. II, ART. 165 . . . I. L. R. 25 All. 343

See PARTITION . I. L. R. 35 Calc. 961

See POSSESSION—SUITS FOR POSSESSION.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE.

See SPECIFIC RELIEF ACT (1 OF 1877).  
12 C. W. N. 634, 686  
13 C. W. N. 305

See TRANSFER OF PROPERTY ACT, s. 119.  
I. L. R. 30 Mad. 316

5 R 2

**DISPOSSESSION—cont'd.**

by co-shebaht.

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N. 273

by landlord.

See LANDLORD AND TENANT . . . 13 C. W. N. 702

by natural guardian.

See HINDU LAW . I. L. R. 33 Calc. 23  
See LIMITATION ACT, SEC II, ART 141.

during pendency of Suit

See PARTITION . I. L. R. 38 Calc. 728

in execution of decree.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

**DISPUTE.**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS 347, 588.

I. L. R. 30 All. 348

concerning collection of tolls.

See TOLLS . I. L. R. 38 Calc. 888

**DISPUTE CONCERNING LAND.**

See CRIMINAL PROCEDURE CODE, SS 145, 146, 147.

See CRIMINAL PROCEDURE CODE . . . I. L. R. 33 Calc. 352

See POSSESSION . I. L. R. 33 Calc. 88

*Jurisdiction of Magistrate—Irregularities in procedure—Omission of personal and local notices—Filing of written statements—ex parte order—No opportunity given to a party of adducing evidence* Where the Magistrate drew up a proceeding under s 145 of the Criminal Procedure Code in the presence of the representatives of the parties and fixed a day for the hearing of the case, but there was no personal service of notices of the parties nor local publication thereof and neither party filed written statements and the Magistrate, after taking the evidence of one witness on behalf of the second party, declared them to be entitled to possession: *Held*, that the proceedings were extremely irregular and had prejudiced the first party, and that the irregularities were so great as to amount to a want of jurisdiction, such as would justify the interference of the High Court **AHMED CHOWDHRY v. PARBATI CHARAN ROY** (1908) . I. L. R. 35 Calc. 774

**DISQUALIFICATION.**

See GUARDIAN—DISQUALIFIED PROPRIETORS . . . I. L. R. 5 All. 264, 487

**DISQUALIFICATION—cont'd.**

of assessor.

See LAND ACQUISITION ACT, 1870, s. 19.  
I. L. R. 8 Bom. 553  
I. L. R. 17 Bom. 209

of Magistrate.

See MAGISTRATE—GENERAL JURISDICTION.  
I. L. R. 24 Mad. 238

of Magistrate or Judge.

See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS  
See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

of manager.

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.  
I. L. R. 22 Calc. 843

to inherit

See ESTOPPEL—ESTOPPEL BY CONDUCT.  
I. L. R. 18 Calc. 341  
I. L. R. 18 I. A. 8

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.  
I. L. R. 18 Calc. 327

See HINDU LAW—STRIDHAN—EFFECT OF UNCHASTITY . . . I. L. R. 1 All. 48

See HINDU LAW—WIDOW—DISQUALIFICATIONS

**DISQUALIFIED HEIR**

See HINDU LAW INHERITANCE  
I. L. R. 32 Bom. 275

**DISQUALIFIED PROPRIETOR.**

*Disqualified proprietor, power of, to contract Debts and borrow Money—Estate under superintendence of Court of Wards—Contract Act (IX of 1872), s 16—Bond—Unconscionable bargain—Compound interest* A talukdar, who has been declared "a disqualified proprietor" under the provisions of the Oudh Land Revenue Act (XVII of 1876) and his estates placed under the management of the Court of Wards is not prohibited

**DISQUALIFIED PROPRIETOR—cont'd**

and *Rai Balkrishna v. Masuma Bibi*, L. R. 9 I. A. 182; I. L. R. 5 All. 142, referred to. The defendant, a "disqualified proprietor," whose property on the ground of his indebtedness and consequent inability to manage it, had been placed in charge of the Court of Wards, executed in favour of the plaintiff a bond for Rs. 10,000 repayable in seven years on the condition of half-yearly payments of interest at 18 per cent. per annum, and compound interest in default of payment of instalments. The bond was one renewing the former bond in similar terms, on which Rs. 750 was due, with an additional loan of Rs. 1,250. Nothing having been paid in respect of the bond, when it fell due, which was after the defendant's estate was released from the charge of the Court of Wards, the plaintiff sued for the full amount of principal and Rs. 1,999 for interest and compound interest due on the bond. *Held*, by the Judicial Committee, that under the circumstances of the case, the plaintiff had been at that time, of the Court of Wards.

Both Courts below concurred in finding that simple interest at 18 per cent. per annum would not have been a high rate, but that the charging of compound interest was exorbitant and unconscionable, and accepting these findings, though not strictly findings of fact, the Judicial Committee *held*, that the plaintiff used his position to demand and obtain from the defendants more onerous terms than were reasonable, and that the bond should be set aside. In the particular circumstances of the case, interest at 18 per cent. per annum was allowed on the sums advanced by the plaintiff throughout. *DIKSHITAR DAS v. MANEN. HIR BAKSH SINGH* (1906). I. L. R. 28 All. 670 s. c. L. R. 33 I. A. 118 10 C. W. N. 848

**DISSOLUTION.**

See **PARTNERSHIP** 12 C. W. N. 455

**DISSOLUTION OF MARRIAGE.**

See **MARRIAGE** 12 C. W. N. 1009

**DISTINCT OFFENCES ON DIFFERENT DATES IN THE SAME TRIAL**

See **MISCHIEF OF CHARGE** I. L. R. 35 Calc. 161

**DISTINCT SUBJECTS.**

See **COURT FEES ACT**, s. 17

**DISTRAINT OR DISTRESS.**

See **BENGAL MUNICIPAL ACT** (III of 1899), ss. 153, CL (b), 159, 175, and 225

See **BENGAL TENANCY ACT**, ss. 121, 122 and 140 I. L. R. 28 Calc. 364

See **COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT** I. L. R. 21 Calc. 979

**DISTRAINT OR DISTRESS—cont'd.**

See **DISTRESS ACT**, 1875.

See **FINE** 3 W. R. Cr. 81  
8 W. R. Cr. 50  
I. L. R. 20 Calc. 475

See **INSOLVENT ACT**, s. 7.  
5 B. L. R. 308

See **JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N. W. P.**  
I. L. R. 12 All. 409

See **LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY.**  
3 B. L. R. O. C. 58

See **LIMITATION** I. L. R. 32 Calc. 459  
I. L. R. 38 Calc. 141

See **LIMITATION ACT** (XV of 1877)  
12 C. W. N. 1090

See **LIMITATION ACT**, 1877, Sch. II, Art. 36  
8 C. W. N. 376

See **MADRAS DISTRICT MUNICIPALITIES ACT**, s. 103 I. L. R. 6 Mad. 428

See **MADRAS RENT RECOVERY ACT**, ss. 15, 17 and 18.  
I. L. R. 25 Mad. 503

See **N. W. P. RENT ACT**, s. 56.  
I. L. R. 24 All. 127

See **PENAL CODE**, s. 186  
I. L. R. 30 Calc. 285

See **SUMMARY TRIAL**  
I. L. R. 36 Calc. 67

**— notice of—**

See **MADRAS DISTRICT MUNICIPALITIES ACT**, s. 103 I. L. R. 14 Mad. 467

See **THEFT** I. L. R. 18 Mad. 364

**— of crops—**

See **SMALL CAUSE COURT, MOPURH—JURISDICTION—DAMAGES.**  
I. L. R. 24 Calc. 163

**— power of—**

See **MADRAS DISTRICT MUNICIPALITIES ACT**, s. 103 I. L. R. 14 Mad. 467

**— no presumption of legality of—**

See **PENAL CODE**, s. 421.  
I. L. R. 25 Mad. 728

**right of—**

See **MADRAS RENT RECOVERY ACT**, s. 1.  
I. L. R. 8 Mad. 8  
I. L. R. 18 Mad. 40

See **MADRAS REVENUE RECOVERY ACT**, s. 11 I. L. R. 17 Mad. 404

**— warrant of—**

See **MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.**  
I. L. R. 22 Calc. 835

**DISTRAINT OR DISTRESS—*contd.*****wrongful—***See* **WRONGFUL DISTRAINT**

1. — **Property of third parties on premises of tenant—Act VII of 1847.** The goods of third parties on the premises of the tenant are not distrainable for rent under provisions of Act VII of 1847. *DWARKA NATH BISWAS v UDDIT CHURN ADDY*. 1 Ind. Jur. N. S. 361

2. — **Right to distrain in presidency towns—Act VII of 1847—Distress warrant.** The right to distrain for rent in arrear has always to some extent existed and been recognized in the presidency towns, and the Acts passed since 1847 are distinct declarations by the Legislature,

that "any person claiming to be entitled to arrears of rent of any house or premises" in a presidency town is authorized to apply for the issue of a distress warrant. *MUHTUN SINGH v KAREEMON-NISSA BEGUM*. 8 Mad. 57

3. — **Distrain for arrears of rent—Bengal Rent Act, 1869, ss 71, 74 (1859, ss 116, 113)—Distraint for arrears of rent—Trees—Produce of land.** Trees are not subject to distraint for arrears of rent under Act X of 1859. The term "produce of land" referred to in that Act means that which can be gathered and stored—crops of the nature of cereal, or grass, or fruit crops; it does not apply to the trees from which the crops, if fruit crops, are gathered. *SHEN PERSHAD TEWARY v MOLEEMA BEBEE*

1 N. W. 53; Ed. 1873, 108

4. — **Goods of sub-tenant—Bengal Rent Act, 1869, s 68 (1859, s 112)—Act X of 1859, s 112—Sub-letting—Produce of land sub-let.** Where the tenant had sub-let his holding to a shikuli or sub-tenant: Held, that, under s 112 of Act X of 1859, the produce of the land was hypothecated for rent payable in respect thereof, and that the crops cultivated by the sub-tenant were distrainable by the zamindar. *GREETUM SINGH v. BULDEO KAHAR*. 4 N. W. 78

5. — **Power to distrain—Bengal Rent Act, 1869, ss 96, 98, 99 (1859, ss 139, 142, 143).** The sections of Act X of 1859, (ss 139, 142, and 143) which relate to distraint and the power to distrain, discussed. *JOYLOLL SHAFIKH v. BROU-NATH PAL CHOWDRY*. 9 W. R. 183

6. — **Distraint of Crops—Person not cultivator of crops.** A landlord cannot distraint crops for arrears due, not from the tenant, but from another person not in possession, and who did not cultivate the crops. *MOHUNDE DASSEE v RAN COOMAR KURMIKAR*. W. R. 1864, Act X, 77

7. — **Suit to contest distress—Bengal Act VIII of 1869, s 80—Issue.** Where, after receiving notice of distress, a party brought a suit under Bengal Act VIII of 1869, s 80, the first

**DISTRAINT OR DISTRESS—*contd.***

Court was held to be in error in thinking it necessary to enquire whether all the steps of the process of distraint were perfectly correct: the simple question to be determined having been whether the demand made by the distrainer was good and valid. *DOONDE MAHTOE v. SHED NARAIN SINGH*

21 W. R. 37

**DISTRESS.***See* **DISTRAINT OR DISTRESS.****DISTRESS ACT (I OF 1875).**

s. 10—Seizure of property in

not property "belonging to the person from whom the rent is claimed" within the meaning of s 10 of the Distress Act. *GOSVIND LALL SEAL v KNIGHT*

1 L. R. 7 Cal. 372; 9 C. L. R. 390

**DISTRESS WARRANT.***See* **SUMMARY TRIAL.**

1 L. R. 38 Cal. 67

**DISTRIBUTION, STATUTES OF.***See* **PARSIS**. 1 L. R. 2 Bom. 75**DISTRIBUTION OF SALE-PROCEEDS.**

*See* **MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES**

1 L. R. 29 Cal. 803

*See* **SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.**

**DISTRICT.***See* **LAND ACQUISITION ACT (I OF 1894).**

1 L. R. 83 Cal. 396

**DISTRICT BOARD.**

power of—

*See* **LOCAL SELF-GOVERNMENT ACT (BEV-GAL ACT III OF 1885), ss. 78, 139**

11 C. W. N. 1099

**DISTRICT COURT.**

*See* **CONTEMPT OF COURT—CONTEMPT GENERALLY**. 1 L. R. 26 Mad. 494

*See* **CONTRACT ACT, s. 265**

*See* **REGISTRATION ACT, 1877, s. 77 (1871, s. 79)**. 1 L. R. 2 Cal. 131

appeal to—

*See* **APPEAL—ORDERS—ORDER REFUSING APPLICATION TO BE DECLARED INSOLVENT**. 1 L. R. 27 Bom. 604

**DISTRICT JUDGE.***See* **DISTRICT JUDGE, JURISDICTION OF.**

assignment of business by—

*See* **CIVIL COURTS ACT, s. 12**

13 C. W. N. 265

**DISTRICT JUDGE—concld.**

— duty of—

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . I. L. R. 14 All. 531

**DISTRICT JUDGE, JURISDICTION OF.**

See BENGAL RENT ACT, 1869, s. 102

See CIVIL PROCEDURE CODE, 1882, ss. 22, 23 . . . 10 C. W. N. 902

See CIVIL PROCEDURE CODE, 1882, ss. 23, 191 (2) . . . 10 C. W. N. 12  
I. L. R. 29 Mad. 595

See CONTRACT ACT, s. 265.

See CRIMINAL PROCEDURE CODE, s. 437.  
I. L. R. 19 Calc. 121, 796

See GUARDIAN . I. L. R. 34 Calc. 599

See HINDU LAW—INHERITANCE  
I. L. R. 34 Calc. 923

See LAND ACQUISITION ACT (I of 1894)  
I. L. R. 35 Calc. 1104

See PROBATE—JURISDICTION IN PROBATE CASES.

See PROBATE AND ADMINISTRATION ACT (V of 1891) . I. L. R. 32 Bom. 934

See RETRANSFER . I. L. R. 39 Calc. 193

See RIGHT OF SUIT—CHARITIES AND TRUSTS  
I. L. R. 12 Bom. 247, 297 note  
I. L. R. 14 Mad. 199  
I. L. R. 15 Mad. 241  
I. L. R. 15 Bom. 149  
I. L. R. 21 Bom. 48

See SANCTION TO PROSECUTION—POWER TO GRANT SANCTION.  
I. L. R. 2 Bom. 491  
I. L. R. 19 All. 90  
I. L. R. 19 All. 121

See TRANSFER . I. L. R. 32 Calc. 875

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . I. L. R. 24 All. 304, 356  
I. L. R. 25 All. 163  
10 C. W. N. 12

See VALUATION OF SUIT—APPEALS

1. — Appointment of guardian—  
Beng. Reg. V of 1804, s. 20—Guardian—Minor—  
Estate paying revenue to Government . A District  
Court . . . I. L. R. 6 Mad. 187

2. — Suit to compel guardian to  
account—Subordinate Judge—Bombay Minors  
Act (XX of 1864). A suit to compel a minor's  
guardian, appointed under Act XX of 1864, to ac-  
count for his administration of the minor's estate.

**DISTRICT JUDGE, JURISDICTION OF—concld.**

cannot be properly brought in the Court of a Subordinate Judge, or in any Court, but in the principal Civil Court of the district where the property is situated, if it be in one district; but if it be in more districts than one, then in the principal Civil Court of the district in which the minor has his residence.  
UTAMRAI MANIKLAL v. DAMODHARAS MANIKLAL  
8 Bom. 39

3. — Suit against municipality—  
Subordinate Judge—Small Cause Court Judge—  
Bom. Act VI of 1873, s. 7—Act X of 1876, s. 15  
In a suit by or against a municipality constituted under the Bombay District Municipal Act (VI of 1873), every individual commissioner must be regarded as a party within the meaning of s. 15 of the Bombay Revenue Jurisdiction Act (X of 1876); and, consequently, such a suit cannot be entertained by a Subordinate Judge or a Judge of a Court of Small Causes, but can be entertained by the District Judge alone . AHMEDABAD MUNICIPALITY v. MAHAMED JAMET  
I. L. R. 3 Bom. 149

4. — Mad. Reg. IV of 1816, hearing of petition under—Subordinate Judge.  
A Subordinate Judge has no jurisdiction to hear and determine petitions under s. 29, Regulation IV of 1816. The jurisdiction created by that Regulation, being peculiar, can only be exercised by the District Judge as representative of the Zilla Judge.  
PONNESAMI PILLAI v. PACHAI  
I. L. R. 2 Mad. 339

Overruled by PONNESAMI CHETTI v. KRISHNA AYYAR . . . I. L. R. 5 Mad. 222

5. — Power to refer case under s. 295, Contract Act—Bombay Civil Courts Act, 1869 . Quare Whether the District Judge had power, under the Bombay Civil Courts Act, XIV of 1869, to refer to the Assistant Judge a case falling under s. 265 of Act IX of 1872. . SORABJI FARDUNJI v. DULABHAI HARGOVANDAS  
I. L. R. 5 Bom. 65

6. — Order respecting execution of decree of Subordinate Judge—Civil Procedure Code, s. 270 . A decree was passed by the subordinate Judge, and in execution of that decree a sale of certain property was held and conducted by the nazir of the District Judge. *Held*, that, in reference to that sale, the District Judge had no jurisdiction to pass any order under the provisions of s. 270 or any order respecting the re-sale of the property. . NANO KISHORE DASS v. PROTAP CHUNDER BANERJEA  
1 C. L. R. 534

7. — Transfer of case to Regulation Provinces—Appal—Bom. Reg. XVIII of 1831—Bom. Act III of 1853. . A suit was instituted in a Court which, at the date of the filing of such suit, was in a non-regulation district, to recover possession of a piece of land situate in a village then within the jurisdiction of that Court; when the Regulations were introduced, the Regulation Court which succeeded the said Court was placed in a district different from that to which the said village

## DISTRICT JUDGE, JURISDICTION OF

—*contd.*

was annexed *Held*, that the village in which the suit arose having been transferred to a district different from that which included the Court which

in another district, when such an appeal was permissible, was not an appeal which could be referred by the District Judge for trial to a Principal Sudder Ameen under Regulation XVIII of 1831, s. 3 *Quare*: When a district, or particular portion of a district, is for the first time brought under the

the before the the Regulation Court which is

NADNI : DHONDO NARAYAN DANLE

5 Bom. A. C. 26

8. — Appeals in suits above

came into operation, lay to the District Courts as before the Act, and not to the High Court RATAN CHAND SHRI CHAND : HANMANTPAT SHIVBAKAS

8 Bom. A. C. 166

9. — Sanction to prosecution—*Power of District Judge to revoke sanction of Subordinate Judge* A District Court has jurisdiction under s. 195 of the Code of Criminal Procedure to revoke or grant a sanction granted or refused by a Subordinate Judge's Court VENKATA : METTUSANI I. L. R. 7 Mad. 314

10. — Trial of case for false evidence in Civil case—*Criminal Procedure Code, s. 477—False evidence* A man died leaving some money due to him in the hands of the Telegraph authorities P wrote a letter to those authorities

riminal Procedure Code to try C EMPRESS : CHATTAN I. L. R. 6 All. 103

11. — Revisional power of District Judge in rent suits—*Bengal Tenancy Act (1771 of 1855) s. 153—Judicial Officer* The words "Judicial Officer as aforesaid," as used in the proviso to s. 153 of the Bengal Tenancy Act, have reference to the "Judicial Officer" spoken of in cl

## DISTRICT JUDGE, JURISDICTION OF

—*contd.*

(b) of that section and to such officer only, and a District Judge has no power to revise decrees or orders passed by a District Judge, Additional Judge or Subordinate Judge referred to in cl. (a) of the section SANKARAN DEBYA : MATHURA DHUPINI I. L. R. 15 Calc. 327

12. — Reference to High Court, power to make—*Stamp Act, 1879, s. 49* A bail-bond was executed to a District Munsif, who expressed no doubt as to the amount of duty to be

13. — Execution proceedings—*Civil Procedure Code, 1882, ss. 223, 228, 249—Mofussil Small Cause Court Act (XI of 1865), ss. 20, 31—Appeal* The plaintiff obtained a decree in a Small Cause suit in a subordinate Court in the

trict Munsif He accordingly presented a petition to the District Munsif under s. 247 of the Code of Civil Procedure, but his petition was dismissed. An

had jurisdiction to entertain it PERUMAL : VENKATARAM I. L. R. 11 Mad. 130

14. — Appeal from order passed after Act came into force in proceedings commenced before it was in operation—*Civil Procedure Code Amendment Act (X of 1889)* A District Judge has jurisdiction to hear the appeal from an order passed after the 1st of July 1888 under the Civil Procedure Code Amendment Act of 1888, although the execution proceedings in the course of which the order was made were commenced before that date BAGAL CHUNDER MOOKERJEE : RANESHWAR MUNDUL I. L. R. 18 Calc. 496

15. — Jurisdiction of District

Nidhi Lal v. Mazhar Husain, I. L. R. 7 All. 229, and Matra Mondal v. Hari Mohan Mullick, I. L. R. 17 Cal. 155, followed. AGGARWAL : MEDHOKOTI I. L. R. 15 Mad. 241

18. — Appeal from order under a. 331—*Civil Procedure Code, 1882, s. 331—Bombay Civil Courts Act (XVI of 1869), s. 8* A obtained a decree in the Court of a first class Subordinate Judge for possession of property worth more than

# DISTRICT JUDGE, JURISDICTION OF

—*contd.*

R5,900. In executing this decree against a portion of the property awarded, which was worth R420, A was resisted by B, who claimed to hold the property under a title adverse to the judgment-debtors. B's claim was thereupon numbered and registered as a suit under s. 331 of the Code of Civil Procedure.

claim being less than R5,000. *MOULAKHAN v. GORIKHAN* . . . I. L. R. 14 Bom. 627

17. — Reference by District Judge to Assistant Judge—*Bombay Civil Courts Act (XIV of 1869), s. 17*—Jurisdiction of Assistant Judge on case so referred. A District Judge referred for trial an appeal to his Assistant Judge under s. 17 of the Bombay Civil Courts Act (XIV of 1869). The Assistant Judge dismissed the appeal for default of the appellant's (defendant's) appearance on the day fixed for hearing. An application was afterwards made to the Assistant Judge for the re-admission of the appeal, but he refused the application. A similar application was then made to the District Judge. He granted the application.

re-admitting the appeal was *ultra vires*. By the reference under s. 17 of the Bombay Civil Courts Act, XIV of 1869, the Assistant Judge acquired full jurisdiction to try the appeal according to the procedure laid down by the Civil Procedure Code of 1862. The Assistant Judge had jurisdiction, under s. 358 of the Code, to entertain the application for re-admission, and his order refusing to re-admit was not subject to reversal or review by the District Judge. The order of the District Judge re-admitting the appeal was made without jurisdiction, and the proceedings subsequent thereto were also without jurisdiction and invalid. *SAKHAR LAKSHMAN v. GUVIND JOTI*

I. L. R. 15 Bom. 107

18. — Act IX of 1861, ss. 1, 3, 4.—*Civil Procedure Code, s. 17*. An application was made to the District Judge of Allahabad, under s. 1 of Act IX of 1861, by a relative of a minor, alleging that the minor had, by the acts and with the connivance and assistance of the defendants at Allahabad, been removed from the plaintiff's custody and guardianship at Allahabad, and praying for the minor's restoration thereto. At the time when the application was made, the minor was at Lahore. *Held*, that, under ss. 1 and 4 of Act IX of 1861, read with s. 17 of the Civil Procedure Code, the application was cognizable by the District Judge of Allahabad, where the cause of action arose; and that, even apart from s. 17 of the Code, the minor

# DISTRICT JUDGE, JURISDICTION OF

—*contd.*

having been in the custody and guardianship of a person within the jurisdiction of the Judge of Allahabad, that officer had full jurisdiction to deal with the application. *SARAT CHANDRA CHAKRABARTI v. FORMAN* . . . I. L. R. 12 All. 213

19. — Exercise by Subordinate Judge of jurisdiction of District Court—*Bengal, N.-W. P., and Assam Civil Courts Act, ss. 23, 24—Appeal—Act XL of 1853*. The words in s. 24 of the Bengal Civil Courts Act (XII of 1857)

Act, are appealable to the High Court, and not to the Court of the District Judge. *SONYA v. KHALAR SAGAR* . . . I. L. R. 13 All. 78

20. — Reference by a Collector—*Land Acquisition Act (X of 1870), s. 55*. A Collector is not competent to refer, nor a District Judge to decide, any question arising under Land Acquisition Act, s. 55. *RAMALAKSHMI v. COLLECTOR OF KISTNA* . . . I. L. R. 16 Mad. 321

21. — Applicability to guardians who had ceased to be such before the Act came into force—*Guardians and Wards Act (VIII of 1890), ss. 41 and 51*. The Guardians and Wards Act (VIII of 1890) does not apply to guardians whose powers had ceased by reason of their wards having attained majority, or otherwise, prior to the passing of the Act. The word "guardian" in s. 51 of the Act means a guardian who was such at the time the Act came into force. A was appointed a guardian of B's property under the Bombay Minors Act, XX of 1861. B attained majority in 1836. In 1892 B applied to the District Judge for an order directing A to deliver to B his property, together with the accounts relating thereto. The District Judge made the order, as asked for, under s. 41, cl. 3, of Act VIII of 1890. *Held*, that the District Judge had no jurisdiction under Act VIII of 1890 to make the order in question, as A had ceased to be a guardian before the Act came into force. *VALLABH HIRVAND v. KRISHNAJI*

I. L. R. 17 Bom. 566

22. — Duty of District Court to hear all evidence—*Guardians and Wards Act (VIII of 1890), ss. 13, 46, and 37—Decision based on evidence taken by a subordinate Court illegal*

gation of material issues of fact to a subordinate Court. Nor does it empower the District Judge to use the evidence taken by the subordinate Court. An application was made for the appointment of a guardian to the person and property of a minor. The District Court sent the application to a Subor.



# DISTRICT JUDGE, JURISDICTION OF

—*contd.*

minate Judge for inquiry and report, and issued a notice calling upon any who objected to the appointment of the proposed guardian to appear before the Subordinate Judge, who would hear and dispose of the objections. The whole inquiry was held before and all the evidence was taken by the Subordinate Judge. Upon the evidence so taken, the District Judge disposed of the application. *Held*, that the procedure adopted by the District Judge was illegal, and his decision, based upon evidence not taken before him, could not be accepted. *Birada Churn Bose v Ajotha Ram*, 23 W. R. 257. *Shadho Singh v Ramnathgraha Lal*, 9 W. R. 83, and *Issur Chandra Das v Jugul Kishor*, 4 B. L. R. 12 33, referred to. *GANEAN VITHAL v KUSUMI*. I. L. R. 23 Bom. 688

23. — Appeal from insolvency order—*Civil Procedure Code, 1882, s. 589—Civil Procedure Code Amendment Acts (VII of 1888), s. 56 and (X of 1888), s. 3, cl. (a)* Bearing in mind that s. 589 of the Code of Civil Procedure was passed to regulate the appellate jurisdiction in appeals from orders, the words "Court subordinate to that Court" in s. 3 of Act X of 1888 must be construed with reference to its appellate jurisdiction. Consequently a District Court has no jurisdiction to hear an appeal from an order in insolvency matters, in a case where it has no jurisdiction to hear an appeal in the suit itself, as when the subject-matter of the suit is more than Rs. 5,000 in value. *VENKATRAYAR v JANABO ALIYAN*. I. L. R. 17 Mad. 377

24. — Appeal to District Judge entertained without jurisdiction—*Provincial Small Cause Courts Act (IX of 1887), s. 25—Decree passed by a Subordinate Judge invested with the jurisdiction of a Small Cause Court—Finality of such decree—Civil Procedure Code (Act XIV of 1882), ss. 622 and 646 A—Reference to High Court.* A Subordinate Judge invested with the jurisdiction of a Court of Small Causes, tried a suit under his Small Cause Court power, and passed a decree in plaintiff's favour. The defendant appealed against this decree, and the Appellate Court, being of opinion that the suit was not of a nature cognizable by a Court of Small Causes, reversed the decree and remanded the case to the Subordinate Judge for trial under his ordinary jurisdiction. Thereupon the Subordinate Judge made a reference to the High Court under s. 646A of the Code of Civil Procedure (Act XIV of 1882). *Held*, that the reference was not authorized by the provisions of s. 646A of the Code, as it applied to a case before judgment. The High Court could, however, deal with the matter under s. 622 of the Code. *Held*, also, that, the suit having been tried by the Subordinate Judge in the exercise of his jurisdiction as a Judge of a Court of Small Causes, the decree was final, and not appealable to the District Court, and the District Judge had no jurisdiction to hear the appeal. The only remedy open to the aggrieved party was to apply to the High

# DISTRICT JUDGE, JURISDICTION OF

—*contd.*

Court under s. 25 of Act IX of 1887. *DIWALIBAI v SADASHIVDAS*. I. L. R. 24 Bom. 310

25. — Appeal to District Judge—*Civil Procedure Code (Act XIV of 1882), ss. 25, 191 (2)—Suit commenced in a District Court—Issues settled by District Judge—Case transferred to Subordinate Judge by High Court—Decision by Subordinate Judge—Validity of decision in appeal and of transfer by High Court.* A suit was instituted in a District Court, and issues were settled by the District Judge. The suit was then transferred by the High Court to the Court of the Subordinate Judge, who decided the case. An appeal was then preferred to and was heard by the District Court, though the Judge who heard the appeal was not the Judge who had settled the issues. On a second appeal being preferred to the High Court. *Held*, (i) that the District Court had jurisdiction to hear the appeal, s. 17 of the Madras Civil Courts Act (III of 1873) having no application, (ii) that the High Court had jurisdiction, under ss. 25 and 191 (2) of the Code of Civil Procedure, to make the transfer to the Subordinate Judge, although the case was in part heard. *PARANISAMI COWNDAN v. THONDANA COWNDAN* (1902). I. L. R. 28 Mad. 595

# DISTRICT MAGISTRATE.

See COLLECTOR. I. L. R. 1 Bom. 828

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—DUTY OF MAGISTRATE. 6 C. W. N. 843

See CRIMINAL PROCEDURE CODE, s. 437. I. L. R. 32 Cal. 1090

See FURTHER INQUIRY. I. L. R. 33 Cal. 6

See JURISDICTION. I. L. R. 35 Cal. 434

See MAGISTRATE—GENERAL JURISDICTION. I. L. R. 30 Cal. 440  
I. L. R. 32 Cal. 1090

POWERS OF MAGISTRATES. I. L. R. 29 Cal. 242

See REVISION—CRIMINAL CASES—ACQUITTALS. 7 C. W. N. 493

— powers of—

See SECURITY FOR GOOD BEHAVIOUR. I. L. R. 29 Cal. 455

See TRESPASS. I. L. R. 38 Cal. 433

# DISTRICT MUNICIPAL ACT.

See BOMBAY DISTRICT MUNICIPAL ACT (Bom. III of 1901).

See PENAL CODE, ss. 21, 186. I. L. R. 33 Bom. 213

**DISTRICT REGISTRAR.**

*Civil Procedure Code, 1882, s. 622*—District Registrar not a "Court" within the meaning of s. 622. A District Registrar is a Court within the meaning of s. 622 of the Code of Civil Procedure, and the High Court cannot interfere with his proceedings under that section. *Atchayya v. Gangayya, I. L. R. 15 Mad. 138*, distinguished. *MANAYALA GOUNDAN v. KUMARAPPA REDDY (1907).*

I. L. R. 30 Mad. 326

**DIVESTING OF PROPERTY.**

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION.

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

WIDOW—DISQUALIFICATIONS.

See WILL—CONSTRUCTION.

I. L. R. 4 Calc. 420

1 Ind. Jur. N. S. 375

I. L. R. 6 All. 583

I. L. R. 15 Mad. 448

**DIVIDENDS,**

— distribution of—

See INSOLVENCY. I. L. R. 38 Calc. 512

— gift of—

See WILL—CONSTRUCTION

I. L. R. 12 Bom. 137

— payment of, out of deposit in bank—

See BANKERS. I. L. R. 18 All. 86

**DIVISION BENCH OF HIGH COURT.**

— appeal from judgment of—

See LETTERS PATENT, N-W P. HIGH COURT, CL. 10. I. L. R. 1 All. 31, 181

— difference of opinion between Judges of—

See CIVIL PROCEDURE CODE, 1882, s. 575.

See LETTERS PATENT, HIGH COURT, CL. 15

4 B. L. R. A. C. 101, 161

B. L. R. Sup. Vol. 694

13 W. R. 310

14 W. R. 296

I. L. R. 10 Calc. 106

See LETTERS PATENT, HIGH COURT, CL. 36

14 Moo. L. A. 209

I. L. R. 3 Bom. 204

I. L. R. 15 Bom. 452

See LETTERS PATENT, N-W. P. HIGH

COURT, CL. 10. I. L. R. 1 All. 181

I. L. R. 9 All. 655

See LETTERS PATENT, N-W. P. HIGH

COURT, CL. 27. 2 N. W. 117

s. c. Agta F. B., Ed. 1874, 198

I. L. R. 11 All. 178

**DIVISION BENCH OF HIGH COURT—**  
*contd.*

— difference of opinion between Judges of—*contd.*

See REFERENCE TO FULL BENCH.

I. L. R. 3 Calc. 20

See REFERENCE TO HIGH COURT—CIVIL CASES. 4 C. W. N. 389

— power of—

See ENGLISH COMMITTEE OF HIGH COURT.

10 B. L. R. 79, 80, 82 note

1. — Power of—Security for stay of execution. A had executed a security bond on behalf of K, who had an appeal to the High Court in a case in which the Court had ordered stay of execution until the appeal was heard. The appeal was heard by a Division Bench, and the Judges differing, the appeal was decreed in accordance with the opinion of the Senior Judge. From this judgment an appeal was preferred under s. 15 of the Letters Patent. After the opinion of the Division Bench was pronounced, A applied to the Judge before whom he had made it for the return of his security bond, but his application was refused pending the final decree of the High Court in the matter. A then moved the High Court for the cancellation or return of the bond. *Held*, that there was no necessity that this motion should have been presented to the Judges who heard the appeal, for it related to matter beside the judgment, and a Division Bench may receive motions from all districts, without reference to the Bench which pronounced the judgment.

that district belongs, does not divest any Division Bench of the Court of the jurisdiction given to it by the Charter, nor can it be always properly adhered to. *AMEER ALI KHAN v. KASSIM ALI KHAN*

13 W. R. 403

2. — Reference to High Court after former reference in same case.—An order passed by an Assistant Magistrate in a case of breach of the peace under s. 330 of the Code of Criminal Procedure was referred to the High Court by the Sessions Judge, with a recommendation that the order should be set aside on certain grounds stated, the want of jurisdiction in the Assistant Magistrate not being one of the grounds. The Division Bench before whom that reference came declined to interfere with the order. It was held by another Division Bench before whom the matter was subsequently brought on motion that they were not debarred from entering into the question of the want of jurisdiction, and, as the effect of the Assistant Magistrate's order was to prejudice one of the parties, the order, which was admittedly without jurisdiction, was set aside. *RUK BHADUR SINGH v. HAR DOYAL SINGH*

21 W. R. Cr. 32

3. — Decision of Division Bench as to Bengali expression. The decision of one

# DIVISION BENCH OF HIGH COURT— concl'd.

Division Bench as to the meaning of a Bengali expression occurring in a particular plaint cannot be binding upon another Division Bench for the purpose of a different suit. *WATSON & Co. v. SUNKO MOYEE* 24 W. R. 414

4. ——— Decision of, how far binding on another Court. The decision of an Appeal Bench of the High Court upon a point of law, or the construction of a document in the case before them, is not necessarily binding on a single Judge of that Court when the same question again arises in another suit before him. *ABHAI CHARAN GHOSE v. DASHMANT DAS* 6 B. L. R. 623

5. ——— Ruling of Division Bench referred to Full Bench. *PER BARLEY, J. — Quere*: Whether a ruling of three Judges of the High Court of Bombay on a case referred by a Division Bench of two Judges for decision by the Full Bench can be regarded otherwise than a ruling of a Division Court of three Judges. *In the matter of the petition of BAI ASMITA* 1 L. R. 8 Bom. 380

6. ——— Division Bench taking civil business—*Orders under Civil Procedure Code, 1882, s. 943* A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s. 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group. *MAHOMED BRAKKE v. QUEEN-EMRESS* 1 L. R. 23 Calc. 533

# DIVISION OF OCCUPANCY HOLDING

*See AGRICULTURE ACT 1901, s. 32*  
1 L. R. 31 All. 348

# DIVORCE

*See BURMESE LAW—DIVORCE*  
1 L. R. 19 Calc. 469

*See DIVORCE ACT (IV of 1869).*

*See HINDU LAW—CUSTOM—IMMORAL CUSTOMS* 1 L. R. 17 Mad. 479

*See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE*  
1 L. R. 3 Calc. 305  
1 L. R. 8 Mad. 169

*See HUSBAND AND WIFE*  
1 L. R. 21 Bom. 77

*See MAHOMEDAN LAW*  
1 L. R. 31 Bom. 364  
1 L. R. 36 Calc. 23, 164  
13 C. W. N. 134

*See MAHOMEDAN LAW—DIVORCE—MARRIAGE*

*See MARRIAGE* 1 L. R. 25 Calc. 537  
3 C. W. N. 209

plea of—  
*See MAINTENANCE—ORDER OF CRIMINAL COURT*  
10 B. L. R. Ap. 33  
1 L. R. 5 Calc. 558  
1 L. R. 7 Bom. 180  
1 L. R. 5 All. 224, 228  
1 L. R. 14 Calc. 676  
1 L. R. 15 All. 143  
1 L. R. 19 All. 50

# DIVORCE—concl'd.

## suit for—

*See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL I. L. R. 16 Bom. 138*

*See PAST MARRIAGE AND DIVORCE ACT, s. 30* 1 L. R. 18 Bom. 366

1. ——— Mahomedan Law—*Hanafi Sunnis—Talak-ul-bain* by one pronouncement in the absence of the wife—*Execution of talaknama in the presence of the Kazi—Communication of the divorce to the wife—Marz-ul-maut—Death of the husband before expiration of the period of iddat* A, a Mahomedan belonging to the Hanafi Sunnis sect, took with him two witnesses and went to the Kazi and there pronounced but once the divorce of his wife (plaintiff) in her absence. He had a talaknama written out by the Kazi, which was signed by him and attested by the witnesses. A then took steps to communicate the divorce and make over the iddat money to the plaintiff, but she evaded both. A died soon after this. The plaintiff thereupon filed a suit alleging that she was still the wife of A and claimed maintenance and residence. *Held*, overruling the contention that the divorce should have been pronounced three times, that the talak-ul-iddat (i.e., irregular divorce) is good in law, though bad in theology. *Held*, further, in answer to the contention that the divorce was not final as it was never communicated to the plaintiff, that a bain-lahai, such as the present, reduced to manifest and customary writing, took effect immediately on the mere writing. The divorce being absolute, it is effected as soon as the words are written "even without the wife receiving the writing." In order to establish Marz-ul-maut there must be present at least three conditions:—(1) Proximate danger of death, so that there is, as it is phrased, a preponderance (gholaba) of life or apprehension, that is that at the given time death must be more probable than life. (ii) there must be some degree of subjective apprehension of death in the mind of the sick person; (iii) there must be some external indicia, chief among which would be the inability to attend to ordinary avocations. Where an irrevocable divorce has been pronounced by a Mahomedan husband in health, and the husband dies during the period of the divorced wife's iddat, she has no claim to inherit to the husband. *SARIBAI v. SARIBAI* (1905) 1 L. R. 30 Bom. 537

2. ——— Alimony pendente lite—*Application for, after decree nisi—Indian Divorce Act (IV of 1869), s. 36* Notwithstanding a decree nisi for dissolution of marriage, on the ground of the wife's adultery, the Court has power, under s. 36 of the Indian Divorce Act, to order alimony pendente lite for the period between decree nisi and decree absolute. *Dunn v. Dunn*, L. R. 13 P. D. 91, considered. *BOWEN v. BOWEN* (1900) 1 L. R. 36 Calc. 1018

3. ——— Jurisdiction—"Permanent Residence"—*Divorce Act (IV of 1869), s. 3 (1)—"Last resided together."* In a petition for dissolution of marriage, where the husband and

**DIVORCE—concl'd.**

— *Agreement between parties to defend the suit.* *Held* that the

4. ——— **Collusion—Husband's petition**  
— *Agreement between the Parties, not acted on whether constitutes Collusion.* A petition for divorce was presented by the husband, on the ground of the wife's adultery with the co-respondent. Subsequently an agreement was come to between the petitioner and the respondent, by which, for

gent, should the latter venture to defend the suit. This agreement, however, fell through, and the respondent filed her answer denying adultery, and making a counter-charge of adultery against the petitioner. The co-respondent did not defend the suit. At the trial, the plea taken by the respondent was that the petition should be dismissed on the ground of collusion between the petitioner and herself. *Held*, that inasmuch as the agreement, which contemplated a fraud upon the Court, was not acted on, and in no way affected the decision of the Court, it did not constitute collusion. *Churchward v. Churchward*, [1893] P. 7, referred to. *BOWEN v. BOWEN* (1909) 1 L. R. 36 Cal. 874

**DIVORCE ACT (IV OF 1869).**

*See* DIVORCE.

*See* MARRIAGE, DISSOLUTION OF  
12 C. W. N. 1009

*See* PLEADER—REMUNERATION  
7 Mad. 304

——— appeal in case under—

*See* HIGH COURT, JURISDICTION OF—  
N.W. P.—CIVIL. 1 L. R. 18 All 375

1. ——— **Costs—Divorce—Wife's costs—**  
*Dismissal of wife's petition—Liability of husband—Deposit or security for costs.* In a divorce suit, where it is shown that the wife has no money of her own, the mere fact that no deposit has been made or security given for payment of the wife's costs is no obstacle to the making of an order against the husband to pay her costs, although her petition is dismissed. *Robertson v. Robertson*, L. R. 6 P. D. 119. *Ottway v. Ottway* L. R. 13 P. D. 141, and *Proby v. Proby*, 1 L. R. 3 Cal. 337, referred to. *BOYLE v. BOYLE* (1903) 1 L. R. 30 Cal. 631; ac. 7 C. W. N. 565

2. ——— **Intervenor—Divorce—Parties**  
— *Alleged adultery, application by* In a wife's petition for dissolution of marriage by reason of the husband's adultery with one Mrs. Ollenbach, the latter applied and obtained this rule calling upon the petitioner to show cause why she should not be allowed to intervene. *BULLY v. BULLY* (1897) 1 L. R. 30 Cal. 490 note

**DIVORCE ACT (IV OF 1869)—concl'd.**

1. ——— s. 2—Application of Act—  
*Polygamous contracts under Mahomedan law!*  
The Indian Divorce Act was not intended to apply to

dan law. Such polygamous contracts are not subject to the jurisdiction of the Courts created by the Indian Divorce Act of 1869. *ZURUNDUR KHAN & HIS WIFE*, 2 N. W. 370

2. ——— **Jurisdiction—Damages.** The High Court has jurisdiction to admit a petition for divorce, where the parties are resident, and the adultery is committed, in the district of the 24-Pergunnahs. Principle on which the Court will assess damage discussed. *KELLY v. KELLY AND SAUNDERS*, 3 B. L. R. O. C. 67

3. ——— **Jurisdiction—**  
*Dissolution of marriage.* A District Judge ought

4. ——— **Jurisdiction—**  
*Residence of parties.* In a suit for dissolution of marriage, where at the time of the presentation of

14 W. R. 416

5. ——— **European British**  
*Act, 24 of 1869, apply to suits between European British subjects resident in Native States in India; and that s. 2 of that Act, which extends those provisions to such persons, was not ultra vires of the Indian Legislature.* Stat. 28 & 29 Vict., c. 15, s. 2 transferred to the General Clauses Act, 1857, s. 26.

Act, 24 of 1869, apply to suits between European British subjects resident in Native States in India; and that s. 2 of that Act, which extends those provisions to such persons, was not ultra vires of the Indian Legislature. Stat. 28 & 29 Vict., c. 15, s. 2 transferred to the General Clauses Act, 1857, s. 26.

authorize the exercise of jurisdiction. But the power so conferred upon the Courts is not to be exercised in cases where the parties are not resident in India.

Those powers were (s. 6 of Stat. 28 & 29 Vict., c. 15) expressly reserved; and the special power

DIVORCE ACT (IV OF 1869)—*contd.*s. 2—*contd.*

given by s. 3 of altering the limits of the jurisdiction by executive order does not exclude by implication the general legislative powers. To effect an alteration of such jurisdiction by Act instead of by Order is still within the general scope of the legislative powers of the Governor General in Council, although the more convenient course of an executive Government notification is usually followed. Previously to the institution of the present suit, the respondent had left India and gone to England without any intention of returning to India. It was contended that Act IV of 1869, passed by the Indian Legislature in exercise of its power to make laws for persons resident in Native territories, could not affect her. *Held*, that the petition satisfied the Act by alleging residence of the petitioner in India and the commission of the act of adultery whilst the parties last resided together in India. It was not necessary to show the residence of the respondent. *THORNTON v. THORNTON*

I. L. R. 10 Bom. 422

8. Jurisdiction of District Court—*Adultery committed in India*—Place of marriage. Under s. 2 of the Indian Divorce Act (IV of 1869), a District Court has jurisdiction to make a decree for dissolution of marriage upon being satisfied that the adultery charged has been committed in India without going into evidence as to the place of the marriage of the parties. *KYTE v. KYTE AND COOKE* I. L. R. 20 Bom. 362

7. "Residence," meaning of the word—Jurisdiction of the Court to grant divorce. That under the Indian Divorce Act domicile is not the test of the Court's authority to grant a divorce, it being sufficient if the petitioner resides in India at the time of presenting the petition and professes the Christian religion. That the meaning of the word "reside" must in each case be decided with reference to its own circumstances. It conveys the idea, if not of permanence, of some degree of continuance. That the "residence" to which the Indian Divorce Act points must be some thing more than occupation during occasional and casual visits within the local limits of the Court, more especially where there is a residence outside those limits marked with a considerable measure of continuance. That where the petitioner does not reside in India, the Court has no jurisdiction by virtue of the Charter of 1774 and the Letters Patent of 1862 and 1865 to grant him a decree for divorce. *JOHNDRA NATH BANERJEE v. ELIZABETH BAKER*

I. L. R. 250

## 8. Non-Christian marriage—

Application of Act—Conversion to Christianity—Native Converts Marriage Dissolution Act (XXI of 1866), ss. 4, 5, 7, 8, 9, 10, 15, 16. The petitioner and the respondent were married while professing the Hindu faith, and afterwards became converts to Christianity. The petitioner subsequently applied for dissolution of the marriage on the ground of his wife's adultery. *Held*, that, being

DIVORCE ACT (IV OF 1869)—*contd.*s. 2—*contd.*

a person professing Christianity at the time of presenting the petition, he was entitled to a dissolution of the marriage under the provisions of the Indian Divorce Act (IV of 1869). It is clear from the provisions of the Native Converts Marriage Dissolution Act (XXI of 1866) that a non-Christian marriage is not dissolved by the mere fact of the conversion of one or both of the parties to Christianity, and may therefore be dissolved in accordance with the provisions of Act IV of 1869. *GOWDHAN DASS v. JASADAMONI DASS* I. L. R. 18 Cal. 2

9. Native Christian—Hindu convert to Christianity. A pariah, who had been converted to Christianity, presented a petition of divorce under Act IV of 1869 on the ground of adultery committed by his wife before his conversion. *Held*, that the Court had no jurisdiction to entertain the petition. *PERIARAYAN v. POTTUKANNI* I. L. R. 14 Mad. 392

## s. 3 (1)—

See DIVORCE I. L. R. 36 Cal. 964

1. s. 3, cl. (2)—Appeal—Judicial Commissioner of Oudh—Oudh Civil Courts Act (Act XIII of 1879), s. 27. A decree dismissing a suit for dissolution of marriage made by the Judicial Commissioner of Oudh, exercising the powers of a District Judge under Act XIII of 1879, and the Divorce Act, 1869, is appealable to the High Court of the North-Western Provinces. *MORGAN v. MORGAN* I. L. R. 4 All. 306

2. cl. (9), and s. 10—Desertion—Adultery—Judicial separation. A husband and wife living in British Burma separated in 1881; the wife, for reasons of convenience, going to England, but with no intention of a permanent separation. After her departure, the husband contracted an adulterous connection with a Burmese woman, which was, however, unknown to the wife till 1875. During the separation he kept up correspondence with his wife, and in some of his letters he expressed an intention of never returning to England, and in 1868 expressed his willingness to aid her in obtaining a divorce. The wife never openly consented to the separation, although she could not be said to have made any active opposition to it. *Held*, that the wife was not entitled to a divorce, but only to a judicial separation, as there was no evidence of desertion. Desertion under the Indian Divorce Act implies "an abandonment against the wish of the person charging it," and although the word "abandonment" is undefined, the effect of the clause is to introduce into the Indian Statute the view adopted by the Courts in England in construing the English Act. The expression "against the wish of" is to be construed as meaning contrary to an actively expressed wish of the person charging abandonment, and notwithstanding the resistance or opposition of such person. A wife is bound, when seeking to prove desertion, to give evidence of conduct on her

DIVORCE ACT (IV OF 1869)—*contd*s. 3(1)—*concll.*

part, showing unmistakably that such desertion was against her will. The decisions of the Probate and Divorce Courts in England must be taken to be a guide to the Courts in India under the Indian Divorce Act except when the facts of any particular case arising out of the peculiar circumstances of Anglo-Indian life constitute a situation such as the English Courts are not likely to have had in view. *FOWLE v. FOWLE*

I. L. R. 4 Cal. 260; 3 C. L. R. 484

ss. 4 and 18—*Matrimonial jurisdiction—Marriage—Nullity* The High Court cannot entertain a suit of a matrimonial nature otherwise than as provided by the Indian Divorce Act, and therefore has no jurisdiction to make a decree of nullity on the ground that the marriage was invalid. *GASPER v. GONSALVES*

13 B. L. R. 109

1. s. 7—*Inspection of letters—Practice* The respondent is entitled to have brought into Court letters written to her by the petitioner while the facts to which they speak were fresh in her memory. If the petitioner has none, he should make an affidavit to that effect. *GORDON v. GORDON*

3 B. L. R. O. C. 100

2. Stay of proceedings—*Petition for divorce in India—Suit by wife in England for restitution of conjugal rights—Practice.* The petitioner, having (as he believed), on the 12th December 1885, discovered that the respondent had been guilty of adultery, brought her from Secunderabad to Bombay, and sent her to England on the 25th December 1886. On the 26th February 1886 he filed his petition in the High Court of Bombay. On the 26th March 1886 the respondent filed a suit against the petitioner in the

DIVORCE ACT (IV OF 1869)—*contd*s. 7—*concll*

The wife subsequently left her husband, and lived in adultery with another man. Both the husband and wife subsequently became Christians but the wife continued to live in adultery. The husband sued under Act IV of 1869 for the dissolution of the marriage. *Held*, that, having regard to s. 7, the marriages contemplated by the Act are those founded on the Christian principle of a union of one man and one woman to the exclusion of others, and that consequently the Act does not contemplate relief in cases where the parties have been married under the rites of Hindu law, a Hindu marriage not being a monogamous one. *Hyde v. Hyde, L. R. 1 P. & D. 130*, and *Brinley v. Attorney-General, L. R. 15 P. D. 76*, cited and followed. *Gobardhan Doss v. Josadmoni Dassi, I. L. R. 18 Cal. 232*, dissented from. *THAPITA PATER v. THAPITA LAKASHINI*

I. L. R. 17 Mad. 235

5. Rules and principles referred to in s. 4. The principles and rules referred to in s. 7 of Divorce Act, IV of 1869, are not mere rules of procedure such as the rules which regulate appeals, but are the rules and the principles which determine the cases in which the Court will grant relief to the parties appearing before it or refuse that relief—rules of *quasi-substantive* rather than of mere adjective law. *A. v. D*

I. L. R. 22 Bom. 612

6. Wife's costs—*Husband and wife—Wife's costs, application for—Foreign domicile—Property of wife.* On an application by the wife for her costs during the pendency of her suit for judicial separation and her husband's suit for divorce: *Held*, that a wife, whose property

the Court will act on the general principles of English law. *Mayhew v. Mayhew, I. L. R. 19 Bom. 293*, followed. *GEORGOPOULAS v. GEORGOPOULAS (1902)*

I. L. R. 29 Cal. 619

ss. 7, 11 and 45—*Parties—Divorce—Intervention—Jurisdiction—Alleged adultery, application by—Civil Procedure Code (Act XII of 1882), s. 32.* In a wife's suit for divorce against the husband on the ground of incestuous adultery, the Court has no power under the Indian Divorce Act (IV of 1869) to allow the alleged adulteress to intervene. The words "all proceedings under this Act between party and party," in s. 45 of the Act, apply only to proceedings after the parties to the suit have been determined, and the parties can only be determined in accordance with the provisions of the Act.

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proceedings ought not to be granted. *THORNTON v. THORNTON*

I. L. R. 10 Bom. 422

3. Evidence of marriage—*Suit for dissolution of marriage—Judicial separation, previous decree for—Cruelty—Adultery—Identity of parties.* In a suit for dissolution of marriage by reason of the cruelty and adultery of the respondent, the first charge and the marriage of the parties were held to be established by the production of a previous decree for judicial separation on account of cruelty, and by proof of the identity of the parties. *Land v. Land, 35 L. J. P. & M. 104*, followed. *LEDLIE v. LEDLIE*

I. L. R. 23 Cal. 544

4. Non-Christian marriage—*Nature of the marriages contemplated by the Act—Suit for dissolution of marriage—Monogamous marriage.* The petitioner and his wife married according to the rites of the Hindu religion.

DIVORCE ACT (IV OF 1869)—*contd.*ss. 7, 11 and 45—*conclld.*

R (O. C.) 51; and *Low v. Lowe*, [1899] P. D. 201, referred to *RAMSAY v. BOYLE* (1903)

I. L. R. 30 Cal. 489; 7 C. W. N. 504

s. 11—*Prostitution—Addition of co-respondent—Amending petition—Laches of petitioner.* Under the Divorce Act, IV of 1869, the addition of a co-respondent is not necessary if the wife has been leading the life of a prostitute, and the petitioner knows of no person with whom adultery has been committed. Where the respondent was living not a life of promiscuous intercourse with all who sought her, but living with separate

lects for fourteen years to take any steps to obtain a separation from his wife, whom he knew to be living in adultery, the Court refused to allow the petition to be amended by the addition of co-respondents. *ROE v. ROE*. 3 B. L. R. Ap. 9

ss. 11 and 16—*Intervening in a divorce suit—Allegation by the husband in his answer that the wife committed adultery—Application by the alleged adulterer to intervene.* A person who has been charged by the husband, in his answer to a petition by the wife for divorce, with having committed adultery with the wife, is entitled to intervene. *Wheeler v. Wheeler and Rhodes*, L. R. 14 P. D. 154, followed *STEVENSON v. STEVENSON* 4 C. W. N. 506

ss. 12 and 17—*Decree nisi—Duty of the Court passing that decree—Confirmation.* The High Court should not make a decree nisi for dissolution of marriage absolute without a motion being made to it for that purpose. When after the passing of the decree nisi for dissolution of marriage no one represented either the petitioner or the respondent and co-respondent in the High Court: *Held*, that no order could be made on the reference for confirmation of such decree unless a motion was made to the Court for that purpose. *Held*, further, that under s. 12 of the Act the duties of a Court in the investigation of a suit for a divorce are that upon any petition for a dissolution of marriage being presented, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged but also whether or not petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same; and shall enquire into any counter-charge which may be made against the petitioner. *Colley v. Colley*, 1 L. R. 10 All. 659, followed. *Fonshaw v. Fonshaw* (1909) I. L. R. 31 All. 611

s. 13—*Collusion—Collusion in presentation of petition for dissolution.* Subsequently to the institution of a suit for dissolution of marriage, and on the same day on which the suit came on for hearing, the petitioner and the respondent each filed petitions, setting out that it was agreed between them that from that date the marriage

DIVORCE ACT (IV OF 1869)—*contd.*s. 13—*conclld.*

within the meaning of s. 13 of Act IV of 1869, and that the petition must be dismissed. *CHRISTIAN v. CHRISTIAN* I. L. R. 11 Cal. 651

ss. 13, 14, and 15—*Cruelty—Condonation.* The petitioner sued for a divorce on the ground of his wife's adultery. The adultery was admitted, but the respondent proved that her husband had been guilty of various acts of cruelty towards her, which disentitled him to have an unconditional divorce, and claimed on this ground a right to a judicial separation with alimony under s. 15 of the Indian Divorce Act. She was at the time of the suit living with the co-respondent. *Held*, that the respondent was not entitled to a decree for judicial separation with alimony. The Court has discretion, under s. 14 of the Act, to refuse a decree for divorce if the petitioner has been guilty of cruelty, although the cruelty may have been condoned. Ss. 13, 14 and 15 of the Indian Divorce Act commented on. *GORDON v. GORDON AND SARAN* 3 B. L. R. O. C. 186

1. s. 14—*Cruelty—Pleading—Issue.* The cruelty must be specifically pleaded, and, if it is not, the Court will not allow the issue to be raised or evidence given of it. *KELLY v. KELLY AND SAUNDERS* 3 B. L. R. Ap. 6

2. *Charge.* Charge although such charge is made usually, maliciously, and without reasonable or probable cause, is not an act amounting at law to cruelty, so as to entitle the wife to a judicial separation. *AUGUSTIN v. AUGUSTIN* I. L. R. 4 All. 374

3. *Condonation of adultery—Revival by wife's misconduct.* When a husband having received reasonably probable information of his wife's adultery, has, by continuing cohabitation, condoned the offence, subsequent misconduct of the wife tending to, though falling short of, adultery, revives the condoned adultery. *PEREIRA v. PEREIRA AND BOUNJOUR* I. L. R. 5 Mad. 118

4. *Conduct conducing to wife's adultery—Dissolution of marriage—Dis-*

a virtuous woman, merely because she had run away into debt. He did not write to her, or go to see her, or make her an allowance proportionate to his income, after he had done so. *Held*, upon a petition by the husband for dissolution of his marriage on the ground of his wife's adultery, such

DIVORCE ACT (IV OF 1869)—*contd.*s. 14—*contd.*

adultery having been committed during such separation, that his conduct towards his wife disqualified him from obtaining the relief sought. *HOLLOWAY v. HOLLOWAY AND CAMPBELL*. I. L. R. 5 All. 71

5. — *Conduct of petitioner conducing to adultery—Just and reasonable cause for desertion—Drunkenness of wife—Leaving wife without provision for maintenance.* Evidence adduced at the hearing of a petition by a husband for the dissolution of his marriage with his wife showed that the petitioner had left his wife voluntarily on account of her drunkenness; that he had not maintained her or contributed to her support since so leaving her; that he had no reason for believing that his wife had committed adultery during the time he had lived with her; and that she had (if the evidence were believed) been leading an immoral life since the petitioner had so left her. The petition was dismissed, whereupon the petitioner appealed. *Held*, that the petitioner, having deserted his wife without just or reasonable cause, and without making any provision for her, had conduced to the adultery (if any had been committed), and the petition had been rightly dismissed. *X v. X*. I. L. R. 22 Mad. 328

8. — *Discretion of Court—Suit for dissolution of marriage—Adultery of petitioner during marriage.* The Courts in India will adopt, as a guide in the exercise of the judicial discretion in granting or refusing a decree of dissolution of marriage, since by s. 13 of the Indian Divorce Act, 1869, the Court may refuse to grant a decree if it is satisfied that the petitioner has committed adultery during the marriage.

or that it has been more or less frequent. There must be special circumstances attending the commission of such adultery or special features placing it in some category capable of distinct statement and recognition, in order that the discretion may be fitly exercised in favour of a petitioner. *G v. G*. 8 Bom. O. C. 48

7. — *Desertion.* In a suit by a wife for a dissolution of her marriage on the ground of her husband's adultery and desertion, the adultery was proved, and it was found that the wife, notwithstanding the desertion, continued to live with her husband.

*Lalooji v. Lalooji*—Evidence and dissonant habits, they came to an arrangement by which she went to live with her friends and he resided at his mother's house, until they could again find means to provide a common house; that for two years previously to the separation, though they had lived together,

DIVORCE ACT (IV OF 1869)—*contd.*s. 14—*contd.*

no conjugal intercourse owing to the husband's misconduct had taken place between them; that he left his mother's house without telling his wife where he was going, and subsequently went to Madras where he had since resided. *Held*, in the Court below, following the case of *Fitzgerald v. Fitzgerald*, I. R. 1 P. & D. 691, that the separation having originally been by mutual consent, desertion could not take place until cohabitation had been resumed, desertion not being proved, the wife was only entitled to a decree for judicial separation. *Held*, on appeal, that the separation, not being brought about by the act of the wife, but by the husband's misconduct, distinguished the case from that of *Fitzgerald v. Fitzgerald*, and that, under the circumstances, the desertion was proved, and the petitioner was entitled to a decree for a dissolution of marriage. *Woods v. Woods*.

I. L. R. 3 Cal. 485 : 1 C. L. R. 552

8. — *Delay—Connivance.* Whilst on the one hand there is no absolute limitation in the case of a petition for dissolution of marriage, yet the first thing which the Court looks to when the charge of adultery is preferred is, whether there has been such delay as to lead to the conclusion that the petitioner had either connived at the adultery or was wholly indifferent to it; and if so, the petition will be dismissed.

9. — *Suit for divorce for adultery—Delay in bringing suit—Evidence of*

husband's excuse was that he believed that after seven years he could contract a second marriage. *Held*, also, that the delay ought not to be construed into an insensibility to the injury sustained, and the other circumstances of the case rebutted the existence of indifference approaching to connivance. (*DEVASAGAYAM PRICHAMATHO v. NAIYAGAN*). 7 Mad. 284

10. — ss. 14, 3, 17—Decree based on admissions and without recording evidence—*Collusion*. A decree for dissolution of marriage cannot be made merely on admissions and without recording any evidence. *BAI KANE v. SHIVA TOYA*. I. L. R. 17 Bom. 624

11. — *Evidence of marriage.* The bare assertion of a petitioner under Divorce Act, 1869, is not sufficient proof of her marriage to satisfy the requirements of that Act. *RATHNAM v. MANIKAM*. I. L. R. 18 Mad. 455

12. — *Ignorance of Law—Marriage by petitioner before decree of District*



DIVORCE ACT (IV OF 1869)—*contd.*ss. 14, 3, 17—*concl.*

Court confirmed by High Court—Discretion of Court to make decree absolute. After the District Court had passed a decree for dissolution of marriage, but before the confirmation of the decree by the High Court, the petitioner, in ignorance of the law, married another woman, but he ceased to cohabit with the woman on discovering his mistake. Under the circumstances the High Court made the decree absolute, holding that, under s. 14 of the Indian Divorce Act (IV of 1869), it had a discretion to do so. *KATE v. KATE AND OTHERS*

I. L. R. 20 Bom. 362

1. s. 16—Application to make decree nisi absolute—Service of decree nisi on respondent and co-respondent—Practice. When an application was made by the petitioner to make absolute a rule nisi for dissolution of his marriage with the respondent, and it appeared he had tried in vain to discover the respondent and co-respondent so as to serve them with notice of the decree nisi, the Court made the decree absolute without such service. *WARDEN v. WARDEN*. 9 B. L. R. Ap. 39

2. Application to make decree nisi absolute—Notice. The parties against whom a decree is made in a suit for divorce against the wife cannot come in to show cause why a decree nisi should not be made absolute; therefore, in an application to make the decree absolute, it is immaterial that the respondent has had no notice of the application. *WILLIS v. WILLIS*

4 B. L. R. O. C. 52

3. Practice—Decree absolute—Service of decree on respondent. It is not necessary, in order that a decree nisi for dissolution of marriage may be made absolute, that the decree should be served upon the respondent. *HICKS v. HICKS*

I. L. R. 8 Calc. 758

4. Divorce, suit for—Decree absolute—Notice of application to make decree absolute—Practice. When a decree nisi has been served on the respondent in a divorce suit it is not necessary to give him notice of an application to make such decree absolute. *GOMES v. GOMES*

I. L. R. 18 Calc. 443

5. Decree absolute, application for—Decree nisi. Non service of—Notice of application—Practice. In an application to have a decree nisi made absolute, where it appeared that the decree had been passed *ex parte*, after the original summons had been personally served on the respondent and that, owing to this, the petitioner being unable to discover the whereabouts of the respondent, who had left Calcutta immediately after the decree was passed, no copy of the decree had been served on him or notice of the application given him. Held, that sufficient cause was shown for the decree being made absolute, notwithstanding it had not been served, or notice of the application given, and the decree was made absolute accordingly. *HUNTER v. HUNTER*

I. L. R. 18 Calc. 539

DIVORCE ACT (IV OF 1869)—*contd.*s. 16—*contd.*

6. Intervenor—Procedure after decree nisi on application by respondent for liberty to intervene. A wife sued for dissolution of her marriage on the grounds of her husband's adultery and cruelty. The respondent did not appear or file an answer, and the case was heard *ex parte*, and resulted in a decree nisi being passed. Subsequently, and before the decree was made absolute, the respondent applied for liberty to intervene under the provisions of cl. (c), s. 16 of the Divorce Act, the application being based on affidavits alleging, *inter alia*, collusion on the part of the petitioner. Held, following *King v. King*, I. L. R. 6 Bom. 416, that the respondent could not be allowed to intervene or be heard when the decree came on to be made absolute, but that the affidavits should be filed, and that notice should be given to the petitioner that the decree would not be made absolute until the matter set out in the affidavits as regarded the collusion had been cleared up. *STEPHEN v. STEPHEN*

I. L. R. 17 Calc. 570

7. Intervenor—Right of third person to intervene—Procedure in case of intervening after decree nisi—Right to move for new trial—Practice—Procedure—Review—Civil Procedure Code, 1877, s. 633—Limitation Act, 1877, Art. 163—Motion to make absolute a decree nisi—Discretion of Court to refuse motion—Further enquiry ordered by Court. A wife sued for dissolution of marriage on the grounds of her husband's adultery and cruelty. The respondent entered an appearance through a solicitor, but did not file any written statement, and did not appear at the hearing, and a decree was made for the petitioner on the 26th July 1881. On the 3rd October, T, who had acted as solicitor for the respondent, appeared as intervenor, and under s. 16 of the Divorce Act (IV of 1869) obtained a rule nisi calling on the petitioner to show cause why a new trial should not be had and all further proceedings under the decree nisi should not be stayed. The rule was obtained upon an affidavit of T, in which he stated that since the date of the decree nisi he had been informed by the respondent that the petitioner had been, prior to that date, guilty of adultery with a person whose name he mentioned, that he was informed by the respondent that the reason why he (the respondent) had not defended the suit was that he wished to avoid making public the fact of his wife's adultery, and thus injuring the prospects of his children; that such application had been made both to the Advocate General of Bombay and to the Government Solicitor that they should intervene as representing the Queen's Proctor in India, but that both had declined. The respondent also filed an affidavit corroborating the statements made in T's affidavit. In showing cause against the rule it was contended on behalf of the petitioner that under the Divorce Act (IV of 1869) the proper course for a third person wishing to intervene was to file an appearance and

DIVORCE ACT (IV OF 1869)—*contd.*s. 10—*contd.*

then to show cause on the motion to make absolute the decree nisi, and that the rule for a new trial was a wrong in form. *Held*, that a new trial could not be granted, there being no provision in the Civil Procedure Code (Act X of 1857) for the granting of a new trial. The respondent himself could only have applied for a review of judgment under s. 623, and, even if otherwise entitled to a review, the motion of the 23rd October 1881, regarded as an application for a review, was too late under cl. 162, Sch. II of the Limitation Act, XV of 1877. Assuming that a third person had the right to apply for a review of judgment, *T*'s application of 3rd October 1881 was also barred. *Held*, also, that under the Divorce Act (IV of 1869) a third person may show cause against a decree nisi being made absolute, but is not at liberty to institute proceedings, e.g. by obtaining a rule as was done in this case. *Held*, also, that *T*, who had been the solicitor to the respondent, and who was, in fact, acting at the instance of the respondent, was not entitled to intervene or to show cause against the decree being made absolute. A respondent has no right to show cause, and he cannot do indirectly through another what he is not permitted to do himself. Counsel on behalf of the petitioner subsequently moved to make the decree nisi absolute, and contended that the Court having held that *T* had no right to intervene or to show cause, the affidavits filed by him should be disregarded and taken off the file, and that no cause should be shown against the decree nisi.

motion, and adjourned the case, directing that the petitioner should attend personally on a day specified, in order that the matters alleged in the affidavits might be investigated. *Kiso v. Kiso*

I. L. R. 6 Bom. 410

ss. 16, 17—Compromise—Sut for dissolution of marriage—Decree made by District Judge—Confirmation by High Court—Application by petitioner and respondent that decree should not be made absolute. In a suit for divorce by the husband as petitioner against his wife and another person as co-respondent, the Court of the Judicial Commissioner of Oudh, where the suit was instituted, passed a decree nisi, and the record of the case was forwarded to the High Court for confirmation under s. 17 of the Indian Divorce Act. The petitioner and the respondent, his wife, also forwarded to the High Court through the District

DIVORCE ACT (IV OF 1869)—*contd.*ss. 16, 17—*contd.*

judge not absolute. *Held* by KING, C. J., and BROOMFIELD, J., that the Court should accede to the prayer of the petition, and not make absolute the decree passed by the Judicial Commissioner of Oudh. Further, that a suit for a divorce is to be dealt with like all other cases between private litigants, and therefore the High Court should not make a decree nisi absolute without a motion being made to it to that effect. *Held* by BROOMFIELD, J., that proceedings in a Divorce Court are quasi-criminal, and that they are governed by rules in many respects vastly different from those which govern ordinary civil litigation, especially in the matter of compromise or mutual agreement between the parties. *Held*, further, that as in the Indian Divorce Act no express power is given to the parties to the suit to prevent a decree nisi passed in it by the District Judge from being made absolute, the principles of the practice of the English Divorce Act in such a matter might well be followed, and an order be made at the desire of both parties staying the proceedings in the cause and not setting aside the decree nisi which cannot be done. *Lewis v. Lewis*, 30 L. J. P. & M. 199, referred to. CULLEN v. CULLEN. I. L. R. 10 All. 559

1. — s. 17—Confirmation—Act XIV of 1859, s. 1, cl. 16. Act XIV of 1859, s. 1, cl. 16, does not apply to divorce suits. A decree of a High Court confirming the decree by a District Judge for dissolution of marriage reversed, so far as it affected the co-respondent, and condemned him in costs. *HAY v. GORDON*

B. L. R. P. C. 301 : 18 W. R. 480  
I. R. I. A. Sup. Vol. 108

2. — and s. 20—Decree for nullity of marriage—Confirmation by the High Court—Time of confirmation. Under the Indian Divorce Act

I. L. R. 23 Bom. 460

3. — Decree for nullity

ation of six months from the pronouncing thereof. *A v. B*, I. L. R. 23 Bom. 460, dissented from.

Act, 1872, and is therefore under s. 41 conclusive

and he prayed the Court not to make the

DIVORCE ACT (IV OF 1869)—*contd.*ss. 17, 20—*contd.*

proof that the marriage was null and void. *CASTON v. CASTON*. I. L. R. 22 All. 270

ss. 18, 19 (2)

See MARRIAGE. I. L. R. 17 Cal. 324

s. 19—Prohibited degrees—Restitution of conjugal rights, *Suit for—Marriage, Validity of—Roman Catholics—East Indians—Customary law—Deceased wife's sister, marriage with* In a suit for restitution of conjugal rights, the parties were East Indians, and at the time of the marriage on 22nd July 1877 were domiciled in British India, resident within the limits of Calcutta, and members of the Roman Catholic religion. The defence to the suit was that a previous marriage had, on 6th December 1871, been performed between the respondent and the petitioner's sister, and the respondent prayed that the second marriage might be declared a nullity. The ceremony of 6th December 1871 had taken place while the petitioner's sister was on her death-bed and in extremis, and had been celebrated in accordance with the rights of the Roman Catholic Church, and it was held both by the original Court and on appeal to be a valid marriage. The first Court (CUNNINGHAM, J.) held that the second marriage was null and void on the ground that the parties were within the prohibited degrees. Held by the Full Bench, that the prohibited degrees mentioned in s. 19 of the Divorce Act do not necessarily mean the degrees prohibited by the law of England. All that was known in respect of the parties to the marriage being that they were Roman Catholic subjects with Portuguese names, and it not having been found whether they were of English or any other European descent, or of native or mixed parentage. Held, that the prohibited degrees for the parties to the marriage were not the degrees prohibited by the law of England, but those prohibited by the customary law of the class to which they belonged, that is to say, the law of the Roman Catholic Church as applied in this country. *LOPEZ v. LOPEZ* I. L. R. 12, Cal. 708

ss. 19 and 53.

See MARRIAGE. I. L. R. 12 Cal. 708

ss. 22, et seq.—Judicial separation

Desertion by petitioner not a bar to a suit for judicial separation—Statutes 20 and 21 Vict., Cap. LXXXV Held, that desertion without reasonable excuse constitutes a bar to a suit for judicial separation. *Duplany v. Duplany*, 6 L. T. 267, followed. *ARTHUR v. ARTHUR* (1904).

I. L. R. 29 All. 553

s. 35—Cost of wife—Succession Act (X of 1865), s. 3 In a suit by a husband for a divorce on the ground of his wife's adultery, an application was made that the petitioner should be directed to pay the respondent's costs. The marriage took place after the passing of the Succession Act, 1865, and it was contended that, as s. 4 of that Act did not allow the husband to acquire

DIVORCE ACT (IV OF 1869)—*contd.*s. 35—*contd.*

any interest in his wife's property, he would not be made to pay her costs; there was, however, no evidence before the Court that the wife had any separate property, and the application was granted. *BROADHEAD v. BROADHEAD*. 5 B. L. R. Ap. 9

2.

Payment of wife's costs On an application by the wife that a sum should be paid into Court to cover her costs of a suit for divorce in which she was respondent, the Court ordered the Registrar to estimate the probable expenses of the suit from the commencement to the date of final hearing; such sum was ordered to be paid into Court, the wife's proctor to have a lien on the sum to the extent of his costs. An application that the amount estimated should be paid out of Court to her was refused; but the Court granted an application that the respondent's costs incurred should be taxed, and the amount thereof be paid out of Court to her proctor. *KELLY v. KELLY AND SAUNDERS*. 3 B. L. R. Ap. 5

3.

Suit for judicial separation—Return to cohabitation—Withdrawal of suit—Costs Where, in a suit by a wife against her husband, the attorney for the petitioner made an application on notice to the petitioner, the respondent, and the respondent's attorney, for an order that the suit be dismissed or withdrawn, and that the petitioner's costs be taxed and the amount thereof be paid to him by the respondent, and stated in his affidavit that he had instituted the suit under the instructions of the petitioner; that the parties had returned to cohabitation and the suit had been amicably settled; that the petitioner had since instructed him to withdraw the suit, and the respondent would pay the costs, for which purpose he had drawn a petition, which the respondent's attorney would not agree to, the Court granted the application, so far as to direct that the costs of the petitioner's attorney, when taxed, should be paid by the respondent, but refused to make any order for the withdrawal or other final disposal of the suit, and ordered that the attorney should personally bear the costs of the application. *P— v P—*

9 B. L. R. Ap. 6

4.

Suit for judicial separation—Liability of husband—Succession Act—

upon which the Court in England had decided, upon which the husband was liable for his which marriage and to destitute means to conduct her case; but this state of the law has been completely altered in India by s. 4 of the Succession Act, which prevents any

DIVORCE ACT (IV OF 1869)—*contd.*a. 35—*contd.*

person from acquiring, or losing, rights in respect of property by marriage. *PROBY v. PROBY*

I. L. R. 5 Calc. 357; 5 C. L. R. 1

5. ————— *Costs of wife—Succession Act, 1865, s. 4—Married Woman's Property Act, 1877*—A wife without property of her own seeking a divorce is entitled to have provision made by her husband for the payment of her costs in the suit. *PROBY v. PROBY*, I. L. R. 5 Calc. 357, distinguished and observed upon. *NATALL v. NATALL*.

I. L. R. 9 Mad. 12

6. ————— *Costs of suit by husband against wife for divorce—Deposit of costs—Stay of proceedings until costs paid—Poverty of husband*. In a suit brought for dissolution of a marriage solemnized in 1859 (the parties to such marriage being of Anglo-Indian domicile) the respondent, being possessed of no separate property of her own, applied to the Court for an order directing her husband to deposit in Court a sum sufficient to cover her probable costs of suit. The Court made an order directing the Registrar to estimate and certify the wife's probable costs of suit, and directed the husband to pay the sum so certified into Court. The husband refused to do so.

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statements made by the parties were contradictory as to the means of the husband, the matter should be referred (if the parties so desired it) for an enquiry by an officer of the Court into the question of means. *THOMSON v. THOMSON*

I. L. R. 14 Calc. 580

7. ————— *Suit against wife—Costs of wife—Practice—Rules and regulations in divorce cases in England*. In a suit for a divorce instituted by a husband against his wife, the Court has a discretion to make the husband pay the wife's costs already incurred, and to give security for her future costs. Rule 158 (as amended, 14th July 1875) of the English Rules and Practice.

8. ————— *Suit against wife—Costs of wife—Practice—Unless special circumstances are made out, the husband will not be ordered to pay the wife's costs in a suit by the husband for dissolution of the marriage*. *PROBY v. PROBY*, I. L. R. 5 Calc. 357, followed. *THOMAS v. THOMAS*.

I. L. R. 23 Calc. 913

9. ————— *Young v. Young*. I. L. R. 23 Calc. 910 note 9. ————— *Withdrawal of petition for dissolution of marriage—Costs of petitioner, on what scale allowed—Divorce Act (IV of*

DIVORCE ACT (IV OF 1869)—*contd.*a. 35—*contd.*

1869), ss. 7 and 41. The petitioner on the 2nd June 1896, presented her petition, in which she prayed for the dissolution of her marriage with the respondent on the grounds of adultery and cruelty. A commission was issued at her instance to examine witnesses in England on the charges of adultery and cruelty and the result of their evidence was that the petitioner was satisfied that the charges brought by her against her husband were wholly unfounded, and she, on the 2nd September 1897, applied for leave to withdraw her suit, and for payment of her costs by the respondent. She contended that her costs should be paid by him as between attorney and client. The respondent submitted he ought to pay costs as between party and party. Held, that the petitioner's costs, including costs of this application, be taxed as between party and party, it being open for the attorney for the wife to sue the husband for the rest of the costs. *BUTT v. BUTT*

I. L. R. 25 Calc. 222

2 C. W. N. 37

10. ————— ss. 35, 36—*Alimony pendente lite—Decree nisi for dissolution of marriage—Application to make decree absolute—Arrears of alimony*. A husband who had obtained a decree nisi for dissolution of marriage applied for a decree absolute.

was made, arrears of alimony pendente lite were due to the wife. The Court (STANBURY, J.) refused to make such decree absolute until such arrears were paid. *DE BRETTON v. DE BRETTON*

I. L. R. 4 All. 295

11. ————— ss. 35, 37—*Alimony pendente lite—Permanent alimony—Practice*. Alimony pendente lite cannot be granted on an application made after a decree nisi in the suit has been passed, nor is it in the power of the Court to grant permanent alimony until an application is made to make such decree absolute. *BENNETT v. BENNETT*

I. L. R. 11 Calc. 354

12. ————— *Condonation—Revival—Co-respondent—Costs—Evidence of misconduct on a date after suit*. Where a husband has condoned adultery committed with one co-respondent, which has been revived by adultery committed with another co-respondent, a decree nisi will be granted against both co-respondents, but costs will not be given against the co-respondent whose adultery was condoned. During the hearing of the suit, evidence was tendered to show

## s. 38—

See DIVORCE. I. L. R. 38 Calc. 108

1. ————— *Alimony—Application for Alimony*. In an application for alimony it is

DIVORCE ACT (IV OF 1889)—*contd.*B. 36—*contd.*

sufficient to set out the fact of the marriage in the petition. An affidavit to that effect is unnecessary. In making the application, it is sufficient to show the Court that there has been a ceremony which might be a valid marriage; and therefore, where the petitioner was shown to be the respondent's deceased wife's sister, alimony was granted. *CAMPBELL v. CAMPBELL*

3 B. L. R. O. C. 101

2. — *Alimony—Failure to pay—Attachment of respondent*—The respondent in a suit brought by a wife for the dissolution of her marriage was ordered to pay her £120 a month for alimony, and to pay into Court £2,000, the certified amount of her costs. On his failure to pay this sum, he was directed by a further order to pay into Court to the credit of the suit £300 monthly, out of which £120 were for alimony and the balance for costs. The respondent continued in receipt of his usual income, but ruled to make the payment directed by the order of the Court, and subsequently filed his petition of insolvency, in his schedule he entered the Accountant General as a creditor for £2,000, but made no mention of his liability for alimony, and he had not filed any accounts. On an application by the petitioner for his attachment stating the above facts, the Court granted the attachment. *GEORGE v. GEORGE*

11 B. L. R. Ap. 2

3. — *Alimony—Application for refund of alimony paid by mistake after the period during which it was payable had expired—Minor children—Divorce Act s. 13, cl. (5)*—In 1882, a decree for dissolution of marriage between E. M. and S. M. was passed by the High Court on the wife's petition, and the husband was ordered to pay alimony for the wife and certain minor children of the marriage. On the 26th of August 1895, a petition was presented to the Court, on behalf of E. M. stating that S. M. had married again on the 2nd of August 1895, that one of the children in respect of whom alimony was payable had come of age on the 16th of April 1895; and that another of such children had married in April 1893, and it was prayed that certain sums which had been paid into Court after the respective dates mentioned above as alimony in respect of the three persons above referred to, might be refunded. Held, that E. M. was not entitled to any refund of alimony except as to sums, if any, paid into Court after the date of the filing of petition for refund and relating to a period subsequent to that date. *In the matter of the petition of MORRIS*

I. L. R. 16 All. 238

4. — *Alimony pendente lite—Practice*—Alimony pendente lite will be granted by the Court from the date of the service of citations, not from the date of the return. *KELLY v. KELLY AND SAUNDERS*

3 B. L. R. Ap. 4

5. — *Alimony pendente lite—Wife living with co-respondent—Costs*—In a suit by the husband for a divorce on the ground of

DIVORCE ACT (IV OF 1889)—*contd.*B. 36—*contd.*

his wife's adultery, where it is found that the wife is at the time of presenting the petition living with the co-respondent, or living apart from the husband, under such circumstances that she does not pledge his credit, an application by the wife for alimony pendente lite will be refused. *Semble*: The wife's costs, however, will be allowed. *GORDON v. GORDON AND SARAN*

3 B. L. R. Ap. 13

6. — *Alimony pendente lite—Nett income—Allowable deductions—Change of circumstances*—A petition by a wife—petitioner in the one and respondent in the other of two cross-suits (matrimonial)—for an increase of alimony was treated by consent on appeal as a petition for alimony. It appeared that the respondent was in receipt of a salary from Government which was subject to deductions, on account of the pension and annuity funds, that his circumstances were involved, and he had agreed with his creditors to discharge his liabilities by certain instalments, that as part of such agreement he was keeping up a policy of insurance on his life, and that he was maintaining and educating three children in England, but that his salary had increased since the order first made for alimony. Held, that the respondent was entitled as of right to have only the deductions on account of pension and annuity funds taken into consideration in the computation of his nett income. In this case, however, the Court, in the exercise of its discretion, took into consideration the expenses the respondent was put to in maintaining his children, and also the arrangement he had made for liquidating his debts. *Quere*: Whether the Court has power to increase or diminish an allotment of alimony made pendente lite on account of change of circumstances? *R v. R*

I. L. R. 14 Mad. 88

7. — *Alimony pendente lite—Application for alimony after decree nisi*—The Court has jurisdiction to grant alimony pendente lite in a suit by the husband for dissolution of marriage on an application made by the wife after a decree nisi has been pronounced. *THOMAS v. THOMAS*

I. L. R. 23 Cal. 813

8. — *Alimony pendente lite—Application for—Denial of means by respondent—Reference to Registrar—Respondent ordered to attend Court for cross-examination as to his means*—On an application alleging means made by a petitioner, the wife, for alimony pendente lite, the respondent denied means. The Court refused to refer the matter to the Registrar to inquire and report, but ordered the respondent to attend Court for cross-examination as to his means. *STREVENSON v. STREVENSON*

I. L. R. 26 Cal. 764

9. — *Divorce—Security for wife's costs—Absence of means of wife—Alimony pendente lite—Reference to Registrar*—In a suit for divorce between persons subject to the Indian Succession Act, the mere fact that the wife has no means of her own is not such a special circumstance

DIVORCE ACT (IV OF 1869)—*cont.*a. 36—*concl.*

as will justify the Court in ordering the husband to pay in advance or give security for his wife's general costs of the action. Case where, on an application in a respondent, a wife, for alimony *pendente lite*, the Court, instead of referring the matter to the Registrar to inquire and report as to the amount that ought to be allowed, directed that the husband should attend Court for examination as to his means, although in his affidavit he had admitted that he was possessed of means. *JARVIS v. JARVIS* (1902). 6 C. W. N. 414

## 1. a. 37—Permanent alimony.

Principle on which the Court will grant permanent alimony. *Green v. Green* 5 B. L. R. Ap. 34

2. Alimony, *permanente*.

In granting alimony to the wife, the Court should be very reluctant, even supposing it has the power, to tie up the property of the husband, and so convert alimony into an absolute interest in, and charge upon, his estate. Rule as to costs in *Jones v. Jones*, L. R. 2 P. & D. 323, followed. *Fowler v. Fowler*

L. L. R. 4 Calc. 286; 3 C. L. R. 484

## 3. Adultery and desertion—Delay in bringing suit—Permanent alimony.

A wife brought a suit for a dissolution of marriage on the ground of her husband's adultery and desertion. The desertion took place twenty-four years before the suit was brought, and ever since the husband had made his wife an allowance. Latterly his circumstances had considerably improved. The Court gave a decree for dissolution, but in determining the suitable amount of permanent alimony it took into consideration the circumstances of the husband at that time.

## 4. Alimony—Costs.

The Court has power, under s. 37 of Act IV of 1869, to order permanent alimony to the wife when a husband obtains a divorce on the ground of her adultery. *Kelly v. Kelly and Saunders*

5 B. L. R. 71

## a. 40—Marriage settlement.

By an ante-nuptial settlement, A settled certain immovable property in Calcutta to which he was absolutely entitled, upon himself for life,

DIVORCE ACT (IV OF 1869)—*cont.*a. 40—*concl.*

directed the trustees to re-convey the property to A for an absolute estate. *Woon v. Woon*

14 B. L. R. Ap. 6

## 1. a. 41—Custody of children—

*Suit by wife for judicial separation*—When a wife obtains a decree for judicial separation on the ground of her husband's cruelty and adultery, and there is nothing to impeach her own conduct, the Court will allow her to have the custody of the children. *MURPHY v. MURPHY* 6 B. L. R. 318

## 2. Adultery of wife

*Access to children*. When the marriage is dissolved on account of the adultery of the wife, she is not entitled to have access to the children of the marriage. *KELLY v. KELLY and SAUNDERS*

5 B. L. R. 71

## a. 42.

*See CUSTODY OF CHILD*

L. L. R. 18 Calc. 473

## a. 45.

*See ante*, ca. 7, 11, and 45

*See COSTS—SPECIAL CASES—DIVORCE*

L. L. R. 28 Calc. 84

*Practice as to filing written statements*. In a suit for divorce on the

there was nothing in the rules of Court, or the Code of Civil Procedure, by which the proceedings under the Act are to be regulated (s. 45), which makes it compulsory on a party who tenders a written statement of his own accord to present it before the first hearing of the suit. *ABBOTT v. ABBOTT and CRUMP* 4 B. L. R. O. C. 51

## ss. 51 and 52—Evidence of adultery—

*Suit for dissolution of marriage on the ground of wife's adultery*. *See ante*, ca. 7, 11, and 45

questioned whether by the petitioner's counsel without hesitation, until he was asked whether he had had sexual intercourse with the respondent. He then asked the Court whether he was

**DIVORCE ACT (IV OF 1869)—concl.**

ss. 51 and 52—concl.

therefore his evidence was not admissible **DE BRETTON v. DE BRETTON** . I. L. R. 4 All. 48

s. 52—Witness. The respondent in a suit for divorce under Act IV of 1869 can be examined as a witness. By the 52nd section she may be compelled to give evidence in the cases there supposed. In other cases her evidence is admissible if she offers herself as a witness. **KELLY & SAUNDERS** . 3 B. L. R. Ap. 8

s. 53

See **MARRIAGE** . I. L. R. 12 Calc. 708See **RESTITUTION OF CONJUGAL RIGHTS**  
I. L. R. 12 Calc. 708

1. s. 55—Appeal from decrees absolute—Limitation for such appeal—Limitation Act (XV of 1877), Art 151 Under the Divorce Act (IV of 1869), an appeal lies from a decree absolute, although the decree *was* has been left unchallenged. An appeal against a decree absolute must be filed within twenty days from the date of decree, that being the period prescribed for appeals from decrees made on the original side of the High Court under the law for the time being in force (see s. 55 of the Divorce Act, IV of 1869). **At B**  
I. L. R. 22 Bom. 612

2. Right of respondent to be heard on appeal A husband brought a suit for divorce against his wife on the ground of her adultery, the co-respondent appeared in that suit. The respondent appealed on the ground (*inter alia*) that on the evidence the Court ought to have held that the adultery was not proved. **Held**, that in that appeal the co-respondent was not entitled to be heard in opposition to the appeal. **KELLY & KELLY AND SAUNDERS** . 5 B. L. R. 71

3. Appeal by a wife from order made in suit for divorce—Wife's costs—Security for costs—Memorandum of appeal admitted without requiring security In a suit for divorce brought by a wife against her husband, the wife obtained a decree  *nisi* which ordered the respondent to pay a monthly sum by way of alimony to the wife, and also ordered him to pay the wife's costs of suit. Under this decree a sum of Rs. 369 was due to the wife on the 26th May 1882. The wife appealed from an order made in the suit, and the Court, under the circumstances, admitted the appeal without requiring from the appellant the usual security for costs. **KING & KING**

I. L. R. 8 Bom. 487

4. Appeal—Production of additional evidence in Appellate Court At the hearing of an appeal from a decree dismissing a suit by a wife for dissolution of marriage on the ground of her husband's incestuous adultery with her sister *M* and cruelty, the appellant produced certain letters written by the respondent and *M* to each other which showed that a criminal intimacy existed between them. These letters were not

**DIVORCE ACT (IV OF 1869)—concl.**

s. 55—concl.

written until after the appellant had filed the appeal. **Held**, that such letters were admissible and should be admitted, and that, having been brought to the Court's notice by the appellant's counsel, the Court was bound in the interests of justice to require their production in order to enable it to decide the appeal on its real merits. **MORGAN v. MORGAN**

I. L. R. 4 All. 308

5. Appeal from decree for dissolution of marriage—Omission to appeal as to damages—Power of High Court to deal with whole case on appeal. The decree in a suit for dissolution of marriage by the husband having awarded damages against the co-respondent, and he not having appealed on the question of damages, it was contended that the High Court could only deal with that part of the decree which dissolved the marriage. **Held**, under the Indian Divorce Act (IV of 1869), that the Court had the fullest power to deal with the case according as justice might require, including the award of damages by the Court below. **RATENCROFT v. RATENCROFT**, L. R. 2 P. & M. 376, followed. **KYTE & KYTE AND COOKE**

I. L. R. 20 Bom. 362

**DOBAS.**See **FISHERY** . 9 O. W. N. 634See **JALKAR** . I. L. R. 33 Calc. 15**DOCK.**See **LAND RECLAIMED FROM THE SEA**  
I. L. R. 1 Bom. 518**DOCTOR.**

— fees of—

See **RIGHT OF SUIT—DOCTOR'S FEES.****DOCUMENT.**See **CIVIL PROCEDURE CODE, 1882**, ss. 137-140.See **CRIMINAL PROCEDURE CODE, 1898**  
I. L. R. 30 Bom. 421  
I. L. R. 32 Bom. 152  
12 C. W. N. 312See **DEED.**See **EVIDENCE** . I. L. R. 31 Calc. 8 1See **INSPECTION OF DOCUMENTS.**See **INSPECTION OF DOCUMENTS—CRIMINAL CASES**See **OFFENCES RELATING TO DOCUMENTS**See **ONDS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR.**See **PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY.**

I. L. R. 29 Calc. 749

See **PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS**See **PRODUCTION OF DOCUMENT.**

DOCUMENT—*contd.*

See PUBLIC DOCUMENT.

See RECITALS IN DOCUMENTS.

See SPECIFIC PERFORMANCE.

I. L. R. 27 All. 408

See STAMP ACT (11 of 1879)

I. L. R. 33 Bom. 609

I. L. R. 30 All. 271

I. L. R. 33 Bom. 420

See TRANSFER OF PROPERTY ACT, s. 59.

I. L. R. 33 Bom. 44

admitted without objection in first Court.

See EVIDENCE, ADMISSIBILITY OF.

I. L. R. 34 Calc. 1050

alteration of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTIES

ancient.

See EVIDENCE ACT, s. 90—PROPER CUSTODY

I. L. R. 33 Calc. 511

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.

I. L. R. 20 Bom. 128

construction of

See CONTRACT . I. L. R. 20 All. 151

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS

I. L. R. 25 All. 337

See GIFT . I. L. R. 33 All. 309

See HINDU LAW . I. L. R. 20 All. 217

See LANDLORD AND TENANT.

I. L. R. 29 All. 203

construction of wajib-ul arz.

See HINDU LAW—WILL—CONSTRUCTION OF WILL—ADOPTION.

I. L. R. 24 All. 195

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-AZ.

explanation of, to pardanashin women.

See PARDANASHIN WOMEN

I. L. R. 28 Calc. 546

filed with plaint, copy of.

See STAMP ACT, 1879, SCH. I, ART. 22.

I. L. R. 15 Bom. 687

loss of.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE

I. L. R. 18 Calc. 201

I. R. 17 I. A. 158

DOCUMENT—*contd.*

person "claiming" under—

See REGISTRATION ACT, 1877, s. 73.

I. L. R. 1 All. 318

referring to will.

See WILL—FORM OF WILL.

I. L. R. 4 Calc. 721

suit for cancellation of.

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

See LIMITATION ACT, 1877, SCH. II, ART. 91

See REGISTRATION ACT, s. 50.

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See RIGHT OF SUIT—DOCUMENTS, LOSS OR DESTRUCTION OF

I. L. R. 20 Mad. 250

See VALUATION OF SUIT—SUITS—DEED, SUIT TO SET ASIDE

thirty years or more old

See EVIDENCE ACT (1 of 1872), s. 90

I. L. R. 33 Calc. 571

See PAROL EVIDENCE

I. L. R. 30 Mad. 386

unstamped or unregistered.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS

1. ——— Alteration of—Material alteration—Material alteration in a written acknowledgment of a debt does not render it inoperative and ineffective—Limitation. The rule of English law that a material alteration of a document by a party to it after its execution, without the consent of the other party, renders it void, is in force in India. This rule does not apply to documents which are not the foundation of a plaintiff's claim, but are merely evidence of a defendant's pre-existing liability. A written acknowledgment of his liability by a debtor, which is intended merely to save the bar of limitation and not to give a right of action, is not within the rule *ATMARAME USHDIRAM* (1901)

I. L. R. 25 Bom. 616

2. ——— Execution of—Signature, sufficiency of—Limitation Act (XV of 1877), SCH. II, ARTS. 91 and 142—Suit to recover possession of immovable property—Cancellation of document not required to be set aside—Fraud. A document is a nullity, where the executant of it signed only on the first page but did not sign on the other pages, having discovered that it was not in accordance with the terms previously agreed upon; such a document does not require to be set aside or cancelled in order to entitle any person to the possession of the property covered by it as against the person in whose favour it stands. *Thoroughgood's Case*, 2 Co. Rep. 9; *Foster v. Mackinnon*, L. R. 1 C. P. 704; *Sham*



DIVORCE ACT (IV OF 1869)—*contd.*ss. 51 and 52—*concl.*

therefore his evidence was not admissible. *DE BREITON v DE BREITON* . 1. L. R. 4 All. 49

s. 52.—*Witness.* The respondent in a suit for divorce under Act IV of 1869 can be examined as a witness. By the 52nd section she may be compelled to give evidence in the cases there supposed. In other cases her evidence is admissible if she offers herself as a witness. *KELLY v KELLY AND SAUNDERS* . 3 B. L. R. Ap. 6

s. 53

See *MARELAGE* . 1. L. R. 12 Cal. 708See *RESTITUTION OF CONJUGAL RIGHTS*

1. L. R. 12 Cal. 706

1. s. 55.—*Appeal from decree absolute—Limitation for such appeal—Limitation Act (XV of 1877), Art 151* Under the Divorce Act (IV of 1869), an appeal lies from a decree absolute, although the decree *non* has been left unchallenged. An appeal against a decree absolute must be filed within twenty days from the date of decree, that being the period prescribed for appeals from decrees made on the original side of the High Court under the law for the time being in force (see s. 65 of the Divorce Act, IV of 1869). *Ar B*

1. L. R. 22 Bom. 612

2. s. 55.—*Right of co-respondent to be heard on appeal* A husband brought a suit for divorce against his wife on the ground of her adultery, the co-respondent appeared in that suit. The respondent appealed on the ground (*inter alia*) that on the evidence the Court ought to have held that the adultery was not proved. *Held*, that in that appeal the co-respondent was not entitled to be heard in opposition to the appeal. *KELLY v KELLY AND SAUNDERS* 5 B. L. R. 71

3. *Appeal by a wife from order made in suit for divorce—Wife's costs—Security for costs—Memorandum of appeal admitted without requiring security* In a suit for divorce brought by a wife against her husband, the wife obtained a decree *non* which ordered the respondent to pay a monthly sum by way of alimony to the wife, and also ordered him to pay the wife's costs of suit. Under this decree a sum of Rs. 3,369 was due to the wife on the 26th May 1882. The wife appealed from an order made in the suit, and the Court, under the circumstances, admitted the appeal without requiring from the appellant the usual security for costs. *KING v KING*

1. L. R. 8 Bom. 467

4. *Appeal—Production of additional evidence in Appellate Court.* At the hearing of an appeal from a decree dismissing a suit by a wife for dissolution of marriage on the ground of her husband's incestuous adultery with her sister *M* and cruelty, the appellant produced certain letters written by the respondent and *M* to each other which showed that a criminal intimacy existed between them. These letters were not

DIVORCE ACT (IV OF 1869)—*concl.*s. 55—*concl.*

written until after the appellant had filed the appeal. *Held*, that such letters were admissible and should be admitted, and that, having been brought to the Court's notice by the appellant's counsel, the Court was bound in the interests of justice to require their production in order to enable it to decide the appeal on its real merits. *MORGAN v MORGAN*

1. L. R. 4 All. 306

5. *Appeal from decree for dissolution of marriage—Omission to appeal as to damages—Power of High Court to deal with whole case on appeal* The decree in a suit for dissolution of marriage by the husband having awarded damages against the co-respondent, and he not having appealed on the question of damages, it was contended that the High Court could only deal with that part of the decree which dissolved the marriage. *Held*, under the Indian Divorce Act (IV of 1869), that the Court had the fullest power to deal with the case according as justice might require, including the award of damages by the Court below. *Ravencroft v Ravencroft*, L. R. 2 P. & M. 378, followed. *KYTE v KYTE AND COOKE*

1. L. R. 20 Bom. 362

DOBAS.

See *FISHERY* . 9 C. W. N. 834See *JALKAR* . 1. L. R. 33 Cal. 15

DOCK.

See *LAND RECLAIMED FROM THE SEA*

1. L. R. 1 Bom. 513

DOCTOR.

— fees of—

See *RIGHT OF SUIT—DOCTOR'S FEES*

DOCUMENT.

See *CIVIL PROCEDURE CODE*, 1882, ss 137-140.See *CRIMINAL PROCEDURE CODE*, 1888

1. L. R. 30 Bom. 421

1. L. R. 32 Bom. 152

12 C. W. N. 212

See *DEED*See *EVIDENCE* . 1. L. R. 31 Cal. 8 1See *INSPECTION OF DOCUMENTS*See *INSPECTION OF DOCUMENTS—CRIMINAL CASES*See *OFFENCES RELATING TO DOCUMENTS*See *ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR.*See *PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY.*

1. L. R. 29 Cal. 749

See *PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.*See *PRODUCTION OF DOCUMENT.*

DOCUMENT—*contd.*

See PUBLIC DOCUMENT.

See RECITALS IN DOCUMENTS.

See SPECIFIC PERFORMANCE.

I. L. R. 27 All. 686

See STAMP ACT (11 of 1879).

I. L. R. 33 Bom. 509

I. L. R. 30 All. 271

I. L. R. 33 Bom. 420

See TRANSFER OF PROPERTY ACT, s. 53.

I. L. R. 33 Bom. 44

admitted without objection in first Court.

See EVIDENCE, ADMISSIBILITY OF.

I. L. R. 34 Calc. 1050

alteration of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

ancient.

See EVIDENCE ACT, s. 90—PROPER CUSTODY

I. L. R. 33 Calc. 511

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEEDS.

I. L. R. 20 Bom. 128

construction of

See CONTRACT. I. L. R. 29 All. 151

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

I. L. R. 25 All. 337

See GIFT. I. L. R. 23 All. 309

See HINDU LAW. I. L. R. 29 All. 217

See LANDLORD AND TENANT.

I. L. R. 29 All. 203

construction of wajib-ul arz.

See HINDU LAW—WILL—CONSTRUCTION OF WILL—ADOPTION.

I. L. R. 24 All. 195

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-AZ

women.

See PARDANASHIN WOMEN

I. L. R. 28 Calc. 546

filed with plaint, copy of.

See STAMP ACT, 1879, SCH. I, ART. 22.

I. L. R. 15 Bom. 687

loss of.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS.

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

I. L. R. 18 Calc. 201

I. L. R. 17 I. A. 159

DOCUMENT—*contd.*

person "claiming" under—

See REGISTRATION ACT, 1877, s. 73.

I. L. R. 1 All. 316

referring to will.

See WILL—FORM OF WILL.

I. L. R. 4 Calc. 721

suit for cancellation of.

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS

See LIMITATION ACT, 1877, SCH. II, ART. 91.

See REGISTRATION ACT, s. 50.

I. L. R. 20 Mad. 250

See RIGHT OF SUIT—DOCUMENTS, LOSS OR DESTRUCTION OF

I. L. R. 20 Mad. 250

See VALUATION OF SUIT—SUITS—DEED, SUIT TO SET ASIDE

thirty years or more old

See EVIDENCE ACT (1 of 1872), s. 90

I. L. R. 33 Calc. 571

See PAROL EVIDENCE

I. L. R. 30 Mad. 386

unstamped or unregistered.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS

1. ——— Alteration of—*Material alteration*—*Material alteration* in a written acknowledgment of a debt does not render it inoperative and ineffective—*Limitation*. The rule of English law that a material alteration of a document by a party to it after its execution, without the consent of the other party, renders it void, is in force in India. This rule does not apply to documents which are not the foundation of a plaintiff's claim, but are merely evidence of a defendant's pre-existing liability. A written acknowledgment of his liability by a debtor, which is intended merely to waive the bar of limitation and not to give a right of action, is not within the rule. *ATSIKIAN v. UMEDRAM* (1901)

I. L. R. 25 Bom. 616

2. ——— Execution of—*Signature, sufficiency of*—*Limitation Act* (XV of 1877), SCH. II, ARTS. 91 and 142—*Suit to recover possession of immovable property*—*Cancellation of document not*

terms previously agreed upon; such a document does not require to be set aside or cancelled in order to entitle any person to the possession of the property covered by it as against the person in whose favour it stands. *Thoroughgood's Case*, 2 Co. Rep. 9; *Foster v. Mackinnon*, L. R. 4 C. P. 701; *Shaw*

DOCUMENT—*contd.*

*Lall Mitra v. Amarendra Nath Bose, I. L. R. 23 Cal 460; and Raghubar Dyal Sahu v. Bhikya Lal Misser, I. L. R. 12 Cal. 63, referred to.* A suit to recover possession of immovable property by setting aside a document on the ground of fraud, but which document does not require to be set aside or cancelled, is governed by Art. 142 and not by Art. 91, Sch II, of the Limitation Act (XV of 1877) *BANKU BHARI SAHA v. KRISHTO GOBINDO JOARDAR (1902)*

I. L. R. 30 Cal. 433

3. Construction of document—*Bombay Revenue Jurisdiction Act (X of 1876, as amended by Act XVI of 1877), s. 4—“Any other written grant”—Land free from assessment—Tribunal—Civil Courts—Jurisdiction—Specific Relief Act (I of 1877), s. 42—Suit for declaration—Consequential relief—Amendment of plaint* Held, that, generally speaking, the name given by the parties to a document is not conclusive as to its nature; but the designation given by the parties themselves to it cannot be lost sight of, where the document is ambiguous and is susceptible of more than one construction as to its nature and scope *KALABHAI v. THE SECRETARY OF STATE FOR INDIA (1905)*

I. L. R. 29 Bom. 10

4. Repugnancy in words—Held, that the rule that, if there be a repugnancy, the first in a deed and the last in a will shall prevail, has no application when the supposed inconsistencies are found in one and the same provision *ADVOCATE GENERAL OF BOMBAY v. HORWUSJI (1905)*

I. L. R. 29 Bom. 375

5. Construction of document—Mortgage—Interest—Possession—Liability of mortgagee in possession to account for rents and profits The defendants were in possession of two shops under a mortgage from the plaintiffs. The plaintiffs sought to recover possession alleging that the mortgage debt had been satisfied by the rents and profits of the shops. The defendants pleaded, *inter alia*, that they were not liable under the terms of the mortgage to render an account of the rent realized. The material portion of the mortgage was in the following terms:—“We have borrowed nine hundred and fifty-one (951) rupees in

DOCUMENT—*contd.*

agreement that the mortgagees should take the rents and profits without accounting in addition to the stipulated interest *MAHARI v. BALDEO PRASAD (1905)* I. L. R. 27 All. 351

6. Construction of document—Deed of trust executed by King of Oudh providing pensions to members of family and support to religious endowment out of interest on Government Loan subscription—“Heirs”—“Descendants”—Suit for pension on death of pensioner—Succession to pension. By a deed of trust dated 23rd November 1839, the King of Oudh appropriated the interest of a sum of 12 lakhs of rupees lent to the East India Company to the payment in perpetuity of pensions to certain persons named in the deed and to making provision for the support of a religious endowment. By Art. 1 (which stated that “the interest has been bestowed as a gift on the person named herein”) trustees were named and appointed, and after them “their descendants,” to manage the endowment, and a person was named, and his “descendants” after him, as the valid of the pensioners through whom the pensions were to be paid. Art. 2 commended the pensioners and their “descendants” to the kindness and support of the Government

“descendants” and in case no “descendant” remained, provided for the appointment of one of the pensioners “in place of the person dying without heir” Held by the Judicial Committee (reversing the decision of the Court of the Judicial Commissioners of Oudh), that on the true construction of the deed the succession to a pension on the death of one of the pensioners was not limited to an heir, who was also a descendant, but the heir by Mahomedan law of the deceased pensioner (in this case the sister) was entitled to succeed *Nawab Sultan Marum Begam v. Nawab Sahib Mirza, L. R. 16 I. A. 175. I. L. R. 17 Cal. 231, distinguished.* This construction did not introduce any inconsistency between Art. 2 and Arts. 1 and 3 of the deed, because the class of persons mentioned in Art. 2 could not be assumed to be precisely co-extensive with the class who could, under the latter articles, enjoy the pensions. Even if the words “heir” and “descendant” were used as con-

of the beneficial interest in the pensions being

7. Construction of document—Grant of zamindari by Government to member of a joint Hindu family and another—Joint tenants—Tenants-in-common. In 1886 Government

sum remaining after deduction, the promised time being five years. Should we pay the money within five years we shall get the shops. We shall pay the expenses relating to the two shops. Should they be paid by the mortgagees, we shall pay them the same together with interest without any objection. Held, on a construction of the mortgage by STANLEY, C. J., and BLAIR, J. (JAMES J., dissentiente) that, there being no contract to the contrary, the mortgagees, if they got possession, which they did, were bound to account for the rents and profits received by them whilst in such possession. There was no

DOCUMENT—*conold.*

granted, as a reward for services rendered during the Mutiny, certain zamindari property to Jivan Ram, Chatterpat, and Nem Ram, members of a joint Hindu family, and to one Puse, a stranger to the family. Puse shortly afterwards got his share separated. Nem Ram died leaving a widow, Musammatt Phulla, and after his death Jivan Ram, Chatterpat, and Phulla joined in selling a portion of the property, the subject of the grant of 1866, to one Nur Ahmad. *Held*, on a suit by certain members of the joint Hindu family, who were not parties to the sale, to recover from the representatives of the vendee the share in the property sold, which had been of Nem Ram in his life-time, that the grant of 1866 conveyed the property to the grantees as joint tenants, and not as tenants-in-common, and therefore the transfer impugned was valid. *GOMIN PRASAD v. INAYAT KHAN* (1907)

I. L. R. 27, All. 310

8. *Lease—Admissibility of evidence—Dismissal of suit on account of inadmissibility of document relied on by plaintiff.* The plaintiff sued to eject the defendants from a certain shop, having his case upon a document put forward as a "kirayanaamah" or lease. This document was ruled inadmissible for want of registration and plaintiff's suit thereupon dismissed. *Held*, that even if the document were admissible in evidence, its rejection did not involve the dismissal of the plaintiff's suit. The document in question was in the following terms:—"I take the shop on a rent of Rs50 per annum without any limit of time for ever. . . I shall pay the rent month by month rateably to Mohant Purn Das . . . On non-payment of rent a right to eject the tenants shall at once accrue to the owner of the shop." *Held*, that this was not a lease, nor even a counterpart of lease, but a mere statement of the intention of the writer, which might be given in evidence for what it was worth. *BENT v. PURAN DAS* (1905)

I. L. R. 27 All. 180

## DOCUMENTARY EVIDENCE.

See AFFILIATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

See EVIDENCE—CIVIL CASES.

See EVIDENCE—CRIMINAL CASES

See EVIDENCE—PERSIAN JUDGMENT.

I. L. R. 33 Cal. 1345

See EVIDENCE ACT, *sec.* 9, 11, (CL. 2) 17, 32, 33, 35, 42, 68, 74, 83, 86, AND 90

See HINDU LAW—PARTITION.

I. L. R. 31 All. 413

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH—DOCUMENTARY EVIDENCE.

1. ——— Specialty documents. The law of British India as administered in the mofussil recognizes no distinction between specialties and

DOCUMENTARY EVIDENCE—*conold.*

other documents. *TIRUMALA RAO SANKAR v. PRASADA SANKARA RAO* . . . 1 Mad. 312

2. ——— Rejection of, without looking into it. A piece of documentary evidence should not be excluded merely on the ground that it is of little evidentiary value, and without being looked into by the Court. *BRINDHAN CHANDEN DAS v. ISHQENDRA CHOWDHURY* (1907)

13 C. W. N. 560

## DOGS, INJURY BY, WITHOUT PROVOCACTION.

See DAMAGES, SUIT FOR.

I. L. R. 38 Cal. 1021

## DOMESTIC SERVANTS.

See ACT XIII OF 1859.

2 B. L. R. A. Cr. 32

See WILL—CONSTRUCTION.

8 B. L. R. 244

9 B. L. R. Ap. 4

## DOMICILE.

See FOREIGN COURT, JUDGMENT OF.

I. L. R. 29 Cal. 509

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

I. L. R. 24 Mad. 650

See HUSBAND AND WIFE.

I. L. R. 4 Cal. 140

See MARRIAGE . . . 13 B. L. R. 109

I. L. R. 17 Cal. 324

See PRIVATE INTERNATIONAL LAW

9 C. W. N. 334

See SUCCESSION ACT, *s.* 4

I. L. R. 1 Cal. 412

I. L. R. 23 Cal. 509

See WILL—CONSTRUCTION 5 B. L. R. 1

— — — foreign.

See DIVORCE ACT (IV OF 1869), *s.* 7

I. L. R. 29 Cal. 619

— — — in Native State.

See LETTERS OF ADMINISTRATION.

I. L. R. 21 Cal. 911

1. ——— Will—Probate, Application for—Service under E. I. Company—21 & 22 Vict., *s.* 106 & 107

**DOMICILE—concl'd.**

Succession Act, and therefore, the will not having been properly executed, probate was refused. *In the goods of ELLIOTT*. I. L. R. 4 Calc. 108  
2 C. L. R. 498

2. ——— Domicile of widow—Capacity to make contract—Contract Act (IX of 1872), s. 11. The domicile of a widow is the same as was her husband's unless she has changed it since his death. By the law of England, the question of the capacity of a widow to enter into a contract is decided by the

I. L. R. 19 Bom 897

3. ——— Domicile of origin—Abandonment—Acquiring fresh domicile—Onus of proof—Immovable property, rights over. The person, who attacks a settlement on the ground of nationality, must show conclusively that the rationality of the settlor was foreign, and, if he succeeds in doing so, the onus is then shifted upon the person supporting the settlement to show that the settlor had acquired a fresh domicile in British

universally recognised *De Nicols v Currier*, [1900] A. C. 21; *In re De Nicols*, [1900] 2 Ch. 410, disented from *A. L. BONNAUD v. EULE CHARBIOL* (1905) I. L. R. 32 Calc. 831

**DOMINANT AND SERVIENT OWNER.**

See EASEMENT. I. L. R. 35 Calc. 889

**DONATIO MORTIS CAUSA.**

See HINDU LAW—GIFT—GIFTS MORTIS CAUSA

See MAHOMEDAN LAW—GIFT—VALIDITY.

See TRUST. I. L. R. 17 Calc. 620

**DONOR, DEATH OF.**

——— registration of gift

See TRANSFER OF PROPERTY ACT, s. 123

I. L. R. 33 Calc. 584

**DOWER.**

See LAND REGISTRATION ACT (BENGAL ACT VI of 1876)

I. L. R. 35 Calc. 120

See MAHOMEDAN LAW.

I. L. R. 26 All. 26

I. L. R. 30 Bom. 122

I. L. R. 36 Calc. 184

I. L. R. 31 All. 243

13 C. W. N. 134, 152

See MAHOMEDAN LAW—DOWER.

See RESTITUTION OF CONJUGAL RIGHTS

I. L. R. 17 Calc. 670

See TRANSFER OF PROPERTY ACT, s. 54

I. L. R. 26 All. 268

**DOWER—concl'd.**

——— cause of action in respect of—

See LIMITATION ACT, 1877, ARTS. 103, 104.

——— deferred—

See HINDU LAW—DWIRAGAMAN.

13 C. W. N. 994

——— lien for—

See RES JUDICATA—PARTIS—SAME PARTIES OR THEIR REPRESENTATIVES.

5 B. L. R. 570

——— suit for—

See JOINDER OF CAUSES OF ACTION.

I. L. R. 18 All. 258

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

I. L. R. 16 All. 400

——— transfer of property, in lieu of—

See MAHOMEDAN LAW 13 C. W. N. 180

1. ——— Armenian widow, right of to dower—*Ad XXIX of 1839*—Widow of Armenian—English law of inheritance The widow of an Armenian, married before the Dower Act

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aser  
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English law of dower having been recognized in this country amongst Europeans and Armenians as a branch of the law of inheritance. *Per GARTHE, C. J.*—Estates which have been held by British subjects under the name of free-hold estates of inheritance are, in all essential respects, the same estates which have been held in England under the same name *SARRIES v. PROSSERNO MOREY DOSSEE*. I. L. R. 8 Calc. 794  
8 C. L. R. 78

2. ——— Mahomedan Law—Widow—

*Remission effective without acceptance by the heirs of husband*—Money spent for the benefit of another—Obligation to repay. According to Mahomedan Law a dower is a debt and its remission by a widow without acceptance by the heirs of the husband is effective. It is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises. *Ram Tuhul Singh v. Blasewar Lall Sahoo, L. R. 2 I. A. 131*, and *Rasbon Steamship Company v. London Assurance*, [1900] A. C. 6, 15, referred to. *JYANI BEGAM v. UMRAI BEGAM* (1908)

I. L. R. 32 Bom. 812

**DOWL FEHRIST.**

See REGISTRATION ACT, 1877, s. 18

I. L. R. 3 Calc. 323

1 C. L. R. 328

**DRAINAGE ACT.**

See BENGAL DRAINAGE ACT.

**DRAINAGE CHARGES.**

——— recovery of—

See BENGAL DRAINAGE ACT, s. 42, 44.

11 C. W. N. 57

**DRAWBACK.**

See BOMBAY MUNICIPAL ACT, 1888, s. 158.  
I. L. R. 17 Bom. 384

**DRAWER'S RIGHT OF ACTION.**

See BILL OF EXCHANGE  
I. L. R. 39 Calc. 291

**DRUGS.**

See BOMBAY DRUGS ACT (HINDU ACT V OF 1878), ss. 3 (2) AND 62.  
I. L. R. 27 Bom. 551

**DUFFADAR, ARREST BY.**

See RESCUE FROM LAWFUL CUSTODY.  
I. L. R. 35 Calc. 361

**DUMBNESS.**

See CRIMINAL PROCEDURE CODE, ss. 310, 341 (1872, s. 189).  
7 N. W. 131  
19 W. R. C. R. 37  
22 W. R. C. R. 35, 72  
I. L. R. 27 Calc. 368  
4 C. W. N. 421

See ESTOPPEL—ESTOPPEL BY CONDUCT  
I. L. R. 18 Calc. 341

See HINDU LAW—INHERITANCE—DISSENTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—DEAFNESS AND DUMBNESS

See HINDU LAW—STRICHAN—DESCRIPTION AND DEVOLUTION OF STRICHAN.  
I. L. R. 18 Calc. 327

See PARTIES—DISABILITY TO SUE.  
2 N. W. 414

**DUNLOP'S PROCLAMATION.**

See FOREST ACT, ss. 75 AND 76  
I. L. R. 18 Bom. 670  
I. L. R. 23 Bom. 518

**DURESS.**

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT.  
I. L. R. 8 Mad. 304

See WILL—CONSTRUCTION.  
I. L. R. 20 Calc. 15

1. ——— Suit to set aside deed—Restoration of advantage accruing to plaintiff under deed. Where one seeks to set aside a deed on account of duress, and such duress does not amount to personal duress, but merely to pressure by threats as of injury to property, the plaintiff must offer to restore any benefit accruing to him under the deed.  
GUTHRIE v. ANUL MAZAFFER  
7 B. L. R. 630 : 15 W. R. P. C. 50  
14 Moo. I. A. 53

2. ——— Contract made under threat of criminal offence. In a suit to enforce performance of a contract, where defendant pleads that the contract was executed under compulsion and intimidation, it is not sufficient for him to prove that it was executed from fear of a criminal complaint, as that might have been a righteous fear, and not

**DURESS—contd.**

simply a badly fear imposed on him, in order to his doing that which he would not of his own free will have done. KOWUNATH SING v. BHABEE KANT ROY  
11 W. R. 314

3. ——— Avoidance of contract—Imprisonment. An agent employed by the plaintiff to purchase timber for him in the Siamese territory,

charged with stealing, at a price much beyond its value. Held, that the plaintiff might repudiate the contract as obtained under duress. In England the mere fact of imprisonment is not deemed sufficient to avoid an agreement made by one who is in lawful custody under the regular process of a Court of competent jurisdiction where no undue advantage is taken of the situation of the party making the agreement. But in a country in which there is no settled system of law or procedure and where the Judge is invested with arbitrary

4. ——— Suit to set aside agreement made under threat of criminal prosecution for which there was no foundation—Right of suit. The plaintiff, under threat of a criminal

prosecution for the charge made by the defendant, in a suit to set aside the agreement: Held, that the plaintiff was entitled to maintain the suit. PUDISHARY KRISHNAN v. KARAMPALLY KUNHUNNI KURUP  
7 Mad. 378

5. ——— Assent to, and validity of, mutation of names in the Collectorate record of rights—North-West Provinces Land Revenue Act (XIV of 1873), ss. 94, 97. The question was, according to the judgment of the High Court, whether a change of names in the Collectorate record-of-rights represented a *bona fide* transfer by the plaintiff or whether there was a mere assent by her to a paper transaction, relating to the ownership of a share in a village, in giving which assent she had not acted freely, but under undue influence. Reversing the decision of the High Court which was that the plaintiff had assented to the proceedings under intimidation, their Lordships held that on the evidence no intimidation had been

I. L. R. 11 All. 389

**DURESS—concl'd.**

6. ——— Award made on consent given under duress—*Setting aside award.* An

1 Bom. 173

7. ——— Common assembly—*Damage done to property.* Coercion to form a member of a common assembly by the members of which damage has been done to property, or coercion to bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. *GANESH SINGH v RAM RAJA*

3 B. L. R. P. C. 44 : 12 W. R. P. C. 38

**DUTIES.**

Liability of Government to—

See MADRAS CITY MUNICIPAL ACT, s. 341.  
I. L. R. 25 Mad. 457

of Collectors and Settlement Officers—

See REGULATION VII OF 1822, s. 9  
I. L. R. 31 All. 247

1. ——— Levy of duties—*Haq—Act XIX of 1844 (Levy of Haqs, Bombay), Act XX of 1859 (Town Duties, Bombay)—Abolition of duties and haqs.* Held, (TRICKEN, J., dissentiente), that all town duties, taxes, and cesses of every kind on trades or professions (and not merely such of them as were then levied by Government) were abolished by Act XIX of 1844, and that a privilege enjoyed by a private person to levy certain fees on

revenues deriving from that source, ceased from the date when the said Act came into operation;

the Legislature in 1844 appears, from the language used by it in Act XIX, and from the recital in Act XVI of that year, to have been the import on salt being about to be increased, that, instead of leaving haqs such as this to be abolished at different times under the Act of 1839, they were then to be entirely abolished. *NANARVANJI PRSTANJI v DEPUTY COMMISSIONER OF CUSTOMS*

2 Bom. 80. 2nd Ed 75

2. ——— *Toda garas haq—Alienation of haq—Bombay Act VII of 1863, s. 27, 32.* Held, in the absence of proof on the part of Government

**DUTIES—concl'd**

but for the alienation, they would be paid. *Held*, also, that *toda garas haq* does not come within the meaning of the—

CURAT &amp; HEIRESS OF KUVABRIA

2 Bom. 253 : 2nd Ed. 239

3. ——— Amount collected, payment of—*Onus probandi.* Held, that what-

tatives if the haq is a perpetual one. Where Gov.

**DWELLING-HOUSE.**

See HINDU LAW—FAMILY DWELLING-HOUSE

lands appurtenant to—

See RENT, SUIT FOR. 2 W. R., Act X, 9  
3 B. L. R. A. C. 65  
3 B. L. R. Ap. 183

See REGISTRAR OF HIGH COURT—SALE BY REGISTRAR. 5 C. W. N. 593

— father's right to eject son from—

See HINDU LAW—SELF-ACQUISITION.  
I. L. R. 33 Calc. 1119

**DWIRAGAMAN.**

See HINDU LAW—GIFT. 13 C. W. N. 894

**DYING DECLARATION.**

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION

1. ——— Admissibility of. A dying declaration recorded in the absence of the accused, and by a Magistrate other than the inquiring Magistrate, is not admissible until it is proved by the recording officer. *PANCHU DAS v EUPHORB (1907)*  
I. L. R. 34 Calc. 698

2. ——— Admissibility of petition of complaint and examination of complainant on oath as dying declaration—*Record and mode of proof of such statements—Evidence Act (I of 1872), ss. 32 & (1), and 91—Criminal Procedure Code (Act V of 1891), s. 200—Assault by several but fatal blow by some one of them—Liability of each accused—Penal Code (Act XLV of 1860), ss. 34, 326.* A petition of complaint and the examination of the complainant on oath under s. 200 of the Criminal Procedure Code are admissible as dying declarations under s. 32, cl. (1), of the Evidence Act, and are not, as such, matters required by law to be reduced to

**DYING DECLARATION—concltd.**

the form of a document within s. 91 of the Evidence Act so as to exclude parole evidence of their terms. The statements admissible in evidence, when made in the absence of the accused, is the oral statement of the deceased, and not the record of it, and such oral statement must be proved by the person who recorded it or heard it made. *Empress v. Samuruddin*, I L R 8 Cal 211, and *King Emperor v. Mathura Thakur*, 6 C. L. N. 72, followed. Where several accused persons struck the deceased several blows, one of which only was fatal, and it was not found who struck the fatal blow, *Ibid.*, that, in the circumstances, it could not be said that those who did not strike the fatal blow contemplated the likelihood of such a blow being struck by the others in prosecution of the common object, and that they were all guilty under s. 326, and not under s. 302, of the Penal Code. *Gouridas Narsappa v. Emperor* (1904) I L R 30 Cal. 659

**E****EASEMENT.**

See ALTERNATIVE CLAIM

I L R. 34 Cal. 51

See CRIMINAL PROCEDURE CODE, s. 147  
13 C. W. N. 859

See EASEMENTS ACT (X of 1882).

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

I L R. 16 Mad. 183

See LANDLORD AND TENANT

9 C. W. N. 856

See LICENSE . I L R. 16 Mad. 280

See LIMITATION ACT, 1877, s. 26 (1871, s. 27)

See MADRAS DISTRICT MUNICIPALITIES ACT . I L R. 29 Mad. 539

See MAHOMEDAN LAW—PRE-EMPTION.

I L R. 31 All 519

See ONUS OF PROOF—EASEMENT.

I L R. 11 Cal. 52

2 C. L. R. 555

15 W. R. 83

21 W. R. 140

See PRE-EMPTION . I L R. 26 All 127

See PRESCRIPTION—EASEMENTS

See RIGHT OF WAY.

See RIGHT TO USE OF WATER.

See RIGHT OF SUIT—CUSTOMARY RIGHTS.

I L R. 6 All 497

I L R. 23 Bom. 666

See RIGHT OF SUIT—EASEMENTS.

**EASEMENT—contd.**

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

I L R. 19 All 163

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY I L R. 1 All 567

See TRANSFER OF PROPERTY ACT, 1882, s. 51 . I L R. 31 All 012

See USE.

dispute concerning—

See POSSESSION, OFFICE OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

1. — Kumki right in South Canara—*Easements Act* (I of 1882), s. 15—*Possession, right to*—The kumki right of land holders in South Canara is not an easement, but a right exercised over Government waste by permission of Government, and it does not entitle the landholder to a decree for possession. *Nagarra v. Subba* . I L R. 16 Mad. 304

2. — Profits à prendre—*Easements Act* (1882), s. 4—*Criminal Procedure Code* (1882), s. 147—*Limitation Act* (1877), s. 3. The term "easement" includes profits à prendre.

3. — Implied grant—*Easement upon the severance of a herbage by its owner into two or more parts—Continuous and apparent easement—Right of way—Limitation Act* (XI of 1877), s. 26. Implication of a grant of easement upon the severance of a tenement may extend to a "way," but that is so only where there has been some permanence in the adaptation of the tenement from which continuity could be inferred. *Charu Surnakar v. Dokouri Chunder Thakoor*, I L R. 8 Cal 956, distinguished. *Ram Narain Shah v. Kamala Kanta Shah* . I L R. 28 Cal. 311

4. — Right of way—*Right to use of drain—Mortgage of part of a house—Easement over the other part granted to the mortgagee by the mortgage-deed—Subsequent sale of parts of the house to different owners—Sale of mortgaged part subject to the mortgage paid off by purchaser—Purchaser's right to easement—License—Grant of right of way in a mortgage of part of property of mortgagor—Reservation by mortgagor of similar right in respect of other property not mortgaged by him—Vendor and purchaser—Sale of land subject to a mortgage giving a right of way. V, the owner of a house, mortgaged the east portion of it to M in 1878. The mortgage-deed gave to the mortgagee the use of a certain privy situated in another part of the house and the right of way to it through a certain bol or passage. V subsequently sold the whole house to C, and C in 1880 mortgaged the western part of it to R, who got a decree, and in execution the part mortgaged to him*



**DURESS**—*concl'd.*

6. ——— Award made on consent given under duress—*Setting aside award.* An award of compensation made by a court of the case  
RIN BAI

1 Bom. 173

7. ——— Common assembly—*Damage done to property* Coercion to form a member of a common assembly by the members of which damage has been done to property, or coercion to bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. *GAYFISH SINGH v RANI RAJA*

3 B. L. R. P. C. 44; 12 W. R. P. C. 38

**DUTIES.**

Liability of Government to—

See *MADRAS CITY MUNICIPAL ACT*, s. 241.  
I. L. R. 25 Mad. 457

——— of Collectors and Settlement Officers—

See *REGULATION VII of 1822*, s. 9  
I. L. R. 31 All. 247

1. ——— Levy of duties—*Haq—Act XIX of 1844 (Levy of Haq, Bombay), Act XX of 1859 (Town Duties Bombay)—Abolition of duties and haqs.* Held, (TRICKEN, J., dissentient), that all town duties, taxes, and cesses of every kind on trades or professions (and not merely such of them as were then levied by Government) were abolished by Act XIX of 1844, and that a privilege enjoyed by a private person to levy certain fees on articles imported and exported through three of the city gates of Surat and originating in an alienation by a former overlord of a portion of the royal revenues derivable from that source, ceased from the date when the said Act came into operation; and consequently that the Government was not liable to pay compensation for the loss of such privilege.

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2 Bom. 80; 2nd Ed. 75

2. ——— Toda garas haq—*Abolition of haq* Bombay Act III of 1863, s. 27, 32. Held, in the absence of proof on the part of Government to the contrary, that there was no intention to

**DUTIES**—*concl'd*

but for the alienation, they would be paid. *Held also*, that toda garas haq does not come within the meaning of the word "taxes."

2 Bom. 253; 2nd Ed. 23

8. ——— Amount collected—*Payment of—Onus probandi.* Held, that whatever may be the right of the Government to the amount collected, it is not a tax.

a long and established custom of the Government to grant a garas haq to a garashia for the purpose of collecting the amount of the tax.

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**DWELLING-HOUSE.**

See *HINDU LAW—FAMILY DWELLING-HOUSE*

lands appurtenant to—

See *RENT, SUIT FOR* 2 W. R. Act X, s. 3  
3 B. L. R. A. C. 66  
3 B. L. R. Ap. 133

See *REGISTRAR OF HIGH COURT—SALE BY REGISTRAR* 5 C. W. N. 593

father's right to eject son from—

See *HINDU LAW—SELF ACQUISITION*,  
I. L. R. 33 Cal. 1119

**DWIRAGAMAN.**See *HINDU LAW—GIFT*

13 C. W. N. 894

**DYING DECLARATION.**

See *EVIDENCE—CRIMINAL CASES—DYING DECLARATION*

2. ——— Admissibility of petition of complaint and examination of complainant on oath as dying declaration—*Record and mode of proof.* Held, that a petition of complaint and the examination of the complainant on oath as dying declaration is admissible as evidence in a criminal case.

**DYING DECLARATION—concl.**

the form of a document within s. 91 of the Evidence Act so as to exclude parole evidence of their terms. The statements admissible in evidence, when made in the absence of the accused, is the oral statement of the deceased, and not the record of it, and such oral statement must be proved by the person who recorded it or heard it made. *Empress v. Samund-din*, 1 L. R. 8 Cal. 211, and *King Emperor v. Mathura Thakur*, 6 C. B. N. 72, followed. Where several accused persons struck the deceased several blows, one of which only was fatal, and it was not found who struck the fatal blow; Held, that, in the circumstances, it could not be said that those who did not strike the fatal blow contemplated the likelihood of such a blow being struck by the others in prosecution of the common object, and that they were all guilty under s. 329, and not under s. 302, of the Penal Code. *Gopaldas Nanavdra v. Empress* (1902). I. L. R. 30 Cal. 659

**E****EASEMENT.**

See ALTERNATIVE CLAIM

I. L. R. 34 Cal. 51

See CRIMINAL PROCEDURE CODE, s. 147  
13 C. W. N. 859

See EASEMENTS ACT (X OF 1882).

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

I. L. R. 16 Mad. 163

See LANDLORD AND TENANT.

9 C. W. N. 856

See LICENSE. I. L. R. 16 Mad. 260

See LIMITATION ACT, 1877, s. 26 (1871, s. 27)

See MADRAS DISTRICT MUNICIPALITIES ACT. I. L. R. 29 Mad. 539

See MAHOMEDAN LAW—PRE-EMPTION.  
I. L. R. 31 All. 519

See ONUS OF PROOF—EASEMENT.  
I. L. R. 11 Cal. 52

2 C. L. R. 555

15 W. R. 83

21 W. R. 140

See PRE-EMPTION. I. L. R. 26 All. 127

See PRESCRIPTION—EASEMENTS.

See RIGHT OF WAY.

See RIGHT TO USE OF WATER.

See RIGHT OF SUIT—CUSTOMARY RIGHTS.  
I. L. R. 6 All. 497

I. L. R. 23 Bom. 666

See RIGHT OF SUIT—EASEMENTS.

**EASEMENT—cont.**

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

I. L. R. 19 All. 163

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY. I. L. R. 1 All. 567

See TRANSFER OF PROPERTY ACT 1882, s. 54. I. L. R. 31 All. 612

See CASE

dispute concerning—

See POSSESSION, ORDER OF ORIGINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

1. **Kumki right in South Canara—Easements Act (I of 1882), s. 15—Possession, right to.** The kumki right of land holders in South Canara is not an easement, but a right exercised over Government waste by permission of Government, and it does not entitle the landholder to a decree for possession. *Nigarra v. Subba*. I. L. R. 16 Mad. 304

2. **Profits à prendre—Easements Act (1882), s. 1—Criminal Procedure Code (1852), s. 147—Limitation Act (1877), s. 3.** The term "easement" includes profits à prendre. *See* *Profits à prendre* (1882), s. 1.

**HALWAY**. I. L. R. 23 Cal. 55

3. **Implied grant—Easement upon the severance of a heritage by its owner into two or more parts—Continuous and apparent easement—Right of way—Limitation Act (XI of 1877), s. 26.** Implication of a grant of easement upon the severance of a tenement may extend to a "way," but that is so only where there has been some permanence in the adaptation of the tenement from which continuity could be inferred. *Charu Sural v. Dolouri Chunder Thakoor*, 1 L. R. 8 Cal. 956, distinguished. *RAM NARAIN SHARMA v. KAMALA KANTA SHARMA*. I. L. R. 28 Cal. 311

4. **Right of way—Right to use of drain—Mortgage of part of a house—Easement over the other part granted to the mortgagee by the mortgagee—Subsequent sale of parts of the house to different owners—Sale of mortgaged part subject to the mortgage paid off by purchaser—Purchaser's right to easement—License—Grant of right of way in a mortgage of part of property of mortgagor—Reservation by mortgagor of similar right in respect of other property not mortgaged by him—Vendor and purchaser—Sale of land subject to a mortgage giving a right of way.** V, the owner of a house, mortgaged the east portion of it to

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**EASEMENT—*contd.***

(i. e., the west) was sold in 1885, and the defendant became the purchaser. In 1897, *O* sold the east part to the plaintiff, who paid off the mortgage to *M*, and obtained *M*'s endorsement of payment on his deed of conveyance. The plaintiff subsequently sued to restrain the defendant from interfering with his use of the passage and of the privy. The defendant alleged that both were comprised in the property purchased by him at the Court sale in 1885, and that the right given by the mortgage of 1878 was merely a license to the mortgagee, and not an easement. *Held*, that

in 1885 was subject to the easement acquired by *M* (the mortgagee), and the plaintiff had purchased the mortgagee's interest in the house, which included her right by way of easement. The plaintiff was therefore entitled to the use of the privy and the

have the use of the drain for passing water as it was continued from old times." *Held*, that these words should be understood as intended to reserve to *O* (the mortgagor), in respect of the part of the house not included in the mortgage, a right to use the

the use of the drain. The plaintiff purchased a part of the house which the vendor had previously

mortgage, and *M* signed a receipt for the mortgage-money endorsed on the conveyance. *Held*, that the

5. ——— **Easements of necessity—Light and air—Severance of tenements by grantor—Implied reservation of easement—Derogation of grant—Reservation of easements of necessity—Injunction—Easements Act (V of 1882), s. 13—Act VIII of 1891.** One *W* was the owner of a certain house behind which was a courtyard or chok half of which belonged to him and the other half to one *M* (the defendant's father), who owned a house close by. Two of the rear rooms of *W*'s house abutted upon his portion of the chok, and had two doors opening out into the chok. In 1891, *W* sold (*inter alia*) his half of the chok to *M*. The conveyance contained no reservation of any rights over the chok. *W*, having died in 1875-76, his widow *J* sold his house

**EASEMENT—*contd.***

to the plaintiff, and shortly afterwards the defend-

had made an absolute sale to *M* of his portion of the chok, expressly reciting that he had reserved no interest in the chok, it would, in the circumstances

the chok. *Held*, also, that the case was not governed by s. 13, cl (c), of the Easements Acts (V of 1882 which was not extended to the Bombay Presidency till Act VIII of 1891 was passed. **CHUNILAL MANCHARAM v. MANISHANKAR ATVARAM**

I. L. R. 18 Bom. 618

6. ——— **Light and air—Partition of a joint family house—Effect of partition by a consent decree where the decree does not reserve any right to the use of light and air—Implied grant of easement upon severance of tenement.** On partition of a family dwelling house by a consent decree, the plaintiff claimed a right to the passage of light and air necessary for the enjoyment of his share

Whether the windows

**DEBI & KALIKUMAR HALDAR**

I. L. R. 28 Calc. 516

7. ——— **Easement by custom—Water rights—Landlord and tenant.** The plaintiffs were lessees from a zamindar of his entire zamindari, and

across the stream when it was low, and this had the

EASEMENT—*contd.*

customary easement asserted by the defendants was not unreasonable, and was enforceable by them against the lessees of the zamindar. *ONN R. RAMAY CHETTI* . . . I. L. R. 18 Mad. 320

8. ——— Right of entry on land in order to repair—*Dominant and servient owners, rights and liabilities of—Easements Act (I of 1882), s. 24, cl. (a)—Railways Act (IX of 1890), s. 122.* The Rajnagar Spinning and Weaving Company had a mill on one side of the Bombay, Baroda and Central India Railway line and a spinning factory on the other. To bring water from the mill to the factory, a pipe had been laid beneath the railway line, and brick reservoirs at each side to preserve the proper level of the water. *Servants*

entry upon a railway. It was proved that the repairs were necessary. *Held*, reversing the convictions and sentences, that, as the pipes and reservoir belonged to the Spinning and Weaving Company and were kept in repairs by them, they, as owners of the dominant tenement, had a right to enter on the premises of the Railway Company, the owners of the servient tenement, to effect any necessary repairs, and that the entry in question, being in the exercise of a right, could not be called unlawful. *QUEEN-EMPRESS v. VANDALI*

I. L. R. 22 Bom. 525

9. ——— Right to discharge smoke over a neighbour's land—*Easements Act (V of 1882), s. 28, cl. (d)—Acquisition of right by prescription.* A right to discharge smoke over ad-

*NARAYAN* . . . I. L. R. 22 Bom. 831

10. ——— Right of growing rice

proved a prescriptive right of using certain land

plaintiff, and that such a right, so attached to plaintiff's land, was not a license, but an easement

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EASEMENT—*contd.*

of the nature of *profits à prendre*. *SUNDHARAI v. JAYAWANT* . . . I. L. R. 23 Bom. 397

11. ——— Water-course—*Riparian owners, rights of—Jurisdiction of mamladar.* The law as to riparian owners is the same in India as in England, and is stated in *illus. (h) of s. 7 of the Easements Act (V of 1882)*. Each proprietor has a right to a reasonable use of the water as it passes his land, but, in the absence of some special

*NARAYAN HARI DEVAL v. KESHAV SHIVRAM DEVAL*  
I. L. R. 23 Bom. 506

12. ——— Tenant—*Easement, right of—Whether a tenant having permanent interest on the land could acquire such right in other land of his lessor—Oast taluqdar.* A tenant of land, even if having a " " cannot acquire a right in other land. *I. L. R. 1 C. W. CHAKRAB.*

13. ——— Water—*Easements Act (V of 1882), ss. 7, 17—Right to raise crest level of calingula of tank—Submersion of lands thereby—Right of owner of such lands to protect them from submergence.* The defendants, being the holders of land situated below a tank, had, for a period of over twenty years, by means of a dam, raised the calingula

from being submerged. *NARAYANA REDDI v. VENKATA CHARIAR (1900)* I. L. R. 24 Mad. 202

14. ——— Right to cornice—*Acquired by, after 12 years' enjoyment.* Where a tank

for more than 12 years. *Mohamed Shamsud Din v. Amrakhali Becharadas, I. L. R. 2 Bom. 110, 111*

EASEMENT—*contd.*

to and followed. **RATHINAVELU MUDALIAR v. KOLANDAVELU PILLAI (1906) I. L. R. 29 Mad. 511**

15. ——— **Right of irrigation—Easements Act (V of 1882), s. 13—Purchase of land by Government at sale for arrears of revenue—Assessment of raiyats in occupation.** In 1816, certain villages, forming part of a zamindari, were brought to sale by Government for arrears of revenue, and bought by Government. The wet lands in these villages were irrigated by a tank in another village, which also formed part of the zamindari, but was not included in the sale. The zamindar had himself occupied the wet lands prior to the sale, and continued his occupation thereafter, as a raiyat under Government. At a date prior to 1860, the zamindar sold his interest in the land, and, at the settlement which took place in that year, his vendee was assessed with a consolidated wet rate on it. In 1869, the Head Assistant Collector directed that the zamindar should be credited, yearly, with the difference between the consolidated wet rate and the dry rate. In doing this he acted without the authority of Government. In 1894, the Board of Revenue directed that no portion of the assessment should be credited to the zamindar, who now sued for a declaration of his right, and for the amount since collected. *Held*, that the meluram right in the villages passed, by the sale, to the Government, who were entitled by easement, to have the lands irrigated from the then existing source of irrigation, and to levy wet assessment on them. Also, that the action of the Settlement Department in assessing the consolidated wet rate was right, and that plaintiff was not entitled to the difference between the wet and dry assessment. *Held*, also, that the action of the Head Assistant Collector was beyond the scope of his authority, and not binding on the Government, who had neither authorized nor ratified it. **SURANMI VENKATA PAPAYYA RAU v. SECRETARY OF STATE FOR INDIA (1902) I. L. R. 28 Mad. 51**

16. ——— **Easements Act (V of 1882), s. 13 (c)—Grant of village as *inam*—Right to water for irrigation—Area under wet cultivation at time of grant subsequently increased—Claim by *inamdar* for proportionate increase of water for irrigation.** In 1859 a village with land comprising 339 acres was granted by Government, as *inam*, to plaintiff. At the time of the grant, 106 09 acres were under wet cultivation, the remainder being *poramboke*, prior minor *inams* and land under dry cultivation. The area of land under wet cultivation was subsequently increased, and plaintiff claimed to be entitled to water for the irrigation of this increased area without paying assessment thereon, and, in 1870, the Collector of the district permitted that increase. Plaintiff had now been assessed in respect of the increased area, and brought this suit for a declaration of his right and for a refund of the money paid by him under protest. *Held*, that plaintiff was entitled, under s. 13 (c) of the Easements Act, to irrigate 106 09 acres, and oo

EASEMENT—*contd.*

more. Also, that the action of the Collector in 1870 was unauthorized and had not been subsequently ratified by Government, and was not binding on Government. **CHIDAMBARA RAO v. SECRETARY OF STATE FOR INDIA (1902) I. L. R. 28 Mad. 66**

17. ——— **Customary right—Use of water and water-course—Riparian rights—Irrigation—Continuous use—Interruption—Unreasonable rights—Nuisance.** An easement which is not a customary right need not be reasonable. An easement may be established of the right to cause riparian water to flow across the plaintiff's land.

statutory period, during seasons of drought, when it could be taken advantage of. **Cooper v. Barbar, 3 Taunt. 99; Whalley v. Lancashire and Yorkshire Railway Company, L. R. 13 Q. B. D. 131; and Rylands v. Fletcher, 3 H. L. 339, distinguished. Hollins v. Verney, L. R. 13 Q. B. D. 301, doubted. BUDRU MANDAL v. MALIAT MANDAL (1903)**

**I. L. R. 30 Cal. 1077**

18. ——— **Ownership of soil—Encroachment by protrusion of beams—Mandatory injunction.** Plaintiff's beams overhung defendant's soil and defendant erected a building, which overhung those beams. A question having arisen as to whether the beams gave the plaintiff a right to the column of air above them: *Held*, that the defendant, being the owner of the soil, was entitled *prima facie* to all above it and the diminution in his rights by reason of the beams did not extend beyond the protrusion of the beams themselves. **RANCHOD SHAMJI v. ABDULBAHAI MITHABAI (1901) I. L. R. 28 Bom. 428**

19. ——— **User of water—Modes of drawing water at different times—Land in occupation of tenant.** The user for 20 years of the water of a tank drawn for irrigating an adjacent land, gives the owner of the land a right of easement, although the modes of drawing the water were different within that period, and the owner of the land has a right to sue, even if the land be in the occupation of his tenant. **Hollins v. Verney, L. R. 13 Q. B. 301, distinguished. KRISTA DAS CHOWDRY v. JOY NARAIN PANJA (1904) S. C. W. N. 158**

20. ——— **Rain-water—Prescriptive right for passing surplus rain-water—Defined channel.** In order to give the owner of land a prescriptive right for passing the surplus rain-water of his land over another person's land, it must be proved that the water passed through a defined channel and not in various directions through the servient tenement. **BIBHU BHUSAN PALIT v. BENY MADHUB MAZUMDAR (1904) S. C. W. N. 244**

21. ——— **Right of way—User as of right—Onus—Limitation Act (XV of 1877), s. 26.**



**EASEMENT—*concl.***

light, which now comes to the plaintiffs' premises, is sufficient for the ordinary user thereof. Where there has been such a substantial diminution of light as to amount to a nuisance, evidence that the plaintiff's office has more light left than many other offices in Calcutta or that the light coming to the plaintiff's premises is sufficient for business purposes, or that the plaintiff could by making internal alterations improve the light coming thereto, is not relevant. *Colls v Home and Colonial Stores, Limited, [1904] A. C. 179*, followed. Inasmuch as the plaintiff was shown the plans of the proposed new building in May 1907

remedy would be a decree for damages and not a mandatory injunction to demolish the defendant's new building. *ANATH NATH DEB v GALSTAN (1908)* . . . I. L. R. 35 Cal. 681

28. ——— Ancient rights—*Injunction to restrain defendant from interfering with ancient rights—Quia timet action, necessary ingredients for.* There are at least two necessary ingredients for a *quia timet* action. There must,

followed *GANOBAI v. PURSHOTAM (1907)*  
I. L. R. 32 Bom. 146

29. ——— Release of easement—Non-

the meaning of s. 276 of the Code. Mere non-user is not an implied release of an easement. *KRISTODHON MITTER v. NANDARANI DASSEE (1908)*  
I. L. R. 35 Cal. 669  
s.c. 12 C. W. N. 969

30. ——— Musical festival. No easement to hold something in the nature of a musical festival on a plot of ground can properly exist. *MOHINI MORAN ADHIKARY v. KASHINATH ROY CHOWDHURY (1909)* . . . I. L. R. 36 Cal. 615

**EASEMENTS ACT (V OF 1882).**

See EASEMENT.

See PRESCRIPTION—EASEMENTS.

**EASEMENTS ACT (V OF 1882)—*concl.***

s. 4.

See CUSTOM . . . I. L. R. 16 All. 176  
I. L. R. 17 All. 67

1. ——— Right to discharge water—*Transfer of Property Act (IV of 1882), s. 54—Document creating an easement—Registration—Transfer of ownership—Right to discharge water.* Held, that an agreement by which the owner of a house undertook to permit the owner of an adjoining house, when he built a second storey, which was in contemplation to discharge rain water and also water used for daily household purposes on to the premises of the former, was a grant of an easement within the meaning of s. 4 of the Easement Act, 1882, and did not require registration, not being a transfer of ownership as contemplated by s. 54 of the Transfer of Property Act, 1882. *Krishna v. Rayappa Shanbhaga, 4 Mad. H. C. Rep. 98*, referred to. *BHAGWAN SAHAI v. NARSINGH SAHAI (1909)* . . . I. L. R. 31 All. 612

2. ——— Right of privacy—*Suit by occupier of house.* Not only the owner, but the lessee or other person in lawful possession of premises may maintain an action if his right of privacy is interfered with. *Gokal Prasad v. Radho, I. L. R. 10 All. 358*, referred to. *KUNDAN v. BIDUT CHAND (1906)* . . . I. L. R. 29 All. 64

3. ——— Right to take water—*Right to take water through another's land when sold by Government.* . . . person's land such water is an Easement Act water was not taken for several years, because Government refused to sell or because there was no water in the source of irrigation. *THIRUVENKATACHAR v. DESTACHAR (1908)* I. L. R. 31 Mad. 532

ss. 6, 7 and 17.

See RIGHT OF WAY I. L. R. 15 All. 270

See RIGHT TO USE OF WATER.

I. L. R. 11 Mad. 16

s. 7, illa. (a) and (i)—*Right of proprietor on higher level under s. 7, ill (i), not an easement and does not interfere with the right of lower proprietor to build on his own land under s. 7, ill (a)—District Municipalities Act (Madras Act IV of 1884), ss 4-B (1), (b), 4-B (3), (b), 21, 261—Supersession of a municipal body under s. 4-B (1) (b) only a suspension—No notice under s. 261 required when the suit is only for injunction.* The "supersession" of a Municipal Council under s. 4-B (1) (b) of Madras Act IV of 1884 is only a suspension of such body for a limited period and such supersession is different from and has not the effect of a dissolution under s. 4-B (1) (a). The "reconstitution" of such a Council under s. 4-B (3) (b) is the revival of the old corporation and not the creation of a fresh one, and all the rights and liabilities of the superseded Council will devolve on

EASEMENTS ACT (V OF 1882)—*contd.*s. 7—*concll.*

the Council so reconstituted as its rightful successor. The notice required by s. 261 of the District Municipalities Act is not necessary when the suit is for an injunction. The right of the owner of higher land under s. 7, illustration (i), of the Easements Act, i.e., that the water naturally rising in, or falling on, such land, shall be allowed by the owner of adjacent lower land to run naturally thereto is not a right in the nature of an easement and is subject to the right of the owner of such lower land to build thereon under s. 7, illustration (a), of the Act. The owner of the lower land cannot complain of the passage of such water as an injury, but he is not bound to keep open such way and may obstruct it by suitable erections on his land. *Smith v. Kenrick*, 7 C. B. 515, referred to. *Ryan v. Fletcher*, L. R. 3 H. L. 335, referred to. *MANAHOTAPADAYA RAOACHARIAN v. MUNICIPAL COUNCIL OF KUMBakonam* (1904)

I. L. R. 29 Mad. 530

## s. 7 (2) (a) and s. 7, ill. (h).

See "WATER". I. L. R. 32 Mad. 141

s. 7, ill. (j)—Riparian owner—Stream—Usufruct—Right to use and consume water without material injury to other like owners. With respect to riparian owners the law is that

flow of the water and the enjoyment of it subject to

owner has the right to use and consume water for irrigating the land abutting on a natural stream, provided that he does not thereby cause material injury to other like owners. *DINKAR v. NARAYAN* (1905)

I. L. R. 29 Bom. 357

## ss. 7 and 17.

See EASEMENT. I. L. R. 24 Mad. 202

## s. 13.

See EASEMENT I. L. R. 26 Mad. 51, 66

s. 13, cls. (e), (f)—Easement of necessity—No easement on the ground of convenience, when there is other means of access—Evidence Act (I of 1872), s. 92—Oral contemporaneous agreement cannot be set up to add to a written contract. *Beld*, that if A has a means of access to his property without going over B's land, A cannot claim a right of way over B's land on the ground that it is the most convenient means of access. The law under s. 13, cl. (c) of the Easements Act is the same as the law in England. *Wutler v. Sharpe*, I. L. R. 15 All. 270, 281, followed. *Enbai*

EASEMENTS ACT (V OF 1882)—*contd.*s. 13—*concll.*

*v. Damodar Ishwardas*, I. L. R. 16 Bom. 552, 559, not followed. *The Municipality of the City of Poona v. Faman Rajaram Ghodap*, I. L. R. 19 Bom. 727, not followed. To sustain a claim under s. 13, cl. (f) of the Easements Act, the easement claimed must be apparent and continuous. A contract in writing cannot be added to by a contemporaneous oral agreement. *KRISHNAMARAYU v. MARRAJU* (1905).

I. L. R. 28 Mad. 485

ss. 15, 26 (c)—Light and air—Prescriptive right to light and air—Infringement of right—Actual damage. Where a plaintiff is claiming relief upon the ground that his prescriptive right to the passage of light and air to a certain window has been interfered with, it is enough to show that the right has in fact been interfered with. The plaintiff is not obliged to go further and show that he has suffered actual damage thereby. *Colls v. Home and Colonial Stores, Ltd.*, [1904] A. C. 179, and *Kine v. Jolly*, [1905] 1 Ch. 450, not applied. *Nandkishor Balgovan v. Bhagubhai Pravinlalbhadra*, I. L. R. 8 Bom. 95, referred to. *KUNVI LAL v. KUNDAN BIBI* (1907)

I. L. R. 29 All. 671

## s. 16.

See CROWN

I. L. R. 16 All. 178

I. L. R. 17 All. 87

## s. 23.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR. I. L. R. 28 Bom. 374

s. 28, cl. (c)—Physical comfort—Disturbance of easements—Meaning of disturbance—Injunction to prevent disturbance—Light and Air—Substantial damage. The Indian Easements Act is not merely prescriptive; it defines the law

ing during the whole of the prescriptive period irrespective of the purpose for which it has been used. *Per CURRIE*—“In any case I see no reason for withholding from ‘disturbance’ its legal sense of an illegal obstruction, and, for the purpose of Chapter IV, that only can (in my opinion) be an illegal obstruction, for which, if done, a suit would lie. Therefore, I hold that for an injunction there must be a threat of something more than mere obstruction, and so the plaintiff’s case must be”

but it is sufficiently exact when applied as a



**EASEMENTS ACT (V OF 1882)—*concl'd***— s. 28—*concl'd*

test to a given state of things to allow the ordinary reasonable man to arrive at a practical determination. A man's physical comfort in relation to the access of light and air to his house at any particular time depends upon the conditions then actually obtaining, regardless of how these conditions came into being or when they may cease, it is a present fact uninfluenced by past history or future fate. Therefore, for the purpose of

## — ss. 52, 58.

See LICENSE . I. L. R. 16 Mad. 280  
I. L. R. 23 Bom. 397

## — s. 60.

See EASEMENT . I. L. R. 29 All. 852  
See LANDLORD AND TENANT.  
I. L. R. 29 All. 133

1. — s. 80 (b)—Thatched house—*License—Relocation—Work of permanent character.* A *kacheha* thatched house may be "a work of a permanent character" within the meaning of s. 60 (b) of the Indian Easements Act, 1882, although the thatch of the house is renewed from time to time *Winter v. Brodwell, 8 East 303*, referred to. *NASIR-UL-ZAMAN KHAN v. AZIM-ULLAH* (1906).  
[I. L. R. 28 All. 741]

2. — Transfer of non-transferable holding—*Ejectment—Abandonment—Sale.* *GHOSE, C. J.*—Where a tenant of a non-transferable holding sold his holding: *Held*, in a suit by the landlord for recovery of possession from the transferee, that if the transaction of sale was not meant to be an operative one, the title to the property still continued with the tenant. That the true question was whether there was an absolute abandonment of the holding by the tenant such as would entitle the landlord to treat the purchaser as a trespasser. If the defendant was holding possession on behalf of the tenant he could not be evicted. *MATHUR MANDAL v. GANOA CHARAN GOPE GHOSH* (1900).

I. L. R. 33 Calc. 1219  
s.c. 10 C. W. N. 1033

## — ss. 60, 61.

See WASTE LAND . I. L. R. 8 All. 69

**EAST INDIA COMPANY.**

See SECRETARY OF STATE

I. L. R. 26 Bom. 314

## — service under—

See DOMICILE . I. L. R. 4 Calc. 106

**ECCLESIASTICAL TRUST.**

— Right of officiating priest to church property—*Right of permanent incum-*

**ECCLESIASTICAL TRUST—*concl'd***

*bent.* A person temporarily officiating as priest has no right or title to the property of the church in which he officiates. The permanent incumbent, and that portion of the community which remains attached to his ministrations, might perhaps claim the restoration of a portion of the property shared by trustees. *FERNANDEZ v. FERNANDEZ*.

2 Ind. Jur. O. S. 12

**EDUCATION, EXPENSES OF—**

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

I. L. R. 1 Mad. 25

0 Bom. A. C. 54

2 Mad. 56

I. L. R. 8 Bom. 225

I. L. R. 4 Mad. 330

**EJECTMENT.**

See AGRA TENANCY ACT (II of 1901), ss. 56, 57, 80 . I. L. R. 28 All. 810

See BENGAL TENANCY ACT, s. 50.

10 C. W. N. 930

See BENGAL TENANCY ACT, s. 85

13 C. W. N. 183

See BENGAL TENANCY ACT, s. 171.

13 C. W. N. 97

See CENTRAL PROVINCES TENANCY ACT (XI of 1893) . I. L. R. 35 Calc. 470

See CIVIL PROCEDURE CODE, 1882, s. 463.

I. L. R. 33 Calc. 1094

See EJECTMENT, SUIT FOR.

See FORFEITURE . I. L. R. 35 Calc. 807

See HINDU LAW . 10 C. W. N. 785

See LANDLORD AND TENANT.

I. L. R. 33 Calc. 339, 459, 531

10 C. W. N. 719

I. L. R. 36 Calc. 927

13 C. W. N. 146, 635, 949

See LANDLORD AND TENANT—

NATURE OF TENANCY 5 C. W. N. 846

See LANDLORD AND TENANT ACT (VII of 1869, B. C.), s. 52 13 C. W. N. 1060

See LEASE, CONSTRUCTION OF.

11 C. W. N. 609

See LIMITATION ACT, 1877, SCH. II, ART. 144—ADVERSE POSSESSION.

I. L. R. 26 Bom. 442

See MADRAS RYNT RECOVERY ACT, s. 10.

I. L. R. 25 Mad. 613

See MORTGAGE—CONSTRUCTION.

I. R. 30 I. A. 54

See OCCUPANCY HOLDING

13 C. W. N. 220

See REGISTRATION I. L. R. 33 Calc. 502

See REVENUE SALE LAW, s. 54.

13 C. W. N. 407

EJECTMENT—*concl.*

See TRANSFER OF NON-TRANSFERABLE  
HOLDING . . . 10 C. W. N. 1033

order for—

See INSOLVENCY . I. L. R. 30 Calc. 488

1. ——— Estoppel—Dispute between rival  
vendors—Evidence Act (I of 1872), ss. 115, 116,  
117. A, who had purchased from X, brought a  
suit against B for ejectment, alleging that B was  
in wrongful possession of his land. A admitted  
that X had sold the same property previously  
to B, but contended that B as the multitear of  
X had obtained possession fraudulently and by  
undue influence. B alleged that he purchased  
the property from X previously ignorant of the  
fact that she had no title, and that in reality P  
was the true owner. Subsequently B purchased  
from P. A contended that, even if X had no  
title, B, by reason of having obtained possession  
from X, was estopped from alleging that A had no  
title. Held, that X having no title, the convey-  
ance to A was invalid, and the rule of estoppel  
only existed . . . the title of B  
I Ch. 410, s. . .

guished. *Payne v. Jones*, 13 N.Y. 20, referred to  
WOODROFFE, J.—X had no title, and therefore B  
was not estopped from raising that defence. *Dillon*  
*v. Fitzgerald*, [1897] 1 Ch 410, s. c on appeal [1897]  
2 Ch. 86, distinguished. *Clarke v. Adie*, 2 App.  
Cas. 423, *Osterhout v. Shoemaker*, 4 Barb 186,  
*Averall v. Wilson*, 3 Hill 513, and *Payne v. Jones*,  
13 Eq. 320, referred to. It is not sufficient for B  
to establish that the sale to A was voidable at the  
option of the vendor: he must show that it was  
absolutely void. *Lala Achal v. Raja Kazim*, L R  
32 I. A. 103, referred to. RUP CHAND GHOSH v.  
SARVESWAR CHANDRA CHANDRA (1906)

I. L. R. 33 Calc. 815  
s.c. 10 C. W. N. 747

2. ——— Immoral transactions—Con-  
tract Act (IX of 1872), s. 23. If a plaintiff cannot  
make out his case, except through an immoral  
. . . . . BAN

I. L. R. 32 Bom. 581

## EJECTMENT, SUIT FOR.

See ACQUIESCENCE . . . 7 B. L. R. 152  
10 B. L. R. Ap. 5  
I. L. R. 25 Calc. 886  
I. L. R. 21 All. 498; L. R. 28 I. A. 56  
I. L. R. 27 Calc. 570; 4 C. W. N. 210  
I. L. R. 14 All. 362

See BENGAL RENT ACT, 1869, s. 52.

See BENGAL TENANCY ACT, s. 153.

I. L. R. 30 Calc. 1063

See CHAUKIDARI CHAKKAN LANDS.

I. L. R. 31 Calc. 703

EJECTMENT, SUIT FOR—*cont.*

See COMPROMISE—

CONSTRUCTION, ETC., OF DEEDS OF  
COMPROMISE . . . 7 C. W. N. 158

COMPROMISE OF SUITS UNDER CIVIL  
PROCEDURE CODE . . . 7 C. W. N. 00

See CO-SHARERS—SUITS BY CO-SHARERS  
WITH RESPECT TO THE JOINT PROPERTY  
—EJECTMENT.

See DECREE—CONSTRUCTION OF DECREE—  
EJECTMENT.

See DECREE—FORM OF DECREE—EJECT-  
MENT.

See EJECTMENT.

See JURISDICTION OF CIVIL COURT—RENT  
AND REVENUE SUITS—NORTH-WESTERN  
PROVINCES . . . I. L. R. 23 All. 360

See LANDLORD AND TENANT.

O C. W. N. 141, 370, 460

I. L. R. 32 Calc. 41, 51

I. L. R. 34 Calc. 902; L. R. 34 I. A. 160

See LANDLORD AND TENANT.

EJECTMENT . . . I. L. R. 32 Calc. 51

FORFEITURE—DENIAL OF TITLE.

I. L. R. 28 Calc. 135

8 C. W. N. 575

NATURE OF TENANCY

I. L. R. 28 Calc. 738

TRANSFER BY TENANT.

8 C. W. N. 816

See LEASE . . . I. L. R. 32 Calc. 848

See ONES OF PROOF—LANDLORD AND  
TENANT . . . 7 C. W. N. 734

See PARTIES—PARTIES TO SUITS—BENAMI-  
DAR . . . I. L. R. 25 Calc. 98, 874

3 C. W. N. 12, 20

I. L. R. 16 All. 68

See PARTIES—PARTIES TO SUITS—EJECT-  
MENT, SUITS FOR.

I. L. R. 21 Bom. 328

I. L. R. 20 Mad. 375

See PRESIDENCY SMALL CAUSE COURTS  
ACT . . . I. L. R. 31 Bom. 258

See RES JUDICATA—COMPETENT COURT—  
REVENUE COURTS.

I. L. R. 30 Calc. 338

See SALE FOR ARREARS OF REVENUE.

I. L. R. 31 Calc. 725

See SMALL CAUSE COURT, PRESIDENCY  
TOWNS—JURISDICTION—RECOVERY OF  
IMMOVABLE PROPERTY.

I. L. R. 5 Bom. 295

I. L. R. 10 Bom. 30

I. L. R. 17 Mad. 216

See TRUSTS . . . 8 C. W. N. 818

notice—

See RULES MADE UNDER ACTS—BENGAL  
TENANCY ACT . . . I. L. R. 26 Calc. 590

EJECTMENT, SUIT FOR—*contd.*

1. ——— Title, proof of—*Necessity for plaintiff to prove superior title.* In a suit for ejectment the plaintiff must make out a title superior to that of the defendant before he can obtain a decree. *MOHESH CHUNDER LAHOORY v. SUMBHOO CHUNDER ROY CHOWDERY* . . . 2 May 303

2. ——— *Necessity for plaintiff to prove superior title.* In a case of ejectment (even though the dispute be merely as to which of the two parties the land belongs) the plaintiff must succeed by the strength of his title only, and not by the weakness of the defence. *SUTTO SURY GHOSAL v. DHONE KRISTNO SINGAR* . . . 1 W. R. 88

*CHUNDER MONEE CHOWDHRAIN v. RAJ KISHORE SHAHA* . . . 5 W. R. 246

*See BHOOBUN MOHUN MUNDLE v. RASH BEHAREE PAL* . . . 15 W. R. 84

*SHAM NARAIN v. COURT OF WARDS* . . . 20 W. R. 187

3. ——— *Necessity for plaintiff to prove superior title.* It is essential that a claimant, seeking to oust a party in possession of an estate, should establish his own right to the estate, and not rely upon the failure of the title impeached. A decree of the Sudder Court held that, although the title set up by the plaintiff was wholly bad, yet that a party defendant with whom the plaintiff had, by a deed of compromise, agreed to divide the estate, had shown his title, and on that ground decreed possession against the other defendant. Such decree reversed by the Privy Council on appeal, as the effect of the decree would be (i) to defeat the defendant's possessory title without giving him an opportunity of contesting the title of the party by whom he is turned out of possession, and (ii) as it was a violation of legal principles which protect possession and of the substantial principles of justice which regulate the joinder of parties and union of titles to sue in one suit. *JOWALA BUNSH v. DHARUN SINGH* . . . 10 Moo. I. A. 611

4. ——— *Proof of title of vendor where plaintiff is a purchaser.* In a suit for ejectment, strict proof of title must be adduced by a plaintiff. It is not sufficient for him to prove that the deed under which he claims was duly executed, he must be put to proof of the title of his vendor. *KALEE PERSHAD MOTTRA v. ITCHA MOYEE* . . . 24 W. R. 337

*TIBBY v. KRISTO MOHUN BOSE. HORENDEO v. AKBAR ALI* . . . L. R. 1 I. A. 76

5. ——— *Suit for possession of chur land—Onus probandi.* Where a party seeks to turn out another in possession of chur land which the plaintiff claims as a part of a mahal purchased by him from Government, the onus is on the plaintiff to prove that the land is the property of the defendant; because,

EJECTMENT, SUIT FOR—*contd.*

unless it is proved to be the property of the plaintiff, the latter is not entitled to turn out the former. *SHORNOMOYEE v. WATSON & Co.*

20 W. R. P. C. 211

affirming decision of High Court in *WATSON & Co. v. SHORNOMOYEE* . . . 9 W. R. 259

6. ——— *Present right to possession—Suit by reversioner against widow for possession.* A plaintiff who has not a present right to possession cannot sue to eject. Where therefore plaintiffs, divided members of the family of defendant's husband, sued the defendant, a widow, for possession of property which she had received from her husband

*RAMAN ANJAL v. SUBBAN ANNAYI alias SUBBA-MAMAYAN ANNAYI* . . . 2 Mad. 386

7. ——— *Ejectment suit by owner of "inter esse termini"—Landlord and tenant—Tenant remaining in occupation after passing a rannama—Effect of the rannama.* The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the mam village of D. In 1853 the third defendant ex-

but the land belongs to the mamdar. I have no title over it, and the mamdar can give it for cultivation to any one he pleases." Shortly after the date of this rannama, the mamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession. *Held*, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. *BHUTIA DHONDU v. ANBO* . . . I. L. R. 13 Bom. 294

8. ——— *Right to possession—Hindu mortgage—Want of possession—Sufficient possession to maintain suit.* In order that a Hindu mort-

*KRISHNAJI NARAYAN v. GOBIND BHASKAR* . . . 9 Bom. 275

Right to sue to set aside sale

ests of one S, where defendant claimed under a deed of sale from the same S, and the lower Appellate Court found that plaintiff had been in possession, and had been forcibly ejected by the defendant:

**EJECTMENT, SUIT FOR—contd.**

*Held*, that defendant's only title was the right to sue to set aside the sale in execution under which plaintiff held possession, and that this title did not avail him to eject plaintiff without a decree first obtained. **BENOSHNEE DHUR DASS v. BHARAWAY DASS** 24 W. R. 117

10. ——— Failure to prove title—*Possession by defendants under void decree.* I mortgaged to the plaintiff his house and certain undivided land in which H and others, Hindu co-parceners, had a share. R bought the interest of H in the land at a Court sale, and let it to H and I, who, failing to pay rent, were sued by R, who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land and rateably distributed the proceeds, except to I who declined to take the amount tendered as his share. In a suit against I and the purchasers under R's decree to recover his mortgage-debt by a sale of the property mortgaged to him, the proceedings of the Collector were held to be without jurisdiction, and the plaintiff was entitled to ignore them, and assert his claim under the mortgage. *Held*, that the defendants, being in actual possession,—albeit through a sale under a void decree,—could not be ousted in the present suit, and were entitled to say that the plaintiff had not proved his title to sell the specific lands mortgaged. **NARAYAN NAQARKAR v. VITHU JAKHOJI** I L. R. 8 Bom. 539

11. ——— Right to eject mortgagee of raiyat with right of occupancy. The sons of a zamindar, whose zamindari estate is held on mortgage by a third party, are not justified in ousting the mortgagee of a raiyat having a right of occupancy. **KHOSRALEE v. BULJEET** 2 Agra 79

12. ——— Demand of possession—*Proceedings under Criminal Procedure Code, s. 530.* Proceedings in a Criminal Court, under s. 530 of the Code of Criminal Procedure, are not a sufficient demand of possession for the purpose of maintaining an ejectment suit. **RAM ROTTO v. MUNDOL v. NETRO KALLY DASSEE** I L. R. 4 Calc. 339

13. ——— Fraudulent transfer of property—*Defendant not in possession.* In a suit for possession by parties claiming as mortgagors

found to be barred against the second defendants, that no decree could rightly be given against the first defendants, though they might have been guilty of breach of trust against the plaintiff and be liable in a suit properly framed for the purpose, as they were in no sense in possession. **AMEENA BEGUM v. DOORDANAH KHANUM** 19 W. R. 44

14. ——— Mortgage—*Redemption, Decree for.* If a suit is brought in ejectment, and the defendant proves that he holds a mortgage, a decree

**EJECTMENT, SUIT FOR—contd.**

for redemption cannot be made without his consent. **CHANDU v. KOMBH** I. L. R. 9 Mad. 199

15. ——— Misstatement of area of land—*Precise definition by other description.* In a suit for ejectment a mere misstatement of the area of the land sought to be recovered ought not to be regarded as anything more than a "false demonstration." If the space is precisely defined by other description, the statement of its measurement in square yards may be treated as surplusage and of no consequence. **VIJAYANDAS MADHAVAS v. MANOMED ALI KHAN** I. L. R. 5 Bom. 208

16. ——— Obligation of plaintiff to accept compensation. The Court will not oblige the plaintiff in a suit in the nature of an action of ejectment to accept compensation. **SORABJI NASARVANJI DUNDAS v. JUSTICES OF THE PEACE FOR CITY OF BOMBAY** 12 Bom. 250

17. ——— Intervenor—*Issue, power of Judge to try.* Where, in a suit brought by a zamindar to eject a raiyat, a person intervenes claiming to be a mortgagee of a part of the raiyat's tenement

18. ——— Ejectment for non-performance of services—*Rate of rent where service is commuted.* Where a plaintiff sues for the ejectment of the defendant on the ground that the latter has failed to render certain stipulated service, and the

which the service ought to be commuted. **BALINDUR NARAIN v. KALLA MESSOO KOOS** 18 W. R. 340

19. ——— Right to bring ejectment suit—*Suit by lessee while lessor is out of possession.* A lessee is entitled to maintain a suit for

20. ——— Suit by second mortgagee to eject first mortgagee in possession—*Right of occupancy, transfer of—Suit for possession by one wrong doer against another—First and second mortgages of occupancy holding.* Where an occu-

being wrong-doers, inasmuch as both mortgages were illegal, the defendants who were in possession had a right as against the plaintiffs to retain possession. **USUF KHAN v. SARVAN**

I. L. R. 13 All. 403

EJECTMENT, SUIT FOR—*contd.*

21. — Sale by mortgagor of parts of the mortgaged property—*Suit for sale by mortgagee without joining the vendees—Subsequent suit to eject mortgagor's vendees—Cause of action—Right of suit.* A mortgagor, who had given a simple mortgage over certain land, sold some of the mortgaged property. The mortgagee, after

vendees of the mortgagor *Held*, that the suit would not lie, inasmuch as the plaintiff (mortgagee) had at its commencement no title to prevent possession of that particular portion of the mortgaged property as against anyone. *HAROV LAL SINGH v. GOBIND RAI*, I. L. R. 19 All. 541

22. — Suit for ejectment by one auction-purchaser against the other—*Prior and subsequent mortgages—Mortgaged property sold twice in execution of decrees in suits in each of which the other mortgagee was not a party—Form of decree.* B mortgaged a house, first to D, and subsequently to M and C. M and C brought

plaintiff's suit must be dismissed; and that it was not competent to the Court to grant a decree in favour of the plaintiff conditioned on the failure of the defendant to redeem the mortgage upon which the plaintiff's title was ultimately based. *Hargu Lal Singh v. Gobind Rai*, I. L. R. 19 All. 541, followed and explained. *MAHAN LAL v. BHAGWAN DAS*, I. L. R. 21 All. 235

23. — Law of Oudh—*Re grant—Construction—Ambiguity—"Occupants"* In a suit to eject the defendant from the occupation of certain shops in a bazar, which, after its confiscation, had been entered in the *Nazul* Register under the erroneous impression that it was previously the property of the King of

EJECTMENT, SUIT FOR—*contd.*

Case remanded to try (i) whether the plaintiffs would have been entitled but for the confiscation; and (ii) whether the occupiers had acquired any rights by long possession. *CHOUNDRI MAKHUL HUSAIN v. LALTA PERSHAD* (1901)

I. L. R. 24 All. I  
s.c. L. R. 28 I. A. 169

24. — Cause of action—*Compensation—Transfer of Property Act (IV of 1882), s. 51—Estoppel—Evidence Act (I of 1872), s. 115.* A brought a suit against B and others for ejectment, making the landlord a defendant to the suit, on the allegation that he (A), having obtained a lease of the land from the landlord, took possession, but subsequently was forcibly dispossessed by the defendants (second party) in collusion with the landlord. The defence of the defendants (second party) mainly was that the suit was bad for multifariousness, inasmuch as they were severally in possession of definite and

several amount of money in payment of the same

persons in possession may seek to justify the wrongful detention of what is his. What the plaintiff is in the memory of possession of his persons hat right

are concerned in his case of doing, and ought accordingly to be made parties to the suit. *Ishan Chander Hazra v. Rameswar Mondol*, I. L. R. 24 Cal. 831, referred to. *Held*, also, that, as it was not shown that the plaintiff knew that the defendants were spending money upon the improvement of the land and were doing so in the belief that they had a good title, while he stood by and allowed them to proceed with these expenditures, the plaintiff was entitled to get a decree for ejectment without indemnifying the defendants for their outlay. *Casador v. Lewis*, 1 Y. & C. 427, and *Wilmott v. Barber*, L. R. 15 Ch. D. 86, referred to. *Held*, further that, even assuming that mere ques-

figures, should not be disturbed. *Held*, that, by a true construction of this direction, it was not a grant of proprietary right to the occupiers. The inquiry

EJECTMENT, SUIT FOR—*contd.*

25. — **Partial ejectment—Joint estate—Co-sharer landlord, rights of—Service tenure—Fair and equitable rent—Bengal Tenancy Act (VIII of 1855)** Where tenants were originally let into possession of land by all the co-sharers in a zamindari, a co-sharer landlord is not competent to obtain a partial ejectment of the tenants to the extent of his share, unless the tenancy has been determined by all the co-sharers. *Hulodhur Sea v. Goro Doss Roy*, 20 W. R. 126; *Radha Prasad Wasti v. Esuf*, 1. L. R. 7 Calc. 114; and *Kamal Kumari Choudhroni v. Kiran Chandra Roy*, 2 C. W. N. 229, distinguished. **Semle:** In the case of a service tenure created by all the co-sharers in a zamindari, not governed by the provisions of the Bengal Tenancy Act, a co-sharer landlord is not competent to sue the tenants for fair and equitable rent payable in respect of his share.

formed.  
BAN (1901)

26. — **Ejectment of under-ryat—Delay in suing—"Holding over," presumption over Act—Bengal Tenancy Act (VIII of 1855), s. 43.** After the expiry of a written lease, a mere delay in the institution of a suit by the lessor for ejectment of the lessee without notice to quit, is no reason for dismissal of the suit on the ground that the lessee was allowed to 'hold over.' *RATAN LAL GIR v. FARSHI BIBI* (1907) 1. L. R. 34 Calc. 386

27. — **Res judicata—Agra Tenancy Act (Local II of 1901), s. 199—Suit for ejectment in Revenue Court—Omission on part of defendant to plead title in himself.** In a suit for ejectment under Act No II of 1901, the defendants did not plead their own title to the plot in suit, and in fact did not oppose the suit for ejectment. *Held*, that a subsequent suit brought in a Civil Court by the then defendants for proprietary possession of the same plot was barred by the principle of *res judicata*. *Ram Kishori v. Raja Ram*, *All Weekly Notes* (1904) 109; *Ashraf-un-nissa v. Ali Ahmed*, *All Weekly Notes* (1904) 141 and *Inayat Ali Khan v. Murad Ali Khan*, 1. L. R. 27 All. 565, distinguished. *Salig Dube v. Deoks Dube*, *All Weekly Notes* (1907) 1, and *Bens Fande v. Raja Kausal Kishore Prasad Mai Bahadur*, 1. L. R. 29 All. 160, referred to *Gokul Mandar v. Pudmanund Singh*, 1. L. R. 29 Calc. 107, discussed. *BHARAT SNEH-BALAK* (1907) 1. L. R. 29 All. 601

28. — **Limitation—Limitation Act (XV of 1877), Sch. II, Arts 139, 113—Lease—Forfeiture—Suit for ejectment.** A lease granted for the reclamation of certain jungle lands provided that the lessee should hold the lands rent-free for six years and that in the beginning of the seventh year he should cause the lands to be measured and a settlement of rent made in respect of the reclaimed lands failing which the landlord would be entitled to possession.

EJECTMENT, SUIT FOR—*contd.*

*Held*, that a suit by the lessor for ejectment on the ground of the lessee's failure to comply with the above-mentioned provision in the lease was governed by Art. 143, and not by Art. 139, Sch. II, of the Limitation Act. *GOOH SHUKH v. H. MATHEWS* (1907) 11 C. W. N. 681

29. — **Parties—Persons in actual possession necessary parties.** In a suit in ejectment the persons in actual possession need to be joined as parties. *BANURI v. NARSINGRAO* (1906) 1. L. R. 31 Bom. 250

30. — **Suit by Committee of management—Appointment of a Committee for management of property—Appointment acquiesced in by owner—Committee in management for a long time—Suit by Committee against a trespasser—Title.** The Parsi Panchayat at Bombay appointed a committee to manage the property of the Parsi Anjuman at Surat. The committee managed the property for a very long time—sixty years—with the authority and acquiescence of the Parsi Anjuman. Subsequently the defendant having trespassed on the property, the committee sued him in ejectment. The defendant contended that the plaintiffs had no right to sue for the recovery of the property as they were neither the owners nor the nominees of the Anjuman. *Held*, that the plaintiffs being in possession for a long time with the authority and acquiescence of the owners, namely, the Parsi Anjuman at Surat, were entitled to recover possession from a trespasser. *JIVANJI JANSHEDJ v. BARJORJI NASSERVANJI* (1909) 1. L. R. 33 Bom. 499

## EKRRAR.

See SPECIFIC PERFORMANCE.

1. L. R. 31 Calc. 534

## ELECTION.

See BOMBAY MUNICIPAL ACT (Bom. III of 1893), s. 33

1. L. R. 31 Bom. 604

See MISJOINDER OF PLAINTIFFS.

1. L. R. 34 Calc. 682

See MUNICIPALITY

1. L. R. 31 Bom. 37

doctrines of—

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY. 1. L. R. 20 Bom. 316  
1. L. R. 21 Bom. 349

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ELECTION, DOCTRINE OF.

1. L. R. 14 Bom. 438

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SURVIVORSHIP

1. L. R. 15 Bom. 443

list of candidates at—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.

1. L. R. 19 Calc. 192, 195 note, 298

1. L. R. 22 Calc. 717

**ELECTION—concll.**

order refusing to set aside—

See SUPERINTENDENCE OF HIGH COURT  
—CIVIL PROCEDURE CODE, s. 622.

I. L. R. 21 Bom. 279

reversioner's right of—

See HINDU LAW—Widow.

I. L. R. 34 Calc. 329

validity of—

See JURISDICTION OF CIVIL COURTS.

I. L. R. 31 Bom. 604

City of Bombay Mun-

has sole jurisdiction to try suits relating to election  
petitions—Jurisdiction of High Court—Civil Proce.

validity of any election may be found in

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valid election, and the words used are consistent  
with the view that an election which in fact took  
place under conditions that made it possible that

a contested election

otherwise expressly provided or necessarily implied,  
that tribunal's jurisdiction to determine those  
questions is exclusive. It is an essential condition  
of those rights that they should be determined in  
the manner prescribed by the Act, to which they  
owe their existence. In such a case there is no  
ouster of the jurisdiction of the ordinary Courts,  
for they never had any. The jurisdiction of the  
Courts can be excluded not only by express words  
but also by implication, and there certainly is  
enough in s. 32 of the Municipal Corporation Act

Semle: If the  
might be a con  
Court and the  
the order of th  
terms of the Act, prevail **BHAISHANKAR v. THE  
MUNICIPAL CORPORATION OF BOMBAY (1907)**  
I. L. R. 31 Bom. 604

**ELEPHANT,**

See ANIMAL . I. L. R. 35 Calc. 413

See COMPANIES ACT, s. 4.

13 C. W. N. 638

**EMBANKMENT.**

See THEFT . . I. L. R. 35 Calc. 437

erection of—

See RIGHT OF SUIT—INJURY TO ENJOY-  
MENT OF PROPERTY.

I. L. R. 18 Mad. 158

1. ——— Addition to existing embank-  
ment—Notification, publication of—Beng. Act II  
of 1882 (Bengal Embankment Act), ss. 6, 76, cl. (b),  
and 80. The words "shall add to any exist-  
ing embankment" in cl. (b), s. 76 of Bengal Act  
II of 1882, are not intended to mean any repair

I. L. R. 11 Calc. 570

2. ——— Maintenance of embank-  
ment—Prescriptive right—Liability for damage  
done by escape of water Where a defendant shows

the escape or overflow be caused by the act of God,  
or *vis major*. **RAN LALL SINGH v. LALL DHARY  
MUNTON . . . I. L. R. 3 Calc. 776**

See MADRAS RAILWAY COMPANY v. ZAMINDAR OF  
CARVETINAGARAM

14 B. L. R. 29; L. R. 1 I A. 384

3. ——— Inundation—Em-  
bankments—Liability to repair—Beng. Act VI of  
1873—Regs. II, VIII, and XXVIII of 1793—  
Reg. VI of 1806—Reg. XI of 1829—Act XXXII of  
1855. In a suit for damages caused by the overflow  
of a river through an embankment on the defend-  
ant's land, it appeared that the defendants held  
under a kabuliya from Government, which

It did not appear whether the embankment was  
in existence when the kabuliya was granted. It was  
proved that the defendants received an annual sum  
from Government as a contribution to the repairs  
of embankments, but such payment was not pro-  
vided for in the kabuliya, and no evidence was given  
as to the terms of the agreement under which  
it was paid. *Held*, that there was no common law  
liability to repair imposed on the defendants; that

**EMBANKMENT—contd.**

regulations and Acts relating to embankments in Bengal considered. **NUFFER CHANDER BHOTTAJOTINDRA MOHUN TAGORE**

**I. L. R. 7 Cal. 605 : 6 C. L. R. 553**

4. ——— Addition to embankment—“Shall add to”—*Bengal Embankment Act (Ben. Act II of 1882), ss. 76, cl. (a), 79.* The words “shall add to any existing embankments,” in s. 76, cl. (a), of Bengal Act II of 1882, include an addition to the height of an embankment. *Goverdhan Sinha v. The Queen-Empress, I. L. R. 11 Cal. 570, overruled. AZODHYA NATH KOLLA v. RAJ KRISHNA BHAR (1902)*

**I. L. R. 30 Cal. 481  
s.c. 7 C. W. N. 284**

5. ——— Notification—*Bengal Embankment Act (Ben. Act II of 1882), ss. 6, 76 (b), 89—Publication of notification in Gazette, effect of—Publication of proclamation and issuing of notices in the locality, if essential—Failure, how affects prosecution and punishment—Ignorance of law, plea of.* Under s. 6 of the Bengal Embankment Act, the provisions of s. 76 (b) of that Act take effect within a declared area one month after the publication of the notification in the Gazette.

cannot override the declaration in s. 6 that the provisions of the notification shall take effect one month from the publication in the Gazette, and every one within the locality would thereafter be bound by the provisions of s. 76 (b). On the principle that ignorance of law is no excuse, a person who has committed any of the acts prohibited by s. 76 (b), one month after the publication of the notification in the Gazette—

mission of an offence under the Act, it is material on the question of punishment. **BRINDABAN GHOSH v. EMERSON (1902)** **7 C. W. N. 288**

6. ——— Sand-bank—*Bengal Embankment Act (Ben. Act II of 1882), ss. 3, 77—“Public embankment,” meaning of—“Made or erected”—Sand bank formed naturally between two spurs erected by Government officers, cutting through or destroying—Statute affecting liberty of subject, construction of* A bank made or erected is something directly caused by some act of construction, and not something which may or may not result from the forces of nature. A bank of sand which has artificially formed, by the action of the water between two

**EMBANKMENT—contd.**

spurs erected by Government for the protection of an embankment, is not an embankment within the definition of that expression, nor is it a public embankment. The cutting through of such a sand bank for the protection of one's own cultivation by preventing an accumulation of water is not an offence under s. 77 of the Bengal Embankment Act. In construing a Statute which affects the liberty of the subject, the Courts should not only adopt the natural and ordinary construction, but should construe strictly expressions occurring therein. **BISLAMBEER SINGH v. QUEEN-EMPERESS (1900)**

**6 C. W. N. 108**

**EMBLEMES, RIGHT TO.**

*See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHT OF—EMBLEMES.*

**I. L. R. 2 Bom. 970**

**I. L. R. 13 Mad. 15**

**EMIGRATION ACT (XXI OF 1883 AMENDED BY ACT X OF 1902).**

**ss. 6, 29, 106, 111—**

——— *Magistrate—Magistrate, First Class, in s. 111, includes Presidency Magistrate—Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of s. 111—Protector of Emigrants has power to impose reasonable terms before he can issue permission applied for—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure—Criminal Procedure Code (Act V of 1898), s. 537 The term “Magistrate of the First Class” used in s. 111 of the Indian Emigration Act 1883 means a Magistrate appointed as*

trate Where on an information a summons is issued to the accused and, owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons is not sufficient, under s. 537 of the Criminal Procedure Code, to upset the finding and sentence unless it has in fact occasioned “a failure of justice,” that is, unless it has unfairly affected the accused's defence on the merits. Sub-s. (1) of s. 111 of the Indian Emigration Act hits at not merely entering into an agreement, but also at any attempt to enter into it. An attempt consists in some external

on the part of the prosecutor to



**EMIGRATION ACT (XXI OF 1883  
AMENDED BY ACT X OF 1902)—*contd.***

ss. 8, 20, 108, 111—*concl'd.*

establish the master's liability, yet the question whether he is liable turns necessarily upon what is

in the clause means whoever either by himself or through his agent. In other words, the Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract. The coupling of the word with the words "terms," "conditions" in s. 107 of the Act shows the intention of the Legislature to be that the officer authorized to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself or being extraneous to it relate to the execution or other considerations which have

makes it compulsory that the execution of the agreement therein referred to should be in the presence of the Protector. In s. 108 of the Act the power conferred on the Local Government,

the other, especially where the language of each is plain. *EMPEROR v. JEEVANJI* (1907)

I. L. R. 31 Bom. 811

s. 107—*Servant offending under the Act in the course of his master's employment for his master's benefit—Master's liability—Artisan—Engine driver on board a steamer.* If a servant having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business, everything which he does within the scope of his employment for that purpose will be binding upon the master and the master will be criminally liable for such act of the

**EMIGRATION ACT (XXI OF 1883  
AMENDED BY ACT X OF 1902)—*contd.***

s. 107—*concl'd.*

servant as an agent in such a business, the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law. A person engaged to drive an engine on board a steamer is an artisan within the meaning of the term as used in s. 107 of the Indian Emigration Act, 1883. *EMPEROR v. HAJI SHAH MAHOMED* (1907)

I. L. R. 32 Bom. 10

**EMIGRATION OF NATIVE LABOURERS.**

*See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—EMIGRANTS, ETC.*

4 Mad. Ap. 4

**ENCROACHMENT.**

*See EASEMENT.* I. L. R. 28 Bom. 428

*See GRANT.* I. L. R. 35 Calc. 478

*See INJUNCTION.* I. L. R. 28 Bom. 298

*See JURISDICTION OF MAGISTRATE.*  
I. L. R. 32 Calc. 287

*See LANDLORD AND TENANT—ACCRETION TO TENURE.* I. B. L. R. A. C. 21

22 W. R. 248

I. L. R. 10 Calc. 820

I. L. R. 18 Bom. 552

I. L. R. 25 Calc. 302

*See LANDLORD AND TENANT.*  
13 C. W. N. 698

*See LANDLORD AND TENANT—OBLIGATION OF TENANT TO KEEP HOLDING DISTRICT.*  
9 C. L. R. 347

*See LAND-REVENUE.*  
I. L. R. 25 Bom. 752

*See LIMITATION ACT, ART. 149.*  
I. L. R. 19 Mad. 154

*See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.* I. L. R. 20 Mad. 433

*See RIGHT OF SUIT—BUILDING, SUIT TO RESTRAIN.* 22 W. R. 73  
25 W. R. 524

*See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.*  
I. L. R. 18 Bom. 699

on public way.

*See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.* 6 C. W. N. 886

on vacant land.

*See POSSESSION—ADVERSE POSSESSION.*  
1 Agta Rev. 38  
I. L. R. 16 Bom. 338

*See RIGHT OF WAY.*  
I. L. R. 17 Bom. 848

**ENCROACHMENT—contd.**

1. ——— Legal rights of owner of land —Owner not compellable to accept compensation instead of removal of encroachment. In a suit to recover land adjacent to a temple belonging to the defendants, on which land the defendants had encroached by building verandahs, the lower Courts found that the land sued for was the property of the plaintiff subject to the defendants' right of access to the temple, and directed the defendants to pay compensation to the plaintiff for the encroachment. The plaintiff appealed to the High Court. *Held*, that, the land being found to be the plaintiff's, the Courts could not compel him to part with his legal rights and accept compensation against his will, however reasonable it might appear to be. The defendants were accordingly ordered to remove the verandahs complained of and to restore possession of the land to the plaintiff. **GOVIND VETKAJI P. SADASHIV BHARMA SHET**

I. L. R. 17 Bom. 771

2. ——— Injury to property—Contributory act—Tort—Contributory negligence. As in the case of contributory negligence, so an act of one party can only be contributory to the injury

caused by another party, if it is a contributory act, and not an independent act.

I. L. R. 11 Mad. 505

3. ——— Stranger building on land of another—Acquiescence of owner—Delay of owner in suing possession—Form of decree. It is well established law in England that if a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. This is also the law in India, with the exception that the party building on the land of another is allowed to remove the building. Delay by the owner in bringing a suit is not in itself sufficient to create an equity in favour of the person spending money on the land so as to deprive the owner of his strict rights. The decree made by the High Court was that the plaintiff should recover the land with liberty to the defendant forthwith to commence to remove his building and to restore the property to the condition in which it was when he took possession, the same to be completed within one year from date of decree. In default, the plaintiff to be at liberty to remove the building at the expense of the defendant. **PREMJI JIVAN BHATE P. CANNON JUMA AHMED**

I. L. R. 20 Bom. 298

4. ——— Projection "Fixture"—Obstruction on public street—Calcutta Municipal Act (Bengal Act III of 1899), ss. 3, sub-a. (37), 256, 336, 341. A verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain which runs between the street and the front of the house, is a "fixture" and "a projection,

**ENCROACHMENT—concl.**

encroachment, or obstruction over or on a public street" within the meaning of s. 341 of the Calcutta Municipal Act. **CORPORATION OF CALCUTTA P. IMADUL HUK (1907)** . I. L. R. 31 Calc. 844

**ENCUMBRANCE.**

See GRIFFIN . I. L. R. 35 Calc. 931

See INCUMBRANCE.

See SILE FOR ARRIERS OF REVENUE. 8 C. W. N. 788

## —— annulment of—

See HINDU TENANCY ACT, s. 167.

11 C. W. N. 350

**ENDORSEMENT.**

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R. 14 Bom. 472

See GOVERNMENT PROMISSORY NOTE. 13 B. L. R. 359

See HINDI—ENDORSEMENT.

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

See REGISTRATION ACT, s. 17. I. L. R. 14 Bom. 472

See STAMP ACT, 1879, s. 39. I. L. R. 11 Mad. 40

See STAMP ACT, 1879, SEC. II, ART. 15. I. L. R. 10 Mad. 64

## —— assignment and re-transfer by—

See STAMP ACT, 1869, ss. 34 AND 41. I. L. R. 3 Calc. 347

## —— forged.

See BILL OF EXCHANGE. I. L. R. 15 Bom. 287

See HINDI—PROPERTY IN HINDI AND FORGED HINDI.

7 B. L. R. 275, 289 note

## —— of transfer on bond.

See STAMP ACT, 1879, s. 17. I. L. R. 17 Bom. 687

## of warrant of arrest.

See WARRANT OF ARREST—CRIMINAL CASES . 5 C. W. N. 447

## —— on deed of sale.

See REGISTRATION ACT, 1877, s. 17. I. L. R. 2 Bom. 547

## —— on mortgage-bond.

See REGISTRATION ACT, 1877, s. 17. I. L. R. 9 All. 108

## —— to allow third person to sue.

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

3 B. L. R. O. C. 130  
2 C. W. N. 286

## ENDOWMENT.

See ACT, 1863—XX (RELIGIOUS ENDOWMENTS).

See APPEAL . I. L. R. 34 Calc. 584

See BENGAL REGULATION VIII OF 1819

See DEBUTTER . 13 C. W. N. 905

See DEBUTTER PROPERTY.

See DECLARATORY DECREE, SUIT FOR—ENDOWMENT.

See DECREE—CONSTRUCTION OF DECREE—ENDOWMENT . I. L. R. 17 Mad. 343  
I. L. R. 21 I. A. 71

See DECREE—FORM OF DECREE—ENDOWMENT . 21 W. R. 334  
I. L. R. 24 Bom. 50

See EVIDENCE ACT (I OF 1872), s. 90.  
I. L. R. 33 Calc. 571

See HINDU LAW—ENDOWMENT.  
9 C. W. N. 528  
I. L. R. 27 All. 581  
I. L. R. 38 Calc. 1003

See HINDU LAW—CUSTOM—ENDOWMENT  
L. R. 11 I. A. 209  
I. L. R. 14 Bom. 90

See LIMITATION I. L. R. 32 Calc. 129

See LIMITATION ACT, 1877, ss. 2, 10, 28  
I. L. R. 31 Calc. 314  
8 C. W. N. 909

See LIMITATION ACT, 1877, SCH. II,  
ART 134.  
I. L. R. 27 Bom. 363, 500

ARTS. 134 AND 144  
I. L. R. 27 Bom. 373

See MAHOMEDAN LAW 9 C. W. N. 625

See MAHOMEDAN LAW—ENDOWMENT.

See MALABAR LAW—ENDOWMENT.

See MORTGAGE . 9 C. W. N. 914

See ONUS OF PROOF—TRUST, REVOCATION  
OF . 10 B. L. R. P. C. 19

See REFERENCE TO HIGH COURT—CIVIL  
CASES . I. L. R. 25 Bom. 327

See RIGHT OF SUIT—CHARITIES AND  
TRUSTS.

See RIGHT OF SUIT—ENDOWMENTS, SUITS  
RELATING TO I. L. R. 13 Mad. 377  
I. L. R. 17 Mad. 143

See SMALL CAUSE COURT MUFUSSIL  
JURISDICTION—ENDOWMENT.

I. L. R. 14 All. 413

See TRUST . I. L. R. 15 Bom. 625

1. ——— Religious endowment—Civil Procedure Code, 1877, s. 539 S. 522 of the Civil Procedure Code, 1877, does not apply to the case of an endowment for purposes religious as well as charitable. KARUFFA v. ARUMTOA  
I. L. R. 5 Mad. 383

## ENDOWMENT—contd.

2. ——— Suit for management of religious endowment—Right of suit—Act XX of 1863, s. 18—Parties—Jurisdiction of High Court.

and control of the temples, endowments, and worship of the Decumbrey sect of Jains, and who formed the committee for the management of all the Jain charities as well in Calcutta as in all the other towns and places in India, brought a suit, praying, *inter alia*, for the construction of a will, and for a declaration of their rights thereunder as members of the said Panch, and to have property dedicated by the will to religious purposes ascertained and secured. *Held per KENNEDY, J.*, in the Court below, that the description of the character in which the plaintiffs sued was uncertain and ambiguous; that, inasmuch as the property in question was not *debutter*, the plaintiffs were not *sebaits*, and all they could claim, therefore, was a right of management; and that a mere manager, without some special power which the Hindu law

gifts in the will could be treated as charitable bequests, possibly the Advocate General could sue. *Held on appeal*, reversing the decision of the lower Court, that the right in which the plaintiffs sued was sufficiently shown, and that the object of the suit was not to assert any personal right of ownership in the plaintiffs. *Held*, further, that the Advocate General was not a necessary party, although it was desirable that such suits should be brought only with his consent, or by the leave of the Court. *Held*, further, that suits of this description do not fall under Act XX of 1863, but come under the ordinary jurisdiction of the Court, inherited from the Supreme Court, and conferred upon that Court by its Charter—a jurisdiction similar in its general features to that of the Lord Chancellor in England. PANCHOWRIE MULL v. CHUNROOLALL

I. L. R. 3 Calc. 563 : C. L. R. 121

KALI CHURN GIRI v. GOLANI . 2 C. L. R. 128

RUP NARAIN SING v. JUNKO BYE  
3 C. L. R. 121

3. ——— Erection of endowment, presumption of—Erection of temple—Ownership, presumption of The mere fact of the erection of a temple does not create a presumption of ownership in the temple.

MISSA . I. L. R. 16 All. 412

4. ——— Property in British India of a temple outside British India—Jurisdiction in suit to declare right to officiate in temple and for share of temple property. The

**ENDOWMENT—contd.**

plaintiff was a member of a family which had the management, and received the income, of certain property situate in British India belonging to a temple situate at Ashta in the Nizam's territory. Part of the income was devoted to religious services and part to the support of the family. The plaintiff sued to recover his portion of the income of the temple.

modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns, and of allowing alienation within certain restrictions. **TRIMPAK RAMKRISHNA RANADE v. LAKSHMAN RAMKRISHNA RANADE**

I. L. R. 20 Bom. 495

5. ——— Succession in management of muth—Religious Endowments Act (XX of 1863), ss. 14, 18—Want of asceticism of paradesi—Removal of paradesi—Form of decree—Civil Procedure Code, ss. 13, 43, 539—Right of suit—Res Judicata—Relinquishment or omission to sue

and children, whom he maintained with the produce of the property of the muth, and it appeared that he had failed to perform the ceremonies of the institution. The muth in question came into existence under a deed of endowment or "charity grant," whereby the first zamindar of Sivaganga granted land to his guru for the erection and maintenance of a muth and the performance of certain religious exercises in perpetuity, and provided that the head of the muth should be of the line of disciples of the original grantee whose spiritual family he desired to perpetuate. In 1867 a predecessor in title of the plaintiff had sued unsuccessfully to recover the income of the muth.

was established that the head of the muth for the time being had the right to appoint his successor, and that such appointment was not subject to the approval of the Government.

and that the members of the plaintiff's family were the only persons interested in the appointment. *Held*, (1) that the jurisdiction

**ENDOWMENT—contd.**

of the auberlinate Court was not ousted by Act XX of 1863 since the temple of the plaintiff was not a public temple.

(v) that the proper decree was (1) to declare the plaintiff's right to appoint a qualified person with the concurrence of the rest of his family; (2) to direct him to do so within a given time, failing which the suit should stand dismissed with costs. If such appointment was made, notice should be given to the other members of the plaintiff's family before it was confirmed; if such appointment were confirmed, the property should be directed to be delivered to the person appointed to be administered in accordance with the trusts and usage of the muth. *Semble*: That the paradesi or head of the muth might be a married man, provided he had been duly initiated. **SATHIAFFAYAR v. PERIASAMI**

I. L. R. 14 Mad. 1

6. ——— Public, religious, and charitable trust—Hindu temple, with a dharmashala and sadavart attached to it—Trustee—Liability of constructive trustee. A Hindu built a temple in honour of the deity Shri Pandurang, to which were attached a dharmashala and a sadavart for feeding travellers and giving alms to the poor. For the maintenance of the temple and the charities connected with it, he dedicated certain property by a deed of gift, under which he constituted himself a trustee for life and appointed a *pinch* to act as his successors in the trust. During his lifetime he managed the temple property.

munity. In 1891 the pujari of the temple and five other worshippers of the idol filed this suit under s. 539 of the Code of Civil Procedure (Act XIV of 1882) with the sanction of the Advocate General, for removing the defendant from the management of the temple on the ground of his misconduct and mismanagement of the trust property. The defendant pleaded (*inter alia*) that the property was not a public, religious, and charitable trust; that he was not a trustee; that the plaintiffs had no right to sue; and that the suit was time-barred. *Held*, (1) that, having regard to the fact that a certain number of the public had always used the temple, that there was attached to it a dharmashala, and that the surplus funds not required for the service of the temple were to be applied to

**ENDOWMENT—contd.**

he made himself a constructive trustee, and was liable as such to the beneficiaries. **JUALKISHORE v. LAKSHMANDAS RAGHUNATH DAS**

**I. L. R. 23 Bom. 659**

7. ——— Suit by trustees for possession—*Madras Regulation VII of 1817—Order of Revenue Board appointing manager.* The suit was brought by the trustees of certain pagodas for the recovery of six villages for the defendant on behalf of the pagodas and to declare a copper

manage must reside in the pagoda if it did not

question whether plaintiff was precluded from recovering during the lifetime of defendant, by reason of the order of 1853, placing defendant in possession: *Held*, that the Government could not create a valid title to more than they themselves possessed; that they had simply taken over the management and management of the endowment and

**NELLAKUNARA SILLAI**

8. ——— Hindu or Mahomedan religious endowment—*Alienation or pledge of—Bombay Act II of 1863, s. 8, cl 3—Common law of the country.* Religious endowments in this country, whether they are Hindu or Mahomedan, are not alienable; though the annual revenues of such endowments, as distinguished from the corpus, may occasionally, when it is necessary to do so in order to raise money for purposes essential to the temple or other institution endowed, but not further or otherwise, be pledged. *Bombay Act II of 1863, s. 8, cl 3*, contained no new law but merely declared the pre-existing common law of this country. **NARAYAN v CHINTAMAN** **I. L. R. 5 Bom. 393**

9. ——— Charity—*Family idols—Sale of trust property in execution—Suit by trustee to recover the property—Limitation.* The Hindu law, unlike the English law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of

**ENDOWMENT—contd.**

the general public. In execution of decrees against the plaintiff as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff) and their descendants by a deed of gift to perpetuate the worship of the donor's household idol. *Held*, that the plaintiff was entitled to recover the property. The gift was a valid one, creating a religious endowment under the Hindu law, and that the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable. **RUPA JAOSHET v. KRISHNAJI GOVIND**

**I. L. R. 9 Bom. 169**

10. ——— Charitable endowment—*Trust property sold in execution—Rights of heirs of the creator of the trust against execution-purchaser.* A trust-deed of certain property executed by the member of a Hindu family pro-

visions of the trust were not proved to have been observed by the settlor or his family, and the settlor on one occasion disclaimed the trust. The trust property was attached and sold in execution of personal decrees passed against the settlor and another member of his family. The widow of the

entitled to recover the land **Rupa Jaoshet v. Krishnaji Govind, I. L. R. 9 Bom. 169**, distinguished. **SUPPAMMAL v. COLLECTOR OF TANJORE**

**I. L. R. 12 Mad. 387**

11. ——— Trustees—*Act XX of 1863, s. 14—Bengal Regulation XIX of 1810—Civil Procedure Code, 1832, s. 539—Suit to remove trustees of Hindu religious endowment—Right of representative of founder of trust to nominate trustee.* The Maharaja of B in 1862 assigned certain lands situated in Bengal for the maintenance of a temple

ENDOWMENT—*contd.*

*Singh v. Kissen Singh*, I. L. R. 7 Cal. 767, approved. *Raghbar Dial v. Keshu Ramnauj Das*, I. L. R. 11 All 18, *quod hoc*, overruled. *Held*, also, that s. 539 of the Code of Civil Procedure was not applicable to the above suit. *Lalshankar Parashram v. Ganpatrao Krishna*, I. L. R. 8 Bom. 365, and *Jayakra v. Albar Hussain*, I. L. R. 7 All 178, referred to. *Held*, also, that, there being no special provision in the endowment for the appointment of trustees, the right of nomination remained vested in the founder of the endowment, and that the right to nominate continued to his heirs. *Gowami Sri Gridharaji v. Romantaji Gowami*, I. L. R. 17 Cal. 3; *L. R. 16 I. A. 137*, referred to. *SHEORATAN KUNWARI v. RAM PANDEY*

I. L. R. 18 All 227

12. ———— *Trust—Ground*

for removing hereditary trustee—Mistake by trustee as to true legal position—Appointment of a devasthan committee—Scheme of management. A mistake by a hereditary trustee of a devasthan as to his true legal position does not of necessity afford a ground for removing him from his post of manager and entrusting it to new hands. The management of a devasthan being found to be lax and improvident, but not fraudulent and dishonest, the Court declined to remove the manager, but appointed a devasthan committee to supervise and control him, and framed a scheme for the management of the trust. *ANNALI RAGHUNATH GOSAVI v. NARAYAN SITARAM*

I. L. R. 21 Bom. 558

13. ———— *Devasthanam committee—*

*Grounds for removal from office—Errors of judgment on part of committee-men* Mere error in

the charge of the committee of which he is a member. The duty of a devasthanam committee consists primarily in seeing that its endowments are appropriated to their legitimate purposes, and are not wasted. It is not a part of the duty of such a committee to interfere with the trustees in matters relating to ritual. *TIRUVENKADATH AYYANAR v. SRINIVASA THATTACHARIAN*

I. L. R. 22 Mad. 381

14. ———— *Devasthanam committee—Dismissal of dharmakarta by three out*

*of five members of committee without meeting—Legality of such dismissal.* The dharmakarta of a

ENDOWMENT—*contd.*

committee took no part in the proceedings. The dharmakarta took no notice of the order, whereupon the same three committee-men signed and issued another resolution dismissing him from his post. This resolution was sent to the other two members of the committee, but was not signed by them. *Held*, that the dismissal was illegal. The dharmakarta, being the holder of an office, could only be removed from it by the corporate act of the committee generally. The acts of a corporation (to which the committee might be likened) must be performed at a meeting convened after due notice to all the members of the body; and though there might be exceptions to that rule, a case in which the matter to be decided involved the rights of third parties and a decision to their prejudice was one in which the rule should be enforced. *THANDAYARAYA PILLAI v. SUBBAYYAR*

I. L. R. 23 Mad. 483

15. ———— *Christian endowment—Powers of a Christian congregation to elect under which Bishopric the endowment should be placed in spiritual*

Catholic boatmen in Royapuram for the purpose of supplying the religious wants of the caste, and in 1829 the Church of St Peter at Royapuram was erected. The fund was under the control of the Government Marine Board, which in 1830, in consequence of disputes between the headmen of the caste, suspended all payment. In 1863 a member of the caste, claiming to be sole surviving headman, brought a suit against Government for a declaration that he was sole surviving headman, and as

said suit. By the decree in this suit it was decreed that the fund in question belonged to the whole body of Roman Catholic boatmen in Royapuram.

King of Portugal, the effect of which was to place St Peter's Church within the territorial jurisdiction of the Vicar Apostolic. Plaintiffs, who were members of the Goanese party, complained, that

16. ———— *Sale of office attached to a temple—Miras rights attached to Devasthanams—Suit against office-holder—Compromise consenting to*

**ENDOWMENT—contd.**

sale of office and its emoluments—Decree in terms of compromise—Execution proceedings—Invalidity of compromise opposed to public policy—Right of Court to refuse to execute. The sale of an office attached to a temple, involving services of a personal nature and entitling the holder of it to receive emoluments, is

its validity, but must execute it accordingly, in terms. Held, that, as the decree was based on an agreement of compromise, and the Court had

invalid, and will, therefore, not be enforced by Courts, and so far as a decree embodies unlawful

**17. — Words of dedication.**

Where in a deed of gift and dedication the following passage occurred: "The right and power of gift are yours. I and my heirs shall have no liability, claim or right." Held, that there was no absolute dedication of the property to the idol so as to constitute the property covered by the same debutter and inalienable. *HARASUNDARI MAJUMDAR v BASANTA KUMAR ROY* (1907)

9 C. W. N. 164

**18. — Valid religious endowment, conditions of—Absolute gift, restraint upon immediate enjoyment—Residuary clause, construction of—"Moveable properties for the service of idols," construction of. In order to constitute a valid endowment all that is necessary is to set apart specific property for specific purposes and when these purposes are clearly religious and charitable**

intention to bequeath certain of his properties to specific religious or charitable trusts, e.g., perform.

**ENDOWMENT—contd.**

ance of Durga and Lakshmi Pujahs, which his executors and trustees are to carry out in the manner indicated by his will. The Court will only

expressed to individuals carried t the intermediate interest for 13 years in certain proper-

to the sons absolutely: *ut supra*, that the absolute restraint on the enjoyment of the properties was not bad in law. *Lloyd v. Webb*, 1. L. R. 24 Cal. 47, distinguished. The last clause in the will was "I also direct that all the moveable properties and articles, which I shall leave, my executors and trustees shall keep apart such of them as they shall think necessary for the service of the thacoors and they shall after 13 years divide the remainder among my three sons in equal shares." Held, that this clause applied only to those articles, which were suitable for the worship of the thacoors and that it did not refer to moneys and other articles in the hands of the executors. The Court also gave a direction that, after due administration, the executors should deal with the balance in their hands as in the case of intestacy and divide the same among the sons of the testator as his heirs.

*PRAYLLA CHANDER MULLICK v. JOGENDRA NATH SREEMANY* (1903) 9 C. W. N. 528

**19. — Scheme for management of Hindu temple by Mahant—Power to make and modify such a scheme—Power to alter**

settling of a scheme for the management of the temple including "provisions for the application

satisfactory footing. Objections were raised to the scheme settled by the High Court (which amended one framed by the District Court) that its effect would be to lower the position of the Mahant and weaken his authority, and that it provided for the application of surplus funds by devoting them to objects foreign to the purposes of the endowment. The Judicial Committee settled a scheme calculated to get rid of those objections and to meet the exigencies of the case without impairing the authority of the Mahant whose position, subject to the scheme, was to be the same as before, and providing that all surplus income should be invested for the benefit of the temple.

**ENDOWMENT—concll.**

High Court for any modification of it which might appear to be necessary or convenient. *Pratap Das Ji Varu v. Tirumala Srinagacharla Garu* (1907)

I. L. R. 30 Mad. 138; I. L. R. 34 I. A. 78

20. ——— Trustees, removal of—*Religious Endowments Act (XX of 1863)*, ss 3, 13—*Misfeasance—Breach of trust*. All endowments, which are affected by Regulation XIX of 1810, whether they come under the Board of Revenue or not, fall within the purview of Act XX of 1863. In a suit brought after having obtained the sanction of the District Judge under s. 18 of Act XX of 1863, for the removal, on the ground of misfeasance, breach of trust and neglect of duty, of a trustee of a religious endowment for the management of which the Local Government appointed in 1864 a Committee of three members under s. 7 of the Act, the defence was that s. 3 of the said Act had no application inasmuch as the endowed property had not vested in the Government before the passing of the Act, and that the proper course for the plaintiff was to have instituted the suit under s. 639 of the Code of Civil Procedure; and that the office of *Daroga* or Manager being hereditary, he could not be removed from that office; *Held*, that the provisions of Act XX of 1863 applied to the case, and that the suit was rightly instituted, and that the *Daroga* could be removed from his office by the District Judge, if he acted contrary to the trust. *Bibee Kuncuz Fatima v. Bibee Sahaba Jan*, 8 W. R. 313; *Sheoratan Kanwari v. Ram Pargash*, I. L. R. 18 All. 227, *Ganes Singh v. Ram Gopal Singh*, 5 B. L. R. App. 55; and *Dhurrum Singh v. Kissen Singh*, I. L. R. 7 Calc. 767, referred to. *Saturluri Sectaramanuja Charyulu v. Nanduri Setaipati*, I. L. R. 26 Mad. 166, followed. *Held*, further, that for the operation of this Act, it is immaterial whether the office of the trustee or manager is hereditary or not, and that in either case the trustee or manager who misconducted himself and acted contrary to the object of the endowment, could be dealt with under the provisions of this Act. *Fakurudin Sahib v. Acken Sahib*, I. L. R. 2 Mad. 197, and *Natesa v. Ganapati*, I. L. R. 14 Mad. 103, followed. *MAHOMED ATHAR v. RAMJAN KHAN* (1907). I. L. R. 34 Calc. 587

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See TRANSFER OF CRIMINAL CASE—GENERAL CASES. I. L. R. 1 Calc. 219

Dismissal of Munsif—Power of  
*Pratap Das Ji Varu v. Tirumala Srinagacharla Garu*

to a rehearing, he appealed under cl. 15 of the Letters Patent. The Court considered it unneces-

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In the matter of the petition of HURISH CHUNDER MITTER . . . 10 B. L. R. 79; 18 W. R. 209

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See PARTNERSHIP—WHAT CONSTITUTES PARTNERSHIP . 3 B. L. R. A. C. 238  
 10 B. L. R. 312  
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See RIGHT OF WAY.

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See STATUTES, CONSTRUCTION OF.

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See TERRITORIAL LAW OF BRITISH INDIA.

1 B. L. R. O. C. 87

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8 Moo. I. A. 303

application of, in Calcutta.

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order 11 of 1883, rule 1, sub s. (c).

See FOREIGN COURT, JUDGMENT OF.

I. L. R. 28 Calc. 641

1. ——— Applicability of, to natives of India. It has always been the policy of the Courts of this country not to apply the strict rules of English law to natives of this country. PARABDI SAHANI v. MAHOJED HOSSEIN

I. B. L. R. A. C. 37

2. ——— Law in mofussil—*Bom. Reg. IV of 1827, s. 26.* Although the English law is not obligatory upon the Courts in the mofussil, they ought, in proceeding according to justice, equity and good conscience (Bombay Regulation IV of 1827, s. 26), to be governed by the principles of English law applicable to a similar state of circumstances. DADA HANAJI v. BABAJI JAGSHET

2 Bom. 38 : 2nd Ed. 39

WEBBE v. LESTER. 2 Bom. 55 : 2nd Ed. 52

3. ——— English rules of

4. ——— Advancement, doctrine of.—*Benami purchase—Europeans in India.* The English doctrine of advancement is applicable in India as between a father and daughter, both of English extraction and living under English law. The status of the daughter, under an alleged *bond fide* purchase, made by her father for her advancement when a minor, cannot be set aside except by positive proof that the father merely made use of her name as he would that of any servant or stranger, retaining the beneficial interest in the property for himself. KISHEN KOOMAR MONTEO v. STEVENSON

2 W. R. 141

5. ——— Aliens, law relating to.—*Devise of lands for charitable purposes—Statute of Mortmain—Introduction of English law into India.* The introduction of the English law into a conquered or ceded country does not draw with it that branch which relates to aliens if the acts of the power introducing it show that it was introduced, not in all its branches, but only *sub modo* and with

ENGLISH LAW—*contd.*

the exception of this portion. The English law incapacitating aliens from holding real property to their own use, and transmitting it by descent or devise, has never been introduced into the East Indies so as to create a forfeiture of lands held in Calcutta or the mofussil by an alien, and devised by a will executed according to the Statute of Frauds for charitable purposes. *Semble* : The Statute of Mortmain does not extend to the British territories in the East Indies. MAYOR OF LYONS v. EAST INDIA COMPANY. 1 Moo. I. A. 175

6. ——— Inheritance, law of—*English law how far applicable.* The case of *Mayor of Lyons v. East India Company*. 1 Moo. I. A. 175, does not mean to decide that the Courts of this country are justified in adopting just so much of the law of inheritance, or of dower, or of any other law, as they consider equitable, and rejecting the rest. It only points out that there are certain portions of the English statute law which from their very nature were only passed for reasons connected with England, and which would not be applicable in India or any Colony of the British Crown, e.g., the Mortmain Acts, the Law of Aliens, and the like. SARRIES v. PROSONOVITSE DOSSEF

I. L. R. 8 Calc. 794 : 8 C. L. R. 78

7. ——— Attainder, law of—*Law in force in India Per Curiam*—The English law of attainder did not apply in India in 1789. PAPANNA v. VENKATADEI APPA RAU. NARASIMHA APPA RAU v. VENKATADEI APPA RAU

I. L. R. 18 Mad. 364

8. ——— Attorneys—*Stat. 3 Jac. 1, c. 7.* Stat. 3 Jac. I. c. 7, has not been extended to India. WILKINSON v. ABBAS SIKHAR

3 B. L. R. O. C. 98

9. ——— Banking in mofussil—*Law of Merchants.* The Law of Merchants is not applicable to banking transactions in the mofussil. ALI v. GOPAL DASS. 13 W. R. 420

10. ——— Bankruptcy—*Stat. 6 Geo. IV, c. 16, and 2 & 3 Will. IV, c. 111—Proof of bankruptcy under English Commission.* The Stat. 6 Geo. IV, c. 16, and 2 & 3 Will. IV, c. 111, made to facilitate the proof of bankruptcy and assignment in England, were held not to extend to the

11. ——— Case Law—*Application of English precedents to India.* English precedents are only to be applied in India after being carefully weighed and tested with regard to the customs and habits of the people. JAGGABUNDHOO SHAW v. GRANT SMITH & Co. 2 Hyde 129

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12. ——— *Principles of English Common Law and Equity Courts.* The different principles on which Courts of Law and Equity in England administer justice observed upon, and the necessity of bearing in mind this distinction when English cases are referred to, pointed out. *PEDDANTHULATY v. THIMA REND* 2 Mod. 270

See as to English cases per *MATHERSON, J.*, in *PARRATH CHARAN MOOKERJEE v. RAMNARAYAN MATILAL* 5 B. L. R. 390, 400, 401

13. ——— *Contracts—Common law of England.* The requirements of the common law of England cannot, unless made applicable by legislation or sanctioned by well-established judicial usages, be imported into the construction of a contract made in this country, unless it be clear from the construction of the contract that the parties at the time then entered into it had such requirements in view, and intended that the contract should be controlled by them. *GREAT EASTERN HOTEL COMPANY v. COLLECTION OF ALLAHABAD*

2 Agro Ex. O. C. 1

14. ——— *Agreements under seal and by parol.* In agreements between natives of this country the law does not distinguish between those which are under seal and by parol, the English law to that effect not having been introduced into this country. *KRISHNA v. RAITAPPA SHANBHAG* 4 Mad. 98

15. ——— *Equitable mortgage—Mad. Reg. II of 1802, s. 17.* Madras Regulation II of 1802, s. 17, enacts that, in the absence of any positive law to the contrary in force in the Presidency of Madras, the decision of the Court is to be according to the justice, equity, and good faith. The plaintiff was an Armenian, and the defendants the plaintiff's agent, who had deposited on land, in agreement

that the transaction was to be governed by any particular local law, that under Madras Regulation II of 1802, s. 17, the principles of English law respecting equitable mortgages applied. *VARDEEN BETH SAM v. LUCKPATHY ROYJEE LALLAH*

9 Moo I. A. 303

16. ——— *Estoppel—Approbation and reprobation of transaction.* The principle that a party cannot both approbate and reprobate the same transaction is applicable to Indian cases. *MAKHANLALL v. SRIKRISHNA SINGH*

2 B. L. R. P. C. 44 : 11 W. R. P. C. 19

12 Moo. I. A. 157

17. ——— *Hundis—Analogy between hundi and bill of exchange—Application of English law.* Where the analogy between native hundis and English bills of exchange is complete, the English law is to be applied. *SUBBOONATH GHOSE v. JUDDOONATH CHATTERJEE* 2 Hyde 259

18. ——— *Immoveable property—Law applicable to Bombay—Lex loci—Reality and*

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*personality.* The *lex loci* report of the Indian Law Commissioners and the introduction of English law into India discussed. Distinction taken, with reference to the observations of Lord Kingsdown as to Calcutta in the *Advocate General v. Surnomoyee Dossee*, 9 Moo. I. A. 425-426, between Bombay, which was held by the English in full sovereignty, and Calcutta, which was merely held by them as a factory. Statement of circumstances which led to the passing of Tergusson's Act, 9 Geo. IV, c. 33, and Act IX of 1837, relating to the immoveable property of Parsis. *NAOROJI BERANJJI v. ROORNA* 4 Bom. O. C. 1

19. ——— *Insurance—Applicability to Hindus—Law where no principle of Hindu law is applicable—Contract of insurance.* Where the insureds, underwriters of a policy of insurance on goods on board a vessel bound from Bombay to Calcutta, were Hindus, but no principle of Hindu law was applicable, the parties having selected the English language for the expression of their contract. *Hidd*, that the case was to be determined in accordance with the principles of English law. *HARRIDAS PURSHOTAM v. GAMBLE* 12 Bom. 23

20. ——— *Limitation, law of—Application of statutes to India.* The Statute of Limitations, 21 Jac I, c. 16, extended to India. *EAST INDIA COMPANY v. ODITCHURN PAUL*

5 Moo. I. A. 43

It applied to Hindus and Mahomedans as well as Europeans in civil actions in the Supreme Court. *RECKMABOYE v. LULLONHOY MOTTICHUND*

5 Moo. I. A. 234

21. ——— *Married woman's property—Law applicable to Hindu converts.* The English law relating to a married woman's property, and the right of the husband therein, is not necessarily applicable to Hindu converts to Christianity. The rule of decision in such cases is the rule prescribed by equity and good conscience, which is in each case to refer the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged. *PANDU v. SREBOMONGOLA DOSSEE* 1 W. R. 22

22. ——— *Notice, doctrine of—Priority of registered deed.* The English equitable doctrine of notice, where there is a contest as to the priority of a deed registered under Act XVI of 1834 or Act XX of 1866 over an unregistered deed of a date prior to those Acts, is applicable in India. *JIVANDAS KESHAVJI v. FRAMJI NANABHAI*

7 Bom. O. C. 45

23. ——— *Oaths in Courts of Justice—Stat 17 & 18 Vict., c. 125.* The English Stat. 17 & 18 Vict., c. 125, does not apply to India. *VALU MUDALI v. SOMERBY* 2 Mad. 246

24. ——— *Personality, law relating to—How far English law is applicable in Calcutta—Term of years—Armenians—Construction of power in deed to invest.* The English law relating to personality applies to personality in India held by

ENGLISH LAW—*contd.*

British subjects and others to whom the English law is applicable. A term of years is therefore personally to India as it is to England. Armenians in India are subject to the English law. A power contained in a trust-deed to invest Rs20,000 "in or upon any real or Government securities, or in or upon any public funds at interest," is of an

25. — Prescription Act—Law of *mofussil*. The English Prescription Act does not apply to this country so the *mofussil*. JOY PRKASH SINGH v. AMER ALI. 9 W. R. 91

See CASES UNDER PRESCRIPTION.

26. — Primogeniture, law of—Law applicable to Portuguese in Bombay. The Portuguese inhabitants of the town and island of Bombay, not having had their laws, and usages having the force of laws, preserved to them by the treaty by which Bombay was (1661) ceded to the English, are subject to English law, so far as the same has been introduced into Bombay, and has not since been varied by legislation. Where a Portuguese inhabitant of Bombay, being entitled to certain immovable estate in perpetuity, died intestate before the 1st of January 1866 (on which day the Succession Act, 1865, came into force), leaving two nephews by a sister as his next-of-kin, it was held that the elder of them, as heir-at-law of the intestate, was entitled to succeed solely to such immovable estate. LOPES v. LOPES. 5 Bom. O. C. 172

27. — Profit à prendre—Rule as to statutes affecting the Crown—Profit à prendre—Right of pasturage in Bombay Presidency—Prescription. The rule of construction according to which the Crown is not affected by a statute, unless specially named in it, applies to India. The rule of English law that a claim to a profit à prendre cannot be acquired by the inhabitants of a village either by custom or prescription does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The right of free pasturage has always been recognized as a right belonging to certain villages, and must have been acquired by custom or prescription. SECRETARY OF STATE FOR INDIA v. MATHURABHAI. I. L. R. 14 Bom. 213

28. — Sheriff's sale. Sale in execution of decree—Law in *mofussil*. The law of the *mofussil* was the *lex res sita* at Sheriff's sales, and controls or modifies the English law as to execution and delivery. BROWN v. RAM KOMUL GHOSE. GOPES CHUNDER CHUCKERBUTTY v. RAM KOMUL GHOSE. W. R. 1864, 179

29. — Suicide—Forfeiture of property. The English law of forfeiture of the personal property of persons committing suicide, if it ever applied to Europeans in India, is not applicable to Natives. *Quære*: Whether the law ever

ENGLISH LAW—*contd.*

had existed as regards Europeans in India. ADVOCATE GENERAL OF BENGAL v. SURSOMYEE

1 W. R. P. C. 14: 9 Moo. I. A. 387

30. — Superstitious uses, Statute of.—The English statute as to superstitious uses is not applicable to the Courts in India, and those Courts have jurisdiction to entertain suits for the establishment and administration of native religious institutions. ADVOCATE GENERAL v. VISHVANATH ATMARAN. 1 Bom. Ap. 9

KHUSALCHAND v. MAHADEO GIRI. 12 Bom. 214

31. — Trust, declaration of.—Binding effect of voluntary declarations of trust—Principle of Equity Courts. *Quære*: Whether Hindu law admits of trusts. Courts of Equity. VEN.

14 Man. 460

32. — Wagers—Stat. 8 & 9 Vict., c. 109 (Games and Wagers). The Stat. 8 & 9 Vict., c. 109, amending the law relating to games and wagers, does not extend to India. RAMALL THAKORSEYDASS v. SOORJUNMULL DROODMULL. 4 Moo. I. A. 339

33. — By-laws—By-law held to be unreasonable, and its enforcement refused. The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India. EMPEROR v. BAL KISHAN (1902). I. L. R. 24 All. 493

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## 1. RIGHT TO ENHANCE.

1. ——— Priority of title or tenure—  
*Inference of right to rent*OR. SATYASARAN GHOSAL v. MOHESH CHUNDER  
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Act—*Suit to assess land at enhanced rate—Act X  
of 1859* A suit to assess land and recover rents at  
an enhanced rate must be dismissed if not brought  
under some section of the Rent Act. SREEDHAR  
JHA v. DABEE DUTT . . . . . 9 W. R. 170See LALUNMONEE v. AJODHYA RAM KHAN  
23 W. R. 813. ——— Suit to assess land paying  
no rent. A suit to assess rent upon land paying  
no rent at all is not a suit for enhancement of rent.  
BARODA KANT ROY v. RADHA CHURN ROY  
13 W. R. 1634. ——— Lakhiraj tenure—*Resumption,  
necessity of, before enhancement.* A decree in a  
suit for resumption must be obtained before rent can

ENHANCEMENT OF RENT—*contd.*1. RIGHT TO ENHANCE—*contd.*

he recovered against a tenant holding under a lakhuraj tenure. *HILL v. KNOWAJ SHEIKH MUNDUL*  
Marsh. 554; 2 Hay 883

ROMESH CHUNDER DUTT v. GOOROO DOSS  
NUNDEE W. R. 1864, 204

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KHAN 1 W. R. 15

NUND KISHORE LAL v. KUREEM BUKSH KHAN  
5 W. R., Act X, 82

MODEE HUDDIN JOWARDAR v. SANDES  
12 W. R. 439

5. ——— Hereditary conditional tenure—*Resumption, necessity of, before enhancement—Descendant of grantee of jaghir* A suit to enhance is not maintainable against the descendant of the grantee of a hereditary conditional jaghir. The zamindar must first sue to resume on the ground that the jaghir has been determined by breach of the condition through neglect of the service. *NILMONEY SINGH DEO v. RANGOFAL SINGH CHOWDHURY* Marsh. 518

6. ——— Punchukee lakhiraj lands—*Necessity for resumption before enhancement.* A zamindar may sue to enhance punchukee lakhiraj lands without first suing for their resumption. *MAHUB CHUNDERA JANAH v. RAJIKSEN MOOKERJEE* 7 W. R. 88

7. ——— Tullubi bromuttur tenure—*Necessity for resumption before enhancement.* A tullubi bromuttur tenure is not a lakhiraj tenure, and it is not necessary for a landlord to bring a suit for its resumption before he can sue for enhancement of its rent. *NILMONEY SINGH v. CHUNDER KANT BANERJEE* 14 W. R. 251

8. ——— Beng. Reg. VII of 1822, s. 9—*Act X of 1859, s. 13—Right to enhance without notice* S 9, Regulation VII of 1822, related only to settlement, not to collection of rents, and did not entitle a person claiming from Government as a private zamindar to enhance rents without proceeding under the law for the collection of rent and without giving notice of enhancement under s. 13, Act X of 1859. *NAWAB NAZIM OF BENGAL v. RAM LAIL GHOSE alias JOGENDRHO GHOSE*

5 W. R., Act X, 5

9. ——— Rent paid in kind—*Conversion into rent paid in money.* A zamindar may sue to convert rents paid in kind into rents paid in money. The fact of the raiyat having paid in kind for a number of years is no bar to enhancement. *THAKOOR PERSHAD v. MAHOMED BAKUR*

8 W. R. 170

10. ——— Assignment of rents to creditor for a term beyond existing lease—*Right on expiration of term* The mere circumstance that the landlord has assigned to a creditor a certain amount of the rents for certain years extending beyond an existing lease, does not prevent

ENHANCEMENT OF RENT—*contd.*1. RIGHT TO ENHANCE—*contd.*

him from enhancing the rent after the expiration of the term. *ESSEN CHUNDER MANICK v. SEENJOY THAKOOR* Marsh. 435; 2 Hay 503

11. ——— Sale of tenure in execution of decree—*Bar to enhancement.* A landowner is not stopped from enhancing rent by the circumstance that he has caused the tenure to be sold under a decree. *SURNOMOYEE v. ADITO CHURN ROY* Marsh. 605

12. ——— Farmer for a term of years—*Absence of stipulation prohibiting enhancement.* A farmer for a term of years is entitled to enhance the rent of rayats holding under him when there is no condition or stipulation in his lease precluding him from so doing. *RUSHTON v. GIRDHAREE TEWAREE* Marsh. 331; 2 Hay 394

13. ——— Ijaradar—*Absence of stipulation prohibiting enhancement.* An ijaradar is entitled to enhance the rent of rayats holding under him where there is no condition or stipulation in his lease precluding him from so doing. *DOORGA PROSAD MITTEE v. JOYNARAIN HAZRA* I. L. R. 2 Calc. 474

14. ——— Dur-ijaradar. A dur-ijaradar can enhance the rents of the estate of which he holds the sub-lease. *GUNGARAH v. USOODHYARAY MITT* 2 W. R. 158

15. ——— Auction-purchaser. An auction-purchaser cannot eject a raiyat having a right of occupancy, or enhance his rent, except in the manner prescribed by law. *DABEE BRUGGUT v. BEECHUN RAOOF* W. R. 1864, Act X, 111

16. ——— Act I of 1845. An auction-purchaser under Act I of 1845 is not entitled to sue to enhance the rent of a tenant, not being a raiyat or cultivator, without his consent. *JOGODESHUR DOSSIA v. UMA CHURN ROY* 7 W. R. 237

17. ——— Beng Regulation XLIV of 1793, s. 5. According to the decision of the Privy Council in the case of *Surnomoyee v. Sutters Chunder Roy Bahadour*, 10 Moo I. A. 123,

the time when the auction-purchase takes place; and he cannot demand any higher rent, even if, at the time of the purchase, the rent was in accordance with the rate of the former tenant.

1 Calc. 612

18. ——— Independent talukh formerly part of a zamindari—*Decree of 1805—Bengal Regulation VIII of 1793, ss. 5 and 50—Bengal Tenancy Act, 1885, s. 67.* A decree of the Sudder Diwani Adalat in 1805 declared that a talukh was fit to be separated from the zamindari of which it

ENHANCEMENT OF RENT—*contd.*1. RIGHT TO ENHANCE—*contd.*

had originally been part according to the provisions of s. 5, Regulation VIII of 1793. The decree directed that, until separation, rent should be paid by the talukhdar to the zamindar, "according to the jumma already assessed upon the talukh"; this revenue to be, on the separation being effected, deducted from that assessed upon the zamindar. Proceedings with a view to separation then continued, but litigation and delays ensued, with the result that no separation had been effected when these suits were instituted in 1892 and 1893. In these suits, the holders of shares into which the zamindari had been partitioned claimed to enhance the rent on the talukh. *Held*, that the decree of 1807,

right of enhancement. S. 67 of the Bengal Tenancy Act, 1883, applies only to rent payable quarterly. *HEMIANTA KUMARI DEBI v. JAGADINDRA NATH ROY*. I. L. R. 22 Cal. 214  
I. R. 21 I. A. 131

10. — *Inamdar—Tenants in possession before grant of inam.* An inamdar, though he cannot eject his tenants who have been in possession before the grant of the inam as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey. *HARI BIN JOTI v. NARAYAN ACHARYA*. 6 Bom. A. C. 23

20. — *Miras—Limited power to enhance.* An inamdar's power to enhance the rent of miras tenants is limited. He cannot demand more rent than what is fair and equitable according to the custom of the country. *TRATARNAY GUJAR v. BAYASI NAMAZI*. I. L. R. 3 Bom. 141

21. — *Mirasdars—Right of inamdar to enhance their rent—Custom.* Mirasdars in an inam village cannot always claim to hold at a fixed rent. An inamdar can enhance their rents within the limits of custom. *VISHWANATH BHIRAJI v. DHONDAPPA*. I. L. R. 17 Bom. 476

22. — *Permanent tenant.* In every part of India the Government or its alienee is debarred, if not by law (as in Bengal), yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit. What that limit is, must be determined by the circumstances of each case. In a suit by an inamdar, holding under a grant from Scindha made in 1793, against his permanent tenant for an enhanced rent, the Court, in the absence of law or contract to the contrary, affirmed the plaintiff's right to enhance the assessment to the extent to which, according to the old custom of the country, Scindha would have been entitled to enhance it, and upon a virtual admission of the defendant

ENHANCEMENT OF RENT—*contd.*1. RIGHT TO ENHANCE—*contd.*

allowed enhancement to the extent of one-half the produce. *PARSOTAM KESHAVDAS v. KALYAN RUVJI*. I. L. R. 3 Bom. 348

23. — *Nij-jote lands held by tenant without right of occupancy—Beng. Act VIII of 1859, ss. 8, 14, 15—Notice to quit.* A landlord seeking to obtain an enhanced rate of rent on account of nij jote land held by a tenant without a right of occupancy has no right to obtain a judicial assessment upon the footing of a notice under Bengal Act VIII of 1869, ss. 14 and 15. His right in ac-

notice to quit unless he agrees to pay the rent required, and if the tenant continues in occupation, he must be taken to have agreed by implication to pay the said rent. *JASOO MUNDUN v. HARJO SINGH*. 22 W. R. 548

24. — *Lessee of house—Rent of sub-tenant.* The lessee of a share of a house has a right to raise the rent of such share, while in the occupation of a sub-tenant without a lease, after due notice of the increased rate, and to proceed to eject him if he refuses to pay the higher rent, even though he has been in possession for many years. *RAU LALL v. CHIMMON GUTTUCK*. 24 W. R. 271

25. — *Shilatri lands—Dom. Reg. I of 1808, s. 4—Right of inamdar to raise assessment on shilatri lands.* Government, by an indenture, dated the 25th January 1810, conveyed to A and B, and their heirs and assigns, certain villages in the island of Salsette, with the exception of such spots of shilatri tenura as might be therein, or on any part thereof, which could only become the property of A and B, on their purchasing the same from the proprietors. Since 1810, the holders of these shilatri lands had paid to the grantees and their heirs assessment (or rent) at a fixed rate which, before the grant, they used to pay to Government.

enhance the rent (or revenue), which he had failed to do, and Regulation I of 1808, s. 4, cls. 1 and 2, containing admissions by Government (which then was the immediate landlord of the shilatri-dars) that Government itself had no such right, plaintiff was consequently not entitled to raise the rent. *DADIBHAI JAHANGIRJI v. RAMJI BIV BHABU*. 11 Bom. 162

26. — *Mirasi lands—Contractual relation—Usage of the locality—Enhancement to be just and reasonable—Land Revenue Code (Bombay Act V of 1879), s. 83—Inamdar—Grantee of Royal share of revenue or of s.nk.* *Held*, that in a suit by an inamdar to enhance rent of Miras land, it must be determined whether what was paid was rent and whether the inamdar

ENHANCEMENT OF RENT—*contd.*1. RIGHT TO ENHANCE—*contd.*

has a right to enhance as against one, who holds on the same terms as the defendant does; the test is whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure. *RAJYA v. BALEKISHNA GANGADHAR* (1903) **1 L. R. 29 Bom. 416**

## 2. LIABILITY TO ENHANCEMENT.

## (a) GENERAL LIABILITY.

1. ——— Raiyats having right of occupancy. No tenures are liable to enhancement of rent by judicial proceedings except the tenures of raiyats having right of occupancy, unless on the foundation of custom or of agreement expressed or implied. *SURNOO MOYE v. BLUMHARDT*

9 W. R. 552

*CHUNDER COOMAR BANERJEE v. AZEEMOODEEN*  
14 W. R. 100

2. ——— Raiyats with right of occupancy. In the absence of express stipulation or of a right such as is mentioned in ss. 3 and 4, Act X of 1859, all raiyats having rights of occupancy are liable to have their rents enhanced, if such rents are below the rate payable by the same class of raiyats for land of a similar description, and with similar advantages in the places adjacent. *PUHLWAN THAKOON v. GODOOREE KOONWAR*

W. R. F. B. 142

3. ——— Raiyats with stipulation

1. . . . .

2 Agra 303

*BYJNATH v. CHUTTER SINGH* . . . 3 Agra 181

4. ——— Settlement with Government for higher revenue. If a raiyat has a right of occupancy, his rate of rent can only be enhanced in the mode prescribed by law; if he has not, his landlord can only claim arrears of rent on the ground of actual agreement, express or implied. Such claim cannot be made at an enhanced rate simply because the landlord has settled with Government at a higher rate of revenue. *ROORUN ROY v. PURDEEP SINGH*

22 W. R. 10

5. ——— Tenure not agricultural—  
Tenant at inadequate rent Except in the case of

to pay a higher rate of rent. *LALUNMOONEE v. AJODHYA RAM KHAN* . . . 23 W. R. 61

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(a) GENERAL LIABILITY—*contd.*

See *KYLASH CHUNDER SIRCAR v. WOONANUND ROY* . . . . . 24 W. R. 412

8. ——— Intermediate tenants—  
*Hereditary and transferable tenure—Act X of 1859, s. 15.* Where a tenure was or has become hereditary and transferable, and the rent has not been changed from the time of the Perpetual Settlement, the tenants (being intermediate between proprietor and raiyats) are protected from enhancement by s. 15, Act X of 1859. Tenants, intermediate between proprietors and raiyats, are subject to the Rent Act, which contemplates under-tenants as distinct from raiyats, and contains provisions relating to both classes. *DURGUT SINGH v. GOOMAY SINGH* . . . 9 W. R. P. C. 3; 11 Moo. I. A. 433

7. ——— Act X of 1859, ss. 13 and 17. Where a notice under s. 13, Act X of 1859, clearly recognized defendants as talukdars, and at the same time sought to enhance rent under

8. ——— Act X of 1859, s. 17. The holding of an intermediate tenure does not remove the holder from the category of raiyats whose lands may be enhanced under s. 17, Act X of 1859; nor does the sub-letting of part of a tenura alter the original character of the raiyat's holding. *UMA CHURN DUTT v. UMA TARA DASEE*

8 W. R. 181

*HURSH CHUNDER CHOWDERY v. RAM CHUNDER CHOWDERY* . . . . . 18 W. R. 528

s.c. on review, *RAM CHUNDER CHOWDERY v. HURSH CHUNDER CHOWDERY* . . . 19 W. R. 198

9. ——— Act X of 1859, s. 17. There is no class of persons intermediate between the tenure-holders and the raiyats entitled to a notice of enhancement under s. 17, Act X of 1859. *RAM CHUNDER CHOWDERY v. HURSH CHUNDER CHOWDERY* . . . 19 W. R. 198

Affirming on review . . . s.c. 18 W. R. 528

10. ——— Act X of 1859, ss. 13-16 Under ss. 13 to 16 of Act X of 1859, the rent of a tenant who is a middleman may be enhanced on notice on the same grounds (except as provided in those sections) on which he was liable to enhancement prior to the passing of that Act. *GRISH CHUNDER GHOSH v. RAMTANOO BISWAS*  
12 W. R. 449

11. ——— Tenants assessed at Government settlement—Zamindars with percentage for risk and labour of collection—Act X of 1859, s. 23, cl. 3. Held, that the plaintiff, whose land at

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(a) GENERAL LIABILITY—*contd.*

the time of the settlement was assessed with a proportionate Government demand, was not liable to enhancement by zamindars who, in their right, were restricted to get a certain percentage only for risk and labour of collection by the order of the settlement officer. **MOOSEY KRUTREY v. MAHOMED TUQUE** . . . . . 1 *Agra Rev.* 3

**WAZIR ALI v. DUNNE** . . . . . 1 *Agra Rev.* 15

12. ——— Lands held in excess of pottah—*Act X of 1859, s. 14*. The words "rent free" in cl. 14, s. 1, are not used in contradistinction to, but merely as showing the meaning of, the term "lakhiraj." Where lands in excess of the number of bighas specified in a pottah have been held for more than sixty years, and have always been considered to form part of what was covered by the pottah, they are held to have been occupied as land included in the pottah since before the Decennial Settlement, and the rent of them cannot therefore be enhanced. **JANKEE BULLUS CHACKERBUTTY v. NOBIS CHUNDER ROY CHOWDHURY** . . . . . 2 *W. R.*, *Act X*, 33

13. ——— *Act X of 1859, s. 17, cl. 3—Suit for lobuliat*. Where a zamindar sued a raiyat for enhancement of rent on the ground that he was holding more land than he paid for the land in excess not being included in any pottah which had been granted to the raiyat, but being within his "jate." *Held*, that the zamindar could

**CROWDRAIN v. SAJED SHEIK** . . . . . 2 *B. L. R. Ap.* 5

14. ——— Cultivators related to zamindar—*Assessment of rent—Rate of rent*. *Held*, that mere relationship does not constitute a class of cultivators, and a zamindar who allowed some of his land to be held at favourable rates cannot be compelled to show similar favour to other cultivators who may be equally near in relationship to him. **DAREE SINGH v. PUNCHUM SINGH**

2 *Agra*, *Part II*, 203

15. ——— Transferable tenure—*Mutation of names—Tenant who has transferred his holding—Liability of*. The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent readjusted. In a suit for enhancement it was found that the defendant had, prior to institution, sold his holding, which by custom was transferable without the consent of the landlord, to a third party. There had been no mutation of names, or payment of a nazaf, or execution of fresh lease; but the landlord had received rent from the third party, and was fully aware of the transfer. *Held*, that the connection of the defendant with the holding had come to an end, and the suit against him did not lie. **ABDUL AZIZ KHAN v. AHMED ALI** . . . . . 1 *L. R.* 14 *Cale*, 785

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*

## (b) PARTICULAR TENURE-HOLDERS AND TENURES.

16. ——— Jungleboory tenants—Jungleboory tenants are liable to enhancement. **DHUNPUT SINGH v. GOOMAN SINGH** . . . . . *W. R.* 1864, *Act X*, 61

**NARAN CHUNDER GHOSH v. GOOROO CHURN SINGH** . . . . . 18 *W. R.* 421

17. ——— Moostagirs—*Act X of 1859, ss. 15 and 16*. Moostagirs are protected from enhancement, not as raiyats, but as intermediate tenants, under ss. 15 and 16, *Act X of 1859*. **DHUNPUT SINGH v. GOOMAN SINGH** . . . . . *W. R.* 1864, *Act X*, 61

*Affirmed by Privy Council in DHUNPUT SINGH v. GOOMAN SINGH* . . . . . 11 *Moos. L. A.* 433  
8 *W. R. P. C.* 3

18. ——— Ex-masfeedar—*Rent-free holding*. *Held*, that an ex-masfeedar, whose land at the time of settlement was separately assessed, and the sum so assessed made payable through the zamindar, cannot be treated as a mera raiyat liable to enhancement. **KEDAR POOREE v. KULLAN KHAN** . . . . . 1 *Agra Rev.* 58

**See HUMEDDOULLAH KHAN v. PRAN SOOKH** . . . . . 3 *Agra* 280

19. ——— Farmers holding over—*Act X of 1859, s. 13*. S 13, *Act X of 1859*, did not apply to farmers holding on after the expiry of their lease, who were therefore liable to enhancement without notice. **NATOORAN SHAH v. DOOROI MANJEE** . . . . . *W. R.* 1864, *Act X*, 92

20. ——— Purchaser of transferable tenure—*Act X of 1859, s. 13*. The purchaser of

a right of occupancy under s. 6, *Act X of 1859*. **FISHER v. NUNDU COOMAR MUNDLE**

*Marsh.* 625

21. ——— Purchaser from raiyat at sale in execution—*Liability to enhancement*. A purchaser at sale is not liable to enhancement.

22. ——— Under-tenants—*Tenants holding directly from Government*. In a suit against the Government for a declaration that certain lands held by the plaintiffs were not liable to

had been taken by the Government shortly afterwards, but again restored under an order of the Board of Revenue in 1827, a settlement being made



# ENHANCEMENT OF RENT—*contd.*

## 2. LIABILITY TO ENHANCEMENT—*contd.*

### (b) PARTICULAR TENURE-HOLDERS AND TENURES—*contd.*

at Rs. 8 per kani; that in 1218 it was arranged that the plaintiffs should pay their rent through a talukdar who had obtained a settlement for a term of thirty years over the whole of the chur in which the lands held by the plaintiffs were situate; that on the term of thirty years expiring, it was not renewed, and that the Government subsequently gave the plaintiffs notice of enhancement. *Held*, that the plaintiffs were not under-tenants, and that, under the circumstances, their tenure was not liable to enhancement. **SECRETARY OF STATE v. RADHA PERSHAD WASTI**. . . . . 9 C. L. R. 169

23. ——— *Sale for arrears of rent.* Under-tenures fall with the original tenure of the defaulter, and are liable to enhancement by the purchaser of the tenure sold for arrears of rent. **TARUNNATH PORANANICK v. MCALISTER**. . . . . 6 W. R., Act X, 34

24. ——— *Khamar lands—Act X of 1859, s. 4.* Act X of 1859, makes no exception as to khamar lands. **RAM COOMAR MOOKERJEE v. RUCCONATH MUNDUL**. . . . . 1 W. R. 356

25. ——— *Mandidari tenure—Tenant with right of occupancy at rates varying with revenue.* Mandidari tenure is the tenure of a tenant with rights of occupancy who is entitled to hold at rates varying with the revenue, and he possesses privileges superior to those of an ordinary raiyat. His rates of rent are not liable to enhancement. **BUNKUR NURSEYA v. OOTBEE SINGH**. . . . . 2 N. W. 369

26. ——— *Talukh created before accession of British Government—Act X of 1859, s. 15.* A talukh created before the accession of the British Government, held at an unvaried rent from before the Perpetual Settlement, is protected from enhancement by s. 15 of Act X of 1859. **GOBIND CHUNDY DUTT v. HURROATH ROY**. . . . . 1 Ind. Jur. N. S. 52; 5 W. R., Act X, 10

27. ——— *Lessees, right of, to collect lac insects from trees—Act X of 1859.* Act X of 1859 does not entitle a lessor to enhance the rent payable by a lessee on account of right leased to the latter to collect lac insects from trees growing on the lands of the former. **GOPAL SINGH MOOKAN v. SUNKUREE PAHARIN**. . . . . 23 W. R. 458

28. ——— *Sursory jote—Act X of 1859, s. 3 and 4.* A sursory jote tenure is not exempt from the operation of s. 3 and 4, Act X of 1859, but is protected from enhancement on proof of twenty years' payment of uniform rent. **DOOROA MOYEE DOSSEA v. KASSISSUR DEBRA CHOWDHURAI**. . . . . 4 W. R., Act X, 20

29. ——— *Government khas mehal, mode of enhancement of rent of.* The rent of a Government khas mehal can only be enhanced by the same process as the rent on any private

# ENHANCEMENT OF RENT—*contd.*

## 2. LIABILITY TO ENHANCEMENT—*contd.*

### (b) PARTICULAR TENURE-HOLDERS AND TENURES—*contd.*

estate. **AKSHAYA COOMAR DUTT v. SHAMA CHARAN PATTAANDA**. . . . . I. L. R. 16 Calc. 566

30. ——— *Settlement of a Government khas mehal—Regulation VII of 1822—Bengal Act III of 1878—Bengal Act VIII of 1879, ss. 10-14.* In order to make the enhanced rent stated in a jumma bundi settled under Regulation VII of 1822 binding upon a tenant, there must be either an assent to that enhancement or else a compliance with the provisions of the rent law with reference to enhancement of rent in force at the time of such enhancement. **D'SILVA v. RAJKUMAR DUTT**, 16 W. R. 153, **ENAYATULLAH MEH v. NUBO COOMAR SARRAR**, 20 W. R. 207, and **REARDOODEN MAHOMED v. McALPINE**, 22 W. R. 549, followed. **AKSHAYA COOMAR DUTT v. SHAMA CHARAN PATTAANDA**. . . . . I. L. R. 16 Calc. 588

### (c) LANDS OCCUPIED BY BUILDINGS AND GARDENS.

31. ——— *Lands with buildings—Garden ground—Non agricultural land.* Land held ancillary to the enjoyment of a house, as, for instance, a garden or compound, is not subject to enhancement of rent under the Rent Acts. Acts X of 1859 and XIV of 1863 do not apply to land occupied by houses, but only to land held for agricultural purposes. **POWELL v. WAHID KHAN**. . . . . 1 N. W. 133; Ed. 1873, 217

**KALEE MOHAN CHATTERJEE v. KALI KISTO ROY**. . . . . 2 B. L. R. Ap. 39; 11 W. R. 183

32. ——— *Garden lands—Act I of 1845, s. 26, cl. 4—Notice of enhancement.* In order to obtain the benefit of cl. 4, s. 26, Act I of 1845 (protecting garden lands from enhancement), it is not sufficient that the notice of enhancement should describe the lands as garden lands, but there must be a clear finding that the lands have been held as such under bond *fide* leaves. **SIDDHESURE CHOWDHRAIN v. KISSOREKANT GOSWAI**. . . . . W. R. 1864, Act X, 101

33. ——— *Lands situated in a town—Bengal Rent Act, 1869.* A suit cannot be maintained under Bengal Act VIII of 1869 for rent at enhanced rates of land not used for agricultural or horticultural purposes, but situated in a town. **MADAN MOHAN BISWAS v. STAIKART**. . . . . 9 B. L. R. 97; 17 W. R. 441

34. ——— *Lands for building purposes—Bastu land.* Bastu land (land used for sites of houses) situated in a town cannot form the subject of suits under Act X of 1859 for enhancement. Bastu land, which is the site of a house occupied by a person engaged in cultivating the

**ENHANCEMENT OF RENT—contd.****2 LIABILITY TO ENHANCEMENT—contd.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS—contd.**

S. C. NYMOODDEE JOARDAN v. MONCRIEFF  
12 W. R. 140

KAILAS CHUNDER SIKKAR v. DURGADAS TARA-  
DAR . . . . . 3 B. L. R. A. C. 284 note

(Contra) KEVNY v. GREFFNER MANJEE  
W. R. 1864, Act X, §

35. ———— *Bastu lands—*  
*Oodbastu lands.* When lands are liable to be assessed  
with rent as *bastu* and when as *oodbastu* lands.  
PREM LAL CHOWDHRY v. BROWN  
O W. R., Act X, §2

his sons' sons for ever at a rent mentioned in the  
pottah. *Held*, that, though the suit was cognizable  
by the Collector, the rent was not liable to enhance-  
ment. KAILAS CHANDRA ROY v. HIRALAL SEAL.  
FAKIR CHAND GHOSE v. HIRALAL SEAL.

2 B. L. R. A. C. 83; 10 W. R. 403

37. ———— Land with buildings—  
*Mokurari.* Where a pottah was granted at "*mo-*  
*kurari*" rates, and the lands were taken for erecting  
buildings thereon, and carrying on the work of an  
indigo factory, it was held to indicate a building  
lease at a fixed rent, and a suit for enhancement  
would not lie in respect of such land. KERRY  
v. MADANLAL DOSS . . . . . 1 B. L. R. S. N. 11

38. ———— *Beng Act VIII*  
*of 1869.* A suit for enhancement of rent under  
Bengal Act VIII of 1869 will not lie in respect of  
lands occupied by buildings. BROJO NATH KUNDU  
CHOWDHRY v. STEWART

8 B. L. R. Ap. 51; 18 W. R. 218

39. ———— *Jurisdiction.* A  
suit for enhancement of rent of land covered  
with buildings will not lie in the Revenue Court  
under cl. 4, s. 27 of Act X of 1859, but is cognizable  
only by a Civil Court. DURGAS SUNDARI DAS v.  
BIBI UMDATANNISSA

9 B. L. R. 101; 19 W. R. 234

On appeal from s. c. in which Judges differed.  
17 W. R. 151

KHAIBUDDIN AHMED v. ABDUL BIKI  
3 B. L. R. A. C. 85; 11 W. R. 410

CHURCH v. RANTANU SHAHA  
9 B. L. R. 105 note; 11 W. R. 547

RAMDHUN KHAN v. HARADHAN PARAMANICK  
9 B. L. R. 107 note; 12 W. R. 404

In re BRAMHANYI BEWA (MITTER, J., dis-  
senting) . . . . . 8 B. L. R. 109 note  
14 W. R. 252

40. ———— A plaintiff  
brought a suit for enhancement of rent of lands

**ENHANCEMENT OF RENT—contd.****2. LIABILITY TO ENHANCEMENT—contd.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS—contd.**

occupied with buildings under Bengal Act VIII of  
1869. *Held*, per E. JACKSON, J., that, though  
Bengal Act VIII of 1869 does not apply to lands  
used for building purposes, the Civil Court has  
jurisdiction to determine suits concerning the rent  
of such lands, and therefore had jurisdiction to  
entertain the present suit. *Held*, per MITTER, J.,  
that the word "land" in Bengal Act VIII of 1869  
is used in its ordinary sense, quite irrespective of the  
purposes for which it is applied; and that a suit for  
enhancement of the rent of land on which a house is  
built will lie under Bengal Act VIII of 1869. BRAJA-  
NATH KUNDU CHOWDHRY v. LOWTHER

9 B. L. R. 121

S. C. BROJONATH KOONDOO CHOWDHRY v. GOFFE-  
NATH SHAHA . . . . . 17 W. R. 183

41. ———— Land forming part of street

no application to land forming part of a street in  
a town. The mere fact that a building has been  
erected on a piece of land with the consent of the  
proprietor does not give the occupant a right to hold  
the land perpetually at the same rate; and if the  
proprietor with an ultimate view of raising the rent  
brings a suit for ejectment, he has a right to have  
his title to eject tried in that suit. COLLECTOR of  
MONGHYR v. MADAN BUKSH . . . . . 25 W. R. 138

42. ———— Land let for building pur-  
poses. A suit for enhancement of rent, in pur-

for building purposes. PURNO CHUNDER ROY v.  
SADUT ALI . . . . . 2 O. L. R. 31

43. ———— Land for purpose of silk  
factory—*Enhancement of rent, suit for—Beng Act*  
*VIII of 1869, s. 14—Notice of enhancement.* Plaint-  
iff, having served notice of enhancement, in terms  
of s. 14 of Bengal Rent Act VIII of 1869, of certain  
lands held by defendants on which reservoirs

**ENHANCEMENT OF RENT—cont'd.****2. LIABILITY TO ENHANCEMENT—cont'd.****(c) LANDS OCCUPIED BY BUILDINGS AND GARDENS—cont'd.**

case of raiyats possessing rights of occupancy. **COMAR PORESH NARAIN ROY v. WATSON & CO.**

3 C. L. R. 543

44. ———— **Lease of land for building.**  
—Perpetual leases for building are only protected as held at a fixed rate, when the rent is fixed by the original leases. **SURBOMUNGULA DOSSEE v. SUTTISH CHUNDER ROY** . . . 2 W. R. 231

45. ———— **Dwelling-houses.**  
A raiyat who takes a pottah or gives a kahulat for his homestead is not entitled to the privileges granted to those who erect "dwelling-houses" on leased lands and is not protected from enhancement. **NUFFER CHUNDRA SAHA v. GOSSAIN JYRISON BHARUTEE** . . . 3 W. R., Act X, 144

46. ———— **Dwelling-house in village.**  
—*Jurisdiction of Revenue Court* A suit for enhancement of rent of a dwelling-house in a village is cognizable by the Collector. **ABDUL HAMID v. DONGARAM DEY** . . . 3 B. L. R. Ap. 133

**KALEE KISHEN BISWAS v. JANKEE**

8 W. R. 250

47. ———— **Lands appurtenant to a dwelling-house—Reg. XIX of 1814, s. 9.** The

ly sued in the Revenue Court for enhancement of rent of these lands *Held, per GLOVER, J.*, that the rent so fixed on that land must be considered the fixed rent of the homestead of the house and ground, and not, therefore, capable of enhancement. **KHARBUDDIN AHMED v. ABDUL BAKI**

3 B. L. R. A. C. 85: 11 W. R. 410

48. ———— **Land on which shop is built—Jurisdiction of Revenue Court—Act X of 1859, s. 23** A suit will not lie in the Collector's Court to enhance the rent of land on which a shop stands, the shop being the thing for which rent is paid and the land merely an adjunct to it. **MADAN SINGH v. MADAN RAM DEB** . . . 1 B. L. R. S. N. 11

49. ———— **Lands leased for building a school and church—Jurisdiction of Revenue Court** Revenue Courts have no jurisdiction in a suit to recover arrears of rent at an enhanced rate from a tenant to whom land had been leased for the express purpose of building a school and a church. **SURBOMYEE v. BLUMHARDT** . . . 9 W. R. 553

**(d) DEPENDENT TALUKDHARS.**

50. ———— **Beng. Reg. VIII of 1793, ss. 49, 51.** A dependent talukhdar, whose tenure is in existence before the Permanent Settlement, is entitled to protection under s. 49, Regulation VIII

**ENHANCEMENT OF RENT—cont'd.****2. LIABILITY TO ENHANCEMENT—cont'd.****(d) DEPENDENT TALUKDHARS—cont'd.**

of 1793, unless his zamindar can prove a title to enhance rent under s. 51 of that law. **RADHEEKA CHOWDRAIN v. RAM MOHUN GHOSH** . . . 1 W. R. 387

51. ———— **s. 51—Actual proprietors.** The "dependent talukhdars" mentioned in Regulation VIII of 1793 are actual proprietors, and not talukhdars whose talukhs are held under documents granted by proprietors which do not transfer property in the soil. The defendant was, therefore, held not exempt from liability to enhancement as being one of the latter. **SUTTYANUND GHOSAL v. HURO KISHORE DUTT** . . . 15 W. R. 474

52. ———— **Act X of 1859, s. 15.** A dependent talukh created before the Decennial Settlement is protected from enhancement by s. 51, Regulation VIII of 1793, except under the circumstances therein mentioned. In a suit by a zamindar for enhancement, brought after Act X of 1859 came into operation, against the holder at a

rent of the talukh should be assessed at pargana rates, if it appears that the rent never has been assessed at pargana rates and never has been enhanced, but has remained unchanged from the time of the Permanent Settlement. Such decrees place the zamindar in no better position than other landlords who, previously to the passing of Act X of 1859, had a good right to enhance, but whose right, not having been exercised from the time of the Permanent Settlement, has been taken away by the 15th section of that Act. **HURRONATH ROY v. GOBIND CHUNDER DUTT** . . . 15 B. L. R. 120

23 W. R. 352: L. R. 2 I. A. 183

**Affirming the High Court decision in HURRONATH ROY v. GOBIND CHUNDER DUTT**

5 W. R., Act X, 11  
s.c. on review . . . 8 W. R., Act X, 2

53. ———— **Unregistered tenure.** A dependent talukhdar, under s. 51 of Regulation VIII of 1793, is not debarred from claiming the benefit of that section because his

that section must fall on the zamindar. **DOYAMONEY CHOWDHRAIN v. NUNDOCOOMAR DEY** 2 May 220

54. ———— **Persons not personal cultivators.** In a suit for arrears of rent at an enhanced rate against tenants who held a "kalmi jote jumma"—personally cultivated raiyats under position of de could, Regulat

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(d) DEPENDENT TALUKDARS—*contd.*

apply to them, unless they could show that their tenure existed, and was capable of being registered, at the date of the Decennial Settlement. **ESHAN CHUNDER BANERJEE v. HURISH CHUNDER SARKAR** 24 W. R. 149

55. Person with lease terminable yearly or at will of zamindar. S. 51, Regulation VIII of 1793, refers solely to dependent talukhdars, and cannot be applied so as to protect from enhancement a person whose tenure is terminable at the end of any year or at the pleasure or caprice of his zamindar. **KALEEDHUN BANERJEE v. ROUESH CHUNDER DUTT** 3 W. R. 172

56. Nature of tenure. In a suit for enhancement of rent under Regulation VIII of 1793 the nature of the tenure is a material question, irrespectively of the question whether the rent is fixed or variable, the nature and extent of the proof which the plaintiff (zamindar) is bound to give being different according as the tenure falls within s. 49 or s. 51 of the Regulation. The rulings of the High Court holding that in order to bring a talukh within s. 51 of the Regulation, it is sufficient to show that it existed and was capable of being registered in the zamindari shershta at the time of the Decennial Settlement, approved of. **BAMA SOONDURIE DOSSEE v. RADHIKA CHOWDHRAIN** 13 W. R. F. C. 11

S. C. **RADHIKA CHOWDHRAIN v. BAMA SUNDARI BASI** 4 B. L. R. P. C. 8  
13 Moo. I. A. 248

57. Exemption from enhancement. Suit for enhancement (under the old law) of rent of a talukh held to be a dependent talukh within the meaning of s. 51, Regulation VIII of 1793, although not duly registered by the zamindar. Held, that the defendant having made out a strong *prima facie* case to prove that he and those through whom he claimed had held the talukh at a fixed rent from a date more than twelve years prior to the Decennial Settlement, and the zamindar having relied on the weakness of the defence and having failed to show that the rent had varied, the tenure was exempt from re-assessment. **MOHAMMAD DOSSEE v. DOYANOYE CHOWDHRAIN** 7 W. R. 62

58. Accretion to zimma tenure with fixed rent. Where a permanent zimma tenure has been held at one rate of rent for more than twenty years, the terms of s. 15, Act X of 1859, as well as the provisions of s. 51, Regulation VIII of 1793, preclude the zamindar from assessing accretions to the parent talukh. **JUGOOT CHUNDER DUTT v. PANIOTY** 8 W. R. 427

59. Raiyati ladimi tenure. Where a zamindar, a purchaser from a mortgagee, sued to enhance the rent of lands (part of the purchased zamindari) held on a raiyati ladimi tenure, which had existed more than twelve years

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(d) DEPENDENT TALUKDARS—*contd.*

from enhancement to which he was entitled by reason of the nature of his tenure. Such a pottah may be confirmatory only, and is not inconsistent with the presumption that a prior title existed. *Semble*, A claim to exempt a tenure from enhancement on the ground that it is a raiyati ladimi tenure does not fall within Regulation VIII of 1793, s. 51. **RAM CHUNDER DUTT v. JOGESH CHUNDER DUTT** 12 B. L. R. P. C. 229; 19 W. R. 353

60. *Beng. Reg. VIII of 1793, ss. 49-52—Beng. Reg. XLIV of 1793,*

mean in perpetuity. **DOORGA SOONDAREE v. Chundernath Bhadoore, S.D. A. (1852) 612**, dissenting from. In an enhancement suit of the nature indicated above, the rate of rent to be fixed as payable by the tenant at 11

**DHRAIN v. HEM CHUNDER CHOWDHRY**  
I. L. R. 14 Calc. 133

61. Notice of enhancement. S. 51, Regulation VIII of 1793 (looked at with ss. 13 and 15, Act X of 1859), does not require any notice in the case of a dependent talukhdar, preliminary to a claim for enhancement of rent; but in order to succeed in a suit under that regulation, a talukhdar

62. Grounds of enhancement. The grounds of enhancement stated in s. 15 of Act X of 1859 are—  
s. tal  
De

63. Act X of 1859, ss. 13, 17. In a suit for enhancement on one of the grounds set forth in s. 17, Act X of 1859, the notice under s. 13 can be served on a raiyat with rights of occupancy; but in a case of a dependent talukhdar

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(d) DEPENDENT TALUKDARS—*conclld.*

the plaintiff must proceed under s 51, Regulation VIII of 1793, and not on the grounds laid down in s. 17, Act X of 1859. The defendant's talukh in this case being a shikmi one, the suit under s 17 was informal, and was accordingly dismissed. **BRJO SOONDUR MITTER MOZOONDAR v. KALER KISHORE CHOWDHRY** . . . 8 W. R. 498

64. ——— Act X of 1859, s. 15. A dependent talukhdar's rent is not liable to enhancement, unless it can be shown to have changed since the Perpetual Settlement, and he must be proceeded against under s 15 (not 17) of Act X of 1859. **NUROKISHORE BOSE v. PANDUL SIRCAR** . . . 8 W. R. 312

65. ——— Rate of enhanced rent—*Right to reasonable profit.* A talukhdar's rent cannot be enhanced to the same rate as that paid by cultivating raiyats; the talukhdar is entitled to some reasonable profits. **KUROSOONDREE CHOWDHRAIN v. ANUND MOHUN GHOSE CHOWDHRY** . . . 7 W. R. 450

66. ——— Neighbouring lands of same kind. A talukhdar is liable to enhancement only to the extent of what other similar talukhdars in the neighbourhood pay for similar under tenure with similar lands. **MORIMA CHUN-DRA DRY v. GOOROO DOOS SEIN** . . . 7 W. R. 285

67. ——— Procedure—*Beng. Reg. VIII of 1793, s 5* Points out the procedure to be adopted by a Court in a suit for enhancement of rent when the defendant pleads that he is a shamilat talukhdar, that is to say, a talukhdar protected under the provisions of s. 5, Regulation VIII of 1793. **SHARODA PROSUNNO MOOKERJEE v. BIPERN BEHARER BOSE** . . . 13 W. R. 71

68. ——— *Ben. Reg. VIII of 1793, s 51*—Failure of defendant to prove presumptive protection from enhancement. In a suit for arrears of rent of a talukh at an enhanced rate, where it was shown that the defendant was not en-

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## (e) CONSTRUCTION OF DOCUMENT AS TO LIABILITY TO ENHANCEMENT.

69. ——— *Maurasi lease.* A maurasi (perpetual) tenure does not necessarily carry with it fixity of rent, it is matter of evidence whether it does or not; therefore the rent of such a tenure may be liable to enhancement. **ANANDAL DAS v. MUSHUN ALI** . . . 2 B. L. R. A. C. 98 note

70. ——— *Rent not fixed as invariable.* A maurasi pottah, in which the rent is not fixed as invariable, does not protect the raiyat

ENHANCEMENT OF RENT—*contd.*[2] LIABILITY TO ENHANCEMENT—*contd.*(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—*contd.*

from enhancement. **TARUCK CHUNDER NUNDEE v. MODHOOSOODEN NUNDEE** . . . 5 W. R., Act X, 80

71. ——— *Tikka mohito.* The words "tikka mohito" cannot be construed as conferring a permanent or *maurasi lease at a fixed rate.* **NUFFER CHUNDER SHAHA v. GOSWAIN JOY SINGH BHARATTEE** . . . 3 W. R., Act X, 144

72. ——— *Mokurari tenure—Suit for Jabuliat—Rate paid for similar lands.* In a suit for a kabuliat at an enhanced rate under a pottah, the terms of which were that the lessee should hold the lands for four years rent-free; that after measurement the lands were to be assessed; that

fixed rate. The case was remanded to ascertain what were the rates of similar lands in the neighbourhood in 1274, and decree to be made accordingly. **KASINUDDI KHANDKAR v. NADIR ALI TARAPDAR** 2 B. L. R. A. C. 265; 11 W. R. 164

73. ——— *Expressions importing hereditary character of tenure.* The objection that the documents relied on by the defendant in support of their mokurari title contained no expressions importing the hereditary character of the alleged tenure was held to be one not open to

variable or at a fixed and invariable rent. Even if the objection were open to the plaintiff, it was held that it could not prevail against the evidence which the record afforded that for upwards of a century the talukhs in question had been treated as hereditary. **LALL**

1. 183

74. ——— *Pura dastoor.* Where it was stipulated in the pottah that the land should be held rent-free for five years from 1250 to 1254; that for 1255 a rate of five annas a bigha should be paid; for 1256 ten annas a bigha; and that from 1257 the rate to be paid every year should be the "pura dastoor," or fully customary rate or fourteen annas,—it was held not to constitute a holding at a fixed rent. **BHARAT CHANDRA AITCH v. GAUR MANI DAS** . . . 2 B. L. R. A. C. 266 note; 11 W. R. 31

75. ——— *Rent fixed after stated time—Act X of 1859, ss. 13 and 17.* The defendant as middleman, took a clearing lease of certain land, which it was agreed in the kabuliat he should "hold during 1260 without any rent; for

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—*contd.*

1261 at the rate of R1 per kani; for 1262 at R2 per kani; for 1263 at R3 per kani; and in 1264 at the full customary rate of R5 per kani." The tenure was admittedly a permanent one. In a suit for arrears of rent for 1272, after notice of enhancement under s. 13, Act X of 1839:—*Held*, that the intention was that after 1264 the rent should be fixed, and it was therefore not liable to enhancement. **SOORASOONDERY DEBERE v. GOLAM ALLY**

15 B. L. R., P. C. 125 note; 10 W. R. 142

76. — Lease not finally fixing rent—*Failure to specify duration*. An amnamah, by which the defendant, for clearing and cultivating chur lands, was to pay no rent for the first three years, and then a low rate of rent gradually rising till it reached a certain rate, no period being fixed for the duration of such last-mentioned rate, was held to be no bar to the plaintiff's right of enhancement. **PROOO MOXEE DOSSIA v. PERAMAYOVO SEIN**

7 W. R. 158

77. — Lease of land increased—*Land let for purpose of clearing at low rent afterwards to be higher*. When land is let for the purpose of clearing jungle, or other reclamation, and on this ground, or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not liable to enhancement. **HERO PRASAD ROY CHOWDHURY v. CHUNDER CHURN BOYRAKER**

I. L. R. 9 Calc. 505; 12 C. L. R. 251

78. — *Act I of 1845, s. 26, cl. 4—Jungle land*. The words "such land continuing to be used for the purposes specified in the leases" in cl. 4, s. 26, Act I of 1845, do not restrain the effect of a lease for clearing land of jungle solely to such time as jungle remains to be cut on the land, but should be taken to mean that the lease will stand unless a lease is made for the purpose of clearing of jungle, old state, extend his over to him under the pottah, and gives the same rent for the additional land as for the other land, such additional land is not assessable with the pargana rate of rent, but the pottah is good and binding even on an auction-purchaser as respects the whole of the land cultivated by the tenant. **WARSON & CO. v. JHURASOO SIRON**

1 W. R. 195

79. — Lease containing no term for expiry—*Improvement of land—Agency of raiyat—Improvement by other means*. When a pottah contains no term and does not provide against enhancement, and the tenant has not occupied for twelve years, if it is shown that the tenant has improved the land, he will be entitled to a proportionate reduction in determining the rent he should pay. But if it is also shown that the value of

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—*contd.*

80. — Transferee of lease—*Construction of lease—Liability to enhancement*. A lease contained the following words:—"You shall continue to pay the sum of sicca R5 fixed on the whole as tica jumma of the said mouzah every year, and having cleared the villages of jungle and having brought the lands under cultivation, yourself and through others, as usual, enjoy and occupy the same with your sons and grandsons in succession." *Held*, that the lease conveyed no absolute interest, and that the grantee and his heirs were entitled to transfer it; and that a transferee, not an auction-purchaser, was not liable to enhancement of rent. **WARSON & CO. v. JHURASOO SIRON**

Marsh. 330; 2 Hay 438

81. — Lease stipulating against enhancement—"Year by year." The stipulation in a pottah, "after this in no manner shall enhancement be demanded," precludes enhancement during the existence of the pottah, notwithstanding in a preceding part of the pottah the words "year by year" are used (**BAYLEY, J., dissentient**). **POYCHANNUN BOSS v. PARRY MOHUN DAI**

2 W. R. 225

82. — Solenamah stipulating against enhancement—*Construction of solenamah*. A solenamah, in which it was stated that the rent, and the tenancy an old and existing tenancy. The result of that suit was a solenamah or compromise between the parties, in which the manager, fixed or confirmed the rent of the tenancy, and agreed that the rent should not be enhanced. *Held*, that the effect of the solenamah was to confer upon the ten-

15 W. R. 434

83. — Decree allowing enhancement—*Subsequent transfer of estate*. A childless

against defendant for a kabalat at enhanced rates of rent. Defendant disputed the claim, setting up the title of the opposite party, but the suit was decreed to the extent of the rate of rent admitted by defendant. Subsequently plaintiff issued a notice of enhancement, and defendant, not coming to terms, sued to set aside the pottah and obtain possession.

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—*contd.*

*Held*, that the decree obtained by plaintiff's vendor created a new contract between the parties under the kabuliya, by which defendant was entitled to hold at the rent admitted by him till plaintiff took further steps; and that plaintiff's vendor

See JUGGESSUR BUTTORYAL v. ROODRO NARAIN Roy . . . . . 12 W. R. 299

84. — Agreement to pay increased rent—*Acquiescence*. One of the holders of an under-tenure having agreed with his immediate landlord that an enhanced rent should be paid in respect of the tenure, the enhanced rent fixed was paid for some years, when default being made, the landlord brought a suit against all the joint-holders for arrears of rent at the enhanced rate. *Held*, that the landlord was entitled to rent at the rate claimed until circumstances were shown from which it would follow that the rate claimed was not the fair and equitable rate payable. *Held*, further,

BURUNUDDI HOWLADAR v. MOHUN CHUNDER GHATA . . . . . 8 C. L. R. 511

85. — Decree in accordance with defendant's admission—*Beng. Act VII of 1869, s. 14*—*Suit for arrears of rent*—*Rate of rent payable*. The plaintiff sued for arrears of rent for the year 1282 at the rate of R2-8 per bigha. The defendant allowed that the rent was only fifteen

Appellate Court that he could only recover arrears of rent at the rate of fifteen annas, that being the rate of "rent payable for the previous year" within the meaning of s. 14, Bengal Act VIII of 1869. *Held*, that the decisions were wrong, and must be reversed. PUNOO SINGH v. NIPPOON SINGH . . . . . I. L. R. 7 Calc. 288; 8 C. L. R. 310

86. — Stipulation in kabuliya for increase in rent—*Rent for land in excess of quantity held under kabuliya*—*Suit to recover rent as agreed*—*Notice of enhancement*—*Beng. Act*

ENHANCEMENT OF RENT—*contd.*2. LIABILITY TO ENHANCEMENT—*contd.*(c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—*contd.*

VII of 1869, s. 14. Where a kabuliya contains an agreement to pay a certain specified rent for a certain specified area, although no rate per bigha was fixed, and also an agreement to pay further rent at the rate specified for lands found on measurement to be held in excess of the lands of which the jumma was fixed, a landlord is entitled to recover such increased rent without serving any notice on the tenant under s. 14 of Bengal Act VIII of 1869, and it is a reasonable presumption to make that the rate per bigha was the average rate of rent payable in respect of the lands for which the total amount of rent payable was fixed. *Nistarini Das v. Eonumali Chatterjee, I. L. R. 4 Cal. 941*, followed. *LAIDLEY v. BISCHERAN PAUL* . . . . . I. L. R. 11 Calc. 553

87. — Agreement to take rent as long as holdings continue—*Right to enhance*—*Exemption from enhancement*. Where the relative rights of the parties as landlord and tenants were determined by competent authority, and the matter referred for decision of the Collector was the commutation of the rents paid in land into money

RAMSOOHN . . . . . 3 Agra 384

88. — Provision in administration paper protecting from enhancement. A specific provision in the administration papers protecting the raiyat from enhancement of rent during the term of the settlement will be enforced. *JHUMMUN SHAH v. DEBER DAS*

I N. W. S. Ed. 1873, 7

2 N. W. J

89. — Agreement to pay enhanced rates—*Tenant-at-will*—*N. W. P. Rent Act (XVIII of 1873), s. 21*. The patwari of a village entered in his diary that a tenant-at-will had agreed with the landholder to pay enhanced rent, but the agreement was not recorded, the terms as to rent were not stated, and there was nothing to show

# ENHANCEMENT OF RENT—*contd.*

## 2 LIABILITY TO ENHANCEMENT—*contd.*

### (c) CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT—*contd.*

that such tenant had assented to such entry. *Held*, that there was no record of such agreement within the meaning of s. 21 of Act XVIII of 1871. **BHAVANI v. ABDUL KHAM I L. R. 3 All. 305**

81. — Agreement not to enhance, duration of—*Liability to enhancement* On the 27th June 1896 a decree was passed by the Court of Session at Calcutta.

or suit brought for enhancement of rent. The settlement of the district where the land in respect of which the agreement was made was situate expired on 1st July 1870. Having subsequently enhanced D's rent to Rs. 10, D brought a suit to contest his liability to pay enhanced rent, basing his suit on the agreement of 27th June 1896. The lower Courts held that B was not bound by the agreement after the expiry of the settlement in force at the time of the agreement, and directed D to pay an enhanced rate of rent. In special appeal D's claim was decreed. **DROZET v. BURDOWAN, 6 N. W. 373**

82. — Assessment of, and decree for, rent at enhanced rate—*Kabuliat, effect of subsequent execution of*. On the 25th of January 1864, the plaintiffs obtained a decree against the defendants for assessment of enhanced rent. Shortly afterwards, the defendants executed a *kabuliat*, at a reduced rate, for eleven years ending the 31st Assin 1282 (16th October 1875). After the term had expired, the plaintiffs sought to recover rent from the defendants at the rate settled by the decree of 1864. *Held*, that the decree had been superseded by the subsequent arrangement, and that the plaintiffs could not recover rent at an enhanced rate, except under the provisions of Bengal Act VIII of 1859. **NOBIN CHUNDER SINHA v. GOUD CHUNDER SHANA I. L. R. 6 Cal. 759; 8 C. L. R. 161**

### 3 EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION

#### (a) GENERALLY.

1. — Tenant accepting pottah after long holding—*Presumption—Act X of 1859, s. 4*. If a tenant has held land at a uniform rate for generations, and the pottah given to him subsequently does not fix a rent different from that previously paid, but merely asserts the rent he is to

2. — Pottah not inconsistent with holding. In a suit for enhancement, if the

# ENHANCEMENT OF RENT—*contd.*

## 3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*

#### (a) GENERALLY—*contd.*

defendant plead pottahs which are not inconsistent with the presumption under s. 4, Act X of 1859, and proves twenty years' uniform payment of rent, the presumption will arise unless the opposite party prove a variance in the pottahs. **KOROONA MOYEE DOSSEE v. SHIB CHUNDER DEB 6 W. R., Act X, 50**

3. — Pottah subsequent to Permanent Settlement—*Pottah not inconsistent with holding*. When a raiyat, in an enhancement suit, proves uniform payment of rent for twenty years previous to the suit, the production of a pottah dated more than twenty years before the suit, but subsequent to the Permanent Settlement, if not inconsistent with the inference that it is a continuation of a former state of things, will not interfere with or defeat the presumption of uniform payment from the Permanent Settlement. **KISNEY MOHUN GHOSH v. ESHAN CHUNDER MITTER 4 W. R., Act X, 36**

4. — Failure to prove pottah—*Act X of 1859, s. 3, 4—Presumption*. In a suit for enhancement of rent, a raiyat is not to be precluded from the benefit of the presumption under s. 4 of Act X of 1859, on proof of having held at a fixed rent for a period of twenty years merely because he has failed to prove a pottah which he has set up not inconsistent with that presumption. **GIRISH CHUNDR BOSE v. KALI KRISHNA HALDAR B. L. R. Sup Vol 538; 9 W. R., Act X, 57**

**PEARSE MOHUN MOOKERJEE v. KOYLA CHUNDER BYRAOZE 23 W. R. 58**

5. — Existence of *kabuliat* within 20 years—*Bengal Rent Act VIII of 1859, s. 4*. The presumption arising in favour of a tenant from a twenty years' occupation, when it is supported by evidence, is not necessarily displaced by the discovery of a *kabuliat* bearing a subsequent date. Such a *kabuliat* is as consistent with the confirmation of a pre-existing rent as with the settlement of a new rate, and it is for the Court to balance the inferences drawn from the *kabuliat* against those arising from the twenty years' holding. **SOORJOMONEY DOSSEE v. PEARSE MOHUN MOOKERJEE 25 W. R. 331**

6. — Setting up pottah—*Presumption of exemption from enhancement*. A defendant who rested his defence in a suit for enhancement upon a pottah, which he set up, as entitling him to hold free from enhancement under s. 4, Act X of 1859, cannot plead that the tenure is protected from enhancement by reason of payment of rent at a uniform rate for twenty years. **JAUN ALI v. JAN ALI 9 W. R. 149**

**WATSON & CO v. SHAN LALL PANDAH 10 W. R. 73**



ENHANCEMENT OF RENT—*contd.*2. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*(a) GENERALLY—*contd.*WATSON & Co v. ANJUNNA DASSEE  
10 W. R. 107

7. ——— Possession of ancient pottah—Act X of 1859, s. 4. The discovery

claiming the benefit of the presumption under s. 4, Act X of 1859. HIRONATH ROY v. KUMOLA KANT CHUCKERBUTTY . . . 5 W. R., Act X, 56

8. ——— Existence of pottah and amulnama—Presumption of change in rent In a suit for enhancement where the defendants plead a holding at a uniform rate from the Permanent Settlement, the mere existence of a pottah and amulnama of 1215 is not conclusive evidence that the rate was then changed, or was then first fixed. LUCHMEE NARAIN SHAHA alias GOFENATH SHAHA v. KOOCHIL KANT ROY . . . 6 W. R., Act X, 46

9. ——— Pottah not shown to be confirmatory of previous holdings—Confirmation of possession. In the absence of documentary evidence to show that a pottah of 1239 was merely confirmatory of a previous holding, the possession of a rayat claiming under that pottah will commence from the date of his pottah, and he is not entitled to the benefit of the presumption under s. 4, Act X of 1859. JAINOODDEEN v. PURNO CHUNDER ROY . . . 8 W. R. 129

10. ——— Pottah subsequent to Permanent Settlement. A tenant is not entitled to the presumption, under s. 4 of Act X of 1859, of having held his tenure at a uniform jumma from the Permanent Settlement, when it appears from his pleadings that his holding first began under a pottah at a period subsequent to the Permanent Settlement, and he does not allege that he held the land previous to his obtaining the pottah. KUNDA MISSEER v. GANESH SINGH

6 B. L. R. Ap. 120: 15 W. R. 193

LUCHMEE PERSAD v. RAMGOLAM SINGH  
2 W. R., Act X, 30

11. ——— Act X of 1859.

s. 4—Rebutting presumption. The presumption of occupancy from the Permanent Settlement created by s. 4, Act X of 1859, is rebutted by the rayat relying upon a pottah granted after the Permanent Settlement. MUNIVORUN SINGH v. WATSON & Co.  
W. R. F. B. 22: 1 Ind. Jur. O. S. 78s.c. WATSON & Co v. CHOTO JOORA MUNDUL  
Marsh 68: 1 Hay 232RAM LAL GROSE v. LALLA PECUNLALL DOSS  
Marsh. 403: 2 Hay 626RANKISEEN SINGH v. DFLER ALI  
W. R. 1864, Act X, 36ENHANCEMENT OF RENT—*contd.*3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*(a) GENERALLY—*contd.*BEER KISHORE LALL v. KUNBOOLY LALL  
W. R. 1864, Act X, 109

12. ——— Reliance on and failure to prove mokurari tenure—Act X of 1859, s. 4—Presumption. The fact of a rayat having relied upon a mokurari tenure cannot prevent his falling back on the presumption arising under s. 4 of Act X of 1859. CHANARNEE BIRSEE v. AYEBOOLLAH SIBRAI . . . 9 W. R. 451

13. ——— Presumption. In a suit for arrears of rent at an enhanced rate, where defendants pleaded protection under a mokurari pottah of old date, which had been lost long ago, and also pleaded the presumption arising from uniform payment for more than twenty years—Held, that the defendants' inability to adduce sufficient

ANUNY RAM PUNIAIA . . . 10 W. R. 383

14. ——— Setting up forged pottah—Presumption. Presumption of occupancy from the Permanent Settlement cannot be pleaded after a pottah brought forward to strengthen the presumption is found to be fabricated. FORSES v. NUND, COOMAR MUNDUL . . . 2 W. R., Act X, 35

15. ——— Act X of 1859, s. 4—Presumption. Quare. Whether a party who has propounded a forged pottah could have the benefit of the presumption arising from paying a fixed rent for twenty years. GOPAL CHUNDER ROY v. GOOROO DASS ROY  
B. L. R. Sup. Vol 764 note: 7 W. R. 135

16. ——— Forged deed—Dishonest defence. In a suit for enhancement of rent, the rayat, defendant, set up a mokurari pottah.

claimed. ISWAR CHANDRA DAS v. NITTIANAND DAS

B. L. R. Sup. Vol 490: 6 W. R., Act X, 70

(b) PROOF OF UNIFORM PAYMENT.

17. ——— Sale for arrears of rent—Auction-purchaser, right of—Presumption. When an auction-purchaser at a sale for arrears of revenue demands an enhancement, the presumption arising from a uniform payment holds good, and the tenant's protection is not swept away by the sale. SHUDEK SIBRAI v. MOHAMOYA DABEE  
1 Ind. Jur. N 6 77s.c. GADUCK SIBRAI v. MOHAMOYA DEBIA  
5 W. R., Act X, 16.

**ENHANCEMENT OF RENT—contd.****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—contd.****(b) PROOF OF UNIFORM PAYMENT—contd.**

18. ————— *Act X of 1859.*

s. 4—*Presumption—Auction-purchaser at sale prior to passing of Rent Act, right of.* The plaintiff was the auction-purchaser at a sale of land made prior to the passing of Act X of 1859. In 1253

Afterwards, and before the plaintiff had received any rent, he brought a suit against the tenant for enhancement of rent. *Held*, that the enactment in s. 4 of Act X of 1859 that, when it shall be proved that the rent at which land has been held by a

rent, unless the mokurari tenure was created twelve years before the date of the Permanent Settlement  
**LUTEEFOONISSA BEEBEY v. POOLIN BEHARY SEN**

1 Ind Jur O. S. 10 : W R F B 31

Upheld on review W R F B 91

**POOLIN BEHARY SEN v. LUTEEFOONISSA BEEBEY**  
Marsh 107: 1 Hay 242

19. ————— *Sale for arrears of revenue*

—*Purchaser, right of—Act I of 1845, s. 26—Act X of 1859, ss. 1, 3, 4.* Baiyats who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement are not liable to have their rents enhanced even at the suit of a purchaser at a sale for arrears of revenue under Act I of 1845. **HUELYNOR MOOKERJEE v. MOHESH CHUNDER BAKERJEE**

B L R Sup Vol 923 : 7 W R 179

20. ————— *Purchaser, right of—Act XI of 1859, s. 37—Beng Act VIII, of 1869, ss. 4 and 17—Presumption*

The procedure prescribed in Bengal Act VIII of 1869 applies to claims of enhancement under s. 37 of Act XI of 1859 by a purchaser at a revenue-sale, and the rights of any such purchaser are, therefore, subject to all the modifications contained in ss. 4 and 17, which form a presumption in favour of tenures of all classes held

**V. ROOKINEE GOPTANI** . I L R 4 Calc. 783

21. ————— *Invalid lakhiraj resumed after Permanent Settlement—Beng. Act VIII*

**ENHANCEMENT OF RENT—contd.****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—contd.****(b) PROOF OF UNIFORM PAYMENT—contd.**

22. ————— *Legal Act VIII is resumed at Settlement.*

PAL  
20 W. R. 466

23. ————— *Evidence of uniform payment of rent.* What is sufficient evidence to warrant a presumption that a tenure has been held at a uniform rate for twenty years will depend upon the circumstances of each case. **PEARLE MOHUN MOOKERJEE v. ANAND MOHUN DEBIA**

9 W. R. 156

23. ————— *Issue as to change in rent—Act X of 1859, s. 15—Presumption.* In determining whether a party is entitled to the benefit of the presumption under s. 15, Act X of 1859, or not, the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within twenty years prior to the institution of the suit. **AHMED ALI v. GOLAN GAFAR**

3 B L R. Ap 40 : 11 W. R. 452

24. ————— *Continuous and uniform payment—Presumption—Beng Act VIII of 1869, ss. 3, 4, S 4, Bengal Act VIII of 1869, entitles the holder of land for the time being, however he may have acquired it, to the benefit of the presumption prescribed in that section if he can show that there has been a continuous and uniform payment of the same rent for twenty years.* **THANUND THAKOOR v. HERDU JHA**

I L R. 9 Calc 252

25. ————— *Calculation of period of twenty years—Act X of 1859, s. 4—Exclusion of time in calculating period.* In calculating the period of 20 years mentioned in s. 4, Act X of 1859, there is nothing in the section to warrant the exclusion of the period during which the estate was under farm. **GOOREN BHAGAT v. FUREED ALUM**

3 Agra 401

26. ————— *Salable tenures—Act X of 1859, s. 4—Possession of vendor.* In cases of saleable tenures the period of possession by the rayat's vendor is included in the twenty years mentioned in s. 4, Act X of 1859. **KHODA NEWAZ v. NUBO KISHORE RAJ** . 5 W. R., Act X, 53

27. ————— *Limitation of presumption—Act X of 1859, s. 4—Suit not under Rent Act.* The presumption arising under s. 4, Act X of 1859, was not necessarily restricted to proceedings

sumption of its having been made since the Permanent Settlement. **DUKHINA MOHUN ROY v. KURNEEMOOLLAH** . 12 W. R. 243

ENHANCEMENT OF RENT—*contd.*3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*(b) PROOF OF UNIFORM PAYMENT—*contd.*

28. ———— *Suit not under Rent Act—Act X of 1859, s. 4, and Beng. Act VIII of 1859, s. 4—Suit in Civil Court for declaratory decree.* A zamindar having sued a rayat for rent, the defendant pleaded to a lower rate of rent than that claimed, and set up a mokurari tenure. The suit was decreed, and an appeal therefrom was dismissed. The rayat then brought an action in the Civil Court to have it declared that he had a mokurari tenure. The suit was dismissed by the first Court, but the lower Appellate Court reversed the

29. ———— *Necessity of pleading holding at uniform rate—Act X of 1859, s. 4—Presumption.* The presumption under s. 4, Act X of 1859, of holding at a uniform rate from the Permanent Settlement need not be specifically pleaded, but (unless rebutted) arises as a matter of course on proof of uniform payment for twenty years. *MUNEEKURNICKA CHOWDERAIN v. ANUND MOYEE CHOWDERAIN* . . . . . 3 W. R. 6

30. ———— *Presumption—Act X of 1859, s. 4.* S. 4 does not require the defendant to plead uniformity of payment from the time of the Permanent Settlement, but provides that if, on the trial of a suit, it appears that the rent has not been changed for twenty years, it shall be presumed that the land has been held at that rate from the time of the Permanent Settlement. *BRUJURNATH SANDYAL v. MUTTY MUNDUL* . . . . . W. R. 1864, Act X, 100

*MAHMOODA BEBEE v. HAREE DRUN KHULKEPA* . . . . . 5 W. R., Act X, 12

*RAM COOMAR MOOKERJEE v. RAGHUB MUNDUL* . . . . . 2 W. R., Act X, 2

*RAKAL DOSS TEWAREE v. KINGOORAN HALDAR* . . . . . 7 W. R. 242

40. ———— *Possession for 50 years—Presumption—Act X of 1859, s. 4.* Proof of uniform payment of rent of twenty years by rayats pleading possession from the Decennial Settlement will, unless rebutted by the landlord, entitle them to the presumption under s. 4, Act X of 1859, and save their holdings from enhancement. But proof of

ENHANCEMENT OF RENT—*contd.*3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*(b) PROOF OF UNIFORM PAYMENT—*contd.*

(*Contra*) *RAMRUTNO SIRCAR v. CHUNGER MOOKERJEE DUBEY* . . . . . 2 W. R., Act X, 74

41. ———— *Proprietors paying rent—Act X of 1859, s. 4.* Proprietors paying rent for the right of occupancy are not rayats in the sense contemplated by s. 4, Act X of 1859. *MITTURJEET SINGH v. FITZPATRICK* . . . . . 11 W. R. 206

42. ———— *Inference from ancient dowl—Beng. Reg. VIII of 1793—Presumption of fixed rent.* The plaintiff claimed to enhance defendant's rent from *suez* Rs 61 to Company's Rs 238. No legal evidence of the dowl was given. *Held, per PEACOCK, C.J.* (BAYLER, J., and KEUR, J., dissentiente), that, independently of the dowl, it might be presumed, from the great differences between the rent at which the lands were held and the present value of the lands, that the occupation at the low rent had been continued as of right, and not merely by the sufferance of the zamindar, and that such occupation at the same rent had existed twelve years before the date of Regulation VIII of 1793. *Per BAYLER, J.*, that independently of the dowl, the facts did not satisfy such a presumption; but that, if the dowl were proved, then it might be presumed that the occupation at the same rent had commenced twelve years before the date of the Regulation. *Per KEUR, J.*, that, even if the dowl were proved, the presumption would not arise. *BRUJUNGOONA DASSEE v. DEBRANJE DASSEE* . . . . . Marsh, 424

*DEBRANJE DASSEE v. BRUJUNGOONA DASSEE* . . . . . W. R. F. B 94

43. ———— *Possession for a long time from olden date, etc.—Presumption—Act X of 1859, s. 4.* Proof of possession for a long time from olden date, etc., will, unless rebutted by the landlord, entitle them to the presumption under s. 4, Act X of 1859, and save their holdings from enhancement. But only proof of payment for twenty years at a fixed rate in order to raise the legal presumption. *MUNMOHUN GHOSE v. HUSRUT SIRDAR* . . . . . 2 W. R., Act X, 39

*JUGMOHUN DOSS v. POORNO CHUNDER ROY* . . . . . 3 W. R., Act X, 133

*HEM CHUNDER CHATTERJEE v. POORNO CHUNDER ROY* . . . . . 3 W. R., Act X, 133

*HURKEESEN ROY v. SHAIKH BABOO* . . . . . 1 W. R. 5

*EGRAM v. BULOORAN* . . . . . 2 W. R., Act X, 89

ENHANCEMENT OF RENT—*contd.*3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*(b) PROOF OF UNIFORM PAYMENT—*contd.*

RAJ COOMAR ROY v. ASSA BERRY

3 W. R., Act X, 170

OOROO DOSS MENDUL v. DURRANEE

5 W. R., Act X, 80

SHAN LAL GHOSE v. MURDUN GOPAL GHOSH

6 W. R., Act X, 37

44. Possession for a long time—*Sufficiency of evidence.* When, in a suit for enhancement, a raiyat or talukhdar pleads possession for a long time and claims the benefit of the presumption under s. 4, that is tantamount to his having named the Permanent Settlement.

DHUN SINGH ROY v. CHUNDER KANT MOOKERJEE

4 W. R., Act X, 43

45. Possession for long time—*Act X of 1859, s. 4—Presumption.* Held (by JACKSON, J., whose opinion prevailed), that where a raiyat in his answer to a suit for enhancement pleads possession for a very long time, and expressly claims the benefit of the presumption under s. 4, Act X of 1859, that presumption is raised.

claimed will not arise from the proof of twenty years' occupation at a rate unchanged. HURRAK SINGH v. TOOLSEE RAY SAHOO . 11 W. R. 84

Affirmed in HURRAK SINGH v. TULSI RAY SAHU

5 B. L. R. 47; 13 W. R. 218

46. Possession from Permanent Settlement—*Sufficiency of evidence.* Possession from the Permanent Settlement is not sufficient to prove that a uniform rate of rent has been paid from that date. MAHMOODA BEGEE v. HAREEDHUN KHULEEFA . 5 W. R., Act X, 12

47. Possession from generation to generation—*Presumption—Act X of 1859, s. 4.* In a suit for enhancement of rent the raiyat pleaded that he had held certain lands from generation to generation at a uniform rate, that he was therefore entitled to claim the presumption arising under s. 4, Act X of 1859, and that he should be allowed to date his claim from the date of the Permanent Settlement. Held, that he was entitled to such presumption on showing that he had paid rent at a uniform rate for a period of twenty years previous to the suit. MIKRAIT SINGH v. TUNDAN SINGH . 3 B. L. R. Ap. 88

12 W. R. 14

48. Sufficiency of proof—*Act X of 1859, s. 4—Presumption.* In a suit for enhancement of rent, when defendant pleads that he has held the land at a uniform rate for twenty years, that presumption is raised.

ENHANCEMENT OF RENT—*contd.*3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*(b) PROOF OF UNIFORM PAYMENT—*contd.*

borated by the records of the Collectorate, which are not to be taken into consideration.

49. Act X of 1859,

s. 4—*Admission of plaintiff.* In a suit for enhancement of rent, plaintiff's admission that defendant had held the tenure for thirty or thirty-two years is not sufficient to raise the presumption.

50. Act X of 1859,

s. 4—*Decrees for arrears of rent.* In a suit for arrears of rent at an enhanced rate, where defendant pleaded the presumption arising under s. 4, Act X of 1859, and plaintiff produced in support of his claim a decree of 1860, declaring him entitled to the enhanced rent and a later decree for arrears on the same scale—Held, that the fact that the later decree had only been executed in part, and that defendants never paid more than Rs. 2 to the Government, did not neutralise the effect of the decrees as the very best evidence that the rents had varied since the Decennial Settlement. WOODY NARAIN SEIN v. TABINEE CHURN ROY . 11 W. R. 498

51. Act X of 1859,

s. 4—*Presumption.* The presumption allowed by s. 4, Act X of 1859, of holding certain orchard land at a uniform rent since the Permanent Settlement was held not to be removed by defendant's statement that the orchard was planted more than forty years ago; and it was for plaintiffs to prove it to have been made since the Permanent Settlement. SOODISTEE LALL CHOWDHRY v. NUTHOO LALL CHOWDHRY . 8 W. R. 487

52. Presumption—

Act X of 1859, s. 4. Where a defendant who claims to have held lands for more than 100 years is able to prove that the rent has not changed for twenty years, he is entitled to the presumption allowed by s. 4, Act X of 1859. LUCHNEEPUR SINGH v. JUNGULEE KULLIAN DOSS . 9 W. R. 147

53. Act X of 1859,

s. 4—*Presumption.* When a raiyat alleges that he has paid rent at a uniform rate for forty years and claims the benefit of the presumption under s. 4, Act X of 1859, that presumption is raised.

SEN v. NEMAYE CHAND . 7 W. R. 472

# ENHANCEMENT OF RENT—*contd.*

## 3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*

### (b) PROOF OF UNIFORM PAYMENT—*contd.*

54. — *Beng. Act VIII of 1869, s. 4—Presumption.* In a suit for enhanced rent after notice, where defendant pleaded that he had for more than twenty years paid at the same rate:—*Held*, that he was entitled to the presumption under s. 4 of the Rent Law, unless plaintiff could prove that defendant's tenure commenced at some date subsequent to the Decennial Settlement. *ASHRAF ALI v. VILAF HOSAIN* . 24 W. R. 368

55. — *Inference—Beng. Act VIII of 1869, s. 4—Presumption.* In a suit relating to four jummas in the possession of the same persons in which it was proved that three of the jummas had been held at the same rent for twenty years, but that the fourth, having only been purchased eighteen years previously by the said

did in inferring that such had been the case. *RADHAMOYE DEY CHOWDHURY v. ACHORE NATH BISWAS* . 25 W. R. 384

56. — *Beng. Act VIII of 1869, s. 4—Presumption of uniformity.* In suits to set aside notice of enhancement, where the plaintiffs put in evidence (in two cases) a chitti of 1257 B. S., and (in a third) a decree of 1857 citing an earlier chitti showing that they had long held at existing rates, and there was no evidence to prove that the land had not been held at those uniform rates from the Permanent Settlement, or that such rent had been fixed at some later period, the plaintiff

57. — *Enhancement of rent, suit for—Beng. Act VIII of 1869, s. 4—Presumption of evidence.* In a suit for arrears of

not been held since the time of the Permanent Settlement. *PEARSI MOHAN MUKHERJI v. BANSHI MAJHI* . I. L. R. 11 Calc. 767

58. — *Act X of 1859, s. 4—Evidence to establish presumption of uniform rent.* A raiyat is not bound to file dakhilas in order to establish the presumption allowed by Act X of 1859, s. 4, if he can establish it by other good independent evidence. *RADHA GOBIND ROY v. SHAMA SOONDURVE DABEE* . 21 W. R. 403

59. — *Act X of 1859, s. 4—Enhancement on ground of there being excess*

# ENHANCEMENT OF RENT—*contd.*

## 3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*

### (b) PROOF OF UNIFORM PAYMENT—*contd.*

land. The rent of a tenure protected from enhancement under the provisions of s. 4, Act X of 1859, cannot be increased on the ground of the tenure containing excess land. *DECOURCY v. MEGHNATH JHA* . 15 W. R. 157

60. — *Enhancement on ground of there being excess land—Act X of 1859, ss. 15 and 16—Presumption of uniform rent.* In a suit for arrears of rent at enhanced rates where

the rent, even though the land in possession of defendant may be in excess of that covered by the original tenure. If, on the other hand, the excess land was not included in the original tenure, but obtained subsequently without the consent of the plaintiff, the possession of the defendant must be considered adverse, and the suit must fail for want of privity. *INDRO BROOSEN DEB v. GOLUCK CHUNDER CHUCKERBUTTY* . 12 W. R. 360

61. — *Act X of 1859, s. 4—Pleading.* *Per NORMAN and HOBHOUSE, JJ.* (*BARLEY, J.* dissenting)—*Held*, that in the present case the defendant had not, either in the written statement filed by him or by his statements in examination, raised the question whether he was entitled to the benefit of s. 4 of Act X of 1859. *HARAK SING v. TULSI RAM SAHU* . 5 B. L. R. 47: 13 W. R. 216

62. — *Presumption.* In a suit for enhancement, before giving a defendant the benefit of the presumption created by s. 4, Act X of 1859, there must be legal evidence of actual uniformity of rent for the whole of the twenty years immediately preceding the commencement of the suit. *RAJ NARAIN ROY CHOWDHURY v. ATRINS* . 15 W. R. 45: 5 W. R. 30

*SHIB NARAIN GHOSH v. KASHIE PERSHAD MOOKERJEE* . I W. R. 226

*RAM KISHORE MUNDUL v. CHAND MUNDUL* . 5 W. R., Act X, 64

*PREM SAHOO v. NYAMUT ALI* . 6 W. R., Act X, 84

63. — *Proof requisite of uniformity of rent.* A raiyat is bound to give strict proof of a uniform payment of rent for twenty years. That is a matter which should not be dropped in his favour on mere inference. *SHAM LALL GHOSH v. BOISTUR CHURN MOZOOMDAR* . 7 W. R. 407

*BUNGO CHUNDRAM CHUCKERBUTTY v. RAM KANYE BHAWAL* . 10 W. R. 256

*SEENATH BOSE v. POOLIAN MOLLAH* . 17 W. R. 374

**ENHANCEMENT OF RENT—*contd.*****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*****(b) PROOF OF UNIFORM PAYMENT—*contd.***

84. ————— *Time for which the rent has been uniform.* Uniform payment must be shown, if not for every year in the twenty years, at least for the greater portion of that period, and for years in the earlier, as well as in the later, portion of the same. *SURNOOYEE DASSEE v. SHAM MUNDUL* . . . . . 9 W. R. 270

85. ————— *Act X of 1859, s. 16—Rent of talukdh—Presumption.* S. 16, Act X of 1859, does not require proof of actual payment of one rate of rent for twenty years, but that the rent has remained unchanged for that period. Uniform rent for the twenty years preceding the suit ought not to be presumed upon evidence which only touches a portion of that period; on the other hand, it is not necessary to have evidence bearing directly on every one of the twenty years. It is sufficient if the whole time is included within limits upon which the evidence bears, provided the evidence leads to the belief of uniform rent. *FOSCHOLA v. HERO CHUNDER BOSE* . . . . . 8 W. R. 284

*RASHEEHARY GHOSH v. RAM COOMAR GHOSH*  
22 W. R. 487

86. ————— *Evidence of each year's rent.* Uniform payment of rent for twenty years may be presumed without proof of such payment for every separate year. *KOMUL LOCHUN ROY v. TUNEREDDEEN SINDAR*  
7 W. R. 417

87. ————— *Presumption—Act X of 1859, s. 4.* Proof of uniform payment of rent up to the date of suit is not absolutely necessary to entitle a rayat to the benefit of the presumption under a 4, Act X of 1859, in a case when the landlord has refused to take rent for a few years before suit. *GYARAM DUTT v. GOKROOCHURN CHATTERJEE* . . . . . 2 W. R., Act X, 59

88. ————— *Interruption in proof of duration—Act X of 1859, s. 4—Presumption.* In a suit for a labuhat at an enhanced rent—*Held* by *SEXTON-KARR, J.*, that, as there was a break of three years in the period of uniform payment which would give rise to the presumption of

satisfactorily proved and attested, and, if so, whether they could legally support a uniform payment for twenty years. *RADNA KANT DEB v. KHEMA DASSEE* . . . . . 7 W. R. 501

**(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE.**

89. ————— *Uniformity in rate—Variation.* Uniformity in the amount actually paid is

**ENHANCEMENT OF RENT—*contd.*****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—*contd.***

not required to raise the presumption under a 4, Act X of 1859, but uniformity in the rate agreed upon, either expressly or impliedly, between the parties to be paid. *MORAN & Co v. ANUND CHUNDER MOZOOMDAR* . . . . . 8 W. R., Act X, 35

*SHAM CHARAN KOONDOL v. DWARRANATH KUBERAJ* . . . . . 10 W. R. 100

70. ————— *Act X of 1859,*

*a. 4—Rent changed in amount, but at same rate.* The words of a 4, Act X of 1859, refer to the rate as well as the amount of rent. Therefore, where from 1839 to 1858 a rayat had paid rent at the same rate, but in 1856 the rent was, by order of the Civil Court, changed, and a proportionate amount remitted in consequence of a portion of the land having been lost by diluvion; *Held*, that the remaining portion of the rent being levied at the same rate as before, the rayat had not lost his right to avail himself of the provisions of a 4, Act X of 1859. *RAIZUNISSA v. TIFUN JHA*  
1 B L R. 8 N. 18; 10 W. R. 246

*KENABAM MULLICK v. RAMKUMAR MOOKERJEE*  
2 W. R., Act X, 17

71. ————— *Rent in kind (bhaoli)—Act X of 1859, ss. 3 and 4.* *Example:* A tenant who has paid at the same bhaoli rate—i.e., in kind—for a period of twenty years is entitled to the presumption of a 4, Act X of 1859, and to exemption from enhancement under a 3. *RAM DAYAL SINGH v. JATCHEE NARAYAN*  
8 B L R. Ap. 25; 14 W. R. 388

72. ————— *Rent in kind (bhaoli) varying in proportion to crop—Act X of 1859, s. 4.* A bhaoli rent, varying yearly in amount in a fixed proportion to the produce of the crop, is not a fixed unchangeable rent of the nature contemplated by a 4 of Act X of 1859. *MAHOMED YACOOB HOSEI v. CHOWDHRY WAHEED ALLY* . . . . . 1 Ind. Jur. N. S. 28; 4 W. R., Act X, 23

*HANUMAN PARSHAD v. RAMJUG SINGH*  
6 N. W. 371

*THAKOOR PERSHAD v. MAHOMED BAKU*  
6 W. R. 170

73. ————— *Rent in kind (bhaoli) varying with amount of yearly produce—Act X of 1859, ss. 3 and 4—Act XVIII of 1873, ss. 5 and 6.* A rent in kind (bhaoli) which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion

### ENHANCEMENT OF RENT—*contd.*

### 3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*

(c) VARIATION BY CHANGE IN NATURE OF RENT  
AND BY ALTERATION OF TENURE—*contd.*

his rent, he has paid the same proportion of the produce of his holding. HANUMAN PARSHAD v. KAULESAR PANDEY. 54. N. L. R. 1911 301

74. ——— Abatement of rent for  
unculturable land.—*Act X of 1859, s. 4.*  
Where an abatement of rent was allowed in a  
lump sum upon a lump jumma on account of lands  
having been rendered unculturable by the overflow  
of a river, the abatement was held not to vary  
the rate of rent so as to debar the raiyat from the  
benefit of the presumption under *Act X of 1859,*  
*s. 4.* RADHA GOBIND ROY v KANUTOOLAH  
21 W. R. 401

75. ———— Alteration in rate—Proof of variation—Payment by tenant. A mere alteration in the rate of rent on the part of a zamindar or person other than the tenant will not prove a variation, unless it be shown that the tenant submitted to or paid that varied and enhanced rate. *GOWD MUNDUL v. NOBBO KISHEN MOOKERJEE*  
5 W. R., Act X, 83

78 Variation of rent shown in dakhilas—Average of payments of rent. Where dakhilas are relied upon to prove uniformity of rent and any variation in the dakhilas is found to exist, there must be a distinct finding as to whether the short payments of one year were made up the next year, the variation *prima facie* being evidence that the rent was not uniform. RAMJADOO GANGOOLY v. LUCKNER NARAIN MUNDUL. 8 W. R. 468

**77. ——— Additional illegal cess for additional land—Immaterial variation** Additional rent for additional land, and the addition of a small illegal cess, are not such variations of the proper rent as deprive the tenant of the presumption arising from twenty years' payment of uniform rent. **SUMEROODDEEN LUSKRE v. HIRONATH ROY** 2 W. R. Act X 83

76. \_\_\_\_\_ Slight variation—Immaterial variation. A variation of one anna is not sufficient to destroy the uniformity required by s. 4, Act X of 1850. **MUNSOOR ALLY v. BUNO SINGH**  
7 W. R. 282

79. *Immaterial variation* The variation of a few annas in the dakhilas, when not proved to be a variation in the annual rents, is not sufficient to deprive the raywat of the benefit of the presumption. TARA SOONDERY BURNONYA v SHIBESSUR CHATTERJEE  
6 W. R., Act X, 51

### ENHANCEMENT OF RENT—*contd.*

### 3 EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*

(c) VARIATION BY CHANGE IN NATURE OF RENT  
AND BY ALTERATION OF TENURE—*contd.*

ELANEE BUKSH CHOWDREY v. ROOPUN TELF  
7 W. R. 284

80. Nominal reduction in jumma—Immaterial variation A nominal reduction in the jumma of one anna and three pies, and that too in the raiyat's favour, is not a variation that deprives him of the benefit of the presumption created by s. 4, Act X of 1859. But the acceptance of a temporary kabuliut annuls such presumption. **RAMRUTN SIRCAR v. CHUNDER MOOKHEE DEBIA**  
2 W. R. Act X. 74

Nor does an unexplained variation of one rupee in a total jumma of sixty rupees. **ANUNOLAL CHOWDREY v HILLS**. 4 W. R. Act X, 33

WATSON & Co v NUND LAL SIRCAR  
21 W. R 420

81 ——— Alteration in jumma—*Im-*  
material variation. It must be a variation which  
affects the integrity of the jumma. GOPAL CHUNDER  
BOSE & MOTHOOR MOHUN BANNERJEE  
3 W. R. Act X, 132

HILLS &amp; HURO LAL SEN 3 W. R., Act X, 135

82 ——— Material difference—*Difference in amount.* The difference between R11-13 and R13-4 was held sufficient to destroy the presumption of a uniform payment of rent. *Bissessan Chookerasutti v Woodhouse Roy* 7 W. R. 44

(the difference in value between the two kinds of rupees) is not a real addition to the rent. **ROCHA RAM MISHRA v. NAGA DOSS**, . . . 2 N. W. 92

84. ——— Variation of rent from change of currency. A variation of rent from

See also KALEE CHURN DUTT v. SHOSHEE DOSSE  
1 W. R. 248

KATTYANI DEBEA v. SOONDUREE DEBEA  
2 W. B. Act X, 80

See MEER MAHOMED HOSSEIN v. FORBES  
22 W. R. 316; L. R. 21, A. 1

85. Consolidation of jummas—  
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**ENHANCEMENT OF RENT—*contd.*****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—*contd.***

which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one jumma. The presumptions of s. 4 are not restricted to holdings, but refer simply to the fact that land has been held by a raiyat at a rent which has not been changed for twenty years before the commencement of the suit. *RAJ KISHORE MOOKERJEE v. HINEER MOOKERJEE* 1 B. L. R. S. N. 8 : 10 W. R. 117

**88. ——— Holding created since Decennial Settlement.** He must be entitled to the presumption in respect of the whole tenure as consolidated. If one of the holdings constituting it is shown to have been created since the Decennial Settlement, the presumption cannot be made as to the rest. *MOULA BEKSH v. JODGONATH SARDGO KHAN* 21 W. R. 267

**87. ——— Presumption.** The consolidation of several holdings into one, or the omission of fractions by the settlement officer, cannot deprive a raiyat of the benefit of the presumption under s. 4, Act X of 1859. *LUKHI MONI HALDAR v. GUNGA GOBIND MUNDIE* W. R. 1884, Act X, 128

*KHODA NEWAZ v. NUDO KISHORE ROY* 5 W. R., Act X, 53

**88. ——— Division of holding among**

the tenant of one shareholder who visits the tenure of all, and give the landlord a right of enhancement. *HILLS v. BESHARUTH MEER*

1 W. R. 10

**89. ——— Division of tenure—Act X of 1859, s. 4—Extent of proof necessary.** In order to bring himself within ss. 3 and 4, Act X of 1859, a raiyat need only show that the particular land which is the subject of suit, not the whole tenure of which it may once have formed a part, has been held at an unchanged rent since the Permanent Settlement. It is not necessary that the land should have remained a separate holding. *KASEENATH NUSKER v. BAMA SOONDARY DOSSIA* 10 W. R. 429

**90. ——— Variation of rent of undivided fractional share—Act X of 1859, s. 4—Presumption of uniformity.** A change in the rent of an undivided fractional part of a tenure is to be considered as a change in the rent of the whole.

**91. ——— Distribution of rent after sale of portion of tenure—Beng. Act VIII of**

**ENHANCEMENT OF RENT—*contd.*****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—*contd.***

1869 s. 4. The sale of a portion of a ten—

20 W. R. 419

**92. ——— Temporary holding by one of several joint owners under arrangement—Act X of 1859, s. 4.** A temporary arrangement among joint owners by which one of their number is allowed to hold a portion of the joint property on payment of a certain sum of money, does not convert the occupier into a raiyat holding at a fixed rent or entitle him to the benefit of the presumption under s. 4, Act X of 1859. *ROGHO-BUN TEWARIE v. BISHEN DUTT DOBEY*

2 W. R., Act X, 93

**93. ——— Partition—Evidence of previous enhancement in a suit by another co-zamindar—Talukh—Beng. Act VIII of 1869, s. 17.** More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependent talukh, the zamindari under which the talukh was held was partitioned under a *batwara* among three zamindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The talukhdars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861, the owner of the ten-anna share—

had remained unchanged, either in its original entirety or apportioned as it had been under the *batwara*, they would be entitled to the benefit of the section; but that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talukh, and that the plaintiff could avail herself of that decree, although she was not a party to it. *SARAT SOONDARY DABEA v. ANUND MONEN SURMA GHUTACK*

I. L. R. 5 Calc. 273 : 4 C. L. R. 448.

See *HEM CHANDRA CHOWDHRY v. KALI PRASANNA BHADURI* I. L. R. 28 Calc. 832

**4. NOTICE OF ENHANCEMENT.****(a) NECESSITY OF NOTICE.**

**1. ——— Intermediate tenure—Beng. Reg. VIII of 1793, s. 51.** A person holding a



**ENHANCEMENT OF RENT—contd.****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—contd.****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—contd.**

presumption of law declared in s 4 of Act X of 1839 (corresponding with s. 6 of Act XVIII of 1873), if he proves that, for a period of twenty years next before the commencement of the suit to enhance his rent, he has paid the same proportion of the produce of his holding. **HANTMAN PARSHAD v. KAULESAR PANDEY**. 25 F. I. L. R. 1141 301

**74.** Abatement of rent for unculturable land—Act X of 1859, s. 4. Where an abatement of rent was allowed in a lump sum upon a lump jumma on account of lands having been rendered unculturable by the overflow of a river, the abatement was held not to vary the rate of rent so as to deprive the raiyat from the benefit of the presumption under Act X of 1839, s. 4. **RADHA GORIND ROY v. KYANUTOOLIAN**. 21 W. R. 401

**75.** Alteration in rate—Proof of variation—Payment by tenant. A mere alteration in the rate of rent on the part of a zamindar or person other than the tenant will not prove a variation, unless it be shown that the tenant admitted to or paid that varied and enhanced rate. **GOPAL MUNDUL v. NARBHO KISHEN MOOKERJEE**. 5 W. R., Act X, 83

**76.** Variation of rent shown in dakhilas—Average of payments of rent. Where dakhilas are relied upon to prove uniformity of rent and any variation in the dakhilas is found to exist, there must be a distinct finding as to whether the short payments of one year were made up the next year, the variation *prima facie* being evidence that the rent was not uniform. **RAMJADOO GANGOOLEY v. LUCKHEE NARAIN MUNDUL**. 8 W. R. 486

**77.** Additional illegal cess for additional land—Immaterial variation. Additional rent for additional land, and the addition of a small illegal cess, are not such variations of the proper rent as deprive the tenant of the presumption arising from twenty years' payment of uniform rent. **SUNEEROODEEN LUSHKUR v. HIRONATH ROY**. 2 W. R., Act X, 93

**78.** Slight variation—Immaterial variation. A variation of one anna is not sufficient to destroy the uniformity required by s. 4, Act X of 1859. **MUNSOOR ALLY v. BUNG SINGH**. 7 W. R. 282

**79.** Immaterial variation. The variation of a few annas in the dakhilas, when not proved to be a variation in the annual rents, is not sufficient to deprive the raiyat of the benefit of the presumption. **TARA SOONDERY BURNONYA v. SHIBESUR CHATTERJEE**. 6 W. R., Act X, 51

**ENHANCEMENT OF RENT—contd.****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—contd.****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—contd.**

**ELAHIE BUKSH CHOWDHRY v. ROOPUN TYLER**. 7 W. R. 284

**80.** Nominal reduction in jumma—Immaterial variation. A nominal reduction in the jumma of one anna and three pies, and that too in the raiyat's favour, is not a variation that deprives him of the benefit of the presumption created by s. 4, Act X of 1859. But the acceptance of a temporary kabuliati annuls such presumption. **RAMRUTNO SIRCAR v. CHUNDER MOOKHEE DEBIA**. 2 W. R., Act X, 74

Nor does an unexplained variation of one rupee in a total jumma of sixty rupees. **ANUNNOLAL CHOWDHRY v. HILLS**. 4 W. R., Act X, 33

**WATSON & Co. v. NUND LAL SIRCAR**. 21 W. R. 420

**81.** Alteration in jumma—Immaterial variation. It must be a variation which affects the integrity of the jumma. **GOPAL CHUNDER BOSE v. MOTHOOR MOHUN BAYERJEE**. 3 W. R., Act X, 132

**HILLS v. HUBO LAL SEN**. 3 W. R., Act X, 135

**82.** Material difference—Difference in value between the two annas of rupees) is not a real addition to the rent. **ROCHA RAM MESE v. NAQA DOSS**. 2 N. W. 92

7 W. R. 44

(the difference in value between the two annas of rupees) is not a real addition to the rent. **ROCHA RAM MESE v. NAQA DOSS**. 2 N. W. 92

**84.** Variation of rent from change of currency. A variation of rent from

See also **KALEE CHURN DUTT v. SHOSHEE DOSSE**. 1 W. R. 246

**KATTYANI DEBEA v. SOONDUREE DEBEA**. 2 W. R., Act X, 60

See **MEER MAHOMED HOSSEIN v. FORBES**. 22 W. R. 316; L. R. 2 I. A. 1

1859, if it can be shown that the rent has not been changed. This principle applies also to jummas

**ENHANCEMENT OF RENT—*contd.*****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—*contd.***

which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one jumma. The presumptions of s. 4 are not restricted to holdings, but refer simply to the fact that land has been held by a raiyat at a rent which has not been changed for twenty years before the commencement of the suit. **RAJ KISHORE MOOKERJEE v. HEMLEKHER MOOKERJEE** 1 B. L. R. S. N. 6 : 10 W. R. 117

**66. ——— Holding created since Decennial Settlement.** Ho must be entitled to the presumption in respect of the whole tenure as consolidated. If one of the holdings constituting it is shown to have been created since the Decennial Settlement, the presumption cannot be made as to the rest. **MOULA BUKSH v. JODOGNATH SADOOKHAN** 21 W. R. 267

**67. ——— Presumption.** The consolidation of several holdings into one, or the omission of fractions by the settlement officer, cannot deprive a raiyat of the benefit of the presumption under s. 4, Act X of 1859. **LUKH MONI HALDAR v. GUNGA GOBIND MONDIE** W. R. 1864, Act X, 126

**KHODA NEWAZ v. NUBO KISHORE ROY** 5 W. R., Act X, 53

**68. ——— Division of holding among**

tion under s. 4, Act X of 1859. In the latter case the default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement. **HILLS v. BESHARATH MEER**

1 W R 10

**69. ——— Division of tenure—Act X of 1859, s. 4—Extent of proof necessary.** In order to bring himself within ss. 3 and 4, Act X of 1859, a raiyat need only show that the particular land which is the subject of suit, not the whole tenure of which it may once have formed a part, has been held at an unchanged rent since the Permanent Settlement. It is not necessary that the land should have remained a separate holding. **KASEENATH NUSKER v. BAMA SOONDERY DOSSIA** 10 W R 429

**60. ——— Variation of rent of undivided fractional share—Act X of 1859, s. 4—**

**MIRSHA v. GOPAL LALL TAGORE** 2 Hay 514

**— 61. ——— Distribution of rent after sale of portion of tenure—Beng. Act VIII of**

**ENHANCEMENT OF RENT—*contd.*****3. EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION—*contd.*****(c) VARIATION BY CHANGE IN NATURE OF RENT AND BY ALTERATION OF TENURE—*contd.***

1869 s. 4. The extent of proof necessary for

20 W. R. 410

**62. ——— Temporary holding by one of several joint owners under arrangement—Act X of 1859, s. 4.** A temporary arrangement among joint owners by which one of their number is allowed to hold a portion of the joint property on payment of a certain sum of money, does not convert the occupier into a raiyat holding at a fixed rent or entitle him to the benefit of the presumption under s. 4, Act X of 1859. **ROOHOBUN TEWARIE v. BISHEN DUTT DOBEY** 2 W. R., Act X, 62

**63. ——— Partition—Evidence of previous enhancement in a suit by another co-zamindar—Talukh—Beng. Act VIII of 1869, s. 17.** More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependent talukh, the zamindar under which the talukh was held was partitioned under a batwara among three zamindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna

defendants could show that the rent of that taluk had remained unchanged, either in its original entirety or apportioned as it had been under the

2 B. L. R. 213, 2 W. R. 448.

See **HEN CHANDRA CHOWDHRY v. KALI PRASANNA BHADURI** I. L. R. 26 Calc 632

**4. NOTICE OF ENHANCEMENT.****(a) NECESSITY OF NOTICE.**

**1. ——— Intermediate tenure—Beng. Reg. VIII of 1793, s. 51.** A person holding a

**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*contd.*****(a) NECESSITY OF NOTICE—*contd.***

tenure of an intermediate character is entitled to a notice under s. 51, Reg. VIII of 1793, before his rent can be enhanced. *NELWONKE SINGH v. CHUNDER KANT BANERJEE* . . . 14 W. R. 251

2. ——— Tullubi bromattur tenure—*Beng. Reg. VIII of 1793, s. 51.* A tullubi

3. ——— Necessity of notice—*Act X of 1859, s. 13.* A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, s. 13. *AKHAY SUNKUR CHUCKERBUTTY v. INDRA BHUSUN DEB ROY* . . . 4 B. L. R. F. B. 58

*ec. AKHAY SUNKUR CHUCKERBUTTY v. INDRO BROOSUN DEB ROY* . . . 12 W. R. F. B. 27

4. ——— *Act X of 1859, s. 13—Specification of grounds of enhancement.* Under s. 13 of Act X of 1859, no tenant is liable to enhancement unless he is duly served with a proper notice at a proper time specifying on what ground enhanced rent is demanded. *MAHTAB KOOER v. BULDEO SINGH* . . . 4 N. W. 58

*BINDESSUREE DUTT SINGH v. DOMA SINGH* . . . 9 W. R. 88

*BURODA KANT ROY v. RADHA CHURY ROY* . . . 13 W. R. 163

5. ——— Express engagement for specified rent—*Act X of 1859, s. 13.* S. 13, Act X of 1859 (requiring previous service of notice),

*MOJOMDAR v. HURO PROSUNNO BHUTTACHARJEE* . . . 17 W. R. 256

6. ——— Under-tenants and raiyats—*Specification of grounds of enhancement—Ground of enhancement—Act X of 1859, s. 13.* S. 13 of

7. ——— Raiyat without express

ment at the time of re-settlement, he has a right to

**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*contd.*****(a) NECESSITY OF NOTICE—*contd.***

receive a written notice before he can be called upon to pay enhanced rent, the provisions of that section qualifying those of s. 7 and 9, Reg. VII of 1822. *D'SILVA v. RAJCOOMAR DUTT* . . . 16 W. R. 153

*See ENAYETOOLAH MEAH v. NUSO COOMAR SIRCAR* . . . 20 W. R. 207

*WOOMANATH ROY CHOWDHURY v. DEBNATH ROY CHOWDHURY* . . . 16 W. R. 471

8. ——— Suit to set aside alleged right to quit-rent tenure—*Act X of 1859, s. 13.* No notice is required under s. 13, Act X of 1859, to set aside an alleged right to a quit-rent tenures in a suit for declaration of titles. *GHUNSHYAM CHOBRY v. KASHEENATH SHANTEEKAREE* . . . 3 W. R. Act X, 4

9. ——— Accreted land afterwards diluviated—*Act X of 1859, s. 13.* In a suit brought by a zamindar for two years' rent on account of newly-formed land which had accreted to the defendant's old jote, but had since diluviated, wherein the Civil Court decreed the rent, allowing defendants to retain possession as tenants:—*Held*, that no notice was necessary under s. 13, Act X of 1859, before rent could be demanded by the zamindar in the case. *WATSON & Co v. NEEL KANT SIRCAR* . . . 10 W. R. 330

10. ——— Suit for arrears of rent of excess land—*Act X of 1859, s. 13.* A suit for

*BELDAR v. RAM KISSEN LALL* . . . 15 W. R. 71

11. ——— Decree for rent according to yearly assessment—*Act X of 1859, s. 13.* Where a decree of 1848 gave plaintiffs the right to assess and to receive the rents for each year according to the assessment made for that particular year, a notice under s. 13, Act X of 1859, was held not necessary when the rent found assessable for the years for which rent was claimed varied from what was found assessable in 1848. *SALEHOONISSA KHATOON v. MOHESH CHUNDER ROY* . . . 1 W. R. 452

12. ——— Land held under ootbun-dee tenure or otherwise—*Act X of 1859, s. 13.* Whether land is held under an ootbun-dee tenure

*SIRCAR* . . .

to generation gave the boundaries of the land leased,

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(a) NECESSITY OF NOTICE—*contd.*

estimated the area thereof, and fixed a certain rent per bigha. It contained a condition that, if on measurement the actual quantity of land should turn out to be either more or less than the estimated area, the rent should be increased or decreased in proportion at the same rate per bigha. In a suit for enhancement of rent, on the ground that the land leased contained more than the estimated number of highas, the lease being one which did not specify the period of the engagement:—*Held*, that notice of enhancement was necessary under Beng. Act VIII of 1869, s. 14. *EKRAM MUNDUL v. HULODHUR PAL* . . . I. L. R. 3 Cal. 271

14. ——— Stipulation in pottah for increase in rental to be made yearly—*Beng. Act VIII of 1869, s. 14*—*Suit to recover rent as per pottah*. Where a pottah in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation and a measurement taken, a landlord is entitled to recover such increased rent as agreed upon in the pottah without serving on the tenants any notice under a 14 of Beng. Act VIII of 1869. *NISTARINI DAS v. BONGOMALI CHATTERJI. DINO NATH DAS v. BONGOMALI CHATTERJI* . . . I. L. R. 4 Cal. 941  
4 C. L. R. 278

15. ——— Lands found in excess. A notice of enhancement, according to the rate mentioned in an agreement, is necessary as to lands found in excess on measurement where no term is specified in the written agreement. *BURUDAKANT ROY v. SHIB SUNKURZEE DOSSEE* . . . 4 W. R., Act X, 35

16. ——— Contract to pay for excess land after measurement—*Notice—Rent Act (Beng Act VIII of 1869), s. 14*. When a tenant contracts to pay rent at a certain rate for any such land as upon measurement may be found to be in excess of the estimated area, it is not necessary to serve him with notice under s. 14 of the Rent Act before instituting a suit for the rent of any additional land, nor is it necessary that he should be present at the measurement. *DWARKANATH v. BABURAM LASKAR* . . . I. L. R. 9 Cal. 72  
11 C. L. R. 326

17. ——— Mistake in measurement—*Act X of 1859, s. 17*. S. 17, Act X of 1859, is applicable to cases where the land was undoubtedly included in the original tenure, but it has been found in a fresh measurement that there

1 W. R. 53

18. ——— *Beng Act VIII of 1869, ss. 18 and 19—Rent of excess lands*. In a

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(a) NECESSITY OF NOTICE—*contd.*

suit for arrears of rent after deduction of payments where the claim embraced excess lands found after measurement and was based on a kabuliat which stipulated that the rayat would pay for such excess at the same rate as for the rest of the land, and from the date of the kabuliat:—*Held*, that there was no question of enhancing the rate of rent, and the rayat was not entitled to notice under Beng. Act VIII of 1869, ss. 18 and 19. *RAM NARAIN LALL v. GUMBEER SINGH* . . . 19 W. R. 108

19. ——— Accreted land—*Enhancement of rent after accretion—Notice of enhancement—Beng. Act VIII of 1869, s. 14—Reg. XI of 1825, s. 4, cl. 1*. Before increased rent, on the condition laid down in Reg. XI of 1825, s. 4, cl. 1, on account of the area of land held by a tenant under a permanent tenure having been increased by accretion can be recovered, a notice must be served upon the tenant under s. 14 of Beng. Act VIII of 1869, imposed  
Raj.

20. ——— Landlord and tenant—*Arrears of rent, Suit for—Notice of enhancement*. When land has accreted to a rayat's holding, the rent paid by the rayat may be enhanced in respect thereof under the provisions of cl. 3, s. 18 of Beng. Act VIII of 1869; and no suit for rent in respect of such accretion will lie unless a proper notice of enhancement has been previously given. *Ramnidheer Manjee v. Parbhoy Dassie, I. L. R. 5 Cal. 823*, followed. *BROJENDRA COOMAR BHOSNIK v. OOPENDRA NARAIN SINGH*  
I. L. R. 8 Cal. 706

21. ——— Suit after permission to hold at old rent—*Subsequent to declaration of right to enhance*. In a former suit brought by a

rents of land the plaintiff now sues to recover from the defendant the rent for the remainder of 1273 and for 1273 at the enhanced rates decreed to the ijaradar. *Held*, that neither the zamindar nor the plaintiff could recover enhanced rents from the rayat without some notice. *BOBINARAIN SINGH v. RUSGO LALL MUNDRA* . . . 7 W. R. 190

22. ——— Previous decree after notice before Act X of 1859—*Suit for subsequent arrears*. Where notice of enhancement was issued according to the law in force before Act X of 1859,

# ENHANCEMENT OF RENT—*contd.*

## 4. NOTICE OF ENHANCEMENT—*contd.*

### (a) NECESSITY OF NOTICE—*concl'd.*

and a decree obtained by the zamindar which ascertained the liability of the cultivator to an enhanced rate of rent and awarded arrears at that rate:—*Held*, that a suit by the zamindar for arrears for the years subsequent to the decree at the enhanced rate thereby determined was legal and good without issue of any fresh notice under Act X of 1859, and the effect of the decree ascertaining the liability to enhanced rent still continued, notwithstanding it was not executed and arrears not recovered under it. *MOUZZUM ALI KHAN v. SEORUTTUN SINGH* . . . . . 3 Agra 277

23. ——— Necessity for fresh notice—*Act X of 1859, s. 13*—Notice of enhancement. Where a zamindar served a notice of enhancement of rent on the raiyats of a mouzah, and afterwards granted a lease of the mouzah to the plaintiff:—*Held*, that the plaintiff was entitled to sue for enhancement upon the notice already served. *KHASKI ROY v. FARAN ALI KHAN*

8 B. L. R. 125; 18 W. R. 144

24. ——— Landlord and tenant—Enhancement of rent, suit for—*Basu land within Municipality—Bengal Tenancy Act (VIII of 1885) not applicable—Maintainability of suit—Notice* Where the subject-matter of a tenancy is

*Ram*, 23 W. R. 61; and *Trilochun Dass v. Gogan Chunder Dey*, 24 W. R. 413, referred to. *KRISHNA KANT SARA v. KRISHNA CHUNDER ROY* (1905)

9 C. W. N. 303

## (b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN.

25. ——— Accuracy and precision in notice—*Notice to pay lump sum on land in possession*. A notice of enhancement must be reasonably accurate and precise. A notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient. *TARACIAND ROY v. KEENARAM KURNOKAR*

W. R. 1864, Act X, 118

26. ——— Prospective notice—*Dis-advantage to tenant*. A notice of enhancement should not be prospective, the principle being that the raiyat should be prepared to meet the claim on grounds existing at the time the notice is received. *BIJNATH KOONWAR v. SAHES KOONWAR*

12 W. R. 532

27. ——— Requisites for notice—*Precise nature of claim*. The great strictness with which cases involving questions as to the form of

# ENHANCEMENT OF RENT—*contd.*

## 4. NOTICE OF ENHANCEMENT—*contd.*

### (b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

notice of enhancement were dealt with has been relaxed in the later practice of this Court, and it has been held in the later ruhng that a notice is good if, without containing the exact terms of the law, it states with sufficient precision the nature of the claim, the amount asked for, and the grounds on which the enhancement is sought, so that the raiyat served with the notice may not be misled, and can clearly comprehend the case which he has to meet. *McGIVERAN v. HURKHOO SINGH* . 18 W. R. 203

28. ——— Notice based on simple ground of rent having become less—*Abatement—Beng Reg. VIII of 1793, s. 51*. A notice of enhancement of the rent of a talukh on the simple grounds of the rent having become less by decrees is not based on the "abatement" contemplated by s. 51, Regulation VIII of 1793, or any of the other grounds specified in that section. *NURU KRISTO MOJOMDAR v. TARA MONEE* . . . 12 W. R. 320

29. ——— Abatement—*Beng Reg. VIII of 1793, s. 51*. In a suit by a zamindar against his talukhdar for an increase of rent under Regulation VIII of 1793, s. 51, the notice

CROWDERY . . . . . 10 W. R. 338

30. ——— Notice describing intermediate as ordinary tenant—*Reg VIII of 1793, s. 51*. A notice describing an intermediate holder as an ordinary tenant and avowedly served under

W. R. 14, 200

31. ——— Specification of rent and

having been registered under the provisions of Regulation VIII of 1793, s. 48, does not deprive them of the benefit of s. 51. *NILMONEY SINGH v. RAM CHUCKERBUTTY* . . . 21 W. R. 439  
— *SHID NARAIN GHOSE v. AUKHIL CHUNDER MOO-KENJER* . . . . . 22 W. R. 485

**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*contd.*****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.***

32. ——— Specification of general grounds—*Proof of grounds specified* A notice of enhancement of an intermediate tenure specifying that the tenant holds more lands than he originally did, and that the productive powers of the land and the value of the produce have increased otherwise than by the agency or at the expense of the tenant, is sufficient if the grounds are proved to exist, and if the rent claimed as fair and equitable is not more than is paid by the holders of similar tenures in the pergunnah or neighbourhood. *GRISH CHUNDER GHOSH v. RANTONOO BISWAS* 12 W. R. 449

33. ——— Specification of particular grounds—*Beng Act VIII of 1859, s. 18—Schedule appended to notice.* In notices of enhancement of rent it is absolutely necessary that in the statement of grounds there should be some words to show that it is the intention of the landlord to proceed under some particular clause or clauses of s. 18, Bengal Act VIII of 1859. It is not sufficient to leave this to be inferred from a schedule appended to the notice. *HOORUL MUNDER v. HERRUCK DUTT KHOWAS* 22 W. R. 429

34. ——— *Act X of 1859, s. 19—Sufficiency of notice of enhancement.* It is not sufficient for a notice of enhancement of rent to allege generally the grounds of enhancement mentioned in s. 17, Act X of 1859. It should set forth specific and tangible grounds of enhancement applicable to the particular case. *DWARAKA NATH CHOWDHURY v. BEERJOI GOBIND BURAI* 10 W. R. 333

*SHIVSPOOL OSMAN v. BENSHEEDHUR DUTT* 15 W. R. 396

*BANEE MADHUB CHOWDHURY v. TARA PROSENNO DASE* 21 W. R. 33

*KALEE KANT CHOWDHURY v. BHOOBUNNESSUREE CHOWDHURAI* 22 W. R. 416

35. ——— Notice not settling out grounds as in s. 17 of Act X of 1859. A notice of enhancement which did not set forth grounds of enhancement in the words of s. 17, Act X of 1859, held not a sufficient notice. *RAM SARAN SING v. BHAJAN DOBAY KARPAPPAZ* 6 B. L. R. Ap. 155 : 11 W. R. 515

36. ——— Suit for enhancement of rent of an intermediate tenure. If the notice is not specifying in accordance with s. 17, Act X of 1859, it is not sufficient. *DASS v. GUGAN CHANDRA SEN* 7 B. L. R. Ap. 45 note : 14 W. R. 274

*KALINATH CHOWDHURY v. HUMI BIBI* 7 B. L. R. Ap. 47 note : 12 W. R. 508

*KRONDEAR ABDUOR RUHMAN v. WOONA CHURN Roy* 8 W. R. 330

**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*contd.*****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.***

*SYEFOOLLA KHAN v. KALEE PERSHAD SAHOO* 20 W. R. 256

37. ——— Indefinite and uncertain notice. Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is claimed. *PERGUNNAH SHAM IN SUBJECT PLACES, AND AS THE PRODUCTIVE POWERS OF THE LAND AND THE VALUE OF THE PRODUCE HAVE INCREASED, AND AS THE PATIL LANDS HAVE BEEN CULTURATED, I AM ENTITLED TO RECEIVE FROM YOU R794-5-7-11½ per annum,* was held to be indefinite and uncertain, and therefore no suit thereon could lie for enhancement of rent. *GOBIND KUMAR CHOWDHURY v. HITTO CHANDRA NAG* 5 B. L. R. Ap. 61 : 11 W. R. 571

*21 W. R. 442 note*

*NILNORAY SINGH v. SAGERMOONIE DEBIA* 12 W. R. 441

*KALI CHANDRA CHOWDHURY v. RATAN GOPAL BRADHURI* 4 B. L. R. Ap. 62 note

*HEEPALAL SEAL v. GUNGADHUR SENAPATTY* 1 Ind. Jur. O. 6. 6  
W. R. F. B. 19. Marsh. 60 : 1 Hay 229

38. ——— Notice not specifying clause or section of Act under which enhancement was sought. A notice of enhancement held to be sufficient, although it did not specify in terms the clause or section of the Act under which enhancement was sought. *KUNIN PARESH NARAIN ROY v. GAUR SUNKER BHUNICK* 9 B. L. R. Ap. 154 : 15 W. R. 39

*RADHA BALLAB GHOSH v. BEHARILAL MOOKERJEE* 6 B. L. R. Ap. 155 : s. c. 12 W. R. 537

39. ——— Insufficient notice. A notice of enhancement stated that "you the defendants pay less than other rayats in the neighbourhood, and therefore you are to pay for the future such and such rates," held not a sufficient notice as contemplated by s. 17, Act X of 1859. *SHRISULOSSMAN v. BANSIDHAR DUTT* 7 B. L. R. Ap. 32

40. ——— Sufficient notice. In a suit for enhancement of rent of an intermediate tenure, a notice to the following effect was held sufficient : "You (defendant) hold a takshishi taluk, the rent of which has always been of a varying nature; you have been called upon to make a settlement with your landlord at the pergunnah rates; by the imme-

**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*contd.*****(a) NECESSITY OF NOTICE—*concl'd.***

and a decree obtained by the zamindar which ascertained the liability of the cultivator to an enhanced rate of rent and awarded arrears at that rate—*Held*, that a suit by the zamindar for arrears for the years subsequent to the decree at the enhanced rate thereby determined was legal and good without issue of any fresh notice under Act X of 1859, and the effect of the decree ascertaining the liability to enhanced rent still continued, notwithstanding it was not executed and arrears not recovered under it. **MOUZZUM ALI KHAN v. SEORUTTEN SINGH** . . . . . 3 Agra 277

**23. ——— Necessity for fresh notice—Act X of 1859, s. 13—Notice of enhancement.** Where a zamindar served a notice of enhancement of rent on the rayats of a mouzah, and afterwards granted a lease of the mouzah to the plaintiff:—*Held*, that the plaintiff was entitled to sue for enhancement upon the notice already served. **KHASKI ROY v. FARZAND ALI KHAN**

9 B. L. R. 125 : 18 W. R. 144

**24. ——— Landlord and tenant—Enhancement of rent, suit for—Bastu land of ——— is**

**KANT SARA v. KRISHNA CHUNDER ROY (1905)**  
9 C. W. N. 303

**(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN.**

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W. R. 1864, Act X, 118

**26. ——— Prospective notice—Disadvantage to tenant** A notice of enhancement should not be made at . . . . .

12 W. R. 532

**27. ——— Requisites for notice—Precise nature of claim** The great strictness with which cases involving questions as to the form of

**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*contd.*****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.***

states with sufficient precision the nature of the claim, the amount asked for, and the grounds on which the enhancement is sought, so that the rayat served with the notice may not be misled, and can clearly comprehend the case which he has to meet. **McGIVERAN v. HUNKHOO SINGH** . 18 W. R. 203

**28. ——— Notices based on simple ground of rent having become less—Abatement—Deng Reg. VIII of 1793, s. 51** A notice of

grounds specified in that section. **NUBO KRISTO MOJOONDAR v. TARA MONEE** . 12 W. R. 320

**29. ——— Abatement—Deng Reg VIII of 1793, s. 51** In a suit by a zamindar against his talukhdar for an increase of rent under Regulation VIII of 1793, s. 51, the notice served was held to be defective, because it did not state when and for what reason the talukhdar had received an abatement of his jumma, and thereby rendered himself liable for the increase demanded. **NORO KISHEN BOSE v. MAZANMOODDEEN ARMED CHOWDHRY** . . . . . 19 W. R. 338

**30. ——— date : s. 51.**  
an ord  
Bengal Act VIII of 1869, s. 18, cannot be considered such a notice as is required by the provisions of Regulation VIII of 1793, s. 51. **KOOCHINDREE KANT BANERJEE CHOWDHRY v. HUREE CHURN TUFADAR**  
24 W. R. 190

**31. ——— Specification of rent and grounds of enhancement—Dependent talukhdars—Reg VIII of 1793, ss. 48 and 51—Non-registration.** Tenants holding a permanent transferable interest intermediate between the proprietor and the rayats, and one which has been in existence from the time of the Decennial Settlement, are entitled, before they can be sued for enhancement of rent, to a notice which not only specifies the rent, but also states the ground on which enhancement is claimed, and shows how the landlord has the right of enhancement, as well as the particular ground on which the rent is to be raised. The fact of not having been registered under the provisions of Regulation VIII of 1793, s. 48, does not deprive them of the benefit of s. 51. **NILMONEY SINGH v. RAM CRUCKERBUTTY** . . . . . 21 W. R. 439  
— **SHIB NARAIN GHOSE v. AUREIL CHUNDER MOOKERJEE** . . . . . 22 W. R. 465

**ENHANCEMENT OF RENT—contd.****4. NOTICE OF ENHANCEMENT—contd.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—contd.**

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12 W. R. 449

33. ——— Specification of particular grounds—*Beng Act VIII of 1859, s. 18—Schedule appended to notice.* In notices of enhancement of rent it is absolutely necessary that in the statement of grounds there should be some words to show that it is the intention of the landlord to proceed under some particular clause or clauses of s. 18, Bengal Act VIII of 1859. It is not sufficient to leave this to be inferred from a schedule appended to the notice. *HOOTUL MUNDER v. HERRICK DUTT KHOWAS*  
22 W. R. 429

34. ——— Act X of 1859, s. 19—*Sufficiency of notice of enhancement.* It is not sufficient for a notice of enhancement of rent to allege generally the grounds of enhancement mentioned in s. 17, Act X of 1859. It should set forth specific and tangible grounds of enhancement applicable to the particular case. *DWARKA NATH CHOWDHRY v. BEEJOY GOBIND BURAL* 10 W. R. 333  
*SHRISIOOL GYMAN v. BENSHEEDHUR DUTT*  
15 W. R. 369

*BANEE MADHUR CHOWDHRY v. TARA PRASAD BOSE*  
21 W. R. 33

*KALEE KANT CHOWDHRY v. BHOBUNNATH CHOWDHRAIN*  
22 W. R. 419

35. ——— Notice not setting out grounds as in s. 17 of Act X of 1859. A notice of enhancement which did not set forth grounds of enhancement in the words of s. 17, Act X of 1859, held not a sufficient notice. *RAM SARAN SING v. BRAJAN DORAY KAFFARDAZ*  
6 B. L. R. Ap. 155 : 11 W. R. 515

36. ——— Suit for enhancement of rent dismissed on the ground of the insufficiency of the notice of enhancement is not specifying the grounds on which it was sought in accordance with s. 17, Act X of 1859. *DINANATH DASS v. GUGAN CHANDRA SEN*  
7 B. L. R. Ap. 45 note : 14 W. R. 274

*KALINATH CHOWDHRY v. HEMI BIBI*  
7 B. L. R. Ap. 47 note : 12 W. R. 509

*KHONDPEAR ABDOR RUHMAN v. WOOMA CHURY ROY*  
9 W. R. 330

**ENHANCEMENT OF RENT—contd.****4. NOTICE OF ENHANCEMENT—contd.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—contd.**

*SYEFOOLLA KHAN v. KALEE PERSHAD SAROO*  
20 W. R. 256

37. ——— Indefinite and uncertain notice. Notice of enhancement should distinctly

pergunnah and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patit lands have been cultivated, I am entitled to receive from you Rs 794-5-7-11½ per annum," was held to be indefinite and uncertain; and therefore no suit thereon could lie for enhancement of rent. *GOBIND KUMAR CHOWDHRY v. HIRU CHANDRA NAO*  
5 B. L. R. Ap. 61 : 11 W. R. 571

21 W. R. 442 note

*NILMONEY SINGH v. SAGERMONEY DEBIA*  
12 W. R. 441

*KALI CHANDRA (CHOWDHRY) v. RATAN GOPAL BRADHURI* 4 B. L. R. Ap. 92 note

*HEERALAL SEAL v. GUNGADHUR SENAPUTTY*  
1 Ind. Jur. O. S. 9  
W. R. F. B. 19 : Marsh. 90 : 1 Hay 229

39. ——— Notice not specifying clause or section of Act under which enhancement was sought. A notice of enhancement held to be sufficient, although it did not specify in terms the clause or section of the Act under which enhancement was sought. *KUMAR PARESH NARAIN ROY v. GAUR SUNKER BRUMICK*  
9 B. L. R. Ap. 154 : 15 W. R. 39

*RADHA BALLAR GHOSH v. BEHARILAL MOOKERJEE*  
6 B. L. R. Ap. 155 : s.c. 12 W. R. 537

39. ——— Insufficient notice. A notice of enhancement stated that "you the defendants pay less than other rayats in the neighbourhood, and therefore you are to pay for the future such and such rates," held not a sufficient notice as contemplated by s. 17, Act X of 1859. *SHEW-SULOSHIAN v. BANSIDHAR DUTT* 7 B. L. R. Ap. 32

40. ——— Sufficient notice. In a suit for enhancement of rent of an intermediate tenure, a notice to the following effect was held sufficient : "You (defendant) hold a takshishi talukh, the rent



ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

and such a gross rental; from this, deducting your 20 per cent on account of mahkana and collection charges, the remainder (so much) ought to be paid to me as my rent, and you are hereby called upon to pay that amount." JANNORA L. GIRISH (HUNDRA CHUCKENBUTTY

7 B. L. R. Ap. 44 : 15 W. R. 335

41. — Omission to state mode of increase of produce or productive powers of land. A notice of enhancement under the second clause of s. 17, Act X of 1859, is defective if it omits to state that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat himself. SOOJAN ALI v. HUREE THAKOOR . . . 8 W. R., Act X, 44

42. — Notice with ground vaguely stated. A notice based on the first of the grounds in s. 17, Act X of 1859, and specifying "that the ratna paid are below those paid for similar lands in adjacent places," was held to be bad. SHIB NARAIN DUTT v. KERAMONISSA BEGUM . . . 17 W. R. 356

43. — Notice with ground incorrectly stated—"Surrounding rates"—Act X of 1859, s. 17. That a tenant is holding at a rent

44. — Notice not stating quantity of land—*Excess land*. A notice under s. 13, Act X of 1859, for enhancement of rent upon land held by a raiyat in excess of the land for which he pays rent to the zamindar, must state the quantity of land so held in excess. The mere statement of "excess land" is not a sufficient compliance with the provisions of the law. GRISH CHANDRA GHOSE v. ISWAR CHANDRA MOOKERJEE . . . 3 B. L. R. A. C. 337 : 12 W. R. 226

45. — Notice stating simply that rates are lower than neighbouring rates—*Enquiry as to rate of rent paid by neighbouring raiyats*. In a suit for enhancement of rent where the raiyats plead that their relations with the zamindar are peculiar, it is not sufficient for a notice to set forth, and for a Court to find, that the rent paid in respect of the land in dispute is lower than the rent paid in respect of neighbouring lands; the Court is bound to enquire into the status and situation of the defendant's raiyats with those of the raiyats of the neighbouring lands. LALLA ROOROOBUN SAROY v. ASLOO . . . 20 W. R. 284

46. — Notice not stating year for which enhancement is sought—Act X

ENHANCEMENT OF RENT—*contd.*4 NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

of 1859, s. 13. A notice of enhancement under s. 13, Act X of 1859, is not required to state that it is for the ensuing year. GUDADHVA BANERJEE v. NUND LAL BISWAS . . . 3 W. R., Act X, 145

DUTT . . . 4 W. R., Act X, 48

48. — Notice with some insufficient reasons for enhancement—Act X of 1859, s. 13. In the case of a tenant who has no right of occupancy, a landlord's notice of enhancement under s. 13 of Act X of 1859 is valid, if it specifies the rent to which the tenant will be subject for the ensuing year and the ground on which the enhancement is claimed, even if among the reasons assigned are some which will not bear examination. The only limit to the landlord's power of enhancement after notice is the fairness and reasonableness of the rent. SREEDHARUL MULLICK v. DWARRANATH SEN . . . 15 W. R. 520

49. — Notice in case of distinct holdings—Act X of 1859, s. 13. A landlord serving notice of enhancement under s. 13, Act X

in his possession, the amount of enhanced rent he is liable to pay upon each, and the ground of such enhancement upon each instance. BEEJOY GOBIND BURAL v. JANABEE BEHONYA . . . 8 W. R. 252

DENOBUNDHU BHADOOREE v. PRANKISHEN SURNA . . . 20 W. R. 148

DWARRANATH HALDAR v. HUREE MOHUN ROY . . . 20 W. R. 404

NIDHOO MONEE JOGINEE v. KISHEN NATH BANERJEE . . . 20 W. R. 442

50. — *Beng. Act VIII of 1869, s. 15—Distinct holdings*. A notice of enhancement under s. 15 of Bengal Act VIII of 1869 must, when the tenant holds different plots the rent of which it is sought to enhance, distinctly specify the several holdings, the amount of enhanced rent claimed in respect of each holding, and the grounds for claiming such enhanced rent. UDAYTARA CHOWDHURAI v. SHIB NATH SURMA BANADOO . . . 9 C. L. R. 207

51. — *Separate holdings*. A notice of enhancement of rent need not be on a separate piece of paper for each holding; all that is required is that it shall be so distinct for each holding that the tenant may be able to distinguish those in respect of which he does not object to the enhanced rent, from others in respect

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

of which he declines to pay it. *McGIVERAN v. DUNHAM CHOWDHURY* . . . 20 W. R. 479

52. ——— Notice in case of land consisting of two or more plots—*Beng. Act VIII of 1869, s. 18*. When the lands the rent of which is sought to be enhanced consist of more than one plot, it is not sufficient for the landlord to serve the tenant with a notice of enhancement, specifying all the three grounds of enhancement

[of 1869. Such ular ground or lot is alleged to

That would not nds applied to ought to be en-

hanced. If in a suit for enhancement the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. *GUNES CHUNDER HAZRA v. RAMPRIA DEHA*

I. L. R. 5 Cal. 53

53. ——— Notice given by agent—*Farmer as agent of zamindar*. A notice of enhancement by a farmer as agent and on behalf of the zamindar is legal. *HEM CHUNDER CHATTERJEE v. POORAN CHUNDER ROY* . 3 W. R., Act X, 182

54. ——— Notice signed by naib—*Evidence of authority to sign*. A notice of enhancement of rent under s. 13 of Act X of 1859, signed by the naib of the landlord, is valid, without evidence that he was specially authorized to sign the notice. *DEGUMBUR MITTEN v. GOSWAMI CHUNDER HALDER*

Marsh. 354; 2 Hay 402

55. ——— Notice by bringing suit—*Act X of 1859, s. 13—Plaint*. The plaint in a suit for enhancement is not a substitute sanctioned by law for the notice of intended enhancement required to be given by s. 13 of Act X of 1859. *SORNA MAITON v. PARABOO* . 2 N. W. 310

56. ——— Notice by suit—*Act X of 1859, s. 13—Decree in contested suit*. Following a previous decision of a Division Bench, *Madhoo Soodun Koodoo v. Gopee Kishen Gossain*, 6 W. R., Act X, 81, it was held that a judgment passed against a raiyat in a contested suit operates as a notice to him under s. 13, Act X of 1859, taking effect from the commencement of the year following that in which the decree was passed. *RAMANATH DUTT v. JOYKISHEN MOOKERJEE*

11 W. R. 3

57. ——— Notice by measurement—*Measurement made in previous suit*. In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

reduced in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease; that suit was decided in favour of the plaintiff for the rent

to the defendant. *EXPAN MUNDEL v. HOLODHUN PAL* . . . I. L. R. 3 Cal. 271

58. ——— Notice not of sufficient length—*Right to enhancement—Insufficient notice*—*Inamdar*. An inamdar is not entitled to recover an increased rent if he has given notice of such increase in December 1870 for the current year 1870-71. *HARI YEMAJI v. PARSHRAM GUNDO*

11 Bom. 23

59. ——— Notice containing clerical error or omission—*Immaterial error—Act X of 1859, s. 17*. Where a defendant has known perfectly well the grounds upon which enhancement of rent is demanded from him, a clerical omission which in no way prejudiced the defendant cannot operate to invalidate the notice of enhancement under s. 17, Act X of 1859. *RYSZYNSKA BRAHM v. BIDONATH SARA* . . . 17 W. R. 354

60. ——— Notice where defendant was aware of ground of enhancement—*Act X of 1859, s. 17*. The object of the notice of enhancement is that the defendant may know what are the grounds on which the plaintiff seeks to enhance his rent, so that he may have an opportunity of coming forward to contest any of those grounds; and as the defendant's own answer in the case showed that he was fully aware of, and came forward to contest, the main ground on which the plaintiff sought to enhance his rent, the notice issued by plaintiff was held to be sufficient to meet the requirements of a 17, Act X of 1859. *TIRTH NUND THAKUR v. MOHUR MUNDLE*

17 W. R. 278

61. ——— Informality in notice. Informality in a notice for enhancement of rent was not allowed to prevail in this case where the defect was held to have been made good by the evidence on the record, and where there could be no doubt that the tenant knew exactly the nature of the demand he had to meet, and where also the objection was a mere after-thought and not put forward until after the order of remand by the High Court. *WOOMA CHURN DUTT v. GRISH CHUNDER BOSE* . . . 17 W. R. 32

62. ——— Omission in notice. Where a raiyat well knew and pleaded to the grounds of enhancement, the mere omission of the words "suo

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

class of raiyats" in the notice was held not fatal to the plaintiff's suit. Nor was the omission of the words "otherwise than by the agency and at the expense of the raiyat" considered material when the plaintiff distinctly stated in his plaint that the productive powers of the soil had increased owing to the land having been irrigated from the plaintiff's khas tank. *WATSON & Co. v. RAVI DHUN GHOSE* 17 W. R. 406

63. ———— *Act X of 1859,*

s. 17. The omission of the words "same class of raiyat" in a notice under Act X of 1859, s. 17, even if unintentional, is sufficient to invalidate a claim for enhancement. *Quere*: Would this be the case if, notwithstanding the omission, the raiyat knew all the grounds on which enhanced rent was demanded of him, and defended himself on all? *SAYE FOOLLAH KHAN v. CHAYA TILAKOOR* 16 W. R. 532

84. ———— *Informality in notice—*

*Dismissal of suit for want of proper notice—Obiter dicta.* Where a suit for enhancement of rent is dismissed on the ground that no notice was served, any decision in the Court's judgment as regards the mal or lakhiraj character of the land must be deemed to be mere *obiter*. Where it is found in such a suit that the notice did not state that the raiyat pays less than raiyats of the same class, the informality may be overlooked if there is evidence on the record of the rates of rent payable by such raiyat; but if there is no evidence of that nature, the suit must be dismissed. *MOTHOOPNATH SIRCAR v. NIL MOKEE DEO* 13 W. R. 297

85. ———— *Omission to specify*

*among grounds stated those relied on.* The plea

answer. *GOPPENATH JANNAH v. JETTO MOLLAH* 16 W. R. 272

*HUSNUT ALI v. QURET THAKOOR* 20 W. R. 232

*QUDH BEHAREE SINGH v. DOST MAHOMED* 23 W. R. 165

66. ———— *Notice fully comprehended by tenant—Contesting suit for enhancement* A raiyat who has received a notice of enhancement may be in a different position relative to its sufficiency according as he waits until a suit is brought against him, or comes into Court of his own accord to attack the notice. In the latter case, if he frames his suit on a thorough understanding of the notice, he cannot object to it as not reasonably sufficient. *RAM BHUROOSEE SINGH v. MAHOMED ASGUFEE KHAN* 19 W. R. 205

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

87. ———— *Mistake in notice—Notice erroneously including lakhiraj land.* A suit for enhancement should not be dismissed merely because the plaintiff has included in his notice of enhancement land belonging to the defendant's lakhiraj holding. *CHUNDER: COOMAR ROY v. BHOLANATH SIRCAR* W. R. 1884, Act X, 110

68. ———— *Notice erroneously including lakhiraj land.* A notice for enhancement, otherwise sufficient, is not invalidated because a portion of the lands claimed as enhanceable in such notice turns out to be rent-free land, but is good so far as it is applicable to the portion of the land which is liable to enhancement. *NEWAJ BUNDOPADHYA v. KALI PROSONNO GHOSE* I. L. R. 8 Calo. 543; 8 C. L. R. 6

69. ———— *Notice of enhancement in respect of portion of land—Validity of notice.* Notice of enhancement, issued on the application of the person to whom the rent is payable, on account of any part of the land in respect of which the notice is served, is good for that part. *GURDOO MULL v. HOOLASEE* 2 Agra 247

70. ———— *Notice to talukhdar as for a raiyat—Act X of 1859, s. 13.* The rent of a talukhdar cannot be enhanced under a notice treating him as a raiyat having a right of occupancy. *DOYAMOYEE CHOWDERAIN v. MOHIMA CHUNDER ROY* 12 W. R. 187

71. ———— *Notice to non-cultivator treated as raiyat.* Where a party who was not personally a cultivator of the land, but held a large jumma with a number of raiyats below him, was treated, in a notice of enhancement under cl. 17, Act X of 1859, as an ordinary raiyat having a right of occupancy, it was held that the notice was not on that account illegal or informal. *KALEE PROSONNO GHOSE v. HURISH CHUNDER DUTT* 15 W. R. 57

72. ———— *Notice of excess after Statement of account of measure—notice land in s occupied stated* that such excess has been proved by measurement. *KALEE KUNARY DASSEE v. SHUNBHOO CHUNDER GHOSE* 6 W. R., Act X, 23

73. ———— *Variation between notice of enhancement and plaint* A plaintiff is not bound to demand

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

74. ——— Notice not followed immediately by suit—*Validity of, for future suit—Act X of 1859, s. 13.* The object of s. 13, Act X of 1859, is that a suit for enhancement should not be brought without previous due notice, and not that when a notice under that section has been once duly given, the tenant cannot thereafter be served with a notice for enhancement. *Rs must be a Roman.*

8 W R, Act X, 88

75. ——— Notice, effect of, as regards rent after suit. In a suit for arrears of rent of a particular year, after notice of enhancement on specified grounds, plaintiff (if his title is established) can only have a decree for the arrears claimed, and on one or other of the grounds alleged. The Judge has no jurisdiction in appeal to declare his right to any enhanced rents for the future. *BHOORUN MOHINER DASSEE v. KEDARNATH BOSE.*

12 W. R. 141

76. ——— Notice omitting grounds of enhancement—*Act X of 1859, s. 13—Auction-purchaser.* Under s. 13, Act X of 1859, a rayat served with a notice of enhancement, which is silent about the ground of enhancement, is not liable to pay the higher rent. An auction-purchaser is no exception to the rule by which every landlord is bound to ascertain the nature, extent, and condition of his rayat's holding before he serves him with a notice of enhancement. A rayat is competent to object to the legality of a notice of enhancement even in a suit in which he is plaintiff. *LALLA SINGH v. REAZOONISSA.*

8 W. R. 271

77. ——— Notice to zimmadare in talukh—*Act X of 1859, s. 17.* S 17, Act X of 1859, applies only to rayats, not to zimmadars having a tenure of a talukhi character. *PANJORY v. JEGOUT CHUNDER DUTT.*

9 W. R. 370

78. ——— Notice on first of grounds stated in s. 17—*Act X of 1859, s. 17, cl. 1. Semble (by MARKBY, J.):* That when a landlord gives notice of enhancement to a tenant on the first of the grounds stated in s. 17, Act X of 1859, he treats him as a rayat having a right of occupancy. *THAKOOR DUTT SINGH v. GOPAL SINGH.*

14 W. R. 4

79. ——— Notice to tenant as rayat—*Act X of 1859, s. 17—Suit for enhancement as against him as under-tenant.* By serving a notice on defendant under the terms of s. 17, Act X of 1859, plaintiff was held to have treated defendant as a rayat having a right of occupancy, and to be debarred from suing him for enhancement of rent as an under-tenant or middleman. *CHUNDERNATH GHOSE v. SROTORAM MOJOMBAR.*

13 W. R. 343

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

80. ——— Notice, effect of, as admitting valid tenure or right of occupancy—*Presumption of nature of tenancy—Onus of proof.* When a zamindar sues to enhance the rent of a talukhdar, and specifies certain churs as part of the land the rent of which is to be enhanced, he, by implication, must be considered to admit that the tenant has some valid tenure or right of occupancy in the land mentioned in the notice. *Bama Soondari Dassee v. Riddhica Churn, 4 B. L. R. P. C. 8; 13 W. R. P. C. 11, cited. ASHANOOGLAH v. KISTO GOBIND DASS.*

2 C. L. R. 592

81. ——— Notice, effect of, as binding

And the decision should be on those grounds only. *BAZEM SEIN v. HUB GOBIN.*

3 Agra Rev. 12

82. ——— *Enhancement in case of tenant-at-will.* A zamindar is not bound by the ground of enhancement mentioned in his

MUNEEROODDEEN MERDHA v. KENNIE

4 W. R., Act X, 45

RAMMOHEE CHUCKERBUTTY v. ALLA BUKSH

4 W. R., Act X, 48

83. ——— *Proof of rate of rent stated in notice.* In a suit for rent at an enhanced rate, the landlord is not indispensably bound to prove the very rate which he claims in his notice. *SUREKANT GHOSE v. BHUGWAN CHUNDER SEIN.*

24 W. R. 13

84. ——— Irregularity in drawing up notice—*Right to declaratory decree to enhance on service of fresh notice.* A slight irregularity in the drawing up of a notice of enhancement cannot affect the plaintiff's right to a declaratory order reciting his right to enhance at some future time on service of a fresh notice. *RAM LOCHUN DUTT v. PETERBER PAUL.*

W. R. 1964, Act X, 111

85. ——— Notice given during pendency of suit—*Right to decree declaratory of right to enhance.* Where a notice of enhancement is served during the pendency of a suit in which the only decree which can be passed is one simply declaratory of the plaintiff's right to enhance

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

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64. ———— *Informality in notice—*

*Dismissal of suit for want of proper notice—Obiter dicta* Where a suit for enhancement of rent is dismissed on the ground that no notice was served, any decision in the Court's judgment as regards the mal or lakhiraj character of the land must be deemed to be mere *obiter*. Where it is found in such a suit that the notice did not state that the raiyat pays less than raiyats of the same class, the informality may be overlooked if there is evidence on the record of the rates of rent payable by such raiyat, but if there is no evidence of that nature, the suit must be dismissed. *MOTHOONATH SIRCAR v. NIL MOONEE DEO* 13 W. R. 297

65. ———— *Omission to specify*

*among grounds stated those relied on.* The plea of informality of notice on the ground that it contained all the grounds of enhancement allowed by law without specifying any as those relied on was disallowed, inasmuch as the raiyat had not shown that he had been prejudiced thereby, or had been in any difficulty as to what he was called upon to answer. *GOPEENATH JANNAH v. JETTO MOLLAH* 18 W. R. 272

*HUSNET ALI v. QUREE THAKOOR*

20 W. R. 232

*ODDH BEHAREE SINOH v. DOST MAHONED*

23 W. R. 165

66. ———— *Notice fully comprehended*

*by tenant—Contesting suit for enhancement* A raiyat who has received a notice of enhancement may be in a different position relative to its sufficiency according as he waits until a suit is brought against him or comes into Court of his own accord to attack the notice. In the latter case, if he frames his suit on a thorough understanding of the notice, he cannot object to it as not reasonably sufficient. *RAM BHUROOZ SINGH v. MAHONED ASOULLEE KHAN* 19 W. R. 205

ENHANCEMENT OF RENT—*contd.*4 NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

67. ———— *Mistake in notice—Notice erroneously including lakhiraj land* A suit for enhancement should not be dismissed merely because the plaintiff has included in his notice of enhancement land belonging to the defendant's lakhiraj holding. *CHUNDER COOMAR ROY v. BHOLANATH SIRCAR* W. R. 1884, Act X, 110

68. ———— *Notice erroneously including lakhiraj land.* A notice for enhancement, otherwise sufficient, is not invalidated because a portion of the lands claimed as enhanceable in such notice turns out to be rent-free land, but is good so far as it is applicable to the portion of the land which is liable to enhancement. *NEWAJ BUNDOPADHYA v. KALI PROSONNO GHOSE* I. L. R. 6 Calc. 543; 8 C. L. R. 6

69. ———— *Notice of enhancement in respect of portion of land—Validity of notice.*

70. ———— *Notice to talukhdar as for a raiyat—Act X of 1859, s. 13.* The rent of a taluk under a notice of enhancement is to be determined by the talukdar's statement of the rent of the taluk. *CHUNDER ROY* W. R. 137

71. ———— *Notice to non-cultivator treated as raiyat.* Where a party who was not personally a cultivator of the land, but held a large jumma with a number of raiyats below him, was treated, in a notice of enhancement under cl. 17, Act X of 1859, as an ordinary raiyat having a right of occupancy, it was held that the notice was not on that account illegal or informal. *KALEE PROSONNO GHOSE v. HURISH CHUNDER DUTT* 15 W. R. 57

72. ———— *Notice of excess after measurement—Statement of proof of measurement.* In a suit for enhancement of rent after notice on the allegation that the defendant holds land in excess of the area admitted by him to be in his occupation, it must be shown that the notice stated that such excess has been proved by measurement. *KALEE KUNARY DASSEE v. SACHINHO CHUNDER GHOSE* 6 W. R. Act X, 23

73. ———— *Variation between notice and plaint.* A plaintiff is not bound to state in his plaint the notice of enhancement which he has received. *THELAK L. L. SINGH v. COUREE SINGH* 1 W. R. 3

the notice of enhancement which he has received. *THELAK L. L. SINGH v. COUREE SINGH* 1 W. R. 3

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

74. — Notice not followed immediately by suit—*Validity of, for future suit—Act X of 1859, s. 13.* The object of s. 13, Act X of 1859, is that a suit for enhancement should not be

8 W. R., Act X, 98

75. — Notice, effect of, as regards rent after suit. In a suit for arrears of rent of a particular year, after notice of enhancement on specified grounds, plaintiff (if his title is established) can only have a decree for the arrears claimed, and on one or other of the grounds alleged. The Judge has no jurisdiction to grant to plaintiff his right

76. — Notice omitting grounds of enhancement—*Act X of 1859, s. 13—Auction-purchaser.* Under s. 13, Act X of 1859, a raiyat served with a notice of enhancement, which is silent about the ground of enhancement, is not liable to pay the higher rent. An auction-purchaser is no exception to the rule by which every landlord is bound to ascertain the nature, extent, and condition of his raiyat's holding before he serves him with a notice of enhancement. A raiyat is competent to object to the legality of a notice of enhancement even in a suit in which he is plaintiff. *LALLA SINGH v. REAZOONISSA* . . . . . 8 W. R. 271

77. — Notice to zamadars in talukh—*Act X of 1859, s. 17* 8 W. R., Act X of 1859, applies only to raiyats, not to zamadars having a tenure of a talukh character. *PANJURY v. JAGGUT CHUNDER DUTT* . . . . . 9 W. R. 370

78. — Notice on first of grounds stated in s. 17—*Act X of 1859, s. 17, cl. 1. Semble (by MARKBY, J.):* That when a landlord gives notice of enhancement to a tenant on the first of the grounds stated in s. 17, Act X of 1859, he treats him as a raiyat having a right of occupancy. *THAKOOR DUTT SINGH v. GOPAL SINGH* . . . . . 14 W. R. 4

79. — Notice to tenant as raiyat—*Act X of 1859, s. 17—Suit for enhancement as against him as under-tenant.* By serving a notice on defendant under the terms of s. 17, Act X of 1859, plaintiff was held to have treated defendant as a raiyat having a right of occupancy, and to be debarred from suing him for enhancement of rent as an under-tenant or middleman. *CHANDERNATH GHOSH v. SHOOTORAM MOJOMDAR* . 12 W. R. 343

ENHANCEMENT OF RENT—*contd.*4. NOTICE OF ENHANCEMENT—*contd.*(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—*contd.*

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81. — Notice, effect of, as binding plaintiff—*Ground of enhancement.* A plaintiff must be kept to the grounds of enhancement stated in his notice. *HURRI MONUN ACHARJEE v. OKHOY KUMAR BOSE* . W. R. 1884, Act X, 14  
And the decision should be on those grounds only *BHEEM SEIN v. HUR GOBIND*

3 Agra Rev. 12

82. — *Enhancement in case of tenant-at-will.* A zamindar is not bound by the ground of enhancement mentioned in his notice in the case of a tenant-at-will. Nor has the tenant any right to claim the prevailing rate, but is liable, after notice of enhancement, to the highest rack-rent. *KOOPIR SIRDAR v. GOLUCK CHUNDER CHUCKERBUTTY* . . . . . 3 W. R., Act X, 126

MUNEEROODDEEN MERDHA v. KENNIE

4 W. R., Act X, 45

RAMMONEE CHUCKERBUTTY v. ALLA BUKSH

4 W. R., Act X, 46

83. — *Proof of rate of rent stated in notice.* In a suit for rent at an enhanced rate, the landlord is not indispensably bound to prove the very rate which he claims in his notice. *SREEKANT GHOSH v. BHUGWAN CHUNDER SEIN* . . . . . 24 W. R. 13

84. — Irregularity in drawing up notice—*Right to declaratory decree to enhance on service of fresh notice.* A slight irregularity in the drawing up of a notice of enhancement cannot affect the plaintiff's right to a declaratory order rectifying his right to enhance at some future time on service of a fresh notice. *RAM LOCHUN DUTT v. PETUMBER PAUL* . . . . . W. R. 1864, Act X, 111

85. — Notice given during pendency of suit—*Right to decree declaratory of right to enhance.* Where a notice of enhancement is served during the pendency of a suit in which the only decree which can be passed is one simply declaratory of the plaintiff's right to enhance

**ENHANCEMENT OF RENT—contd.****4. NOTICE OF ENHANCEMENT—contd.****(b) FORM AND SUFFICIENCY OF NOTICE, AND INFORMALITIES IN—contd.**

that suit for the payment of a sum by way of rent from the year subsequent to the service of the notice. **ROMANATH DUTT v. JOY KISHEN MOOKERJEE** . . . . . 3 W. R., Act X, 80

**88.** ——— Notice of enhancement as distinct from requisition to tenant to come to terms—Notice to pay current rate of rent. Where a zamindar, after obtaining a decree declar-

ing the rate, but is simply a requisition to come to terms. **DEEN DYAL PARAMANICK v. SATTISH CHUNDER ROY** 15 W. R. 272

**97.** ——— Joint application for issue of notice of enhancement—Collection of rent jointly made Where collection is jointly made by the lumberdars, they both ought to join in the application for issue of notice of enhancement. **RAM PERSHAD v. MAHOMED HASHIM** . . . . . 2 Agra 248

**(c) SERVICE OF NOTICE.**

**88.** ——— Person to serve notice—Act X of 1859, s. 13 According to s. 13, Act X of 1859, a notice of enhancement must be served by the farmer, and not the zamindar, at the person to whom "the rent is payable," notwithstanding an agreement between the zamindar and the farmer by which the zamindar reserved to himself the right of serving notices of enhancement. **BINODE LALL GHOSE v. MACKENZIE** 3 W. R., Act X, 157

**DOORGA ROY v. SHYAM JHA** . . . . . 8 W. R. 72  
**DOORGA CHURN CHATTERJEE v. GOLUCK CHURN BISWAS** . . . . . 23 W. R. 228

**89.** ——— Person to be served—Personal service—Substituted service—Act X of 1859, s. 13 According to s. 13, Act X of 1859, a notice of enhancement must be served by the farmer, and not the zamindar, at the person to whom "the rent is payable," notwithstanding an agreement between the zamindar and the farmer by which the zamindar reserved to himself the right of serving notices of enhancement. **BINODE LALL GHOSE v. MACKENZIE** 3 W. R., Act X, 157

as it cannot be so personally served, it must be affixed at his usual place of residence in the district in which the land is situated; or if he have no such place of residence, at the mal cutcherry, etc. **CHUNDER MOHSE DOSSEE v. DRUKONEERHUR LAGOORY** . . . . . 7 W. R. 2

**90.** ——— Service of notice on wrong parties A suit for arrears of rent at enhanced rates cannot be maintained where the notice of enhancement has been served on parties other than the one known to the zamindar as the actual tenant from whom he had received rents, and to whom he had given receipts, even though the parties served with the notice are the representatives of the registered tenant. **HURGO MOHUN MOOKERJEE v. GOLUCK CHUNDER SIKKAR** . . . . . 12 W. R. 265

**ENHANCEMENT OF RENT—contd.****4. NOTICE OF ENHANCEMENT—contd.****(c) SERVICE OF NOTICE—contd.**

**81.** ——— Registered and not registered tenant in possession—Notice of enhancement must be served. **NORO COOMAR GHOSE v. KISHEN CHUNDER BANERJEE** . . . . . W. R. 1884, Act X, 112

**92.** ——— Service on husband when wife is tenant Notice of enhancement must be served on the husband when the wife is the tenant. **CHANDER MOHUN MOOKERJEE v. KISHEN CHUNDER BANERJEE** . . . . . W. R. 1884, Act X, 112

**93.** ——— Service of defective notice. The service of a defective notice of enhancement is not valid. **CHANDER MOHUN MOOKERJEE v. KISHEN CHUNDER BANERJEE** . . . . . W. R. 1884, Act X, 112

**94.** ——— Notice where there are several defendants Notices of enhancement must be duly served on each defendant before enhanced rent can be decreed. **LYON v. BANESUR PAUL** . . . . . 2 May 120

**95.** ——— Personal service Where the service of notice of enhancement relied on has not been personal, it will not be valid unless it appear that an attempt has been made to effect personal service on all the defendants. **RASH BANERJEE MOOKERJEE v. KHETTRO NATH ROY** . . . . . I C. L. R. 418

**96.** ——— Mode of service—Substituted service—Avoiding service of notice Where substituted service of notice of enhancement is made, it should be made in such a manner as to reach the person to whom the notice is to be served. **CHANDER MOHUN MOOKERJEE v. KISHEN CHUNDER BANERJEE** . . . . . W. R. 1884, Act X, 112

**97.** ——— Substituted service without attempting personal service A notice is not duly served when it is merely fixed on the defendant's residence without any attempt being made to effect personal service. **BURODA KANT ROY v. RAY CHURN BURNOSHIL** . . . . . 24 W. R. 361

**98.** ——— Indigo factory—Conspicuous place—Act X of 1859, s. 13—Informally in notice. An indigo factory is a "conspicuous place" within the meaning of s. 13, Act X of 1859, where a notice of enhancement may be fixed. A notice of enhancement served under the provisions of s. 13, Act X of 1859, is not informal because it does not bear the signature of the landlord or his agent. **HURONATH ROY v. MIKRO MOYKE DABEE** . . . . . W. R. 1884, Act X, 58

**99.** ——— Substituted service—Proof of intention to avoid service. Service of notice of enhancement is not valid if it is proved that the defendant intended to avoid service. **CHANDER MOHUN MOOKERJEE v. KISHEN CHUNDER BANERJEE** . . . . . W. R. 1884, Act X, 112

# ENHANCEMENT OF RENT—*contd.*

## 4. NOTICE OF ENHANCEMENT—*contd.*

### (c) SERVICE OF NOTICE—*contd.*

of notice upon a defendant, by affixing the same upon the door of his dwelling-house, is not sufficient, unless the condition exists which alone renders substituted service good, namely, that the person

100. ———— *Service on joint Hindu family—Beng. Act VIII of 1869, s. 14.* Service of notice of enhancement under s. 14 of Bengal Act VIII of 1869 must be made strictly in the manner provided by that section. *Chunder Monce Dossee v. Dhuroneedhur Lahory*, 7 W. R. 2, followed. When a tenure was held by a Hindu and three Santhals, and it was shown that service of the notice of enhancement had been personal on the latter, but only on the son of the former who was an adult and living with his father as a member of a joint Hindu family:—*Held*, that this was not sufficient service on the Hindu tenant. *Quare*: Whether, if it had been shown that the notice, though served on the son, had come into the hands of the father, that would not amount to a sufficient service of the notice. *BOIDONATH MASHANTA v. LADLAY*. . . I. L. R. 10 Cal. 433

101. ———— *Substituted service—Beng. Act VIII of 1869, s. 14—Reg. I of 1812, s. 10—Evidence of substituted service, nature of—Burden of proof.* Proof of the validity of a substituted service required by s. 10, Regulation

353 12 B L R 220, distinguished. Where the only person named in a substituted service was an adult male, and the notice was served on him, the service was valid. *See* *he*

terms of s. 14 of the Rent Act, to throw the onus upon the defendant to show by cross-examination or otherwise that the search was not properly made. *NOOR ALI MIAN KHONDKAR v. ASHATULLAH*. . . I. L. R. 11 Cal. 608

102. ———— *Joint family—Notice shown to have reached, though informally, person intended to be served—Beng. Act VIII of 1869, s. 14.* Where there is evidence that a notice under s. 14 of Act VIII of 1869 has actually reached the persons for whom it was intended, such notice is valid, although the formalities enjoined by the section have not been strictly complied with. Service of such notice upon two of four joint brothers is good service. *BASSUNT LALL DASS v. PANA ALI*. . . 3 C. L. R. 432

103. ———— *Joint notice—Act X of 1859, s. 19.* A joint notice of enhancement was served upon several raiyats, whose jummas were

# ENHANCEMENT OF RENT—*contd.*

## 4. NOTICE OF ENHANCEMENT—*contd.*

### (c) SERVICE OF NOTICE—*contd.*

notices, but that they were entitled to the benefit of some of the holdings being separate for the purpose of surrendering some, and retaining others, of such separate holdings under s. 19 of Act X of 1859.

*JADUB CHENDER HALDAR v. ETWARREE LUSHEER Marsh*, 22 May 1899

104. ———— *Joint undivided tenure—Joint tenure subdivided without sanction.* In a case of joint tenure not subdivided under any sanction from the superior landlord, notice of enhancement need not be served on all persons interested under an alleged subdivision. *MOTHOORANATH CHATTERJEE v. KHETTERNATH BISWAS*. . . 2 W. R., Act X, 92

105. ———— *Tenure held jointly.* A suit for enhanced rent in respect of a tenure held jointly cannot proceed except on notice to all the joint tenants. *SURNOMOY v. JOHUR MAHOMED NASHYO*. . . 10 C. L. R. 545

106. ———— *Joint Hindu family—Beng. Act VIII of 1869, s. 14.* Where a tenure is owned by a joint Hindu family, it is sufficient service of notice of enhancement under s. 14, Bengal Act VIII of 1869, if any one of the co-sharers is served with the notice. *NORODDER CHUNDER SHAH v. SONARAM DASS*. . . I. L. R. 4 Cal. 592; 3 C. L. R. 359

107. ———— *Co-sharers—Beng. Act VIII of 1869, s. 14.* Where personal service of notice upon a co-sharer, under Bengal Act VIII of 1869, s. 14, is found to be impracticable, the notice may be stuck up at the adjoining house of another co-sharer. *MAHOMED ELAHEE BUKSH CHOWDHURY v. BROJO KISHORE SEN*. . . 24 W. R. 14

108. ———— *Service of notice signed by only one of several share-holders—Suit by one of two joint khots for enhanced rent—Notice, sufficiency of service of.* In a suit brought by one of two joint khots to recover enhanced rent from a tenant, the notice of enhancement given to the tenant having been signed by both the khots, it was

L. L. S. DOM. 25

109. ———— *Service of notice at instance of only some of several share-holders—Beng. Act VIII of 1869, s. 14.* *Per GARTH, C.J., PONTIFF and MITTER, J.J.* (MORRIS and McDONELL, J.J., dissenting)—A suit for arrears of rent at an enhanced rate brought by all the share-



**ENHANCEMENT OF RENT—*contd.*****4. NOTICE OF ENHANCEMENT—*concl'd.*****(c) SERVICE OF NOTICE—*concl'd.***

holders will lie, notice under s. 14 of Bengal Act VIII of 1859 having been issued at the instance of some of the persons entitled to the rent. **CHUNU SINGH v. HERA MAHTO**

I L. R. 7 Calc. 833 : 9 C. L. R. 37

(*Contra*) **KASHEE KISORE ROY CHOWDREY v. ALIP MUNDOL**

I L. R. 8 Calc. 149 : 7 C. L. R. 107

**5. GROUNDS OF ENHANCEMENT****(a) GENERALLY.**

1. ———— Distinction between raiyats with and without rights of occupancy—*Act X of 1859, s. 17, cl. 1.* In ascertaining tho rates of rent, the Courts should not fail to recognize the important distinction between raiyats having a right of occupancy and other raiyats, in a case of enhancement under cl. 1, s. 17, Act X of 1859. **LUCHUN v. JOGUL KISHORE** . . . 3 Agra 99

2. ———— Grounds in case of raiyat without right of occupancy—*Act X of 1859, ss. 6 and 17.* In a suit for enhancement of rent it was held that the provisions of s. 6, Act X of 1859, do not apply to the case of a raiyat not having a right of occupancy; and in fixing a fair and equitable rate for such a raiyat, Courts are not restricted to the grounds laid down in s. 17. **PITAMBAR KURUMKAR v. RANTUNOO ROY** . . . 10 W. R. 123

3. ———— *Bengal Tenancy Act (VIII of 1855), s. 46, sub-ss. (8) and (9)—Non-occupancy raiyat—Enhancement of rent—Fair and equitable rent* Sub-s. (9) of s. 46 of the Bengal Tenancy Act is not exhaustive. It was not intended that, if there was no land of a similar description and with like advantage in the same village as the land in suit, it should be impossible to enhance the rent of a non occupancy raiyat upon any other ground. **HOSAIN ALI KHAN v. HATI CHARAN SHAW**

I L. R. 27 Calc. 478

4. ———— Grounds in case of raiyats treated as occupancy raiyats—*Act X of 1859, s. 17.* Where a landlord treats raiyats as having a right of occupancy subject to enhancement under s. 17 of Act X of 1859, he must, before he can enhance, show that some of the conditions of s. 17, Act of X of 1859, exist. **FITZPATRICK v. SEETA ROY** . . . 1 Ind Jur. N. S. 170

5. ———— Grounds for enhancement, enquiry into. A claim for enhancement of rent should not be disposed of without determining the propriety of the enhanced rent with reference to the ground on which it is claimed. **MURDYAT OOPADHYA v. MAHMOUD NAZEN**

1 N. W. Part 2, 19 : Ed. 1873, 79

6. ———— Failure to prove one of several grounds—*Act X of 1859, s. 17.* There

**ENHANCEMENT OF RENT—*contd.*****5. GROUNDS OF ENHANCEMENT—*contd.*****(a) GENERALLY—*concl'd.***

is nothing in s. 17, Act X of 1859, which provides that if one of the grounds specified in the notice of enhancement be not proved, there shall be no decree for enhancement on account of any other ground which is proved. **RAN KANT CHUCKERBUTTY v. MOHESH CHUNDER SINGH** . . . 7 W. R. 172

7. ———— Grounds, procedure as to, where notice is bad—*Power of remand.* In a suit for enhancement against a raiyat having a right of occupancy, if the notice served is found to be bad in law the Judge has no power under the Procedure Code to remand the case with a view to the ascertainment by local enquiry of the area of the land in dispute and the rates prevailing in its neighbourhood. **HUREE DOSAI. PARBETTY CHURN MOJOMDAR** . . . 13 W. R. 227

8. ———— Grounds, onus of proof of—*Act X of 1859, s. 17—Question of proper rate of rent.* In an appeal from a decree for enhancement of rent, where the lower Court found that the defendant had failed to give evidence of non-liability:—*Held*, that it should have enquired whether the rate assessed by the first Court was proper, and such as plaintiff would be entitled to have under s. 17, Act X of 1859. **RUXGOMONEY DOSSEE v. CAMPBELL** . . . 12 W. R. 111

9. ———— Grounds in case of proprietor who has settled with Government—*Increase in value of produce—Excess land.* A proprietor who has settled with Government under a jummalbundi cannot sue for enhancement on the mere ground that the rate is below the prevailing rate, but must sue either on the ground of increase in the value of the produce or of an excess quantity of land. **SUKH MANI HOLLAR v. GURJAGOBIND MUNDLE** . . . W. R. 1884, Act X, 128

10. ———— Grounds in case of intermediate tenures—*Deduction.* A deduction of 15 per cent. from the gross rent is a fair and equitable mode of assessing the rent payable by an intermediate tenant in a suit for enhancement. Intermediate tenures should be assessed at a rate so as to allow the tenant a reasonable profit, and not at a rate at which actual cultivators are assessed. **SWARNAMAYI v. GAURI PRASAD DAS**

3 B. L. R. A. C. 270

11. ———— Unforeseen catastrophe—

equitable. **BANASOONDEREE DOSSEE v. KALUO PRADHAN** . . . 10 W. R. 395

(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES

12. ———— Principle of adjustment of rent—*Act X of 1859, s. 17.* Where enhancement of rent is sought on the ground "that the rate of



**ENHANCEMENT OF RENT—contd..****5. GROUNDS OF ENHANCEMENT—contd.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES—contd.**

Bengal Act VIII of 1869, s. 18, cl. 1, cannot be restricted to lands in contract with that to which the rent suit relates. The general rule may be stated to be that the plaintiff is not, on the one hand, restricted to a comparison with lands immediately contiguous, and must not, on the other, pick and choose particular places, but should consider the rates

higher rates for lands of the same description and quality, and the only question is the extent to which the defendant is liable to enhancement, the clause must not be so construed as to deprive a zamindar of his fair rents; but the Court should be guided by a consideration of what is fair and equitable, as provided by s. 5, subject to the limitations prescribed in s. 17. If a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the Court is not in error in taking an average. *DENA OAZEE v. MOHINEE MOTUN DOSS*, 21 W. R. 157

24. ——— Varying rates—Bengal Tenancy Act (VIII of 1885), s. 30, cl. (a)—Prevailing rate. In a suit for enhancement of rent

lowest rate may be taken and the rent of the defendants may be enhanced up to that limit. *ALFEE KHAN v. RAGHU NATH PROSAD TEWARI*, *HINMUT KHAN v. RAGHU NATH PROSAD TEWARI*, *HARI MOHAN GAZI v. RAGHU NATH PROSAD TEWARI*, 1 C. W. N. 310

25. ——— "Average rate" of rent—Beng. Act VIII of 1869, s. 18. In trying a question of enhancement, when the first ground mentioned

*MAHOMED*, 22 W. R. 100

26. ——— Abwabs paid by neighbouring raiyats—Act X of 1859, s. 17. In determining the enhanced rent which a raiyat is liable to pay under s. 17, Act X of 1859, a Court cannot legally include patwarian and other abwabs paid by raiyats in the neighbouring lands. *BURMAH CHOWDHRY v. SREENIVAS SINGH*, 12 W. R. 29

27. ——— Prevailing rate for neighbouring lands—Intention of this portion of clause.

**ENHANCEMENT OF RENT—contd.****5. GROUNDS OF ENHANCEMENT—contd.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES—contd.**

and is not intended—after the rent has been raised on some raiyats in any place for a special reason—to furnish a means for raising the rents of all the raiyats of the same place to the same rate. *GLASSCOTT v. RAJ CHUNDER MOOCHY MUNDUL*, 25 W. R. 381

28. ——— Current rate prevailing in village—Act X of 1859, s. 17. In a suit for a

29. ——— Cultivators of same class in places adjacent—Calculation of rate. When application is made for enhancement of rent of a right-of-occupancy cultivator, care should be taken to compare his rent with that paid by cultivators of the same class in places adjacent, even if not in the same mouzah and cultivating under similar advantages in every way. *ISMAIL KHAN v. BHOONDOO*, 1 N. W. 28; Ed. 1873, 24

30. ——— "Same class" of raiyats, meaning of—"Prevailing rate"—Act X of 1859, s. 17. The words "same class" in s. 17, Act X of

*SHADHOO SINGH v. RAMANOOORAH LALL*, 8 W. R. 83

31. ——— Special class of raiyats—Standard of enhancement. In the absence of proof of any separate class of raiyats within the general body of occupancy raiyats, the general body of such raiyats must be held to be "the same class of raiyats" to whose standard a raiyat with a right of occupancy may be raised, although some may be more and some less ancient than he. *RAM COOMAR DHARA v. BHOYRUS CHUNDER MOOKERJEE*, 6 W. R., Act X, 33

32. ——— Raiyats holding under same class of landlord. Raiyats are not necessarily hold under. *NATH ROY*

33. ——— Same class of raiyats—Cultivators of high and low caste—Calculation of

caste, but it is necessary to consider and show the

**ENHANCEMENT OF RENT—contd.****5. GROUNDS OF ENHANCEMENT—contd.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES—contd.**

the difference of castes. **KUNUK SINGH v. GHOLAM JELANEE** . . . . . 2 **Agra 329**

**34.** ———— *Difference of caste among raiyats.* Comparison must be made with raiyats of the same caste. **BATNEE PERSHAD v. MAHOMED UDEER HOSSEIN** . . . . . 3 **Agra Rev. 3**

**BHEEM SEIN v. HUR GORIND** . . . . . 3 **Agra Rev. 12**

**35.** ———— *Comparison where no class of raiyats of same class—Allowance for difference of class.* *Held*, that where cultivators of similar description are . . . . .

1 **Agra Rev 7**

**36.** ———— *"Lands of similar description"—Mode of enhancement of tenure containing different descriptions of land.* Where the holding of a cultivator consists of several descriptions of land, the enhancement should be determined by comparing each description of land with similar adjacent land held by the same class of cultivators, and not by applying indiscriminately the average rates of tenants having a right of occupancy. **MITHU LALL v. SEETA RAM** . . . . .

1 **Agra Rev. 49**

**37.** ———— *Mode of enhancement—Adjacent lands.* Where in places adjacent no land of similar description, with similar advantages . . . . .

**TIKARAM SINGH v. SANDES** . . . . . 22 **W R. 335**

**38.** ———— *Prevailing rates of rent—Ascertainment of fair rate of rent.* That the value of . . . . .

as is shown by what is paid by similar raiyats for similar lands. **AMANULLA v. RAM KIDDER GHOSE** . . . . . 9 **W R. 392**

**39.** ———— *Sufficiency of evidence to prove prevailing rate.* In a suit for enhancement of rent on the ground that the rates at which defendant held were below the prevailing rate paid by the same class of raiyats for adjacent lands of a similar description and with similar advantages, the evidence of three patwaris who put in their statements . . . . .

**ENHANCEMENT OF RENT—contd.****5. GROUNDS OF ENHANCEMENT—contd.****(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES—contd.**

**40.** ———— *Sufficiency of evidence to prove prevailing rate.* In a suit after notice for a *lababat* at enhanced rate . . . . .

legally sufficient to make a case which defendant was bound to rebut. **SARROOP MANNA v. BONOMALEE CHURN MITTEE** . . . . . 15 **W. R. 240**

**41.** ———— *Sufficiency of evidence of prevailing rate.* The mere fact of a particular rate of rent having been decreed against two raiyats not having a right of occupancy is not enough to show that the rate so decreed was the rate prevailing in the neighbourhood. **SURAHUTOONIS v. KHATOON v. GYANER BUKTOOR** . . . . . 11 **W. R. 142**

**42.** ———— *Act X of 1859, s. 13, 17—Raiyat without right of occupancy—Occupancy raiyats at lower rates.* In a suit for enhancement of rent after notice under s. 13, Act X of 1859 (such notice not treating the defendant as a . . . . .)

**JOTEDAR** . . . . . 13 **W R 255**

**43.** ———— *Proof of rate of rent—Mistake as to area of land.* A suit for enhancement of rent after notice should not be dismissed merely because the landlord has made a mistake as to the exact area of the lands which his tenants hold. Where enhancement is sued for on the ground that the rent paid by the defendant is below the rate prevailing in the neighbourhood, it is not enough for the plaintiff to show that the adjacent lands are of a similar description to those held by defendant; he must also show that they are held by persons of the same class with the defendant. **WOOMANATH ROY CHOWDHRY v. ASHUMBURKE BISWAS** . . . . . 12 **W. R. 476**

**44.** ———— *Evidence by hypothetical adjustment of rents.* In a suit for enhanced rent where the ground relied on is the prevailing rate paid by adjacent occupiers of similar land, such ground cannot be established by the probability or even the certainty that, if the rents of the neighbouring occupants were re-adjusted, they would come up to the rate claimed. **BARMOAUN DEY v. BUSONA BIBEE** . . . . .

13 **W. R. 107** : 13 **B. L. R. 200** note

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(b) RATE OF RENT LOWER THAN IN ADJACENT PLACES—*contd.*

45. — Failure to prove existence of ground for enhancement. Where the ground of enhancement was that defendant paid rent below the prevailing rate for land of similar description and with similar advantages in the places adjacent, and the plaintiff failed to prove the existence of any such ground, the plaintiff was not entitled to a decree at the rates which the defendant's lands would bear, as Act X of 1859 does not authorize enhancement of the rent of a raiyat to the rates which the lands will bear. *JAIN ALI v. JAN ALI* 9 W. R. 149

46. — Data for calculation of. In a suit for enhancement of the rent paid by shikmi talukhdars, the plaintiff is bound to afford data (e.g., the rate paid by intermediate tenants of the same class) upon which the Court can come to a satisfactory conclusion as to what would be a fair and equitable rate to be paid by defendant, plaintiff being competent, under s. 10, Act VI of 1862, to measure the talukh and ascertain the assets. *DABE DOSS NEGEE CHOWDERY v. GOBIND MOHUN GHOSE* 10 W. R. 213

47. — Rate paid by neighbouring riyats of same class. In a suit for enhancement of rent on the ground that the defendant pays at a lower rate than that paid by the neighbouring riyats of same class, the Court ought to give a decree at the actual rate found to be paid by the neighbouring riyats. *ARTUL GAZA v. AMUNOODDEEN* 5 C. L. R. 41

48. — Beng Act VIII of 1869, s. 18—Grounds of enhancement, proof of. In a suit to recover rent at an enhanced rate after notice upon grounds furnished by the first two clauses of s. 18, Bengal Act VIII of 1869, where the defendant pleaded that the land was manras, held by him at a fixed rate of rent for generation after generation:—*Held*, that the defendant's failure to prove this plea was no bar to his setting up that he had earned the right of occupancy in the land. *Held*, that the plaintiff could not succeed without proving the substance of each part of cl. 1, and that it was not enough to show that the rate paid by the defendant was below the prevailing rate for adjacent land of a similar description and with similar advantages; but it must also be shown that the prevailing rate was paid by riyats of the same class as the defendant. *DOMA ROY v. MELON* 20 W. R. 416

## (c) INCREASE IN VALUE OF LAND.

49. — Valuation of produce—Proportion, principle of—Act X of 1859, ss. 13

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

and 17—Apportionment of increased value. In a suit for enhancement of rent on the ground specified in s. 17 of Act X of 1859, that "the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the raiyat" the amount of the increased rent is not to be ascertained by establishing a proportion between the former rent and the old produce; but the absolute increased value of the produce being ascertained, the enhanced rent is to be arrived at by considering what part of such increased value ought to be apportioned to the tenant as the produce of his capital and labour, and what part of it is rent, that is, as it has been defined, "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to the cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." Rent cannot be enhanced beyond the rate demanded in the plaint, and it can be enhanced only in respect of such part of the land as has increased in value. *HILLS v. ISHORE GHOSE* Marsh. 151; 1 Hay 350

*ISHORE GHOSE v. HILLS*

W. R. F. B. 48: 1 Ind. Jur. O. S. 25

50. — Wages of riyats—Fair and equitable rent—Loss for crops destroyed. The produce of a bigha of dhan in 1267 and 1268 should not be valued at the prices of 1269. Whether a raiyat borrows his food or not, he cannot receive his wages out of the proceeds of crops before the crops are gathered. An allowance for a house cannot be made to a raiyat in addition to a fair allowance for wages. Loss on account of crops destroyed or injured cannot be taken into consideration twice over: (i) in ascertaining the average of the quantities and prices, and (ii) in making an allowance for risks based upon injuries done to the crops, of which the quantities and prices must have been taken into consideration in calculating the average. A landlord cannot be charged with a rate of interest or profit on capital far beyond the ordinary rate of interest or profit, and also with an allowance for ensuring the return of the capital with such extraordinary rate of interest. One rate of rent cannot be fixed for a raiyat who spends his own capital, and another for a raiyat who is compelled to borrow it. The rate of rent which the landlord has a right by law to demand does not depend upon the size of the land. What or lands advanced be fair and landlord

is concerned. A raiyat who, but for the Permanent Settlement, would have been entitled to no

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

more than half of the gross proceeds of his land, is not over-assessed when he is allowed to retain at least five-sixths of the gross proceeds for his labour and profit on capital, and called upon to pay something less than the other one-sixth as rent to the zamindar. *HILLS v. ISICKER GHOSE*

W. R. F. B. 131

*Held* in the same case on review.—The condition and rights of rayats, whose tenures have commenced since the Permanent Settlement, depend not on status, but on contract and on laws and regulations specially enacted. In 1793 the zamindars were declared to be the proprietors of the lands. From 1793 to 1812 they were prevented from granting pottahs or leases to rayats for more than ten years, and could not, therefore, have created rayals with hereditary rights of property in the soil. After Regulation V of 1812 they could grant leases at any rate and for any term. By the retrospective effect of s. 2, Regulation VIII of 1819, leases in perpetuity or for terms granted prior to 1812 were rendered valid. In this case it was admitted that the value of the produce had increased otherwise than by the agency or at the expense of the rayat, and that the notice required by s. 13, Act X of 1859, had been served before the end of Chaitro in the year preceding that for which enhancement was claimed. Upon being served with that notice, the defendant had a right to quit according to s. 19. The Statute of Limitation does not give him a right of occupancy under s. 6 by holding for twelve years. But for Act X of 1859, therefore, the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the Permanent Settlement) would have been liable to have his tenancy determined, and to be turned out of possession at the end of 1267, if he and his

produce and cost of production. After the Permanent Settlement, and before Act X of 1859, a right of occupancy was not acquired by a rayat merely by holding or cultivating land for a period of twelve years. When that Act created the right, s. 5 declared the rayats having rights of occupancy should be entitled to hold at fair and equitable rates, thus leaving it to the Court to determine in every case of dispute what is a fair and equitable rate. To be fair and equitable, it must be so as regards both parties. *ISICKER GHOSE v. HILLS*

W. R. F. B. 148

51. — *Act X of 1859, ss. 5, 6, and 13—Adjustment, mode of—Proportion, rule of.* When there has been an increase in the value of the produce of land arising from an increase in price, and the zamindar is entitled to a

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

gross produce calculated in money to which the zamindar is entitled under the custom of the country; that as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown that rent is to be presumed, in all cases in which the pre-

gross produce calculated in money to which the zamindar is entitled under the custom of the country; that as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown that rent is to be presumed, in all cases in which the pre-

rate payable for annual lands in the places adjacent," and "rates fixed by the law of the country"; that in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise in price, this method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil calculated on an average of three or five years next, before the date of the alleged rise in value, bears to its present value; that in all cases in which the above presumption is rebutted by the nature and express terms of the written contract, the readjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based; and that in cases in which it appears, from the express terms of the contract, that the rent, then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the rayat to cultivate indigo or other crops, the former rent must be corrected so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down. *Per Macnerson, J.*—The rule of proportion, as the old value of produce is to the old rent, so is the present value of produce to the rent which

be at liberty, in each case, to prove any special circumstances tending to show that the application of the rule of proportion to that particular case would work injustice. *Per FINEK, J.*—When the Collector is called upon in any given case to determine the rent which it is fair and equitable that the rayat should pay, he ought to enquire:

# ENHANCEMENT OF RENT—*contd.*

## 5. GROUNDS OF ENHANCEMENT—*contd.*

### (b) RATE OF RENT LOWER THAN IN ADJACENT PLACES—*contd.*

45. ————— *Failure to prove existence of ground for enhancement.* Where the ground of enhancement was that defendant paid rent below the prevailing rate for land of similar description and with similar advantages in the places adjacent, and the plaintiff failed to prove the existence of any such ground, the plaintiff was not entitled to a decree at the rates which the defendant's lands would bear, as Act X of 1859 does not authorize enhancement of the rent of a rayat to the rates which the lands will bear. *JANALI v. JANALI* . . . . . 9 W. R. 149

46. ————— *Data for calculation of.* In a suit for enhancement of the rent paid by shikmi talukhdars, the plaintiff is bound to afford data (e.g., the rate paid by intermediate tenants of the same class) upon which the Court can come to a satisfactory conclusion as to what would be a fair and equitable rate to be paid by defendant, plaintiff being competent, under s. 10, Act VI of 1862, to measure the talukh and ascertain the assets. *DAREE DOSS NEOGEE CHOWDRY v. GOBIND MOHUN GHOSE* . . . . . 10 W. R. 213

47. ————— *Rate paid by neighbouring rayats of same class.* In a suit for enhancement of rent on the ground that the defendant pays at a lower rate than that paid by the

rayats *ARTUL GAZA v. ANUNOODDEEN* . . . . . 5 C L R 41

48. ————— *Beng Act VIII of 1869, s. 18—Grounds of enhancement, proof of.* In a suit to recover rent at an enhanced rate after notice upon grounds furnished by the first two clauses of s. 18, Bengal Act VIII of 1869, where the defendant pleaded that the land was mairasi, held by him at a fixed rate of rent for generation after generation.—*Held*, that the defendant's failure to prove this plea was no bar to his setting up that he had . . . . .

paid by the defendant was below the prevailing rate for adjacent land of a similar description and with similar advantages, but it must also be shown that the prevailing rate was paid by rayats of the same class as the defendant. *DOMA ROY v. MELON* . . . . . 20 W. R. 416

### (c) INCREASE IN VALUE OF LAND.

49. ————— *Valuation of produce—Proportion, principle of—Act X of 1859, ss. 13*

# ENHANCEMENT OF RENT—*contd.*

## 5. GROUNDS OF ENHANCEMENT—*contd.*

### (c) INCREASE IN VALUE OF LAND—*contd.*

and 17—*Apportionment of increased value.* In a suit for enhancement of rent on the ground specified in s. 17 of Act X of 1859, that "the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the rayat" the amount of the increased rent is not to be ascertained by establishing a proportion between the former rent and the old produce; but the absolute increased value of the

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and what part of it is rent, that is, as it has been defined, "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to the cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." Rent cannot be enhanced beyond the rate demanded in the plaint, and it can be enhanced only in respect of such part of the land as has increased in value. *HILLS v. ISHORE GHOSE* . . . . . Marsh. 151: 1 May 350

*ISHORE GHOSE v. HILLS*

W. R. F. B. 48: 1 Ind. Jur. O. S. 25

50. ————— *Wages of rayats—Fair and equitable rent—Loss for crops destroyed.* The produce of a bigha of dhan in 1267 and 1268 should not be valued at the prices of 1269. Whether a rayat borrows his food or not, he cannot receive his wages out of the proceeds of crops before the crops are gathered. An allowance for a house cannot be made to a rayat in addition to a fair allowance for wages. Loss on account of crops destroyed or injured cannot be taken into consideration twice over: (i) in ascertaining the average of the quantities and prices, and (ii) in making an allowance for risks based upon injuries done to the crops, of which the quantities and prices must have been taken into consideration in calculating the average. A landlord cannot be charged with a rate of interest or profit on capital far beyond the ordinary rate of interest or profit, and also with an allowance for ensuring the return of the capital with such extraordinary rate of interest. One rate of rent cannot be fixed for a rayat who spends his own capital, and another for a rayat who is compelled to borrow it. The rate of rent which the landlord has a right by law to demand does not depend upon the size of the holding of the circumstances of the rayat. What is a fair and equitable rent for one rayat for lands of a similar description and with similar advantages in the same neighbourhood must also be fair and equitable for another, so far as the landlord is concerned. A rayat who, but for the Permanent Settlement, would have been entitled to no

# ENHANCEMENT OF RENT—*contd.*

## 5. GROUNDS OF ENHANCEMENT—*contd.*

### (c) INCREASE IN VALUE OF LAND—*contd.*

more than half of the gross proceeds of his land, is not over-assessed when he is allowed to retain at least five-sixths of the gross proceeds for his labour and profit on capital, and called upon to pay something less than the other one-sixth as rent to the zamindar. *HILLS v. ISHORE GHOSH*

W. R. F. B. 131

*Held* in the same case on review.—The condition and rights of raiyats, whose tenures have commenced since the Permanent Settlement, depend not on status, but on contract and on laws and regulations specially enacted. In 1793 the zamindars were declared to be the proprietors of the lands. From 1793 to 1812 they were prevented from granting pottahs or leases to raiyats for more than ten years, and could not, therefore, have created raiyats with hereditary rights of property in the soil. After Regulation V of 1812 they could grant leases at any rate and for any term. By the retrospective effect of s. 2, Regulation VIII of 1819, leases in perpetuity or for terms granted prior to 1812 were rendered valid. In this case it was admitted that the value of the produce had increased otherwise than by the agency or at the expense of the raiyat, and that the notice required by s. 13, Act X of 1859, had been served before the end of Chaitro in the year preceding that for which enhancement

was demanded (assuming that he was not holding for a fixed term, and that his tenancy commenced since the Permanent Settlement) would have been liable to have his tenancy determined, and to be turned out of possession at the end of 1267, if he and his landlord could not agree as to the rent to be paid.

produce and cost of production. After the Permanent Settlement, and before Act X of 1859, no right of occupancy was not acquired by a raiyat merely by holding or cultivating land for a period of twelve years. When that Act created the right, s. 5 declared the raiyats having rights of occupancy should be entitled to hold at fair and equitable rates, thus leaving it to the Court to determine in every case of dispute what is a fair and equitable rate. To be fair and equitable, it must be so as regards both parties. *ISHORE GHOSH v. HILLS*

W. R. F. B. 148

51. — *Act X of 1859, ss. 5, 6, and 13—Adjustment, mode of—Proportion, rule of.* When there has been an increase in the value of the produce of land arising from an increase in price, and the zamindar is entitled to a

# ENHANCEMENT OF RENT—*contd.*

## 5. GROUNDS OF ENHANCEMENT—*contd.*

### (c) INCREASE IN VALUE OF LAND—*contd.*

new kabuliata from an occupancy raiyat, at an enhanced rate, at fair and equitable rates:—*Held per TREVOR, J.* (concurring in by the majority of the Court)—The words "fair and equitable" in s. 5, Act X of 1859, are to be construed as follows:

gross produce calculated in money to which the

and equitable until the contrary be shown that rent is to be presumed, in all cases in which the pre-

adjacent," and "rates fixed by the law of the country"; that in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise in price, this method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil calculated on an average of three or five years next, before the date of the alleged rise in value, bears to its present value; that in all cases in which the above presumption is rebutted by the nature and express terms of the written contract, the readjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based; and that in cases in which it appears, from the express terms of the contract, that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the raiyat to cultivate indigo or other crops, the former rent must be corrected so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid

pergunnah customary rates. Either party should be at liberty, in each case, to prove any special circumstances tending to show that the application of the rule of proportion to that particular case would work injustice. *Per TREVOR, J.*—When the Collector is called upon in any given case to determine the rent which it is fair and equitable that the raiyat should pay, he ought to enquire



ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

(i) Whether at the last antecedent period, when the arrangement between the parties (either then created or previously existing) was such as must, by reason of tacit acquiescence or otherwise, be taken to have been fair and equitable, that arrangement contained express stipulations as to rent; if so, then these stipulations, unless the reason for them is gone, should be followed in arriving at the rent for the new pottah. (ii) If the Collector finds no express agreement to guide him, then he must ascertain whether the raiyat is legally entitled by custom, based either on his personal status or on the character of the land occupied by him, to any definite share of the produce of the land or to any beneficial interest in it. If the raiyat is so entitled, the rent must be adjusted accordingly. (iii) If neither express agreement nor legal right in the raiyat be found to have determined

the custom ought to be complied with, and the rates adhered to. The fair presumption will be, in the absence of evidence or unless a different foundation be actually shown, that the rate was originally based upon the principle of sharing the produce of the land between the raiyat and zamindar in a fixed ratio. The result of applying this presumption would be that the new fair and equitable rent would be the same proportionate part of the new produce that the old rent was of the old produce. In all cases, the duration of the intended pottah must be taken into consideration as an element affecting the question of fairness and equity. *Per NORMAN, J.*—(i) With respect to the rents of raiyats having mere

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cont. (ii) If such a case  
the zamindar simply allege that the value of the produce has become increased, otherwise than by the agency, or at the expense, of the raiyat, he shows an increase in the value of that which primarily

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ENHANCEMENT OF RENT—*contd.*5 GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

the zamindar may be

in exceptional cases it may be found that the particular crop for which the land is specially fitted, as

position to make out a case under the first clause, the increased profit may be divided between the zamindar and the tenant, as may appear reasonable under the special circumstances of the case; and

enhanced price of produce (vi) If the produce

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is not applicable. *THE CHIEF JUSTICE*  
*Chow v. Hills, W. R. F. R. 131, 148*, should be  
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ence to the former value of the produce. It must  
take into consideration the circumstances under

account. It is only the net increase, of  
of the net increase as will render the rent fair and  
equitable, that can be added to it. *THAKORANTEE*  
*DOSSEE v. BISHANSHUR MOH KERRIE*

B. L. R. Sup. Vol. 202  
S W. R., Act X, 29

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

52. ———— *Cost of production—Calculation of rate of enhancement.* In ascertaining the rate of enhancement, the Court is not bound to calculate the exact value of the produce and the cost of production, but to estimate the average productive value and cost of production. *HURU MOHUN MOOKERJEE v. THAKOOR DOSS MUNDUL* 1 W. R. 112

53. ———— *Calculation of increase in produce—Proportion.* The mode of calculating the increase in the value of produce according to the rule of proportion is by simply taking the former and present value of produce, and not by calculating former and present profits after deducting costs. *RAM TARUCK GHOSE v. BIPESWAR BANERJEE* 6 W. R., Act X, 32

54. ———— *Rule of proportion—Decrease in productive power and value of produce.* In a suit for enhancement where not only the value of the produce has decreased, but the productive powers of the land have decreased, and the expenses of cultivation increased, the formula to be applied in determining the rent will be as follows: The average value of the produce before the decrease in the productive powers of the land will be to the average value of the present decreased produce, minus the increased cost of production, as the rent previously paid will be to that which the land ought now to pay. *SHOW-DAMINEE DOSSEE v. SHOOKOOL MAHOMED* 7 W. R. 84

55. ———— *Rule of proportion.* In a suit for enhancement of rent where the expenditure is stationary, and the value of the produce has increased, the proper rule is that the rate of rent to be paid shall bear to the old rate the same proportion as the present value of the produce bears to the old value. *DOORGANATH SHAN v. KARIM FAKIR* 9 W. R. 348

*SHIB NARAIN GHOSE v. KASHEE PATCHAY MON-KEEJEE* 1 W. R. 226

56. ———— *Rule of proportion—Deduction for costs of production—Aver-*

duction. It is necessary to take the average values of the produce of a series of years, including the years of abnormal plenty and scarcity. *JOHNSON MUNDUL v. SHOOKENDER NATH ROY* 25 W. R. 391

57. ———— *Accidental or exceptional increase in value—Drought or scarcity.* The increase in the "value of the produce" which

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

is to form a ground for enhancement of rent under s. 17 of Act X of 1859 means an increase in its natural and usual value in ordinary years. The accidental and exceptional high prices of a particular year, in consequence of drought and scarcity, cannot be treated as a measure by which rent is to be adjusted. A tenant takes land, not with reference to the exceptional high prices of a past year, but with reference to the prices he may reasonably expect to realize for the crops which he will raise in succeeding years. *BRAGHUTH DOSS v. MAHASOOF ROY* 6 W. R., Act X, 34

58. ———— *Casual increase in fertility.* A casual increase in the fertility of the land is not a ground for permanent enhancement of rent. *KINETO MOHUN PATIL v. HURKE SUNKER MOOKERJEE* 7 W. R. 235

59. ———— *Casual increase in fertility.* In coming to a conclusion as to whether the produce or the productive powers of the land have increased otherwise than by the agency or at the expense of the raiyat, the average of four or five years ought to be taken; the increase of an exceptional year should not be the guide. *RAJKEISHNA MOOKERJEE v. KALKE CHARAN DOHAIN* 6 B. L. R. Ap. 122; 15 W. R. 109

60. ———— *Casual increase*

*SREESH CHUNDER DOSS v. ASSIMONISSA* 7 W. R. 234

61. ———— *Steady and normal increase.* The increase must be permanent, i.e., steady and normal. *THAKOORANEE DOSSER v. BISHESWAR MOOKERJEE* 3 W. R., Act X, 142

62. ———— *Inconsistent grounds of enhancement—Increase of produce and value of produce—Lowness of rent compared with neighbouring rates.* Claims to enhancement on the basis of increased produce and increased value of produce are inconsistent and incompatible with one founded on an inequality between the rent paid by a tenant on the estate and paid by a tenant on a neighbouring estate. *SHREESH CHUNDER DOSS v. ASSIMONISSA* 7 W. R. 235

63. ———— *Increase of produce—Increase of value of produce.* A claim to enhancement of rent on the basis of increased produce, and one on that of increased value of produce, are not inconsistent and incompatible; and if there were so, they would not, by being set against each other, cancel each other, and thus diminish plaintiff's claim to the benefit of s. 17 of Act X of 1859. *GOPKESNATH MOOKERJEE v. SHOOKOOL MUNDUL* 25 W. R. 391

ENHANCEMENT OF RENT—*contd.*5 GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

64. ——— Rule of proportion—*Rates of present and former value unascertainable* The rule of proportion is not applicable where the rates between the present value of the produce of the soil and the former value at the time of the original taking cannot be ascertained, and where it is only necessary to see what is a fair and equitable rate by comparison with the rate paid by the neighbouring rayats for similar land. *JADUB CHUNDER HOLDAR v. ETBERRY LUSHKUR*

3 W. R., Act X, 180

65. ——— Calculation where adjustment has taken place In a suit for a kabuli at enhanced rents, if the rents of the adjacent lands have been already adjusted and enhanced, the enhancement of the defendant's holding will depend on the rates paid by those adjacent lands, supposing them to be of the same kind and not on any doctrine of proportion which will only apply when no adjustment has taken place. *AZIM MULLICK v. GUNGA DHUR BANERJEE*

5 W. R., Act X, 58

66. ——— Rate for lands allotted on batwara—*Reg XIX of 1793, s 19* In a suit for khas possession of land made over to plaintiff on batwara, the defendant pleaded twelve years' adverse possession, and that he was entitled to retain possession on payment of rent, as the lands were occupied by gardens made by his ancestor. *Held*, that the rate given in the batwara papers was not necessarily the fair rate for the lands; for under

67. ——— Increase in productive powers—*Increase in rent* By the words "increase of productive powers" in s 17, Act X of 1859,

68. ——— Agency operative at time of notice—*Beng Act VIII of 1869, s 18* In a suit for arrears of rent for two years of which the rate claimed for one year 1278 was the old rate and the rate claimed for 1279 was an enhanced rate after notice. *Held*, that, as the suit was from the beginning essentially a suit to recover arrears of rent due in respect of the years 1278 and 1279, and the question whether the plaintiff had made out a right to be paid rent at an enhanced rate for 1279 was only part of the larger question what was the rate at which rent was due for that year, there was no error in the lower Appellate Court's decreeing arrears of rent for 1279 at the rate which was found to be the true rate, although less than the enhanced rate claimed. *Held*, that

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*contd.*

the increase of productive power alluded to in s. 18 of the Rent Law as a ground of enhancement must be an agency subsisting and operative at the time, when the notice is issued. *BRONJATH TEWARÉE v. GRANT* . . . . . 22 W. R. 13

69. ——— *Beng Act VIII of 1869, s. 18—Increase by natural agency* An increase, either permanent or likely to last for a considerable time, caused by natural agency in the productive powers of the land, is one of the elements to be  
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70. ——— Rise in value owing to portion of town being swept away. A rise in the value of lands, owing to a considerable portion of the town in which the lands are situated having been swept away by a river, is not such an increase in the productive powers of the land as is contemplated by cl 17 of s 17 of Act X. *KHOND-KAR ABDON RUHMAN v. WOOMACHURN ROY*

6 W. R. 330

71. ——— Land improved otherwise than by cultivator. *Held*, that, though the land may have been improved otherwise than by the exertions of the cultivator, yet the zamindar is not entitled to demand rent beyond what is fair and equitable for the same class of cultivators, as the cultivator sought to be enhanced to pay for such improved lands. *JUNNA PERSHAD v. BHOWANEE* . . . . . 2 Agra Rev. 1

72. ——— *Act X of 1859, s 17—Embankment, construction of* An increase in the productive power of the land, occasioned by an embankment, constructed at the expense of Government, for excluding the sea from flooding the land, is a ground of enhancement under s. 17 of X of 1859. *JADUB CHUNDER HALDAR v. ETWARÉE LUSHKUR* . . . . . Marsh, 468 : 2 Hay 599

73. ——— Canal, construction of—*Expenses of making ducts and for canal rates* A cultivator cannot claim altogether to be exempted from enhancement on account of the increase in the productive power of land which has been effected by a canal which was not made at his expense or labour, but he can fairly ask that the expenses, such as the cost of making ducts and the payment of canal rates, should be calculated and deducted from the total amount of increased value. *PIRAN v. RAN BUESH* . . . . . 2 Agra 346

74. ——— Canal, construction of—*Expenses for canal dues* *Held*, that a rayat is entitled to deduction of the actual

**ENHANCEMENT OF RENT—contd.****5. GROUNDS OF ENHANCEMENT—contd.****(c) INCREASE IN VALUE OF LAND—contd.**

ment of canal dues. **MAHEETUP SINGH v. LOKINDER SINGH** . . . . . 2 Agra 170

**75.** ——— *Middleman. A middleman is liable to enhancement when the productive powers of his land have been increased otherwise than by the agency or expense of the raiyat. Two-thirds was held to be a fair proportion of the surplus profits of the land to be awarded to the landlord.* **JADUB CHUNDER HALDAR v. ISHORE LUSHEE** . . . . . W. R. 1884, Act X, 74

**76.** ——— *Fair and equitable rate.—Act X of 1859, s. 17. S. 17 does not say that in every case the rate of rent may be raised to the prevailing rate, but only that the rent shall not be raised except on some one of the grounds specified. That section must always be read with reference to the general provision of s. 5, that the*

name of rent, what is in fact not rent, but the produce of his own labour and capital sunk in the land. **NOOR MAHOMED MUNDUL v. HURRIFROSONKO ROY** . . . . . W. R. 1884, Act X, 75

**77.** ——— *Grounds of exemption.—Increase in value from natural causes*

the same locality, but not sharing the especial advantages resulting from works or improvements erected or effected, by or at the expense of the defendant or his ancestor, has been increased by natural causes, it must be assumed that the lands of the defendant owe their increased value to that extent to natural causes, and are to that extent liable to enhancement. **TERAKT CHOORAHEN SINGH v. DENEJ ROY** . . . . . I. L. R. 5 Calc. 56

**78.** ——— *Act X of 1859, s. 17.—Increase at expense of tenant. Where it is found that the productive powers of a holding have been increased at the expense of the tenant, and it is not found that they have increased otherwise, no grounds of enhancement under s. 17 of Act X of 1859 are shown.* **QUNDA v. RAHEEM SHERE KHAN** . . . . . 3 N. W. 138

**79.** ——— *Increase at expense of raiyat. If the tenant's expenditure has caused an increase in the productive power of the land, such expenditure once made cannot permanently bar enhancement of rent, but after the lapse of such a time as may be fairly estimated as sufficient to enable him to recover his outlay and a just*

**ENHANCEMENT OF RENT—contd.****5. GROUNDS OF ENHANCEMENT—contd.****(c) INCREASE IN VALUE OF LAND—contd.**

share of profit in respect of it, his rent may be enhanced on any legal ground. **MUJLIS v. MOHER** . . . . . 3 Agra 223

**80.** ——— *Increase in value of land by tenant's means. In a suit for enhancement of rent of land originally leased for the purposes of a homestead, where defendant had erected shops and made other improvements at a great outlay and considerable risk, as the river had encroached and was encroaching, a Judge was held not to have done wrong in allowing the tenant a reduction on account of the increase of value of the land induced by his energy.* **NUFFER CHUNDER SHAH v. GUNGA DUTTA BHARUTTY** . . . . . 11 W. R. 160

**81.** ——— *Right to enhance rent where increased facilities for irrigation are provided by landlord. Where a landlord provides facilities for irrigation, of which the tenants may without expense avail themselves, bringing the*

tenants for irrigation falls in the neighbourhood. **IKRAM ALI v. BABOO LALL** . . . . .

1 N. W. 178 ; Ed. 1873, 257

**82.** ——— *Right to increased rent where raiyat digs wells and does not use the irrigation already existing, though sufficient. Semble. If a zamindar has, before the construction of a well by a tenant, provided sufficient means of irrigation, he will be entitled to receive rent at the rate payable by the cultivators of the same class as his tenant for land with the like facilities for irrigation in places adjacent, and will not be*

**DEC** . . . . . 3 N. W. 282 ; Agra F. B., Ed. 1874, 258

**83.** ——— *Improvements by agency of tenants. The fact that at a distant time the raiyat or his ancestors have by their own agency or at their own expense made wells or effected improvements, is not a legal bar to the landlord's right to enhance.* **LALLA SHEO NARAYN v. OODHUN SINGH** . . . . . 1 N. W. 180 ; Ed. 1873, 258

**84.** ——— *Reclamation of waste land by tenant. In a suit to enhance rents the Deputy Collector found that the annual revenue*

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(c) INCREASE IN VALUE OF LAND—*concl'd.*

obtained by the raiyats was R12,579, and that an increase in such rates was partly due to the exertion of the defendant in reclaiming some waste land, and he deducted R2,579 as the defendant's share, and awarded R10,000 as a fair and reasonable rate to be paid to the plaintiff. *Held*, that there was no reason for impeaching his award of this rate. **SURRO MOYE v. ADORRO CHURY ROY Marsh. 605**

85. — *Expenditure of labour and capital by tenant* Where tenants held for some twenty-five years upon a rent apparently much below that payable for lands of the same description in the neighbourhood, they were held not to be entitled to a claim to a kabuhat at an enhanced rate. **PROSONO COOMAR PAUL CHOWDERY v. RADHA NATH DEY CHOWDERY 7 W. R. 97**

86. — *Increase by exertion of tenants.* In a suit for enhancement of rent upon the ground that the rates were below the prevailing rates payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent, the Judge

neither reason was any ground of exemption from enhancement. **SREERAM CHATTERJEE v. LAKSHUN MAGILLA Marsh 379; 2 May 427**

87. — *Care and labour expended by raiyat.* In a suit for a kabuhat at an enhanced rent, where in spite of the shortness or deficiency of the crops, their value, owing to the additional care and labour expended by the raiyat, had increased considerably above that in former years, it was laid down that the Court must try and discover what the raiyat was entitled to as a set-off against the increased value of the produce for the additional care and labour expended by him, and whether or not the zamindar was not entitled to some portion of the increased value of the produce in the shape of enhanced rent. **SHODAMNEN DOSSEE v. HARAN CHUNDER SURHA 6 W. R., Act X, 103**

88. — *Increase by agency of tenant—Beng. Act VIII of 1869, s. 13.* In a suit for enhancement of rent, defendant pleaded that the land was used solely for fruit trees,

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*

## (d) LANDS HELD IN EXCESS OF TENURE.

89. — *Excess lands—Act X of 1859, s. 17, cl. 3* Lands in excess of the area recorded in a mokurari pottah containing no boundaries are liable to assessment under s. 17, Act X of 1859. **BIRRO DOSS DEY v. SAKERNONEE DOSSEE W. R. 1864, Act X, 38**

90. — *Act X of 1859, s. 17, cl. 3* Where a tenant is found to be holding a

X of 1859 **GOPEENATH MOKERJEE v. RAM HUREE MUNDUL 9 W. R. 478**

91. — *Act X of 1859, s. 17, cl. 3.* In a suit for enhancement under cl. 3,

under special circumstances. **REAZOONISSA v. DAN ALL 8 W. R. 326**

92. — *Act X of 1859,*

93. — *Expenses of cultivating excess lands.* Where a tenant holds excess lands for which no rent has hitherto been paid, the zamindar may treat him either as a trespasser or a tenant. In the latter case a suit will not

entitled to no deduction under s. 17, Act X of 1859.

94. — *Rent of accreted land—Reg. XI of 1825, s. 4—Evidence that land has been subject of permanent settlement.*

Such additional rent for the accretion cannot be considered as forming part of the rent of the original tenure. In a suit for enhancement it is not necessary to show that the land, the rent of which it is sought to enhance, has been the subject of permanent settlement. In such

ENHANCEMENT OF RENT—*contd.*5. GROUNDS OF ENHANCEMENT—*contd.*(d) LANDS HELD IN EXCESS OF TENURE—*contd.*

a suit the Government, as against the raiyats, is in no better position under the Rent Laws than other landlords. *Sudanundo Mytee v. Nourutton Mytee*, 8 B. L. R. 280; 16 W. R. 239, followed. *Gopi Mohun Muzoomdar v. Hills*

5 C. L. R. 33

95. — *Accretion—Engagements of parties.* In a suit for enhancement in respect of an accretion the plaintiff is not bound to show any established talukhdari rates, but, if entitled to enhance, ought to obtain a decree for enhancement at a rate proportionate to that paid for the parent tenure. In the case of accretions to recently-created tenures, the question of enhancement will mainly depend on the engagement of the parties. *Gopal Lal Thakoor v. Kurnur Ali*

6 W. R., Act X, 85

96. — *Accretion to original tenure—Ground of enhancement—Beng. Act VIII of 1859, s. 14 and s. 15, cl. 3.* A suit for an enhanced rent brought against a tenant on the ground that the tenure has been increased by accretion must be after service of notice required by

97. — *Accretion—Notice to pay higher rent or give up possession.* Where a kabuhat stipulated that on the accretion to a certain bowls of any new cultivable chur, a fresh measurement should be made of the chur and bowls, and that excess rent should be paid for the excess land at a stipulated rate up to five droves, and at pergunnah rates for the residuo, in default thereof

excess land to be settled with others, the Labuhatdar measured the bowls and accreted chur without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a Labuhat for the said amount of land and rent, or that he would take khas possession. In a suit, amongst other things, for assessment of rent of the excess land: *Held*, (i) that s. 14 of Bengal Act VIII of 1859 did not

come to a settlement in respect thereof or to give up possession. *Ram Coomar Ghose v. Kali Krishna Tagore*

I. R. 13 I. A. 116; I. L. R. 14 Cal. 99

ENHANCEMENT OF RENT—*contd.*

## 6. DECREASE IN QUANTITY OF LAND.

Decrease in quantity of cultivable land—*Deduction of rent in suit for enhancement.* In a suit by the mother of the then zamindar of a talukh for enhancement of rent, a decree was made in 1821 in terms of a compromise,

enhancement finally established. The ameen's report, which fixed the rent payable at Rs. 124, was not, however, made until 1859. In a suit to recover rent at Rs. 124 for the year 1871-72, the Subordinate Judge gave a decree for Rs. 1062-15-6, a re-measurement of the talukh having shown a decrease in the amount decreed. *Judge* *Soorki*

## 7. RESISTANCE TO ENHANCEMENT.

1. — *Purchaser of patni talukh—Act X of 1859, s. 14 & s. 15, Act X of 1859.* does not apply to the case of a purchaser of a patni talukh at a sale under Regulation VIII of 1819, unless the jumma is shown to be a mesne incumbrance which came into existence subsequently to the creation of the patni. *Hannomohun Mookenjee v. Brojokishore Roy*

W. R. 1884, Act X, 103

2. — *Suit to contest enhancement—Act X of 1859, s. 14—Question of rates.* In a suit by a tenant under s. 14, Act X of 1859,

3. — *Act X of 1859.*

been created. *Norutoolah v. Govind Chunder Dutt* 1 Ind. Jur. N. B. 2: 4 W. R., Act X, 25

*Khoda Newaz v. Nuso Kishore Ras*

5 W. R., Act X, 53

4. — *Suit for reversal of notice of enhancement—Failure to prove holding at fixed rate.* In a suit for reversal of a notice of enhancement of rent the plaintiff endeavoured to show a holding at a fixed rate within Act X of 1859, ss. 3 and 4. *Held*, that upon his failing to prove such a holding the defendant was entitled to have the suit dismissed, and was not bound to show his

**ENHANCEMENT OF RENT—contd.****7. RESISTANCE TO ENHANCEMENT—concl'd.**

title to enhance. **GUNGAPERSAUD SINGH v. RAMLOLL SINGH**

Marsh. 185 : W. R. F. B. 59

1 Ind. Jur. O.S. 118 : 1 Hay 452

**PUDDOLOCHUN BHADOORI v. CHUNDER NATH ROY**

1 Ind. Jur. N. S. 171 : 5 W. R., Act X, 51

5. ——— Suit to resist notice of enhancement. All the pleas under which a rayat can resist a notice of enhancement ought to be considered in the suit he brings to resist the notice.

**PUDDOLOCHUN BHADOORI v. CHUNDER NATH ROY**

1 Ind. Jur. N. S. 171 : 5 W. R., Act X, 51

6. ——— Suit to contest enhancement—Act X of 1859, s. 14. Where a rayat on whom notice of enhancement has been served sues under s. 14, Act X of 1859, and fails to show that any excessive rate is demanded from him, or that he is not liable to pay the rent demanded, his suit ought to be dismissed. The Court ought not to go on to try defendant's case as if he were suing for enhancement. **GUNGA NARAIN CROWDHRY v. KOFA PALI**

11 W. R. 377

**ENHANCEMENT OF RENT—concl'd.****8. RIGHT TO DECREE AT OLD RATE ON REFUSAL OF ENHANCEMENT—concl'd.**

arrears of rent of the years 1284, 1285, and also for arrears of rent of the year 1286, the latter at an enhanced rate. The notice of enhancement was not proved, and the defendant insisted that the suit should be dismissed. *Held*, that, though the notice of enhancement had not been proved, the plaintiffs were not thereby precluded from the arrears of rent at the old rate. **Mahomed Rohimooden v. Radha Mohun Mundul**, 6 W. R., Act X, 96 : **Soorascondery Dabee v. Golam Ally**, 15 B. L. R. 125 note. **Brojonath Tewaree v. Grant**, 22 W. R. 13 : **Bhagvan Dutt Jha v. Sheo Mungul Singh**, 22 W. R. 256 ; and **Bhubo Soondurce Choudhrai v. Kasheerath Acherjee**, 22 W. R. 351, referred to. **GHUNSHYAM SINGH v. TARA PRASAD COONDHO**

I. L. R. 8 Calc. 465

10 G. L. R. 447

**ENHANCEMENT OF SENTENCE.**

See CRIMINAL PROCEDURE CODE (Act V of 1898), s. 439

I. L. R. 32 Bom. 162

**ENQUIRY.**

See INQUIRY

See CRIMINAL PROCEDURE CODE, s. 145.  
13 O. W. N. 420

— by purchaser.

See HINDU LAW , 13 C. W. N. 931

**ENTICING AWAY MARRIED WOMAN.**

See ADULTERY . I. L. R. 30 Calc. 910  
7 C. W. N. 143

See COMPOUNDING OFFENCE.

I. L. R. 1 Mad. 191

See PENAL CODE, s. 498

**ENTRY OF NAMES IN VILLAGE PAPER**

See HINDU LAW—PARTITION

I. L. R. 31 All. 412

**EPIDEMIC DISEASES ACT (III OF 1897).**

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE  
I. L. R. 24 Mad. 70

s. 4.—Demolition of property—Non-payment of compensation—S. 4, "done or intended to be done," meaning of—Personal liability of Magistrate for omitting to pay compensation—Magistrate's assessment of value of demolished premises, if final—Plague Regulation A (Calcutta Gazette, 17th October 1900). The words "done or intended to be done" in s. 4 of the Epidemic Diseases Act (III of 1897) do not include omissions. **Jolliffe v. Wallacey Local Board**, 9 C. P. 162, explained and distinguished A Magistrate, who omits to pay adequate compensation in respect of property demolished under the Act, is personally

**8. RIGHT TO DECREE AT OLD RATE ON REFUSAL OF ENHANCEMENT**

1. ——— Refusal of enhancement—Arrears of rent at admitted rate. Where, in a suit for arrears of rent at an enhanced rate, the rent was due under a *kabuliat* on the terms of which it was held that the rent was not liable to enhancement and the enhancement was consequently refused—*Held*, that a decree should not be given for arrears of rent at the rate agreed in the *kabuliat*. **SOORASCONDERY DABEE v. GOLAM ALLY**

15 B. L. R. 125 note : 19 W. R. 142

Affirming the decision of the High Court in **GOLAM ALLY v. GOPAL LALL THAKOOR** . 9 W. R. 65

**HERRONATH ROY v. GOBIND CHUNDER DUTT**  
6 W. R., Act X, 2

**SARODA MOHUN ROY CHOWDHRY v. SHRIDHOSREE DOSSEE** . . . . . 24 W. R. 35

**KASHEE PERSHAD SEN NAZIE v. JANU PERSHAD**  
2 C. L. R. 265

2. ——— Failure to establish grounds—Admitted rate. In a suit for rent at an enhanced rate, where the plaintiff is unable to establish the grounds upon which he claims enhancement, he may have a decree for rent according to the *jumma* for which the defendants admit liability. **BHUBO SOONDURCE CROWDHRAIN v. KASHEENATH ACHARJEA** 22 W. R. 351

**AKASHBUTTY KOORER v. HEERA RAM MUNDUR**  
24 W. R. 82

3. ——— Failure to prove notice—Decree at old rate of rent—Suit for arrears of rent. The plaintiff sued for the

# EPIDEMIC DISEASES 'ACT (III OF 1897)—*concl'd*

s. 4—*concl'd.*

liable and an action will lie against him in respect thereof, even though he may have acted in his administrative capacity as Chairman of the Calcutta Corporation under clause 2 of Plague Regulation A (2), *Calcutta Gazette*, 1900, part 1, page 1144. The Magistrate's decision as to the amount of the compensation to be accorded is not final and can be reviewed by the Courts. *RAY LAL v. R. T. GREER* (1904) I. L. R. 31 Cal. 829 s.c. 8 C. W. N. 881

## EPILEPSY.

death from—

See MEDICAL JURISPRUDENCE.

13 C. W. N. 622

## EQUITABLE ASSIGNMENT.

See CLAIM TO ATTACHED PROPERTY.

I. L. R. 21 Bom. 287

See DEPOSIT OF TITLE-DEEDS

See EQUITABLE MORTGAGE

## 1. — Assignment of mortgage—

A executed a single mortgage of 8 annas of the same lands to D. It was proved that the consideration-money given by C for the lease had been expended in paying off B's mortgage, and that the bond had been taken from C.

see having taken a regular assignment of the bond  
*DULI CHAND v. MONOHAR LALL UPADHYA*

2 C. L. R. 18

2. — Assignment of decree—*Claim of attaching creditor*—Assignee's incomplete equitable title A brought a suit against B, which was dismissed with costs. A subsequently brought a suit against C, in which he obtained an *ex parte* decree and assigned his interest under the decree to D and E. D and E neglected to have their names substituted for that of A on the record. C applied for and obtained an order setting aside the *ex parte* decree, and allowing him to come in and defend the suit on deposit in Court of the sum sued for. At the re-hearing the suit was again determined in favour of A. B thereupon, in execution of his decree for costs, attached the moneys in the hands of the Court in the suit of A against C. D and E obtained an *ad interim* injunction restraining B from meddling with the money, and put in their claim under the assignment.

# EQUITABLE ASSIGNMENT—*cont'd.*

in Court to the credit of S, having been ascertained, was afterwards attached by the defendants judgment-creditors of S, and paid out of Court to the defendants. *Held*, that S had made a valid equitable assignment to the plaintiff, and that the defendants were bound to refund to the plaintiff the moneys paid out of Court to them. *SHARI MULL v. SINGARAVELU MUDALI*

I. L. R. 6 Mad. 294

4. — Assignment by power-of-attorney—*Firm—Partnership—Contract made by one member of firm binding on firm.* The firm of S & Co, the partners of which were W S and F E, took a contract from Government on 12th November 1877 to construct a barrel-house at the Gunpowder Manufactory at Kurkee, and on the 28th November 1877 the plaintiff agreed to advance moneys "up to Rs. 15,000" for the purpose of enabling the firm to execute the contract.

the same day the firm executed a power-of-attorney to the plaintiff, authorizing him to receive from the Government Engineer all such sums to be paid to the firm under the contract, which plaintiff in fact received at Poona.

on 12th of April 1878 he left for England, up to which time the firm had not received any money from the Government.

former one, to make further advances to the firm up to Rs. 16,000 in addition to Rs. 15,000 on the same terms as those mentioned in the previous agreement, and by means of these advances the firm was enabled to complete the contract.

The plaintiff due to his negligence, failed to attach the moneys on 30th September 1878, and the sum attached was paid to the defendant. The plaintiff sued the defendant to recover from him Rs. 634-11-0. *Held*, that the plaintiff was not entitled to recover the sum from the defendant.



**EQUITABLE ASSIGNMENT—*cont'd.***

that the first agreement of 28th November 1877, coupled with the execution of the power-of-attorney to him of the same date, amounted to an assignment to the plaintiff of the sums to become due to S & Co. on the bills passed by the Executive Engineer. *Held*, also, that the second agreement, although made by one member only of the firm of S & Co., with the plaintiff was under the circumstances both necessary to the carrying out of the partnership business and in accordance with the ordinary practice of such partnerships as that of S & Co., and was therefore binding on the firm, and that the two agreements, accompanied by the power-of-attorney, operated as an assignment of all the moneys to become due on the contractors' bills as a security for the plaintiff's advances with interest, and that the plaintiff was therefore entitled to recover the sum claimed from the defendant. *JAGABHAI LALLUBHAI v. RUSTAMJI NASARWANJI* . . . I. L. R. 9 Bom. 311

**EQUITABLE DEFENCE.**

*See* COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT, AND SETTING ASIDE, OF COMPROMISE . I. L. R. 18 Bom. 721

**EQUITABLE ESTATES.**

*Lease—Assignment of lease—Mortgage of lease—Liability of the mortgagee to the landlord—Possession of the mortgagee.* *Held*, that in India there is no distinction between legal and equitable estates, although in ordinary parlance the distinction is often referred to. Hence, when a lessee mortgagee has interest in the land, the mortgagee becomes liable for the rent to the lessor only, if he (the mortgagee) enters into possession of the land or does any act equivalent to entry into possession. *VITHAL NARAYAN & SHRIDHAR SAVANT (1905)* . . . I. L. R. 28 Bom. 391

**EQUITABLE LIEN.**

*See* INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . I. L. R. 23 Cal. 592

**EQUITABLE MORTGAGE.**

*See* BENASHIDAR . I. L. R. 35 Cal. 551

*See* BILL OF EXCHANGE.

I. L. R. 3 Cal. 174

*See* CIVIL PROCEDURE CODE, 1882.

8 C. W. N. 174

*See* DEPOSIT OF TITLE-DEED.

*See* INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . I. L. R. 4 Bom. 333

I. L. R. 19 All. 76

I. L. R. 23 A. 108

*See* MORTGAGE—FORM OF MORTGAGE.

3 N. W. 54

10 C. W. N. 278

I. L. R. 33 Cal. 410

**EQUITABLE MORTGAGE—*cont'd.***

1. ——— Evidence of assignment. To entitle a person to claim as equitable mortgagee, it is not sufficient to show that he paid off the original mortgage, but also that it was his own money that was paid, and that he was to stand in the position of the original mortgagee. *PANDOR-UNO BHAL PUNDIT v. BALKRISHN HUBBAJEE MAHAJUN* . 5 W. R. P. C. 124 : 2 Moo. I. A. 60

2. ——— Agreement creating charge on proceeds of an intended appeal—Property substituted by agreement between decree-holder and third parties for such proceeds—Right to follow

*Notice.*  
due  
The  
the  
present plaintiff under an agreement signed by the appellants, which provided as follows:—"You should first take out of the amount which may be collected from the defendants the whole of the amount incurred on account of the said costs."

to, and the money was paid out to them on their substituting certain other property for the purposes of the charity. The present plaintiff, having obtained a decree on the above agreement, now sought to execute it against the money which had been so paid out. *Held*, that the above agreement constituted a valid charge on the funds realized under the appellate decree, which charge was binding on the payees of the money, and the plaintiff was not bound to proceed against the property substituted by them for the purposes of the charity. *PALANIAPPA v. LAKSHMANAN*

I. L. R. 18 Mad. 429

3. ——— Equitable charge on property purchased—A charge created in favour of the lender of the purchase-money. By the acts of the parties and their relations to one another, money borrowed by an agent for a principal for the purchase of property was rendered a charge upon the later in the principal's hands, he being the real purchaser. The lender of money, which he advanced to the nominal purchaser of property, who was the agent of the real purchaser, made the advance with the knowledge that it was for the principal's purposes, the latter only using the agent's name in the purchase. The nominal purchaser then executed a deed purporting to hypothecate the property for the loan. The

the  
a  
declaration of his title and his right to possession against the nominal purchaser was dismissed

**EQUITABLE MORTGAGE—concl'd.**

Afterwards in the present suit, which the lender brought against both the real and the nominal purchasers: *Held* that, although in regard to the previous judgment it might be difficult to decide that the deed itself constituted a valid hypothecation, the facts of the case were sufficient to show that the lender of the money was entitled to a declaration that the advance of money for the purchase formed an equitable charge upon the property against the real purchaser. **BHAOWATI PRASAD v. RADHA KISHEN SEWAK PANDR**

I. L. R. 15 All. 304

**EQUITABLE RELIEF.**

*See* FORFEITURE . I. L. R. 31 Bom. 15

*Delay and Acquiescence when bar to equitable relief—Limitation Act, 1877, Sch. II, Art. 91.* Delay and acquiescence will not bar the defendant's right to equitable relief unless he knew that he had the right of being a free agent at the time he deliberately determined not to inquire what his rights were or to act upon them.

only to suits by plaintiffs to have instruments avoided. A defendant may, by way of equitable defence, set up the invalidity of a deed, although his right to have it avoided by a suit has become time-barred. *Jugaldas v. Ambashankar*, I. L. R. 12 Bom. 501, distinguished. *Kanganath Sakharam v. Govind Narasimha*, I. L. R. 20 Bom. 639, referred to and followed. **LAKEISHI DOOS v. ROOP LAUL** (1900) . . . I. L. R. 30 Mad. 189

**EQUITY.**

*See* ACCOUNT . 13 C. W. N. 686

*See* ADMINISTRATION . 9 C. W. N. 167

— of purchaser.

*See* HINDU LAW . 13 C. W. N. 615

*Loan borrowed by a*

aside a contract, merely because it flows from moral, not legal, obligations, unless it was proved that the defendant was forced, tricked or misled into it by the plaintiff by means of fraud, using that word not merely in the restricted sense of actual deceit, but in the larger sense of an unconscientious use

I. L. R. 32 Bom. 37

**EQUITY OF REDEMPTION.**

*See* ATTACHMENT—SUBJECTS OF ATTACHMENT—EQUITY OF REDEMPTION

I. L. R. 21 Bom. 226

*See* CIVIL PROCEDURE CODE, 1882, ss. 278, 282, 287 . . . I. L. R. 33 Bom. 311

*See* MORTGAGE . I. L. R. 26 All. 712  
9 C. W. N. 20

*See* MORTGAGE—REDEMPTION.

*See* SALE . . . 9 C. W. N. 225

*See* SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

*See* TRANSFER OF PROPERTY ACT.

I. L. R. 26 All. 279, 593

*See* TRANSFER OF PROPERTY ACT s. 99.

I. L. R. 30 Calc. 463

*See* VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

— clog on—

*See* MORTGAGE . I. L. R. 31 All. 462

— purchaser of worthless—

*See* SALE . . . I. L. R. 36 Calc. 323

1. — Attachment in execution of decree—Attachment—Money-decree. *Semble*: An equity of redemption cannot be taken in execution of a decree for a money-debt under the attachment clauses of Act VIII of 1859. **BRANJANATH KUNDU CHOWDHRY v. GOBIND MANI DAS**

4 B. L. R. O. C. 83

2. — Sale of equity of redemption and purchase by mortgagee. Under Act VIII of 1859, an equity of redemption can be sold in execution of a decree. **SARASWATI DEBI v. NABADWIP CHANDRA GOSSAIN** . . . 5 B. L. R. 360

3. — Position of purchaser—Trustee. A mortgagee cannot, properly in execution of a simple decree for money the repayment of which secured by mortgage, attach and sell the mortgagor's equity of redemption in the property mortgaged; but if he do so and purchase it himself, he becomes a trustee for the mortgagor, against whom he cannot acquire an irredeemable title. **KANINI DEBI v. RAMLOCHUN SIRCAR**

5 B. L. R. 450

4. — Sale in execution of decree—Position and powers of purchaser. A mortgagee, having obtained judgment on the covenant in a mortgage deed, cannot, by becoming the purchaser

*See* s.c. on appeal where the decision, however, seems to have been confined to the special circumstances of the case . . . 10 B. L. R. 60 note

**ERRONEOUS DECISION.**

*See* ERROR IN LAW I. L. R. 30 Mad. 461

## ERROR.

See PARTNERSHIP, ACCOUNT OF.

11 C. W. N. 776

See SALE IN EXECUTION OF DECREE—  
ERRORS IN DESCRIPTION OF PROPERTY  
SOLD.

affecting merits of case.

See APPELLATE COURT—ERRORS AFFECT-  
ING OR NOT MERITS OF CASE.See APPELLATE COURT—REJECTION OR  
ADMISSION OF EVIDENCE ADMITTED  
OR REJECTED BY COURT BELOW.

See WITNESS—CIVIL CASES.

I. L. R. 28 Calc. 37

in law.

See APPEAL—ARBITRATION.

I. L. R. 29 Calc. 167

See RES JUDICATA. I. L. R. 30 Mad. 461

See SPECIAL OR SECOND APPEAL—OTHER  
ERRORS OF LAW AND PROCEDURE.See SPECIAL OR SECOND APPEAL—  
GROUNDS OF APPEAL

of law.

See SECOND APPEAL. 11 C. W. N. 1028

setting aside conviction for.

See ACCOMPLICE.

R. L. R. Sup. Vol. 459 : 57 W. R. Cr. 80

3 B. L. R. F. R. 2 note

5 W. R. Cr. 59

I. L. R. 14 Bom. 115

See REVISION—CRIMINAL CASES.

1. ——— Accused—Offence  
triable as a warrant case—Conviction of offence triable  
as a summons case—Absence of charge—Conviction,  
legality of—Material error—Criminal Procedure Code  
(Act V of 1898), ss. 232, 242 and 254—Penal Code  
(Act XLV of 1860), ss. 143 and 379. When a case  
is being tried as a warrant case, and a charge is  
drawn up of an offence which is triable as a warrant  
case, and it is intended to proceed against the ac-  
cused also for an offence which is triable only  
as a summons case, that offence should form part  
of the charge. Where an accused person was sum-  
moned for offences under ss. 143 and 379 of the  
Penal Code, and the trying Magistrate drew up a  
charge only for the offence under s. 379, but con-  
victed the accused only for the offence under s. 143  
of the Code; *Held*, that the offence under s. 143  
should have formed part of the charge, and that  
the accused was misled in his defence by the  
absence of such a charge. *HOSSEIN SARDAR v.*  
*KALU SARDAR* (1902)

I. L. R. 29 Calc. 481; s. c. 8 C. W. N. 599

2. ——— in law—Erroneous decision—Sub-  
sequent suit—*Res judicata*. An erroneous decision on  
a question of law in a previous suit is no bar, in a  
subsequent suit between the same parties, to the  
Court deciding the same question, provided the  
decision in the latter suit does not in any way ques-

ERROR—*con. id.*

tion the correctness of the former decree or in any  
way affect its operation. *Gopu Kolandavelu*  
*Chetty v. Sami Royar*, I. L. R. 28 Mad. 517, referred  
to. *Almunissa Choudhuran v. Shama Charan*  
*Roy*, I. L. R. 32 Cal. 749, referred to. *Koyyina*  
*Chittamma v. Doosy Gattaramma*, I. L. R. 29 Mad.  
225, referred to. *MANGALATHAMMAL v. NARAY-*  
*ANSWAMI Aiyar* (1907). I. L. R. 30 Mad. 461

## ESCAPE FROM CUSTODY.

See ARREST—CRIMINAL ARREST.

See CONTENT OF COURT—PENAL CODE.  
s. 17 . . . . . 1 Bom. 38See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY  
IN ONE DISTRICT—ESCAPE FROM CUS-  
TODY . . . . . 1 Bom. 139

See PENAL CODE, s. 174 7 Mad. Ap. 44

See PENAL CODE, s. 186 . . . . . 2 Bom. 134  
I. L. R. 23 Calc. 759

See PENAL CODE, ss. 223-226.

See SENTENCE—GENERAL CASES.

8 W. R. Cr. 85

1. ——— Criminal offence—Police  
Amendment Act, Presidency Towns (XLVIII of  
1860), s. 8—Offence at Common Law. To escape  
from custody under civil process is not a criminal  
offence within the meaning of s. 8 of the Presidency  
Towns Police Amendment Act of 1860. *Quare*:  
Whether such an escape without force is a mis-  
demeanour at Common Law. *REG v. CONNOR*  
8 Bom. Cr. 15

2. ——— Arrest under civil process—  
escape from—Criminal liability of officer suffer-  
ing escape—Penal Code (Act XLV of 1860), s. 223.  
S. 223 of the Penal Code applies only to cases  
where the person who is allowed to escape is in  
custody for an offence or has been committed to  
custody, and not to cases where such person has  
merely been arrested under civil process.  
*QUEEN-EMRESS v. TAPALLAH*

I. L. R. 12 Calc. 193

3. ——— Custody of Sheriff—Relaxa-  
tion of imprisonment—Custody in private house.  
If a Sheriff, upon the representation of a debtor's

of custody, even for a week only, he cannot, by  
any agreement which he might have made with the  
debtor, afterwards retake him, although the debtor  
may have agreed that, if he does not pay the money  
within a week, he shall be retaken. A debtor  
removed from prison under a rule of Court, whether  
with or without the consent of his creditor, and  
kept in charge of a Sheriff's officer in a private  
house, is still in the custody of the Sheriff. The  
Sheriff may, without a rule of Court, refuse to allow  
the debtor to reside out of prison, though the credi-

**ESCAPE FROM CUSTODY—contd.**

tor may have consented to it. When the Sheriff and all parties consent to the debtor being kept in custody in a private house, the Sheriff is liable to an action for escape on proof of want of proper care and surveillance; but it would be a matter of fact for a jury to consider whether the creditor, being in some measure instrumental to the escape, ought to recover against the Sheriff. *HAINES v. EAST INDIA COMPANY*

4 W. R. P. C. 89 : 6 Moo. I. A. 487

4. ——— Arrest under process of Revenue Court—*Civil Procedure Code, 1877, s. 651*—"Revenue Court."—A Revenue Court is a "Court of Civil Judicature" within the meaning of a 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. *EMPRESS v. HARAKHATH SINGH*

I. L. R. 4 All. 27

5. ——— Arrest in absence of warrant—*Civil Procedure Code, 1877, s. 651*—Arrest in execution of decree—Possession of warrant of arrest. The apprehension of a defaulting debtor is execution

making the apprehension. *EMPRESS v. AMAR NATH*

I. L. R. 5 All. 318

6. ——— Discharge by Judge—Liability of Sheriff. Where a prisoner is

ordered, but no warrant of commitment is drawn up, and the Sheriff delivers the prisoners to the jailor, with no other document than his own order to his bailiff to arrest the prisoner and the latter, in consequence, is discharged from custody by a Judge on application on a writ of *habeas corpus*—*Held*, that the Sheriff is not liable for an escape. *MARHED CONJEE v. DUNDAS*

1 Ind. Jur. N. S. 228

7. ——— Custody for offences not punishable under Penal Code—*Criminal offence*. Escapes from custody by parties detained for offences not punishable under the Penal Code, are punishable under the Penal Code. *ANONYMOUS*

3 Mad. Ap. 11

8. ——— Custody from inability to give security. A person in custody from his inability to give security is not in custody for an offence with which he has been charged or of which he has been convicted. He cannot, therefore, be convicted of escaping from such custody under a 224 of the Penal Code. *ANONYMOUS*

3 Mad. Ap. 23

9. ——— Custody of village officers—*Penal Code, s. 224*. Escape from the custody of a

**ESCAPE FROM CUSTODY—contd.**

village watchman by a person wanted by the police on a charge of theft and arrested on suspicion by the village watchman, is no offence under s. 214 of the Penal Code. *Queen v. M. Sinnadu Padiyachi, Wier 65, followed QUEEN v. BOJJIGAN*

I. L. R. 5 Mad. 22

10. ——— *Penal Code (Act XLV of 1860), s. 224*—Escape from custody of village officers—*Madras Regulation XI of 1816, s. 5*. On a charge under the Penal Code, s. 224, it appeared that the accused had been apprehended on a hue and cry being raised as he was running away after committing robbery, and that he was handed over to the Village Magistrate, and was by him placed in the charge of taliyaries for detention till the next morning when he was to be taken to the police station, and that he escaped from the custody of the taliyaries. *Held*, distinguishing *Queen v. Bojjigan, 1. L. R. 5 Mad. 22*, that the accused was rightly convicted of the offence charged. *QUEEN-EMPRESS v. FAKIRA*

I. L. R. 17 Mad. 103

11. ——— Custody while giving security for good behaviour—*Penal Code, s. 224*. The defendant, being detained in custody for the purpose of giving security for good behaviour, escaped from that custody. *Held*, that he had not committed an offence under a 224 of the Penal Code. *ANONYMOUS*

7 Mad. Ap. 41

12. ——— *Penal Code, s.*

He was convicted under s. 224 of the Penal Code. On appeal, the conviction was reversed on the ground that the custody was not legal. *Held*, that the conviction was right. S 50 of the Code of Criminal Procedure, which requires a private person who arrests a thief in the act to take the thief to the nearest police station, is sufficiently complied with by sending the offender in custody of a servant. *QUEEN-EMPRESS v. POTADU*

I. L. R. 11 Mad. 480

13. ——— Arrest of person required to give security for good behaviour—*Escape from such arrest—Conviction for such escape illegal—Act XLV of 1860, s. 40—Criminal Procedure Code, ss 55, 110, 117, 118*. An order was issued to a police officer directing him to arrest K under s. 55 of the Criminal Procedure Code as a person of bad livelihood. K, with the assistance of three others,

been committed in connection with his evasion of arrest. *Empress v. Shasti Churn Napti, I. L. R. 8 Cal. 331, followed. QUEEN-EMPRESS v. KAKHARA*

I. L. R. 7 All. 87

ESCAPE FROM CUSTODY—*contd.*

14. ———— Escape while being taken before Magistrate—*Penal Code, ss. 224, 225—Subsequent conviction for such escape.* An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code. *EMPRESS v. SHASTI CHURN NAPIIT*

I. L. R. 8 Cal. 331 : 10 C. L. R. 290

15. ———— Escape from transportation—*Penal Code, ss. 224, 226.* To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convicts should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation :—*Held*, that he had committed an offence punishable under s. 224, and not under s. 226, of the Penal Code. *QUEEN v. RAMASAMY* . 4 Mad. 152

16. ———— Apprehension without warrant—*Penal Code, s. 224.* Where a person apprehended on a charge of a cognizable offence escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognizable offence, the police officer who apprehends him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224. *QUEEN v. RAM SARAN TEWARY*

24 W. R. Cr. 45

17. ———— *Penal Code (Act XLV of 1860), s. 224—Madras Salt Act (Madras Act IV of 1839), ss. 46 and 47—Right to arrest person without warrant in search for contraband salt.* The Madras Salt Act, 1839, only authorizes searches for contraband salt and arrest of the parties concerned in the keeping of such salt to be made by officers of the Salt Department without search-warrant in cases where the delay in obtaining such search-warrant will prevent the discovery of such contraband salt. *Held*, that, where the circumstances did not justify the officer in believing that the delay in obtaining a search-warrant would prevent the discovery of contraband salt, he had no power to search or arrest persons without such warrant, and the escape by the persons so arrested from custody was no offence within the meaning of s. 224 of the Penal Code. *QUEEN-EMPRESS v. KATIAN* . I. L. R. 19 Mad. 310

18. ———— Escape from confinement negligently suffered by public servant—*Escape from confinement intentionally suffered by public servant—Penal Code, ss. 222, 223—Criminal Procedure Code, ss. 61, 167.* While a case was being investigated by A, a police officer, under the provisions of Ch. XIV of the Criminal Procedure Code, T prevented a petition to the Magistrate having jurisdiction to try the case, in which he accused W

ESCAPE FROM CUSTODY—*contd.*

of .....  
and  
the  
acc  
trace, who, having examined a copy of the statement, made an order on the petition to the following effect: "As no police report has been made in this matter, and the petitioner only has presented this petition, ordered that these papers of W be sent to the District Superintendent of Police, and if a report of this matter be made, the case may be sent up according to rule with the papers." In accordance with this order, W was taken to the District Superintendent of Police, and was sent by that officer to A. *Held*, that the Magistrate's order might be taken to have been passed under s. 167 of the Code, and therefore W was lawfully committed to the custody of the police, and A was bound to detain him in such custody until released therefrom by due course of law; and that consequently A, having negligently suffered W to escape, had been properly convicted under s. 223 of the Penal Code. *EMPRESS v. ASHRAF ALI* . I. L. R. 6 All 129

19. ———— Irregular endorsement of warrant—*Penal Code (Act XLV of 1860), s. 224—Criminal Procedure Code, 1898, s. 79.* An endorsement on a warrant of arrest under s. 79 of the Criminal Procedure Code should be regularly made by name to a certain person in order to authorize him to make the arrest. Where an endorsement was made to the officer of a certain police station without the name of such officer being given :—*Held*, that the arrest under the warrant was not legal so as to make any escape an offence under s. 224 of the Penal Code. *MURGA TEWARY v. RAHMAT BUKSH* . 4 C. W. N. 85

20. ———— Obstructing public servant in his duty—*Penal Code, ss. 186, 224.* Escaping from lawful custody is not obstructing a public servant in the execution of his duty within the meaning of s. 186 of the Penal Code. *Reg. v. POSHUBIN DHANBAJI PAUL*

2 Bom. 134 : 2nd Ed. 128

21. ———— Right of entry in pursuit of prisoner escaped—*Entry into lodging-house.* Court peons may pursue into the yard of a lodging-house, the door leading into which is open, a prisoner who has escaped from their custody. *DUKHOO v. CHUNDRO KANT CHOWDHRY*

3 W. R. Cr. 68

22. ———— Rescue from lawful custody—*Penal Code, s. 225.* Before a conviction can be had under s. 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody at the time. *QUEEN v. DECEMBER ADIR* . 21 W. R. Cr. 22

23. ———— *Penal Code, s. 225.* Where a police officer, duly appointed under Act V of 1861, was engaged in the discharge of his duty as such police officer at a time when an unlawful assembly took place, it was held that he was

ESCAPE FROM CUSTODY—*contd.*

competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code. *QUEEN v. ASSAM SHUREFF*  
13 W. R. Cr. 75

24. ————— *Penal Code, s. 225—Criminal Procedure Code, s. 59—Arrest of thief—Rescue from custody of private person.* To support a conviction under s. 225 of the Indian Penal Code, it is not necessary that the custody from which the offender is rescued should be that of a policeman; it is enough that the custody is one which is authorized by law. *Held*, therefore, that rescue from the custody of a private person who had arrested a thief in the act of stealing was an offence. *QUEEN-EMPRESS v. KUTTI*

I. L. R. 11 Mad. 441

25. ————— *Person unlawfully arrested by a private person and made over to village-chaukidar—Rescue from custody of village chowkidar—Lawful custody—Penal Code (Act XLV of 1860), s. 225—Criminal Procedure Code (Act V of 1893), s. 59—Village Chowkidars Amendment Act, 1870 (Bengal Act I of 1892), s. 13.* S, who was alleged to have committed theft, was unlawfully arrested by a private person and made over to the custody of the village-chowkidar. The theft was not committed in view of such private person. S was rescued from the custody of the village-chowkidar by the accused. The accused were convicted under s. 225 of the Penal Code, and sentenced each to two months' rigorous imprisonment. *Held*, that a village chowkidar cannot be properly regarded as a police-officer within the terms of s. 59 of the Code of Criminal Procedure, and that S, therefore, was not in lawful custody at the time of his rescue. Conviction and sentence set aside. *KALAI v. KALU CHOWKIDAR*

I. L. R. 27 Calc. 368

4 C. W. N. 252

26. ————— *Escape where detention is not for an offence—Penal Code (Act XLV of 1860), s. 224.* An offence was committed in 1866. In 1893 a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest, the accused escaped from custody. *Held*, that he was not liable to conviction under s. 224 of the Penal Code. An escape from custody when such detention is not for an offence, is not punishable under that section. *GANOA CHARAN SINGH v. QUEEN-EMPRESS*

I. L. R. 21 Calc. 337

27. ————— *Escape from lawful custody—Penal Code (Act XLV of 1860), s. 224.* The accused having been legally arrested, was subsequently left unguarded and he escaped. He was then re-arrested, and was tried and convicted under the Penal Code, s. 224. *Held*, that the conviction was right. *QUEEN-EMPRESS v. MURRAY*

I. L. R. 18 Mad. 401

28. ————— *Omission to notify substance of warrant—Criminal Procedure Code*

ESCAPE FROM CUSTODY—*contd.*

(Act V of 1893), s. 80—*Penal Code (Act XLV of 1860), s. 225B.* An arrest by a police-officer without notifying the substance of the warrant to the person against whom the warrant is issued, as required by s. 80 of the Criminal Procedure Code, is not a lawful arrest, and resistance to such an arrest is not an offence under s. 225B of the Penal Code. *SATISH CHANDRA RAI v. JODU NANDAN SINGH*  
I. L. R. 26 Calc. 748  
3 C. W. N. 741

But see *QUEEN-EMPRESS v. BASANT LALL*  
I. L. R. 27 Calc. 320

29. ————— *Aid of chaukidar—Power of a police-officer to demand aid of a chaukidar in arresting an accused—Code of Criminal Procedure (Act V of 1893), s. 42 (a)—Lawful arrest—Lawful custody.* A police-officer lawfully authorised to arrest a person can demand the aid of a chaukidar, under s. 42 (a) of the Code of Criminal Procedure, in preventing the person from escaping by a certain path, and the custody of a person so taken by the chaukidar is, for the time being, lawful custody. *MANIK PAN v. KENARAM SINDAR (1901)*  
3 C. W. N. 337

30. ————— *Arrest by private person—Penal Code (Act XLV of 1860), ss. 224, 411—Escape from lawful custody—Actual thief arrested by private person whilst in possession of stolen property—S. 411 of the Indian Penal Code not applicable to the thief himself.* S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person whose bullock had been stolen in his absence traced it to the house of the thief, and there and then arrested him, and made him over to a chaukidar, from whose custody he escaped, it was held, that this was not an escape from lawful custody, within the meaning of s. 224 of the Code. *Seemle*. That, if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the chaukidar would have been a lawful custody. *Queen-Empress v. Potadu*. I. L. R. 11 Mad. 480, referred to. *KISO-EMPEROR v. JOHRI (1901)*. I. L. R. 23 All. 268

31. ————— *"Offence"—Arrest—Cognizable offence—Escape from lawful custody—"For any such offence," meaning of—Code of Criminal Procedure (Act V of 1893), s. 51—Penal Code (Act XLV of 1860), ss. 144 and 224.* The words, in s. 224 of the Penal Code, "for any such offence" mean for any offence with which a person is charged or for which he has been convicted. So

accused person is no less guilty than a convicted person, if he escapes from lawful custody. In the present case the petitioners were arrested by the police under the authority of a 64 of the Code of Criminal Procedure. That arrest was perfectly

**ESCAPE FROM CUSTODY—concl'd.**

lawful, and the subsequent detention was in lawful custody. *Ganga Charan Singh v. Queen-Empress*, I. L. R. 21 Calc. 337, distinguished.

DEO SAHAY LALL v. QUEEN-EMPRESS (1900).

I. L. R. 28 Calc. 253 : s.c. 5 C. W. N. 289

**ESCHEAT.**

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS  
I. L. R. 12 Mad. 287

See GRANT—CONSTRUCTION OF GRANTS  
I. L. R. 1 Calc. 391

See ILLEGITIMACY . 11 B. L. R. 144

See INANDAR . I. L. R. 28 Bom. 276

See LETTERS OF ADMINISTRATION.  
10 C. W. N. 1085

See MALABAR LAW—MORTGAGE  
I. L. R. 10 Mad. 189

See REGULATION V OF 1799, s. 7  
I. L. R. 29 All. 277

1. ——— Onus probandi—*Jus tertii*. In a suit by the Crown claiming lands as an escheat, which are admittedly in the possession of the parties claiming as heirs, the onus is on the Crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the Crown. *GIRIDHARI LALL ROY v. GOVERNMENT OF BENGAL*  
1 B. L. R. P. C. 44 : 10 W. R. P. C. 31

so in High Court. *GOVERNMENT v. GREE-DHAREE LALL ROY* . . . 4 W. R. 13

2. ——— Territorial law of India. The illegitimate son of an Englishman by a Mahomedan woman died intestate without lawful issue.

English law. *SECRETARY OF STATE v. ADMINISTRATOR GENERAL OF BENGAL* 1 B. L. R. O. C. 87

3. ——— Cause of action—*Possession—Title*. The period during which the Government may sue on total failure of natural heirs dates from the time when the failure of heirs or reversions be-

4. ——— Brahmin dying without heirs—*Right of Crown*. On the death of a Brahmin (whether sacerdotal or not) without heirs, the Sovereign power in British India is entitled to take his estate by escheat, subject, however, to the trusts and charges previously affecting the estate. *COLLECTOR OF MASULIPATAN v. CAVALY VENCATA NARAINAPAH*  
2 W. R. P. C. 59 : 8 Moo I. A. 500

**ESCHEAT—cont'd.**

5. ——— Sale by proprietors free of revenue—*Death of holder without heirs*. The proprietors of a mehal held free of revenue transferred by sale all their rights and interests in a garden situated within the area of the mehal. When revenue was imposed on the mehal, no interference with the rights of the holder of the garden took place. Revenue engagements were not taken from him, and he remained, as before, a proprietor, although not a proprietor who engaged for the revenue of the mehal. *Hell*, that the garden did not escheat to the zamindars of the mehal on the death of the holder without heirs. *CHIRAGHAN v. HARBANS* . . . 7 N. W. 213

8. ——— Failure of male heirs—*Acquiescence—Waiver of right—Succession of females*. A suit by the Government for the possession of the polliam of Erasca Naikoor in Madras as an escheat for want of male heirs dismissed, the Government having acquiesced in the right of female succession to the polliam, and possession having been held for a period of eighteen years after the alleged escheat. *COLLECTOR OF MADURA v. VEERACAVOO UNVAL*  
8 Moo. I. A. 446

7. ——— *Quere*. As to whether natural relationship to an adopted son would be efficacious to intercept an escheat to the Crown. *MUTHAYYA RAJAGOPALA THEVAR v. MINAKSHI SUNDARA NACHIAR* (1901)  
I. L. R. 25 Mad. 394

**ESTATES-LAND ACT (MAD I OF 1808).**

s. 189—*Civil Courts have jurisdiction to hear and determine suits instituted before Act came into force*. S. 189 of the Madras Estates Land Act does not take away from Civil Courts the jurisdiction to hear and determine suits which were taken cognizance of by them before the Act came into operation. The section merely bars cognizance of suits and says nothing of pending suits. *Sadanva Pillai v. Kallappa Mudaliar*, I. L. R. 24 Mad. 39, referred to. *Vedavilli Narayiah v. Mangamma*, I. L. R. 27 Mad. 538, referred to. *SUBBARAYA MUDALIAR v. RAKKI* (1908) . . . I. L. R. 32 Mad. 140

**ESTATES PARTITION ACT (BENG. VIII OF 1876).**

See PARTITION

See PARTITION ACTS

s. 31.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION  
I. L. R. 15 Calc. 188

ss. 112, 118.

See PENAL CODE, s. 186  
I. L. R. 22 Calc. 286

s. 116—*Order excluding lands from partition—Suit to direct partition of lands excluded—Limitation Act (XV of 1877), Sch. II,*

# ESTATES PARTITION ACT (BENG. VIII OF 1876)—concl'd.

s. 116—concl'd.

*Art. 14.* Under s. 116 of the Estates Partition Act (Bengal Act VIII of 1876) the Collector can only adopt one of two courses, if any objection is raised before him that a particular plot of land does not appertain to the estate under partition, namely, either to strike off the partition or proceed with the partition, treating the disputed land as part of the estate. Where in proceedings under the Estates Partition Act (Bengal Act VIII of 1876), certain persons objected that certain lands did not appertain to the estate under partition and the Collector passed an order excluding the disputed lands from partition. *Held*, that the order of the Collector was not such an order as he could pass under s. 116 of the Act and was consequently a nullity, and that Art. 14 of Sch. II of the Limitation Act did not apply to it. *Bejoy Chand Mahatab Bahadur v. Krisna Mohini Dasi*, I. L. R. 21 Calc. 226; *Shiraji Yesu Chawan v. The Collector of Ratnagiri*, I. L. R. 11 Bom. 429; *Naga v. Yalu*, I. L. R. 15 Bom. 424; *Narendra Lal Khan v. Jogi Hari*, I. L. R. 32 Calc. 107, followed *Parbati Nath Dutt v. Rajmahun Dutt*, I. L. R. 29 Calc. 369, distinguished. *ALIMUDDIN v. ISHAN CHANDRA DEX* (1906) . . . I. L. R. 33 Calc. 693

ss. 116, 148, 150.

*See* LIMITATION ACT, 1877, SCH. II, ART. 14.  
I. L. R. 29 Calc. 367  
I. L. R. 24 Calc. 149

s. 123.

*See* SALE FOR ARREARS OF REVENUE—  
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I. L. R. 24 Calc. 687

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4 B. L. R. O. C. 103  
9 B. L. R. 377

*See* HINDU LAW—WILL—CONSTRUCTION  
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I. L. R. 11 Calc. 684  
I. L. R. 12 I. A. 103  
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L. R. 16 I. A. 29

## ESTOPPEL.

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3. ESTOPPEL BY DEEDS AND OTHER  
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*See* APPEAL . . . I. L. R. 30 All. 46.

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*See* BENGAL TENANCY ACT, s. 110.

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*See* BHAGDARI AND NARWADARI ACT.

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*See* CIVIL PROCEDURE CODE, 1882, s. 13.

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*See* CIVIL PROCEDURE CODE, 1882, s. 244

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by Assent of reversioner to alienation by widow.

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See LEASE—CONSTRUCTION

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of minor by act of guardian.

See LAND ACQUISITION ACT, s. 19

I. L. R. 17 Bom. 299

**1 STATEMENTS AND PLEADINGS.**1. ——— Proof of estoppel. Estoppels must be made out clearly *TWEEBIE v POORNOCHUNDER GANGOOLY* . . . . .

8 W. R. 125

2. ——— Statement in former suit—Estoppel in *pass*—Pleadings—Decision on plead-**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

*ings* An estoppel *in pass* need not be pleaded in order to make it obligatory. With the Indian system of pleading, a party's statement in a judicial proceeding cannot be excluded like allegations in

bodied therein as must have been found affirmative to warrant the judgment of the Court upon the issues joined. They are then conclusive between the same parties, not because they are the statements of those parties, but because, for all purposes of present and prospective litigation, they must be taken as truth. A brought a pauper suit, and virtually denied possession of certain property. B petitioned to dispauper A, alleging that A was possessed of such property. The Court decided that A was in possession, and rejected her prayer to be allowed to sue as a pauper. Held, in a subsequent suit by A's representative against B's representative for the property, that, even if A's allegation, found to be false, could be treated as

3. ——— Admission. A plaintiff's statement in a former suit held not to bind him conclusively. It should be taken as an admission. *JUGUTENDUR BUNWARER v DIN DYAL CHATTERJEE* . . . . .

1 W. R. 310

*BISSESSUREE DEBER v JANKEE DOSS*

1 W. R. 162

*KHANTONKEE DEBIA v KOMODINEE DEBIA*

25 W. R. 68

4. ——— Denial of genuineness of mortgage—Subsequent suit to redeem. F sued to eject K from certain land, alleging that K, having entered under a lease, held as a trespasser. K pleaded that he held as mortgagee. It was found that K obtained possession under a mortgage deed for Rs. 1,000, which had not been registered, and that he held also a second mortgage for Rs. 50, and it was held on second appeal that K was entitled to defend his possession by virtue of the mortgage for Rs. 50, and as F had not offered to redeem the charge, but had sued on false averments, the suit was dismissed. F then sued K to recover the land on payment of Rs. 50. In his plaint F stated that, though the mortgage-deed for Rs. 50 was fabricated, the High Court had decided that he was bound to pay Rs. 50 before recovering

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**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

not sue for redemption. *Held*, that V was entitled to redeem. **VARATHAYANAR v KRISHNASAMI**

**I. L. R. 10 Mad. 102**

5. ——— *Admission not amounting to estoppel—Statement in suit for enhancement as to certain person being tenant.* A patnidar obtained decrees for enhancement of rent on kabuliats signed by a widow for her minor son, by which she agreed to pay it. *Held*, while finding that the minor was liable for the enhanced rent, that the patnidar was not precluded by the fact that he had, after the son had attained full age, sued the mother as tenant, stating that she, and not the son, was tenant. **WATSON & Co. v. SHAN LALL MITTER**

**I. L. R. 15 Cal. 8**  
**L. R. 14 I. A. 178**

6. ——— *Plea in former suit—Contrary defences* *Held*, that the defendants, having in a previous suit set up the defence that K was disqualified by insanity and taken the decision of the Court on that ground, were estopped now from setting up the defence that he was not so disqualified, and that he was entitled to succeed. **BRISHBOOKUN LAL AWASTEE v MAHADEO DOREY**

**15 B. L. R. 145 note: 17 W. R. 422**

7. ——— *The plaintiff sued kabuliats it was disputed.*

being in issue in the former suit. **GOBINATH ROY CHOWDHURY v RAOHONATH MITTER**

**Marsh. 43: W. R. F. B. 10: 1 Hay 75**

**JUOOUT MISSEER v BABOO LAL**

**5 W. R. Cr. 50**

8. ——— *Admission by party in other cases—Case between different parties* An admission made by a party in other cases may be taken as evidence against him, but cannot operate against him as an estoppel in a case in which his opponents are persons to whom the admission was not made, and who are not proved to have ever heard of it, or to have been misled by it, or to have acted in reliance upon it. **CHUNDERKANT CHUCKERBUTTY v PEARCE MOHUN DUTT**

**5 W. R. 209**

9. ——— *Statement in former suit—Assertion as to nature of tenure of land* *Held*, that the plaintiff's assertion in a former suit claiming as "mahikana" the land now in dispute, even if the identity of the land now claimed with the land then in suit be established (which had not been done), does not absolutely preclude him from asserting "mourasi" right to the same land and the Court from adjudging his true right. **RAM SAHAY MISSEER v BISRAJ SINGH**

**1 Agra Rev. 19**

10. ——— *Denial of pottah.* A raiyat is estopped from pleading, in a suit for a

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

kabuliats and for determination of the rate at which such kabuliats is to be delivered, a pottah which he deemed in a former suit for rent. **MAHOMED HOSSEIN v. PERROO MULLICK**

**W. R. 1864, Act X, 115**

12. ——— *Admission—Re-*

made a decree not founded upon it. The plaintiffs thereupon sued for the sum the receipt of which they had so admitted. *Held*, that such admission was evidence against them. **BIHUNUNT NARAIN JHA v LOLL JHA**

**Marsh. 48: 1 Hay 114**

**LOLL JHA v. BIHUNUNT NARAIN JHA**

**1 Ind. Jur. O. S. 104**

13. ——— *Contradictory statements.* *Held*, that the former statement of the plaintiff, which was at variance with the one now made, was not an estoppel, but the Court ought to have determined which of the two statements was correct. **JOY NARAIN v TORARUN**

**3 Agra 216**

14. ——— *Pleading—Inconsistent claims* Where a plaintiff deliberately claimed lands as rent-free, he was not allowed, merely on the ground of the proprietor admitting the lands to be leased to plaintiff's vendors, or even of the defendant making a somewhat similar admission, to benefit by such admissions and vary his claim. **NIDHA CHOWDHURY v. BUND & LALL TACOON**

**6 W. R. 289**

15. ——— *Admission.* Because the decree in a former suit against the present plaintiff and the alleged holders of a separate half share awarded to another co-sharer who was the plaintiff in that case, owing to a mistake of that plaintiff supported by the admission of the present plaintiff less than he was legally entitled to, the mistake need not be perpetuated, nor will his former admission estop the plaintiff in a subsequent suit. **RAM SURBOHEE SINGH v. KASHEE ROY**

**8 W. R. 176**

16. ——— *Survey award made without authority.* In a suit for certain

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

Immoveable property it was held that the plaintiffs were not bound by an Act IV award against a person in whose name the property had been purchased by the father of the plaintiffs, but who had not either title or interest in the property, and did not conduct the Act IV proceeding with any authority from the plaintiffs. *Held*, too, that plaintiffs were not estopped by statements made by them as parties in another suit, which did not affect their status—nor by their failure to set forth their title in a former suit brought against them for mesne profits of the land in dispute. *MOHENDRA NATH MULLICK v. RAKHAL DOSS SIRCAR*. . . . . 10 W. R. 344

17. ————— *Finding against statement.* The allegation of a plaintiff in a former suit was referred to arbitration, having been

*CHUNDER DUTT v. HISSAN MOHUN SHAHA*. . . . . 8 W. R. 68

18. ————— Plaintiffs sued for their share in the property of their family. The Judge rejected their claim, mainly on the ground that, when parties in a former suit respecting the same property, they had pleaded division, and the Court found that the family was undivided. *Held*, that the Judge was wrong in attributing to the plaintiff the plea of division in the former suit, and, even if such plea had been raised, the judgment in that suit, pronouncing the status of the family to be that of non-division, was conclusive on that subject, and that it was open to the plaintiffs to sue for enforcement of their rights to effect a division. *SANGOOVEN v. KOLLATHOORAYEN*. . . . .

1 Ind. Jur. O. S. 116

*WATSON v. POKHUR DOSS PAUL MOHNEE DOSSEE v. POKHUR DOSS PAL*. . . . . 4 W. R. 2

19. ————— *Disclaimer of defendant.* The plaintiff sued for a quantity of land which was family property in the possession of his brother, the defendant. The defendant in a former suit declared that the land sued for was not family property, but belonged to his sister, and in this suit he claimed the property under her will. The lower Court found that the property was family property, but that the plaintiff was entitled to a decree for the

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plaintiff was only entitled to a decree for a moiety of the property. *VELLAIN CHETTY v. AYYAN alias THUNDANMURTY CHETTY*. . . . . 4 Mad. 374

20. ————— *False statement in plaint.* A plaintiff is not estopped by an evidently false statement in his plaint as to possession, but the Court may look behind the statement and determine

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

upon its truth or otherwise and affirm or disallow it, as may seem right and proper. *CHOONEE LALL v. KERAMUT ALI*. . . . . W. R. 1884, 282

21. ————— *Erroneous admission in petition.* A party is not bound by an erroneous admission in a petition. *KRISTO PREA DOSSEE v. PUDDO LOCHUN MYTEE*. . . . . 8 W. R. 288

22. ————— *Statement of dispossession in petition.* Suit subsequently brought alleging possession. A statement of dispossession made in a petition preferred under s. 269 of Act VIII of 1859 by a person claiming land sold in execution of a decree, and ordered to be put in possession of the auction-purchaser, cannot operate as an estoppel in a suit subsequently brought by the claimant to "establish her right" on the allegation of her being in possession of the land in question. *KHANUM JAN v. RUTTON LAL*. . . . . 8 W. R. 85

23. ————— *Statement by stranger to suit—Transfer of interest of judgment-debtor—Liability.* Where a person filed a petition in a suit stating that all the interests of the judgment-debtor had been transferred to him, and for several years

so deal with a judgment-debtor as to acquire an interest in the suit which will enable him to oppose and prevent the execution of the decree, without rendering himself liable to be put upon the record as a judgment debtor. *LALLA POOROHIT LALL v. SAREERUN*. . . . . 7 W. R. 388

24. ————— *Contradictory statements—Admission.* In proceedings under Act XXVII of

25. ————— *Admission of father as to ancestral property.* How far binding on sons. In the case of ancestral property the admission of a father may be used as evidence against his sons, but is not conclusive, and does not stop the sons from contending that such admission was collusive or erroneous. *NOORBU RAM v. DOORABEE SINGH*. . . . . 2 Agra 145

26. ————— *Plea in former suit—Denial of will.* *Held*, that the plaintiffs were not estopped in a suit under a will for a legacy by the denial

**ESTOPPEL—contd.****I. STATEMENTS AND PLEADINGS—contd.**

of the will by the persons through whom they claimed. **NANA NARAIN RAO v. RAMA NUND**

2 Agr. 171

27. ————— **Erroneous pleas—Subsequent contradictory evidence.** In a suit for land the defendant pleaded that the land was his ancestral estate. He subsequently tendered evidence, then

28. ————— **Admission by reversioner—Suit by party to prevent sale of property in which he has an interest.** Held, that a party was not estopped from bringing a suit to bar sale of a property in which he had a reversionary right by the fact that he had admitted on previous occasions that he had no present right in the property. **SUNJ BAREE v. PAJAG PATUK**

I N. W. Part II, 5; Ed. 1873, 65

29. ————— **Admission of predecessor in title—Interest in property—Decree.** When the

18) notwithstanding a decree under which the property was sold as the property of the admitting person and another co-debtor. **BERIN BEHAREE SIRCAR v. NILMONI SINGH DEO** . 25 W. R. 125

30. ————— **Admission of having transferred rights—Failure of transferee to prove it.**

merely because it had failed to prove his title against **C. HURO PERSHAD ROY CHOWHERRY v. RAM CHANDER BABOO** . 7 W. R. 300

31. ————— **Admission in former suit—Effect between different parties.** To a suit brought by certain mortgagees against the inamdars to enforce

gages. The present zamindar, son and successor of the grantor of 1863, now sued claiming that he had determined the tenancy by a notice to quit. *Held*, that the above did not operate as any estoppel as between the plaintiff and the inamdars, the zamindar not having been a party to the suit, but was only an admission, and not conclusive. **MAHARAJA OF VIZIANAGRAM v. SURYANARAYANA**

I. L. R. 9 Mad. 307

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**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

quential relief, and therefore properly stamped, could be permitted to say in appeal that the house was the subject-matter of the suit within the meaning of s. 16 of the Bombay Courts Act, XIV of 1869. **MOTICHAND JAICHAND v. DADABHAI PESTANJI**

11 Bom. 186

33. ————— **Diverse contentions in pleading—Account—Limitation.** A defendant having by his written statement pleaded that, if a general partnership account were taken, he would be found not to be indebted to the plaintiff in respect of contribution claimed, cannot also plead the Limitation Act as a bar to the taking of such account. **DAYAL JAIRAJ v. KHATAV LADHA**

12 Bom. 97

34. ————— **It is not open to**

I. L. R. 9 Calc. 15  
6 C. L. R. 375

35. ————— **False admission of ancestor.** A false admission made by a serishtadar to avoid losing his appointment does not estop his heirs from afterwards setting up the truth. **MAHOMED WAYEZ v. SUGGEERONISSA** . 6 W. R. 38

36. ————— **Fraudulent statement—Admission.** When, in answer to a suit, two parties combined to make a statement to defeat a third party, it is competent to either of those parties, when they are opposed to each other in a suit, to say that the combined statement was false, and intended as a fraud against the third party. The admission in the former suit is not to be regarded as an estoppel, against either of the two parties in a subsequent suit, but the Court is competent to enquire into the character of the transaction and to declare it void if it is satisfied that the transaction is not a *bona fide* one. **RAM SARTY SINGH v. PRAN PIANNE**

1 W. R. 156

G A

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

Immoveable property it was held that the plaintiffs were not bound by an Act IV award against a person in whose name the property had been purchased by the father of the plaintiffs, but who had not either title or interest in the property, and did not conduct the Act IV proceeding with any authority from the plaintiffs. *Held*, too, that plaintiffs were not estopped by statements made by them as parties in another suit, which did not affect their status—nor

10 W. R. 33

**17.** — *Finding against statement.* The allegation of a plaintiff in a former suit, which was referred to arbitration, having been overruled by the arbitrators, and another state of things found by them to exist, he is not estopped by his former allegation from bringing a further suit founded on the finding of the arbitrators. *RAM CHUNDER DEY v. KISSEN MOHUN SHAH*

6 W. R. 68

**18.** — Plaintiffs sued for their share in the property of their family. The Judge rejected their claim, mainly on the ground that, when parties in a former suit respecting the same property, they had pleaded division, and the Court found that the family was undivided. *Held*, that the Judge was wrong in attributing to the plaintiff the plea of division in the former suit, and, even if such plea had been raised, the judgment in

1 Ind. Jur. O. S. 116

*WATSON v. POKHUR DOSS PAUL. MOHINEE DOSS v. POKHUR DOSS PAL* . . . . . 4 W. R. 2

**19.** — *Disclaimer of defendant.* The plaintiff sued for a quantity of land which was family property in the possession of his brother, the defendant. The defendant in a former suit declared that the land sued for was not family property, but belonged to his sister, and in this suit he claimed the property under her will. The lower Court found that the property was family property, but that the plaintiff was entitled to a decree for the whole property on the ground that the disclaimer of the defendant in the former suit amounted to an estoppel and forfeiture of his share. *Held*, that the effect of the defendant's conduct did not operate either as an estoppel or a forfeiture, and that the plaintiff was only entitled to a decree for a moiety of the property. *VELLAIN CHETTY v. ARYAN alias THUNDAYANBETTY CHETTY* . . . . . 4 Mad. 374

**20.** — *False statement in plaint.* A plaintiff is not estopped by an evidently false statement in his plaint as to possession, but the Court may look behind the statement and determine

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

upon its truth or otherwise and affirm or disallow it, as may seem right and proper. *CHOOVEE LALL v. KERAMUT ALI* . . . . . W. R. 1864, 282

**21.** — *Erroneous admission in petition.* A party is not bound by an erroneous admission in a petition. *KRISTO PREA DOSSEE v. PUNDO LOCHUN MITEE* . . . . . 6 W. R. 288

**22.** — *Statement of dispossession in petition—Suit subsequently brought alleging possession.* A statement of dispossession made in a petition preferred under s. 269 of Act VIII of 1859 by a person claiming land sold in execution of a decree, and ordered to be put in possession of the auction-purchaser, cannot operate as an estoppel in a suit subsequently brought by the claimant to "establish her right" on the allegation of her being in possession of the land in question. *KRANTUN JAN v. RUTTON LAL* . . . . . 8 W. R. 95

**23.** — *Statement by stranger to suit—Transfer of interest of judgment-debtor—Liability.* Where a person filed a petition in a suit stating that all the interests of the judgment-debtor had been transferred to him, and for several years

rendering himself liable to be put upon the record as a judgment-debtor. *LALLA POOROHIT LALL v. SAREERUN* . . . . . 7 W. R. 368

**24.** — *Contradictory statements—Admission.* In proceedings under Act XXVII of 1859, a party, called herself the mother

ed under the husband's will. The plaintiff afterwards sued as her husband's widow, without an adopted son, to call in question the will set up by

**25.** — *Admission of father as to ancestral property—How far binding on sons.* In the case of ancestral property the admission of a father may be used as evidence against his sons, but is not conclusive, and does not stop the sons from contending that such admission was collusive or erroneous. *NOWBUT RAM v. DORBARIE SIKH* . . . . . 3 Agra 145

**26.** — *Plea in former suit—Denial of will.* *Held*, that the plaintiffs were not estopped in a suit under a will for a legacy by the denial

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

of the will by the persons through whom they claimed. **NANA NARAIN RAO v. RAMA NUND**

2 Agra 171

27. ——— **Erroneous pleas—Subsequent contradictory evidence.** In a suit for land the defendant pleaded that the land was his ancestral estate. He subsequently tendered evidence, then first obtained, to show that the land had in 1814 been mortgaged to, and in 1831 bought by, his father. *Held*, that the evidence was receivable notwithstanding the erroneous plea. **RANGASAMI AYYANGAR v. KRISTNA AYYANGAR** . . . 1 Mad. 72

28. ——— **Admission by reversioner—Suit by party to prevent sale of property in which he has an interest.** *Held*, that a party was not estopped from bringing a suit to bar sale of a property in which he had a reversionary right by the fact that he had admitted on previous occasions that he had no present right in the property. **SERAJ BAZEE v. PATAO PATUK**

I N. W. Part II, 5; Ed. 1873, 65

29. ——— **Admission of predecessor in title—Interest in property—Decree** When the admission of his predecessor in title is set up against a party, it is open to him to show that the person whose admission is alleged to bind him had at the time no interest in the property (Evidence Act, s. 18) notwithstanding a decree under which the property was sold as the property of the admitting person and another co-debtor. **BEPIN BEHAREE SINGAR v. NILMONI SINGH DEO** . 25 W. R. 125

30. ——— **Admission of having transferred rights—Failure of transferee to prove it.**

merely because B had failed to prove his title against C. **HURO PERSHAD ROY CHOWDERY v. RAM CHEN DER BABOO** . . . 7 W. R. 360

31. ——— **Admission in former suit—Effect between different parties** To a suit brought by

between the plaintiff and the inamdar, the inamdar not having been a party to the suit, but was only an admission, and not conclusive. **MAHARAJA OF VIZIANAGARAM v. SURYANARAYANA**

I. L. R. 9 Mad. 307

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32. ——— **Difference between conten-**

**MOTICHAND JAICHAND v. DADABHAI PESTANJI** .  
11 Bom. 166

33. ——— **Diverse contentions in pleading—Account—Limitation.** A defendant having by his written statement pleaded that, if a general partnership account were taken, he would be found not to be indebted to the plaintiff in respect of contribution claimed, cannot also plead the Limitation Act as a bar to the taking of such account. **DAYAL JAIRAJ v. KHATAY LADHA**  
12 Bom. 97

34. ——— **It is not open to a defendant to change the whole nature of his defence at the last moment, and to set up in a Court of appeal a plea which he has directly and fraudulently repudiated in the Court below.** In an effect-

be true. *Held*, that the inamdar was estopped from contending on appeal that they were occupaney rayats, and therefore not liable to be ejected; and that by their own conduct they had forfeited the rights which they claimed. **SUTYABHAMA DASSES v. KRISHNA CHUNDER CHATTERJEE**

I. L. R. 3 Cal. 15  
6 C. L. R. 375

35. ——— **False admission of ancestor.** A false admission made by a scrishthadar to avoid losing his appointment does not estop his heirs from afterwards setting up the truth. **MAHOMED WAJEE v. SUGGEROONISSA** . . . 6 W. R. 36

36. ——— **Fraudulent statement—Admission.** When, in answer to a suit, two parties combined to make a statement to defeat a third party, it is competent to either of those parties, when they are opposed to each other in a suit, to say that the combined statement was false, and intended as a fraud against the third party. The admission in the former suit is not to be regarded as an estoppel, against either of the two parties in a subsequent suit, but the Court is competent to enquire into the character of the transaction and to declare it void if it is satisfied that the transaction is not a bona fide one. **RAM SARKY SINGH v. PRAS PEARSE**

1 W. R. 156

6 A

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

*Affirmed by P. C in RAM SURUN SINGH v. PRAN PEAREE*

15 W. R. P. C. 14: 13 Moo. I. A. 551

37. ——— Statement in former suit to defeat claim—*Benami transaction to defeat creditors—Proof of true nature of transaction.* Where the lower Appellate Court did not allow a defendant in the present suit to deny the truth of

previously put forward in a Court of Justice with a view to defeat the claim of the plaintiff was held to be no estoppel to the party's showing the real truth of the transaction. Even where the object of a benami transaction is to obtain a shield against a creditor, the parties are not precluded from showing that it was not intended that the property should pass by the instrument creating the benami, and that in truth it still remained with the person who professed to part with it. *DEBIA CHOWDURAI v. BRIGOLA SOONDURIE DEBIA*. 21 W. R. 422

*GOVERNATH NAIK v. JODOO GHOSE*

23 W. R. 42

*See RAM SURUN SINGH v. PRAN PEAREE.*

15 W. R. P. C. 14: 13 Moo. I. A. 551

*UDEY KUNWAR LADD*

6 B. L. R. 283: 15 W. R. P. C. 16  
13 Moo. I. A. 563

*BYKUNT NATH SEN v. GOSWOLLAR SIKDAR*

24 W. R. 391

*ASHRUF SIRDAR v. BHUEO SOONDURIE*

25 W. R. 40

*MUKUN MULLICK v. RAMJAN SIRDAR*

9 C. L. R. 64

and cases there cited

38. ——— Entry in settlement papers

—Persons not parties to administration paper. *Held*, that a cultivator is not bound by a condition entered in the village administration paper to which he was no party. *MEHUR ALI v. KUNHYE*

1 Agra Rev. 13

*CHUNDUN SINGH v. NIRTO*

3 Agra 11

*GIRDHAREE LALL v. OOMHAR SINGH* 3 Agra 243

39. ——— Return of Income tax—*In-*

*come Tax Act XXXII of 1860, s. 97, rule 4—Perpetuity of tenure.* Under rule 4, s. 97 of the Income Tax Act (XXXII of 1860), a return made to the Income Tax officer is not conclusive evidence against the party making it upon the point of perpetuity of tenure. *JOWAHAR LALL v. POR-KUTUM SINGH*. 6 W. R. 252

40. ——— Petition submitting account of income—*Act IX of 1869, s. 19—False statement of income.* A petition submitting the schedule of his income, filed by a petitioner in the

**ESTOPPEL—contd.****1. STATEMENTS AND PLEADINGS—contd.**

*Income Tax Office, is admissible as evidence against the person submitting and subscribing it; but it is*

24 W. R. 113

41. ——— Principle of estoppel—*Sale—Mortgage—Unregistered Sale-deed and Mortgage-bond—Transfer of Property Act (IV of 1892), s. 51—Suit for possession and mesne profits.* The principle of estoppel cannot be invoked to defeat the plain provisions of a statute. *BYRAM v. MUHAMMAD YAKUB*, I. L. R. 16 All. 344, *RAM BAKSH V. MUGHLANI KHANUM*, I. L. R. 26 All. 266, and *KARALLA NANUBHAI v. MANNUKHAM*, I. L. R. 24 Bom. 400, distinguished *JAGADBANDHU SABA v. RADHA KRISHNA PAL* (1903). I. L. R. 33 Calc. 920

**2. DENIAL OF TITLE.**

1. ——— Parol evidence to prove different title from that in lease—*Suit for rent.* A executed a khabulat for a term of years to B as zamindar. B gave a patni of the zamindari to C. C instituted a suit for arrears of rent under

beneficially entitled to the land, although C was only a benamidar for a third party. *Held*, that in India the English doctrine of estoppel did not apply, and that A was competent in a suit for rent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. *DONZELL v. KADERNATH CHUCKERBUTTY*. 7 B. L. R. 720: 16 W. R. 166

But see *JAINARAYAN BOSE v. KADUMBINI DAST*  
7 B. L. R. 723 note

3. ——— Evidence Act, s. 116—*Landlord and tenant.* S. 116 of the Evidence Act does not debar one who has once been a tenant from contending that the title of his landlord has been lost or that his tenancy has determined. It precludes him only during the continuance of the tenancy from contending that his landlord had no title at the commencement of the tenancy. *ANNU v. RAMAKRISHNA SASTRI*. I. L. R. 2 Mad. 226

3. ——— Denial by tenant of his landlord's title—*Ejectment, suit for.* In a suit





ESTOPPEL—*contd.*1. STATEMENTS AND PLEADINGS—*contd.*

Affirmed by P. C. in *RAM SURUN SINGH v. PRAY PEARRE*

15 W. R. P. C. 14: 13 Moo. I. A. 551

37. — Statement in former suit to defeat claim—*Benami transaction to defeat creditors*—Proof of true nature of transaction. Where the lower Appellate Court did not allow a defendant in the present suit to deny the truth of admissions made by her in a former case, or to adduce evidence of her own falsehood and deceit, it was deemed to have acted in opposition to the ruling of the Privy Council in a case in which a statement previously put forward in a Court of Justice with a view to defeat the claim of the plaintiff was held to be no estoppel to the party's showing the real truth of the transaction. Even where the object of a benami transaction is to obtain a shield against a creditor, the parties are not precluded from showing that it was not intended that the property should pass by the instrument creating the benami, and that in truth it still remained with the person who professed to part with it. *DEBIA CHOWDHRAIN v. BIMOLA SOONDURE DEBIA* 21 W. R. 422

GOPEENATH NAIK v. JODOO GHOSE

23 W. R. 42

See *RAM SURUN SINGH v. PRAY PEARRE*.

15 W. R. P. C. 14: 13 Moo. I. A. 551

UDAY KUNWAR v. LADE

6 B. L. R. 283: 15 W. R. P. C. 16  
13 Moo. I. A. 583

DYKUNT NATH SEN v. GOBOOLLAN SIKDAR

24 W. R. 391

ASHRUF SIKDAR v. BHUAG SOONDURE

25 W. R. 40

MUKUN MCLLICK v. RAMJAN SIKDAR

9 C. L. R. 64

and cases there cited.

## 38. — Entry in settlement papers

—Persons not parties to administration paper. Held, that a cultivator is not bound by a condition entered in the village administration paper to which he was no party. *MEHUA ALS v. KUNHYE*

1 Agra Rev. 13

CHUNDUN SINGH v. NIETO

3 Agra 11

GIRDHAREE LALL v. GOHRAO SINGH

3 Agra 249

## 39. — Return of Income tax—

Income Tax Act XXXII of 1860, s. 97, rule 4—Perpetuity of tenure. Under rule 4, s. 97 of the Income Tax Act (XXXII of 1860), a return made to the Income Tax officer is not conclusive evidence against the party making it upon the point of perpetuity of tenure. *JOWAHER LALL v. GOHRAO SINGH* 6 W. R. 252

40. — Petition submitting account of income—Act IX of 1869, s. 19—False statement of income. A petition submitting the schedule of his income, filed by a petitioner in the

ESTOPPEL—*contd.*1. STATEMENTS AND PLEADINGS—*contd.*

Income Tax Office, is admissible as evidence against the person submitting and subscribing it; but it is not conclusive, and a false statement made in it, though it may render the petitioner amenable to a prosecution under Act IX of 1869, s. 19, does not estop the person verifying the petition from proving that he made the statement to evade the income tax, and that the fact was otherwise than as stated. *GREGORIOUS SINGH v. FOOLSHARER KOOPAR*

24 W. R. 173

## 41. — Principle of estoppel—Sale

—Mortgage—Unregistered Sale deed and Mortgage-bond—Transfer of Property Act (IV of 1882), s. 54—Suit for possession and mesne profits. The principle of estoppel cannot be invoked to defeat the plain provisions of a statute. *BOYAN v. MUHAMMAD YALUB*, I. L. R. 16 All 344, *RAM SAKSHI v. MUHAMMAD KHANAM*, I. L. R. 26 All 266, and *KARALI NANNATH v. MANMATHRAM*, I. L. R. 24 Bom. 470, distinguished. *JAGADBANDHU SARKAR v. RADHA KRISHNA PAL* (1903), I. L. R. 38 Calo. 930

## 2. DENIAL OF TITLE.

1. — Parol evidence to prove different title from that in lease—Suit for rent. A executed a kabuliat for a term of years to B as zamindar. B gave a patni of the zamindari to C. C instituted a suit for arrears of rent under the lease for a term of years against A, the lessee. A, in defence, admitted the execution of the lease to B, but denied that B was his real lessor and beneficially entitled to the rent, alleging that B was only a benamidar for a third party. Held, that in India the English doctrine of estoppel did not apply, and that A was competent in a suit for rent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. *DONNELLY v. KADERNATH CHUCKLEBUTTY*, 7 B. L. R. 720: 18 W. R. 186

But see *JAINABAYAN BOSE v. KADERNATH DASI*  
7 B. L. R. 723 note

## 2. — Evidence Act, s. 116—

Landlord and tenant. S. 116 of the Evidence Act does not debar one who has once been a tenant from contending that the title of his landlord has been lost or that his tenancy has determined. It precludes him only during the continuance of the tenancy from contending that his landlord had no title at the commencement of the tenancy. *AYYU v. RAMAKRISHNA SASTRI*, I. L. R. 3 Mad. 226

3. — Denial by tenant of his landlord's title—Ejectment, suit for. In a suit to eject a tenant holding over after the expiration of his lease, it is not competent to the tenant to set up that his landlord, the plaintiff, holds under an invalid *lakhsar* tenure, and that the zamindar and not the plaintiff is entitled to the land. *MOHSEN CHUNDER BISWAS v. GOHROOFRASID BOSE*

Marsh, 377: 2 Hay 473

## ESTOPPEL—contd.

## 2. DENIAL OF TITLE—contd.

4. ——— Suit by landlord for possession—*Ejectment*, suit for. The plaintiff sued for possession of a certain house, alleging the expiry of the lease (kabuliat), on which the defendants held it as tenants. The mamlatdar dismissed the suit, being of opinion that the plaintiff had no title to the house when he granted the lease, and the house belonged to the defendants when they executed the lease. *Held*, reversing the decree, that the defendants (tenants), having executed the kabuliat, could not deny the plaintiff's title as a ground for refusing to give up possession, and the mamlatdar himself, therefore, could not go into the question. *Parbhudas v. Fulba*, I. L. R. 19 Bom. 133 note, distinguished. *PATEL KILABHAI LALLUBHAI v. HARGOVAN MANSUKH*

I. L. R. 19 Bom. 133

5. ——— Regular suit by tenant. If the existence of a tenancy be established by the fact of the tenant's payment of rent to his landlord or otherwise, the tenant cannot ordinarily dispute the title of his landlord in a suit brought against him for recovery of possession. He must first give up possession, and then, if he has any title at hand, that title may be tried in a suit of ejectment against the landlord. *VASUDEV DAI v. BIBAJI RANU* . . . 6 Bom. A. C. 176

6. ——— Denial by tenant of landlord's title—*Evidence Act (I of 1872), s. 116—Derivative title*. A, a raiyat, being in possession of a certain holding, executed a kabuliat regarding this holding in favour of B (who claimed the land in which the holding was included, under a derivative title from the last owner), and paid rent to B thereunder. *Held*, that A was not estopped by s.

the person to whom they have attorned, and not to cases in which the tenants have previously been in possession. *LAL MAHOMED v. KALLAVUS*

I. L. R. 11 Calc. 519

7. ——— Denial of title as holding under unregistered document—*Admission of landlord's right*. Where a tenant has repeatedly

been obtained was unregistered. *SHUMS AHMUD v. GOOLAN MOHEZ-GOD-DEEN* . . . 3 N. W. 153

8. ——— Denial of lessor's title—*Co-sharers—Lease from one of several co-sharers*. A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment. *JAMESDAI SONABAI v. LAKSHMIRAM RAJARAM*

I. L. R. 13 Bom. 323

## ESTOPPEL—contd.

## 2. DENIAL OF TITLE—contd.

9. ——— Unassessed waste reclaimed by plaintiff—*Evidence Act (I of 1872), s. 116*

land was not assessed to revenue in the name of either of these persons. At the end of two years, the tenant let into occupation a sub-tenant who subsequently assigned his right to the defendant, the holder of a neighbouring warg. The defendant obtained a pottah for the land from the revenue authorities. In a suit by plaintiff to eject the defendant:—*Held*, that the defendant was not estopped from setting up a title adverse to the plaintiff, and that his possession became adverse when the pottah was granted to him. *SUNBARAYA v. KRISHNAPPA*

I. L. R. 12 Mad. 422

10. ——— Denial of right of fishery in river—*Licensee on payment of rent of fishery in navigable river—Suit for ejectment*. In an ejectment suit in respect of a julkur in a navigable river, the defendant, if he has paid rent to the plaintiff or his predecessors, is precluded from rais-

11. ——— Denial of title of person supposed to be landlord—*Payment of rent—Title*. In a suit for rent by a patnidar, who claimed

estopped from showing that, under the deceased husband's will, the plaintiff had no title. *BANER MAHOMED GHOSE v. TRIKOOBAS MENDUL*

B. L. R. Sup. Vol. 588: 6 W. R., Act X, 17

*TILLESWEE KOER v. ASMEED KOER* . . . 24 W. R. 101

12. ——— Landlord and tenant—*Collusion*. The plaintiff in an ejectment suit had established in a former suit that land formerly the property of the second defendant's father had been sold under a decree and purchased benami for him

that the second defendant, who contested the validity as against him of the decree under which the land was sold, having withdrawn a suit filed by him to declare the sale invalid as against him after his

**ESTOPPEL—contd.****2. DENIAL OF TITLE—contd.**

father's death, had colluded with the first defendant and collected rent from him. *Held*, that the second defendant, having come in by collusion with the first defendant, was precluded from denying the plaintiff's title, and was liable to the plaintiff for the rent collected by him from the first defendant. *PATIL PATIL NARAYANA*. I. L. R. 13 Mad. 335

**13. — Mortgagee and mortgagor.**

The karnavan of a Malabar taluk, having the jennu title to certain land and holding the umma right in a certain public devasom to which other land belonged, demised lands of both descriptions on kanom to the defendants' taluk, and subsequently executed to the plaintiff a muknani of the first-mentioned land and purported to sell to him the jennu title to the last mentioned land. In a suit brought by the plaintiff to redeem the kanom and to recover arrears of rent—*Held*, that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the devasom; and that the plaintiff, who had denied the title of the devasom in the Court of first instance, was not entitled to redeem the kanom as a whole, by virtue of his admitted title to part of the premises comprised in it. *KORRA PANTHAR v. KARUNAKARA*. I. L. R. 16 Mad. 328

**14. — Mortgage by tenant at fixed rates—Ejectment of mortgagor by zamindar—Suit for redemption against mortgagee in possession of the mortgaged property.** The rule of law which prohibits a mortgagee or tenant from disputing his mortgagor's or landlord's title does not bar the mortgagee or tenant from showing that the title of his mortgagor or landlord under which he entered has determined. Hence where a tenant at fixed rates, who, having mortgaged his fixed rate holding by a usufructuary mortgage and put the mortgagee in possession, was ejected by the zamindar, subsequently sued the mortgagee, who had remained in possession after his mortgagor's ejectment, for redemption. *Held*, that the mortgagee could plead successfully that the mortgagor's interest in the holding had determined by the ejectment of the mortgagor. *NARCHEBI BHAGAT v. NARCHEBI BHAGAT*. I. L. R. 16 All. 328

**15. — Application for tenure to Collector under wrong impression—Liability for rent.** Where application is made to a Collector for a tenure liable to pay revenue on account of an estate which applicant has carved out of unoccupied waste, and it is found that Government is not in a position to create such a tenure, the applicant is not bound by his offer made under an erroneous impression, nor is he estopped thereby from pleading as against the landlord that he is not liable to pay and not. *BRUNNATH CHOWDHRY v. LALL MEH MANSINGH*. 14 W. R. 391

**16. — Denial in former suit of relationship of landlord and tenant—Suit for possession.** A rent suit having been dismissed upon defendant denying that he was a tenant of the plaintiff,

**ESTOPPEL—contd.****2. DENIAL OF TITLE—contd.**

if, the latter sued the former for khas possession. *Held*, that, after his former denial, defendant could not now claim a settlement and refuse the khas possession sought. *SOMASOLLAH v. IMAMODDIN*. 24 W. R. 273

*DABEE MESSER v. MUNGUR NEAR*

2 C. L. R. 208

**17. — Payment of rent suit to contest title after—Payment under erroneous impression.** The plaintiffs were the registered holders of the village of Mabholi, in the Ahmedabad Collectorate, for which they obtained a sanad in 1864, under Bombay Act VII of 1863. The defendants were the descendants of the original owners of the village, who, about 1768, finding themselves unable to meet the expenses attaching to the village, gave up their title to it to the ancestors of the plaintiffs, on condition of retaining a third of the lands rent-free as their vanto or share, subject to no other condition but a house tax. *Held*, that the circumstances did not constitute the relationship of landlord and tenant between the parties. The fact that the defendants had for some years paid to the plaintiffs part of the amount of quit-rent levied from the plaintiffs by Government did not estop the defendants, when better informed of their rights, from contesting the title of the plaintiffs to any further payments. *JESINGBHAI v. HATAJI*. J. L. R. 4 Bom. 79

**18. — Acceptance of lease under coercion—Payment of rent.** A person accepting a lease under coercion is not bound by such acceptance, nor do payments of rent by him to the person granting the lease estop him from questioning the title of the payee, unless the payee let him into possession. Even then the effect of the payment as an estoppel would be confined to the title of the payee at the time possession was given. *Collector of Allahabad v. SURAJ BAKSH*. 6 N. W. 333

**3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS**

**1. — Deed, construction of.** Those who rely upon a document as an estoppel must clearly establish its meaning, if there is any ambiguity, the construction may be aided by looking at the surrounding circumstances. *Mewa Kewar v. Hulas Kewar*. 13 B. L. R. 312

**2. — Statement in bond—Evidence of amount of consideration actually received.** Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash—*Held*, that it was open to the defendant to show by evidence that only a portion of the principal sum had been received by him. The strict technical doctrine of English law as to estoppels in the case of deeds under seal does not apply to the written

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

instruments ordinarily in use amongst the natives of India. **GAUREVALLABA RANCHANDRA BOMAYA NAYIK v. VIRAPPA CHETTI** . 3 Mad. 174

**3. ——— Stipulation in bond—Proof of payment—Omission to endorse payment.** A stipulation in a bond that all payments should be endorsed on the back thereof, and that all other pleas of repayment would be futile, does not estop the defendant from proving by other means that the debt, or part of it, has been satisfied. **KALEE DOSS MITTRA v. TARACHAND ROY** . 8 W. R. 316

See **GIRDHAREE SINGH v. LALLOO KOONWUR** 3 W. R. MIB. 23

**NARAIN UNDIR PATIL v. MOTILAL RAMDAY**  
I. L. R. 1 Bom. 45

**4. ——— Agreement of parties—Irregular procedure, agreement to be bound by** Where a Court has a general jurisdiction over the subject-matter of a claim, parties may be held to an agreement that the questions between them should be heard and determined by proceedings contrary to the ordinary *cursum curiarum*. **SADASIVA PILLAI v. RAMALINGA PILLAI**

15 B. L. R. 383; 24 W. R. 193  
I. L. R. 2 I. A. 219

**SHEO GOLAH LALL v. BENI PRASAD**  
I. L. R. 5 Calc. 27; 4 C. L. R. 29

**5. ——— Acquiescence of judgment-debtor in irregular procedure—Omission to proceed under s. 90 of the Transfer of Property Act.** Where the mortgaged property was sold in execution of a mortgage-decree, but the sale-pro-

ceedings were irregular, the plaintiff was not estopped from the execution of the decree for recovery of the unsatisfied balance by the attachment and sale of other properties of the judgment-debtor, and the

*Held*, that the effect of the previous proceedings being struck off after notice to, but without objection from, the judgment-debtor, is to estop the

**KAILASH CHUNDES BRAHMACHARI**  
2 C. W. N. 254

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

**6. ——— Agreement to abide by punchayat—Proceedings to show decision of punchayat inequitable.** An agreement between the parties to abide by the determination of a punchayet fixing the line of boundary, and the determination of the punchayet, were held to be not conclusive evidence so as to bar either party from showing the determination of the punchayet to be inequitable. **MOKUNDIMS OF MOUTZA KUNKUN-WADEY IN PERGUNNAH JAMUCUNDI v. EMANDAB BRAHMINS OF MOUTZA SOORPAL**

7 W. R. P. C. 8; 3 Moo. I. A. 383

**7. ——— Effect of valid award on reference to arbitration—Defence of submission to arbitration and award upon the matter in suit before suit brought** An award upon a question referred to arbitrators on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference, from afterwards contesting

the estate against the other who had obtained possession of the whole. The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held*, that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties. **BHAGOTI v. CHANDAN**  
I. L. R. 11 Calc. 388; I. R. 12 I. A. 87

**8. ——— Contract—Construction of agreement to refer—Breach of contract.** The plaintiffs, on the 4th August 1881, entered into a contract with the defendant for the sale to the latter of a quantity of goods of a certain description "to be delivered up to the 31st December 1881." The plaintiffs stipulated that they would make no

such variance, difference, inferiority, damage, or defect, if any, and such decision shall be final and binding on both parties." If either buyers or sellers failed "to name an arbitrator within two days after

**ESTOPPEL—contd.****2. DENIAL OF TITLE—contd.**

father's death, had colluded with the first defendant and collected rent from him. *Held*, that the second defendant, having come in by collusion with the first defendant, was precluded from denying the plaintiff's title, and was liable to the plaintiff for the rent collected by him from the first defendant. *PATU PATI V. NARAYANA*. I. L. R. 13 Mad. 335

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**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

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NARAIN UNDIR PATIL v. MOTILAL RAMDAS . . . 1 L. R. 1 Bom. 45

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L. R. 2 I. A. 218

SHEO GOLAM LALL v. BENI PROSAD . . . 1 L. R. 5 Cal. 27; 4 C. L. R. 20

5. ——— Acquiescence of judgment-debtor in irregular procedure—*Omission to proceed under s. 90 of the Transfer of Property Act* Where the mortgaged property was sold in execution of a mortgage-decree, but the sale-proceeds not having been sufficient to satisfy the decree, the decree-holder, without proceeding under s. 90 of the Transfer of Property Act, made applications for the execution of the decree for recovery of the unsatisfied balance by the attachment and sale of other properties of the judgment-debtor, and the applications were allowed and subsequently struck off and the judgment . . .

the Transfer of Property Act had been obtained—*Held*, that the effect of the previous proceedings being struck off after . . .

*See also* . . . 193 P. C., followed. MADHU SUDAN CHACKERBUTTY v. KAILASH CHANDER BRAHMACHARI . . . 2 C. W. N. 254

**ESTOPPEL—contd.****3 ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

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7. ——— Effect of valid award on reference to arbitration—*Defence of submission to arbitration and award upon the matter in suit before suit brought* An award upon a question referred to arbitrators on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference from afterwards contesting in a suit the question so referred and disposed of by the award. Two widows of a deceased Hindu referred generally to arbitrators the question of their rights, respectively, in the estate of their deceased husband, including the matter whether there was, or was not, any cause disentitling the widow who afterwards brought this suit for her share in the estate against the other who had obtained possession of the whole. The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held*, that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties. BRAGOTI v. CHANDAN . . . 1 L. R. 11 Cal. 398; 1 L. R. 12 I. A. 67

8. ——— Contract—*Construction of agreement to refer—Breach of contract* The plaintiffs, on the 4th August 1881, entered

sales of goods of the same description to others before 1st December 1881; and the contract contained an arbitration clause to the effect that "if the buyers object to accept all or any of the goods offered to them by the sellers in fulfilment of the

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

*parties. The goods shipped in Calcutta between the 4th and 24th November 1881. On the 15th August the plaintiffs entered into other contracts*

were on the terms that the goods were not to arrive in Calcutta until after the 31st December 1881.

between the contract price and the market value which the plaintiffs demanded from him. The plaintiffs thereupon appointed an arbitrator, who (the defendant declining to appoint an arbitrator) proceeded to act in the matter, and, finding that the plaintiffs had not committed a breach of the contract, made an award in their favour for Rs 30, the difference in price of the goods at the contract and market values. The plaintiffs sued to recover the amount due to them under the award, or in the

whether the plaintiffs, by making the other contract, had committed a breach of the stipulation, was not properly a subject of reference to the arbitrator under the arbitration clause. The general words in that clause, "or any other grounds whatsoever," mean any other grounds of a like character, and do not include a pure question of law. *CARLISLES NEWSHAW & Co. v. RICKWAUTH BOOKLEAF*. I. L. R. 8 Calc. 809

9. — Agreement not to execute under terms—*Order in conformity with agreement.* Where the parties to a suit have by natural agreement made certain terms and informed the Court of them, and the Court has sanctioned the arrangement and made an order in conformity with it, and the agreement has been acted upon, neither party is at liberty to renege from it. The question whether such an agreement does or does not violate the rule that a Court cannot add to its decree, becomes under the circumstances one which the Court will not enter into; the party who seeks to raise such question being estopped by his own conduct, and the action of the Court taken thereunder. *SHRO GOLLAN LALL v. BENI PRASAD*. I. L. R. 5 Calc. 27; 4 C. L. R. 29

10. — Bonami leases—*Lease in name of wife—Showing true nature of transaction.* Held, that it would be very inequitable that

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

there should be anything in this country of the nature of the old English doctrine of estoppel by deed. A party giving a kabulist nominally in favour of A is not estopped from pleading that he did not contract with A at all, and that he did not obtain the leased premises from her, but that she knew nothing of the transaction, her name being used merely as a matter of convenience between the lessee and her husband. *KEDAPNATH CHUCKERBUTTY v. DONZELLE*. 20 W. R. 352.

11. — Admission of validity of deed. An admission by an adoptive mother in a suit brought by her mother-in-law to set aside the adoption, that an alleged unomuttie-puttur, under which her mother-in-law had previously professed to adopt a son to her deceased husband was valid,

*SHEER CHUNDER ROY* Marsh. 455

12. — Admission of execution of deed—*Contest as to validity*—The mere fact of a person having in a previous suit admitted the

13. — Agreement not to execute decree—*Wrongful execution in breach of agreement—Deed of conditional sale—Defeating claims of third persons—Maxim, "In pari delicto potior est conditio possidentis."* The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex parte* decree dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale dated the 24th December

the defendant stipulated that plaintiff's possession should not be disturbed. The defendant, *inter alia*, pleaded estoppel. Held, that plaintiff was not ex-

tion to Inam, where justice, equity, and conscience require no more than that a party should

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

their position on the faith of such instrument  
**PARAN SINGH v. LAJJI MAL** I. L. R. 1 All. 403

**14. — Penami conveyance—Relation of landlord and tenant.** The plaintiff having sued to obtain possession of certain land which the defendant held as tenant, and in respect of which he had for some years paid rent, the defendant alleged that, prior to the time when he became tenant, the plaintiff had for good consideration conveyed to him the premises leased, together with other property. This conveyance was found to be a mere penami transaction. *Held*, that the plaintiff was not estopped from asserting the tenancy, and under the circumstances was entitled to recover. **SARUKTELLA v. HARI** 10 C. L. R. 199

**15. — Mortgage fraudulently made to defeat execution of decree—Right of mortgagor to sue subsequently to recover possession.** In 1851 *T* obtained a decree against *G*, the father of the plaintiff. In order to defeat the execution of that decree, *G*, in collusion with one *B*, permitted the latter to obtain a decree based upon an award against him, and to sell the land in execution, at which sale *B* himself and another person purchased it. In 1857 these purchasers sold the property to *F* (defendant No. 1). In 1858 *T* attached the land in execution of his decree, but the attachment was raised on the application of defendants Nos. 1 and 3, who alleged that the property was theirs. In 1876 the plaintiff, who was the son of *G*, sued the defendants to recover possession. He alleged that

whereby defendant No. 1 as a mortgagee acknowledged the receipt of two sums of Rs 375 from *G*. It further appeared that on the faith of exhibit 18 the defendants had been permitted to remain in possession for ten years without disturbance as mortgagees. The subordinate Courts held that the decree, sale, and re-sale of the lands were fraudulent. . . . having been not recover in appeal: I to recover; that the defendants, having accepted repayment of

ing the execution of the decree obtained by *T*.  
**MAHAJATI GOPAL BAKLEKAR v. VITTRAL BAILAL**  
 I. L. R. 7 Bom. 78

**16. — Mortgage without being owner of property—Subsequent ownership by mortgagor of the same property—Auction-purchaser—Validity of mortgage.** In 1871, *M*, the

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

mortgagee of certain property, styling himself the owner of it, mortgaged it to *S*. In 1875 *M* became the owner of such property by purchase. In 1877 such property was put up for sale in execution of a decree against *M*, and *A* purchased it. *S* subsequently sued *M* and *A* to enforce the mortgage of such property to him by *M*. *Held*, that, inasmuch as, if *S* had at any time sued *M* to enforce such mortgage after he had become the owner of the mortgaged property and before *A* had purchased

**BAKSHI . . . . . I. L. R. 3 All. 805**

**17. — Declaration in deed of sale—Admission.** The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety, and that the other moiety belonged to her deceased

**13 W. R. 2**

**18. — Suit on a document executed by defendant in which he was described as a trader—Plaintiff in suit that he was an agriculturist—Dekkan Agriculturists' Relief Act (XVII of 1879).** The mere fact that the defendant described himself in the instrument, on which the suit was brought, as a trader, would not of itself estop him from pleading at the trial that

trader, and intended that that representation should be acted on by the plaintiff. **KADAPPA v. MARTANDA** I. L. R. 17 Bom. 227

**19. — Statement in deed of assignment—Evidence of knowledge of alteration in purpose of assignment.** The plaintiffs received an assignment of debt due to a third person not a party to the suit. The document assigning the debt

ants were aware of any intended alteration in the apparent purpose of the assignment, the plaintiff was precluded from saying that he had received it in any other light. **SCINDE, PUNJAB, AND DELHI BANK v. MUDEGOOSODEN CHOWDHRY**

**Bourke O. C. 322**



**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

20. ———— *Recital in deed of sale—Title proof of—Variance between Pleading and Proof.* A claimed certain property from B, the daughter of C, on the ground that on the death of C it had descended to D as the heir of C, and produced a kohals containing a recital that on the death of C, who had died childless, it had descended to D. *Held* that A

KRISHNA CHUNDER SANNYAL

I, L. R. 4 Calc. 397

F 21. ———— *Estoppel by agreement—Grantor and grantee—Possession obtained from a grantor, without title—Title subsequently acquired by purchase—Denial of grantor's title—Constructive trust.* The defendant having obtained possession of some land under a deed of sale from P, who had no title to it afterwards perfected his title by purchase from the real owner. In a suit for recovery of possession of the land brought by the plaintiff, claiming to be a subsequent purchaser from P, on the ground that the previous purchase by the defendant was a fraudulent one. *Held*, that the defendant was not estopped from denying P's title and setting up his own as purchaser from the real owner. *Per RAVIRAJ, J.*—The estoppel only exists so long as the grantee claims under the title of his grantor alone. *Dillon v. Fitzgerald*, [1897] 1 Ch. Div. 419, on appeal, [1897] 2 Ch. Div. 56, distinguished. *Paine v. Jones*, L. R. 13 Eq. 320, referred to. *Per WOODHOUSE, J.*—Ss. 116 and 117 of the Evidence Act are not exhaustive of the doctrine of estoppel by agreement. The ground of the rule of estoppel laid down in *Dillon v. Fitzgerald*, [1897] 1 Ch. Div. 86, and similar cases examined. The principle of the rule in such cases is that where property is taken under an instrument and the taking possession is in accordance with a right, which would not have been granted except upon the understanding that the possessor should not dispute the title of him under whom the possession was derived, there is an estoppel. The ground of the rule of

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

The vendor had also parted with all the title-deeds relating to the property. The vendee subsequently mortgaged the property to the plaintiff who had no knowledge that the full amount of the consideration money was not paid to the vendor though he knew that the vendor was in possession of some portion of the property. *Held*, that the defendant (the vendor) was estoppel from contending that she had a lien on the chawl for the unpaid balance of the purchase-money by her declaration as to the receipt of the whole purchase-money and by her act in handing over the title-deeds. *Per BACHELOR, J.*—A vendor of immovable property who endorses upon the purchase-deed a receipt for the purchase-money cannot set up a lien for unpaid purchase-money as against a mortgagee for value without notice under the purchaser. *TEJIRAM v. KASHIBAI* (1908) . . . I, L. R. 33 Bom. 53

23. ———— *Estoppel of judgment-debtor by previous petition—Application to set aside sale in execution of decree not mentioning fraud and irregularity.* The fact that a judgment-debtor, who petitions to have the sale in execution of the decree against him set aside on the ground of fraud and irregularity, has, in a petition made previous to the sale asking for its adjournment,

24. ———— *Parties to suit both deriving title from the same document—Question of validity of document—Suit for possession.* The plaintiff sued the defendant to recover a sum of money by attachment and sale of certain property in the legal possession of the defendant. Both the plaintiff and the defendant professed to derive their title by virtue of a document which the Court found was invalid according to Mahomedan law. *Held*,

I, L. R. 7 Bom. 170

25. ———— *Rights of transferee of sub-lessee—Lease, construction of—Right to deny*

certain annual quit-rent. Subsequently the proprietary settlement of the village (the possession being conditional on expiry of term) was made with the sub-lessee, whose proprietary rights having been sold at auction were purchased by the plaintiff, who sued to set aside the lease. *Held*, on the construction of

22. ———— *Transfer of Property Act (IV of 1882), s. 55, cl. (4) (b), cl. (6)—Vendor's lien for unpaid purchase-money—Sale-deed containing acknowledgment of receipt of consideration money in full—Mortgagee taking the mortgage without notice of unpaid purchase-money—Evidence Act (I of 1872), s. 115.* In a registered sale-deed of a chawl it was stated that the vendor had received consideration in full and there was also an acknowledgment of the vendor at the foot of the deed to the same effect.

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

whose rights he purchased, was estopped, as would have been the latter, from questioning the validity of the lease in favour of the defendant. *KURU CHOWDEY v. JANKER PERSAD*. 1 Agra 164

**26. — Acquiescence—Right of Hindu widows—Effect of alienation of interest in subject of suit.** A Hindu dying intestate left two widows (*D* and *M*) as his co-heiresses. A document put forward by a third party (*H*) as a will of the de-

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

ceased failed to ascertain it when he attained his majority in 1878. His conduct of acquiescence in it had, moreover, acted as a ratification of the contract of relinquishment. *VENKATACHALAM v. MAHALAKSHMANNA*. I. L. R. 10 Mad. 272

**29. — Objection of minority raised after completion of purchase and possession by vendees.** The vendees in a suit to enforce a right of pre-emption, set up as a defence to the suit that the sale was invalid, on the ground that they were minors, and therefore incompetent to contract. *Held*, that, as they had paid their money to the vendor and the conveyance had been perfected, and they were in possession of the property, they were estopped from urging such ground. *KNEV KARAN v. HAR DAYAL*. I. L. R. 4 All. 37

**30. — Plea of non-liability to pre-emption of property acquired by pre-emption.** The fact that a property has been acquired under a claim of pre-emption does not estop the person who has acquired it from pleading that the right of pre-emption did not extend to such property. *SALIG RAM v. DEBI PARSAD*. 7 N. W. 38

**31. — Signature on blank bond—Blank stamped paper.** Where a person chooses to entrust to his own man of business a blank paper duly stamped as a bond and signed and sealed by himself, in order that the instrument may be duly drawn up and money raised upon it for his benefit, if the instrument is afterwards duly drawn up and money obtained upon it from persons who have no reason to doubt the *bond fides* of the transaction, it must, in the absence of any evidence to the contrary, be taken that the bond was drawn in accordance with the obligor's wishes and instructions. *WANDUNNESSA v. SURADASS*. I. L. R. 5 Cal. 39

**32. — Destruction of document—*Omnia præsumentur contra spoliatores*** In a suit brought against a Collector to compel him to refrain from preventing the plaintiff executing his decree against certain land, the only issue being whether the land was the private property of the

plaintiff, that it was not competent for the defendant to say that the document was not such a one as could be legally admitted in evidence, and that the case came within the rule, *omnia præsumentur*

*DOBEY v. MYNA BAE*

9 W. R. P. C. 23; 11 Moo. I. A. 487

**27. — Solehnama, effect of—Finding by Judge on remand—Special appeal.** In a case which was remanded to be tried on its merits, the remanding Judge being of opinion that it was not barred, the additional Judge of the zillah adhered to his former opinion that the plaintiff's claim was barred by limitation, but found as a fact that she had been a party to a solehnama

plaintiff was barred by the solehnama from maintaining this suit. *Bhugwan Deen Dobe v. Myna Bae*, 9 W. R. P. C. 23, distinguished. *JEDOO-BUSSEE KOOER v. ASHAN KOOER*. 14 W. R. 370

**28. — Minor, contract by—Deed of relinquishment executed by minor—Ratification by acquiescence.** A sued in 1885 to recover certain

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

*contra spoliatorem.* ARDESHIR DHANIRHAI v. COLLECTOR OF SURAT 3 Bom. A. C. 116

**4. ESTOPPEL BY JUDGMENT.**

1. Civil Procedure Code, 1882, s. 13 (1858, s. 2). The doctrine laid down in the *Duchess of Kingston's Case*, 2 Sm. L. C. 679, as to estoppel by judgment is applicable to cases tried under the Civil Procedure Code, s. 2 of which is consistent with that rule. KHUGOWLEE SINGH v. BOSSEIN BUX KHAN

7 B. L. R. 673; 15 W. R. P. C. 30

2. Decree—Difference between decree and agreement on which it was based. So long as a decree subsists unrevoked the parties thereto are bound by prior agreement ground that that of the prior parties had requested the Court which passed the decree to draw it up according to the terms of the agreement. JANKISAI v. ATMARAM BABURAY

8 Bom. A. C. 241

3. Decree in suit on kabuliata—Subsequent suit on same kabuliata. A suit for rent was brought against the guardian of a minor, and the Court

by the decree in the former suit from denying the validity of the kabuliata. TARIKREESAUD CHOSE v. SREEROPAL PAUL CHOWDHURY Marsh. 476; 2 Hay 593

4. Dismissal of suit on failure to prove kabuliata—Pleadings

5. Decision of genuineness of documents—An affirmation in

documents in a subsequent suit between the same parties. HURREHUR MOOKERJEE v. OOMA MOTER DOSSEE 12 W. R. 625

**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

6. Order for execution of decree without judgment—Judgment by decree VAN D

7. Order disallowing objections to attachment—Civil Procedure Code (1859), s. 246, (1879) s. 283. In order to decree against a family, for a

100 suit was brought by K within one year from the date of the order, but L, who purchased the right of S in the lands attached and sold, did bring a suit within a year from the date of the order to obtain what he had bought at the Court sale from K and others.

1. L. R. 4 Mad. 303

8. Civil Procedure Code, 1859, s. 249, rejection of claim under Limitation—Adverse possession, plea of. An order passed under s. 246 of the Code of Civil Procedure, 1850 will, if not him afterw the date of by the decr

1. L. R. 6 Mad. 606

9. Civil Procedure Code, 1882, s. 335—Order rejecting claim-petition. An order rejecting a claim-petition under s. 335 of the Civil Procedure Code, not being appealed against within one year, acquires the force of a decree, Velayuthan v. Lakshmana, 1. L. R. 8 Mad. 506, followed. ACHUTA v. MAMMAVU

1. L. R. 10 Mad. 357

10. Order rejecting claim under Civil Procedure Code, 1882, s. 281—Parties—Nage suit—party act

**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

was estopped from now re-asserting his claim.  
KRISHNAN v. CHADAYAN KUTTI HAJI

I. L. R. 17 Mad. 17

11. \_\_\_\_\_ Civil Procedure Code (Act VIII of 1859), s. 246—Civil Procedure Code (Act XIV of 1882), ss. 281, 283—Limitation Act (XV of 1877), Sch. II, Art. 11—Limitation Act (IX of 1871), Sch. II, Art. 15—Suit for possession. In certain execution-proceedings land was attached, but before the sale the judgment-debtors, with the permission of the Court, sold the land to the wife of the judgment-debtor.

provo that they had been in possession of the land twelve years before suit. On appeal to the High Court, the plaintiffs, appellants, contended that the claim of the defendants in the execution-proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order from asserting their claim.

they could have brought a suit to establish their right to possession, and that such time had not expired. GEND LALL TEWARI v. DEENOMATH RAN TEWARI I. L. R. 11 Calc. 673

F 12. \_\_\_\_\_ Construction of decrees made in order in execution-proceeding—Finality of such order—Omission to appeal against order. A Court having jurisdiction decided in the course of execution-proceedings (in an order which was not appealed) that the decree to be executed awarded

**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

judicata applied was not relevant, that term referring to a matter decided in another suit. RAM KIRPAL v. RUP KUARI

I. L. R. 6 All. 269; I. L. R. 11 A. 37

13. \_\_\_\_\_ Civil Procedure Code, s. 17 and 17A—Execution of decree

Code of Civil Procedure for re-trial on the merits, practically took no steps whatever to defend the decree. *Held*, that no contrary construction could be placed on the decree.

v. Rup Kuari, I. L. R. 6 All. 269, referred to. KISHAN SAIHAI v. ALADAD KHAN

I. L. R. 14 All. 64

14. \_\_\_\_\_ In reference to an application for execution of a decree, a Court made an order between the parties construing the decree to award interest at a certain rate till payment. *Held*, that no contrary construction could be placed on the decree.

I. L. R. 4 All. 102; I. L. R. 11 A. 181

15. \_\_\_\_\_ Decree in suit to set aside adoption—Reversioner. *Quare*: Whether a decree in favour of the reversioner.

than the plaintiff. JUDHOMA DASSTY v. BAHASCON-DARI DASSTY

I. L. R. 1 Calc. 289; 25 W. R. 235—  
I. L. R. 3 I. A. 72

See BHADWANTA v. SURI I. L. R. 22 All. 33  
and CHHEDU SINGH v. DURGIA DIXI

I. L. R. 22 All. 352

16. \_\_\_\_\_ Effect of decree appealed from after

rule—No bar

title accrued

An adoption

High Court

appeal to the Privy Council was preferred, when the parties entered into a compromise and the appeal was permitted to be withdrawn. *Held*, that the decree of the High Court as to the validity of the adoption became final and was not affected by the compromise so as to allow the matter to be again litigated between the parties or their privies. Although the decision of a Court as to the validity of an adoption in a suit between A and B may, in any subsequent proceedings between A and those claim-

**ESTOPPEL—contd.****3. ESTOPPEL BY DEEDS AND OTHER DOCUMENTS—contd.**

*contra spoliatorem.* ARDESHIR DHANJIBHAI v. COLLECTOR OF SURAT 3 Bom. A. C. 116

**4. ESTOPPEL BY JUDGMENT.**

1. *Duchess v. estoppel under the consisten*

HOSSEN BUX KHAN  
7 B. L. R. 673; 15 W. R. P. C. 30

2. *Decree—Difference between decree and agreement on which it was based.* So long as a decree subsists unreversed and unvaried, the parties thereto and those claiming under them are bound by it, and no effect can be given to any prior agreement regarding the same matter on the ground that the terms of the decree differ from those of the prior agreement, notwithstanding that the parties had requested the Court which passed the decree to draw it up according to the terms of the agreement. JANKIBAI v. ATMARAM BABURAY 8 Bom. A. C. 241

3. *Decree in suit on kabuliati—Subsequent suit on same kabuliati.* A suit for rent was brought against the guardian of a minor, and the Court gave a decree founded on a kabuliati given by the ancestor of the minor. After the minor had come of age, a suit was brought against him for subsequent arrears under the kabuliati. Held, that he was estopped by the decree in the former suit from denying the validity of the kabuliati. TARIKESSESAD GHOSH v. SREEGOPAUL PAUL CHOWDARY Marsh. 476; 2 Hay 563

4. *Dismissal of suit on failure to prove kabuliati—Pleadings, admission in statement in.* Plaintiff sued before on a kabuliati of 1864, and was dismissed on the ground that

REQUISITE OF 1864 WHICH REQUIRED THAT THE AMOUNT OF 1864

5. *Decision of genuineness of documents*

of these documents in a subsequent suit between the same parties. HUPPESUR MOOKERJEE v. OOMA MOYSE DOSSEZ 12 W. R. 525

**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

6. *Order for execution of decree*

7. *Order disallowing objections to attachment—Civil Procedure Code (1859), s. 246, (1879) s. 283.* L, in execution of a decree against S, a member of an undivided Hindu family, for a personal debt, attached the interest of S in certain lands alleged to be the joint property of the family of S. K intervened, and objected to the attachment on the ground that the property was not family property or partible. The objection was disallowed under s. 246 of the Code of Civil Procedure (Act VIII of 1859). No suit was brought by K within one year from the date of the order, but L

was estopped from again pleading that the same property was not family property or partible. BALUBA KRISHNA RAU v. LAKSHMIANA SHANKHDOORE

1. L. R. 4 Mad. 303

8. *Civil Procedure Code, 1859, s. 249, rejection of claim under Limitation—Adverse possession, plea of.* An order passed under s. 246 of the Code of Civil Procedure, 1859, rejecting a claim after investigation, null, if not contested by suit by the claimant, estop

1. L. R. 4 Mad. 303

9. *Civil Procedure Code, 1882, s. 335—Order rejecting claim—petition.* In a suit for a claim, petition on under s. 335 of the Code, 1882, s. 335—Order rejecting claim—petition.

1. L. R. 4 Mad. 303

10. *Order rejecting claim under Civil Procedure Code, 1882, s. 281—Parties—Non-joinder of puisne mortgagee in a mortgage suit—Right of redemption—Transfer of Property Act (IV of 1882), s. 85—Claim in execution to mortgage premises.* A mortgagor sued on his mortgage and obtained a decree against the mortgagor for the principal, together with the interest accrued due thereon, and for the sale of the mortgage pre

### ESTOPPEL—contd.

#### 4. ESTOPPEL BY JUDGMENT—*contd.*

gaged the opportunity of discharging it. No suit was brought to question this order. The first mortgage was not paid off, and the mortgage premises were brought to sale. The purchaser, who was the first mortgagee, now sued for possession of the land,

to the present suit; (ii) that the second mortgagee was estopped from now re-asserting his claim.

**KRISHNAN v. CHADAYAN KUTTI HAJI**

I. L. R. 17 Mad. 17

11. \_\_\_\_\_ *Civil Procedure*

Code (Act VIII of 1859), s. 246—Civil Procedure Code (Act XIX of 1859), ss. 231, 253—Limitation Act (XV of 1877), Sch. II, Art. 11—Limitation Act (IX of 1871), Sch. II, Art. 15—Suit for possession. In certain execution-proceedings land was attached, but before the sale the judgment-debtors, with the permission of the Court, sold the land to the

twelve years before suit. On appeal to the High Court, the plaintiffs, appellants, contended that the claim of the defendants in the execution-proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order

they could have brought a suit to establish their right to possession, and that such time had not expired. GEND LALL TEWARI v. DIXONATH RAM TEWARI . . . I. L. R. 11 Calc. 673

I. L. R. II Calc. 673

**¶ 12. — Construction of decree made in order in execution-proceeding—Finality of such order—Omission to appeal against order.** A Court having jurisdiction decided in the course of

**ESTOPPEL—*con'd.***

#### 4. ESTOPPEL BY JUDGMENT—*cont'd.*

*judicata* applied was not relevant, that term referring to a matter decided in another suit. **RAM KIRPAL v. RUP KUARI**

I. L. R. 6 All 269; L. R. 11 I. A. 37

**13.** \_\_\_\_\_ *Civil Procedure*

*Code, s. 13, expl. II—Execution of decree—Principle of res judicata as applied to execution proceedings—Decision not in another suit, but in same suit. Where a person on his own application was added as a party respondent to an appeal, and on the case on appeal being remanded under s. 562 of the Code of Civil Procedure for re-trial on the merits, practically took no steps whatever to defend the suit:—Held, that he could not afterwards plead his way of objection to execution of the decree, matters*

I. L. R. 14 All. 64

14. \_\_\_\_\_ In reference to

an application for execution of a decree, a Court made an order between the parties construing the decree to award interest at a certain rate till payment. *Held*, that no contrary construction could be placed upon the decree in a subsequent application

1. L. 5. (A. 104; L. R. 111. A. 181)

15. \_\_\_\_\_ Decree in suit to set aside

**adoption—Reversioner, Quare:** Whether a decree in favour of the adoption passed in a suit by a reversioner to set aside an adoption is binding on any reverseroner except the plaintiff; and whether a decision in such a suit adverse to the adoption would bind the adopted son as between himself and any other than the plaintiff. JUNOONA DASSYA v. BIRMAJCON-  
DARI DASSYA

L. L. R. 1 Calc. 289: 25 W. R. 235

L. R. 3 I. A. 72

See BHAGWANTA v. SUDHI I.L.R. 22 ALL 33

and GUERRETT SINGH S. DEEPA DYL

L. L. R. 22 All. 352

of degree appealed

10. Effect of distress appeared from after compromise on appeal—*Limit of*

rule—No bar to persons contesting inter se under a title derived from one of the original litigants. . . . by the . . . Court, an . . . when the . . . the appeal was permitted to be withdrawn. *Held*, that the decree of the High Court as to the validity of the adoption became final and was not affected by the compromise so as to allow the matter to be again litigated between the parties or their privies. Although the decision of a Court as to the validity of an adoption in a suit between *A* and *B* may, in any subsequent proceedings between *A* and those claiming

**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

ing under him on the one side and B and those

operate as an estoppel so as to prevent the validity of the adoption being again questioned by either party to such suit. *VYTHILINGA MUPPANAR v. VIJAYATHAMMAL*. I. L. R. 8 Mad 43

**17. —** Decree in compromised suit—*Purchaser pendente lite*. A person who buys with her eyes open, *pendente lite*, cannot maintain a suit involving a revival and re-trial of the very question decided in her vendor's suit. *NADURONISSA BIBER v. AGHUR ALI CHOWDHURY*. 7 W. R. 103

**18. —** Decree in suit to impeach conditional sale—*Purchaser from conditional vendor*. The purchaser of the conditional vendor's interest pending the suit to impeach the conditional sale must be bound by the decree in that suit. *GHAZEE-ODDEEN v. BHOOKUN DOOREY* 2 Agre 301

**19. —** Decrees against sisters with life-interest in property of father—*Effect of, on survivor*. The survivor of several Hindu sisters is not bound by decrees obtained against her sisters during their lives, whose interest was only a life interest in their father's property, which on their death passed to the survivor as heir of her father. *JORGEBIND SONOY v. MAHARAJ KOOYWAR*. 17 W. R. 1

**20. —** Decree as to right of way—*Effect of, as against auction-purchaser of lands in mortgage suit*. A brought a suit against B to have it declared that B possessed no right of way over his lands. This suit was dismissed, and B

against B to have it declared that no such right of way existed over the lands.—*Held*, that C was not estopped by the previous decision against A, his mortgagor, from again raising the question of the validity of the right of way over the said lands. *BONOMALEE NAG v. KOYLASH CHUNDER DEY*. I. L. R. 4 Calc. 692

**21. —** Reliance by plaintiff in case in their favour subsequently reversed. Where the plaintiffs appealed in both the lower Courts to the jurisdiction for the determination of a previous suit as evidence in their favour, and embodied it in their plaints as being a material particular of the cause of action which they proposed

**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

already passed in favour of these plaintiffs on the strength of the decision of the High Court, which reversed the judgment in the previous suit on which the plaintiffs had relied. *PANIGTY v. PARBUTTY CHOWDHURAN*. 8 W. R. 492

**22. —** Decree in former unsuccessful suit—*Raising same title as defence in subsequent suit*. The fact that a person failed to establish a prescriptive title in a suit in which he was plaintiff, does not debar him from defending his right of possession against another plaintiff suing him for the property. *SRIKIDHAR VINAYAK v. BABAJI BIN JIVAJI*. 6 Bom. A. C. 220

**23. —** Suit for wasilat after decree for possession—*Selling up title of third party*. In a suit for wasilat brought after a decree awarding possession to the plaintiff the defendant cannot set up the title of a third person. *BENGAL COAL COMPANY v. DIRENDRAN DAIHA*. Marsh. 105 : 1 Hay, 181

**24. —** Decision in former suit declaring patni sale valid—*Claim in another form*. Where a patni taluk had been sold for

set aside the sale, but had failed, and now renewed the attempt:—*Held*, that, even if the claim of these persons to the zamindari rights had been proved, which was not the case, they could not now repeat their old suit against the patniar in a new form: still less could they, after having always denied the existence of the patni taluk, now claim in appeal to be its owners, if it existed. *HURO NATH DASS v. ROMA NATH SURMA*. 25 W. R. 321

**25. —** Decree on disclaimer of title by defendant in written statement.

reason why the said decree is absolutely concluded by it so long as fraud is not proved. *RADHA KISHEN CHOWDHURY v. KOMUL SHAW*. 25 W. R. 126

**26. —** Decree by consent in former suit—*Evidence Act, s. 116—Suit for possession*. Plaintiff alleged a purchase of land from A and B, of which he afterwards granted them a pottah and

**ESTOPPEL—*contd.*****4. ESTOPPEL BY JUDGMENT—*concl.***

27. ——— Judgment by consent. A judgment by consent raises an estoppel just in the same way as a judgment after the Court has exercised a judicial discretion in the matter. *LAKE-MISHANKAR DEVSHANKAR I. VISHNURAM*  
I. L. R. 24 Bom. 77

28. ——— Decree establishing joint liability—*Suit for contribution—Denial of liability.* Where a joint decree, passed against several defendants, has been satisfied out of the property of one of them, and then a subsequent suit for contribution has been brought by the latter against the

was liable to satisfy the decree in the former suit, and that consequently they are not liable to contribute. *ASMAN SING v. AJNAS KOER*  
2 C. L. R. 406

29. ——— Decree against karnavan, effect of—*Representation by karnavan of members of Malabar taluqd—Civil Procedure Code, 1882, ss. 13 and 30.* Although the members of a taluqd or family may, in an irregular fashion, be represented by a karnavan of the taluqd in a suit, the decree therein does not raise an absolute es-

of competent jurisdiction to bar a subsequent claim for compensation in a suit for arrears of rent, as well as for compensation—*Mixed question of law and fact.* A suit for compensation was brought in the Court of the Munsif at Goas in 1868 by the plaintiff (patnidar) against the defendant's predecessors (darpatnidars), upon the basis of a *darpatni kabuliya*, which stipulated that the darpatnidars would deliver certain articles to the plaintiff's landlord, or in default they would compensate the plaintiff for any damage she might sustain. The Court (which had no jurisdiction to try suits for rent) gave a decree to the plaintiff for damages which she had sustained for the darpatnidars' default. In a subsequent suit brought by the same

to entertain a suit for arrears of rent, it was competent to entertain a suit for compensation for breach of contract, and, as the previous suit was not a suit for

**ESTOPPEL—*contd.*****4. ESTOPPEL BY JUDGMENT—*contd.***

arrears of rent, nor was the claim in the subsequent

the issue whether that particular stipulation was valid or not, the question being a mixed question of law and fact. A decision in a previous suit on a question of law, even if erroneous, would operate as *res judicata* in a subsequent suit. *Parthasaradi Ayyangar v. Channa Krishna Ayyangar, I. L. R. 5 Mad. 394*, dissented from. *BISHNU PRIYA CHOWDHURANI v. BHABA SUNDARI DEBYA* (1901)  
I. L. R. 28 Calc. 318

31. ——— Decree—*Whether a decree estops a person not a party to it—Evidence.* Certain

a decree was made in *G's* favour. In a subsequent suit between *G* and one *B*, who was no party to the previous suit: *Held*, that *B* was not estopped by that decree from disputing *G's* title to the property. *BROJENDRA KUMAR ROY CHOWDURY v. GORI MOHAN ROY* (1903) 7 C. W. N. 574

32. ——— Representative of deceased plaintiff—*Civil Procedure Code, ss. 401 et seq—Suit in forma pauperis—Death of plaintiff—Decree passed in ignorance of plaintiff's death—Appeal—Consent order for re-trial—Objection to plaintiff's representative suing in forma pauperis.* The plaintiff in a suit brought in *forma pauperis* died, but

On this appeal an order was passed, by consent of parties, sending back the suit to be re-tried on the merits as between the defendant and the person nominated by him as plaintiff, and it was so re-tried, and a decree was again passed in favour of the plaintiff. *Held*, that it was not thereafter open to the defendant to object that there had been no inquiry into the right of the representative of the original plaintiff to sue as a pauper. *AKBAR HUSAIN v. ALIA BIBI* (1902) I. L. R. 25 All. 137

33. ——— Purchaser of land—*Estoppel by judgment—Res judicata—Civil Procedure Code (Act XI of 1882), s. 13—Purchaser, previous suit—Defence in previous suit—Vendor, possession of—Pleader, non-disclosure of facts by—Evidence Act (I of 1872), s. 115—Fraud—Silence, when fraudulent.* A purchaser of land cannot be estopped



**ESTOPPEL—contd.****4. ESTOPPEL BY JUDGMENT—contd.**

by a judgment in a suit against his vendors commenced after the purchase, although the former had, as pleader for the vendors, actively defended the suit. *Mercantile Investment and General Trust Company v. River Plate Trust, Loan, and Agency Company*, [1894] 1 Ch 378; *Mohunt Das v. Nilkomal Dewan*, 4 C. W. N. 283, followed. If, however, the purchaser had allowed the vendors to remain in possession intending to mislead the plaintiff, who, having been so misled, had sued them, the decree in suit would bind him on the ground of fraud. Silence amounts to fraud for which a Court will grant relief only, when it is the non-disclosure of those facts and circumstances, which one party is legally bound to communicate to the other. *Fox v. Mackreth*, 2 R. R. 55, followed. *M'Kenzie v. British Linen Company*, 6 App. Cas. 82, distinguished. The defence must also be a true cause of the change of position of the other party. *Picard v. Sears*, 6 A. & E. 469; 43 R. R. 538, referred to. A person conducting as pleader the defence on behalf of a defendant is under no legal obligation to disclose to the plaintiff the fact that the defendant had, prior to the suit, transferred the subject-matter of the suit to him. *Mohunt Das v. Nilkomal Dewan*, 4 C. W. N. 283, referred to. S. 115 of the Evidence Act (I of 1872) does not apply to a case in which the defendant has been only mission on estoppel.

BANSERJEE

I. L. R. 32 Calc. 357

**5 ESTOPPEL BY CONDUCT.**

See HINDU LAW—SELF-ACQUISITION.

I. L. R. 33 Calc. 1119

1. — Representation made to, and acted upon by, party. When a person willfully induces another to believe the existence of a

*BANKEPERSHAD v. MAUN SINGH*. 8 W. R. 67

2. — Evidence Act, 1872, s. 115  
— Permitting person to believe in and act upon the truth of anything. S. 115 of the Evidence Act,

I. L. R. 7 Calc. 594  
10 C. L. R. 581

3. — Admission of point of law. An admission on a point of law is not

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

an admission of a "thing" so as to make the admission matter of estoppel within the meaning of s. 115 of the Evidence Act. *Jolendra Mohun Tagore v. Ganendra Mohun Tagore*, 9 B. L. R. 377; L. R. 1 A. Sup. Vol. 47, and *Gopre Lall v. Chundrablee Bahoojee*, 11 B. L. R. 391, referred to. *JAGWANT SINGH v. SILAN SINGH*. I. L. R. 21 All. 285

4. — Estoppel caused by representation on which action has followed — Title, as between rival purchasers supported by an estoppel affecting the assignee of the person estopped—Notice. The law enacted in the Evidence Act, 1872, s. 115, relating to estoppel as a consequence of declaration, act, or omission causing another's belief, and action thereon, does not differ from the English law on that subject, of which the

omission has induced another to act, or to abstain from action, should have been fraudulent, or that he should have been aware of the estoppel.

*Mad 3*, referred to and disaffirmed. A widow had held benami for her husband during his life, property as to which he had executed a hibanama in her favour. After his death, she mortgaged the property, her son representing her in the transaction. After her death, in a suit between rival purchasers of part of the property comprised in the hibanama

estate could be allowed to deny the truth of this representation, intentionally made on his part, which also had been acted on by the mortgagee; and it made no difference that the son had not had a fraudulent intention. As a result of the estoppel upon the son, any purchaser of the mortgagee's interest at a sale would be bound by it.

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

**5. ——— Representative—Representation by person other than party through whom plaintiff claims—Suit for property through prior holder.** Where a person claims property as the representative of another, the doctrine of estoppel cannot apply to representations made by any one except that other person. *RANOA RAO v. BHAVANVI*

**I. L. R. 17 Mad. 473**

**6. ——— Minor, fraud by—Fraudulent representation by minor that he was of age—Contract by minor.** A minor representing himself to be of full age sold certain property to A and executed a registered deed of sale. The deed contained

**7. ——— Intention of parties as evidenced by their acts—Execution of deed of partition—Vendor and purchaser.** Whatever may

**DUTT . . . . . 4 B. L. R. P. C. 16**

**S. C. SOOHEEMONEE DOSSEE v. MOHENDRO NATH DUTT . . . . . 13 W. R. P. C. 14**

**8. ——— False representations to induce others to contract.** Parties who by false representations induce others to enter into contracts are estopped from asserting the truth of the

**9. ——— Conduct of complainant conducing to acts complained of—Claim to relief.** If the person who asks for redress is a party who has countenanced the acts of which he complains, the Court is bound to refuse him any redress or assistance. *BHYRO DUTT v. LEKHANEE KOOER*

**16 W. R. 123**

**10. ——— Suit by guardian to set**

suit was brought under such circumstances, it was dismissed with costs, the Court leaving the minor to sue to set aside the lease through some other person as next friend. *MONMOMINEE JOGNEE v. JAGOOBUNDHOO SADOOKHAN*

**16 W. R. 233**

**11. ——— Mortgage by minor—Voidable mortgage—Estoppel—Evidence Act (I of 1872), s. 115—Fraud—Specific Relief Act (X of 1877), ss. 35, 41.** The general law of estoppel, enacted by s. 115 of the Evidence Act (I of 1872), will not apply to an infant, unless he has practised fraud

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

operating to deceive. A court administering the equitable principles will deprive a fraudulent minor of the benefit of a plea of infancy; but he who

*Chunder v. Gopal Chunder Laha*, **I. L. R. 20 Calc. 296**; *Mills v. For*, **L. R. 37 Ch. D. 153**; *Wright v. Snow*, **2 De Gex & S. 321**; and *Nelson v. Stocker*, **4 De Gex & J. 458**, discussed. *DHURMO DASS GHOSE v. BRAHMO DUTT*

**I. L. R. 25 Calc. 616**

**2 C. W. N. 330**

*Held* on appeal (affirming the above decision), that s. 115 of the Evidence Act has no application to contracts by infants; but the term "person" in that section applies only to a person of full age and competent to enter into contracts. The words "person" and "party" in s. 64 of the Contract Act

fancy, or was put upon enquiry as to it—*Held* (affirming the decision of *JENKINS, J.*), that the

distinguished *BROHMO DUTT v. DHARMO DAS GHOSE* . . . . . **I. L. R. 28 Calc. 361**  
**3 C. W. N. 466**

**12. ——— Fraudulent conduct of parties—Pleading illegality of agreement.** In a

**13. ——— Fraudulent endorsement on hundi—Forged hundi.** The bona fide holder for value of a forged hundi, to whom, after it had been dishonoured, it had been transferred by endorsement by the payees, who at the time of endorsement knew that the hundi was forged, sued the payees on the hundi, to recover the amount he had paid them for it. *Held*, that the payees were estopped from setting up the forgery of the hundi as a bar to the suit. *BISSEN CHAND v. RAJENDRO KISHORE SINGH* . . . . . **I. L. R. 5 All. 303**

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

14. ——— **Laches of purchaser—*Acquiescence.*** Where a purchaser of land lets by for five years allowing another person to occupy the land and afterwards to sell it he is estopped by his own conduct from afterwards claiming the land from a *bona fide* purchaser without notice. **MONESH CHUNDER CHATTERJEE v. ISHUR CHUNDER CHATTERJEE . . . 1 Ind. Jur. N. S. 266**

15. ——— **Recognition of status of defendant as occupancy raiyat—*Suit subsequently treating him as occupying seer land.*** Held, that the plaintiff, having once recognized the character of the defendant as an occupancy raiyat of certain land, could not afterwards sue for possession of the land, alleging it to be *seer* land which once belonged to the defendant and had by partition fallen to the plaintiff's puttee, possession never having been acquired by the plaintiff since partition. **KALOO RAI v. MOHANT RAI . 1 Agra 259**

16. ——— **Suit in ejectment as against trespassers—*Previous admission by plaintiff of defendant's tenancy—N-W. P. Rent Act (XII of 1881), s. 36.*** The service of a notice of ejectment under s. 36 of Act No. XII of 1881 is, as between the person who causes such notice to be served and the person on whom it is served, a conclusive admission by the former of the existence between them of the relationship of landlord and tenant, and the landlord cannot afterwards sue in the Civil Court to eject the same tenant from the same land on the ground that he is not a tenant, but a mere trespasser. **BALDEO SINGH v. IMDAD ALI . I. L. R. 15 All. 169**

17. ——— **Application for ejectment as a tenant—*N-W. P. Rent Act (XII of 1881), s. 36—Subsequent suit for ejectment as a trespasser—Civil and Revenue Courts—Jurisdiction.*** Held, that the mere fact of a plaintiff in a suit for ejectment in a Civil Court having on a previous occasion applied to the Revenue Court for the ejectment of the defendant would not estop him from asserting that the defendant was unlawfully in possession, that is, as a trespasser. **ZUBEIDA BIBI v. SHEO CHARAN . . . I. L. R. 22 All. 83**

18. ——— ***N-W. P. Rent Act (XII of 1881), ss. 36, 96 (b)—Subsequent suit for ejectment as a trespasser—Civil and Revenue Courts—Jurisdiction.*** Held, that the fact that a plaintiff in a civil suit for ejectment of an alleged trespasser has on a previous occasion taken proceedings against the defendant under s. 36 of the Rent Act, 1881, is not of necessity fatal to the suit in the Civil Court. **15 All**

**Rai, A.**

**Bibi v.**

**HAMID ALI SHAH v. WILAYAT ALI**

**I. L. R. 22 All. 93**

19. ——— **Transfer of occupancy-rights with zamindar's consent—*Acceptance***

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

**of rent by zamindar from vendees—Contract Act, ss. 2, 23—Evidence Act, ss. 115, 116.** Under a deed, dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zamindars instituted a suit for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the *N-W. P. Rent Act* in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zamindars had consented to the sale to the vendees, and re-  
*from the . . . . .*

dars had consented to was valid; and that, under any circumstances, they were stopped by their conduct from bringing a suit to set aside the sale. **Per MAHMOOD, J.**—That the sale-deed was invalid with reference to the provisions of ss. 2 and 23 of the Contract Act, inasmuch as its object was the transfer of occupancy-rights, which was prohibited by s. 9 of Act XVIII of 1873. Also, **per MAHMOOD, J.**—That s. 115 of the Evidence Act implies that no declaration, act, or omission will amount to an estoppel unless it has caused the person whom it concerns to alter his position, and to do this he must both believe in the facts stated or suggested by it, and must rest upon such belief; that in the present case it could not be said that the vendee was misled by the fact that the zamindars were consenting parties to the sale-deed; that he could not plead ignorance that the deed was unlawful and void; that it had not been shown that he acted upon the zamindar's agreement to take no action, so as to alter his position with reference to the land; and that, under these circumstances, the zamindars were not estopped from maintaining that the sale deed was invalid. **DONNA v. JHINGURI . . . I. L. R. 7 All. 511**

Reversed on appeal under the Letters Patent and the judgment of MAHMOOD, J., upheld in **JHINGURI TEWARI v. DURGA . . . I. L. R. 7 All. 578**

20. ——— **Receipt of rent from mortgagee—*Denial of mortgage.*** Held, that the plaintiffs, zamindars, who had received rents from the mortgagee as such, were estopped from pleading the invalidity of the mortgage. **GUNGA BISNES v. RAM GUTI RAI . . . 2 Agra 49**

21. ——— **Delivery under contract—*Subsequent repudiation.*** Held, that, where a person delivered indigo pursuant to the terms of a *sutta* made by a third party professing to act on his behalf, he must be considered to have assented to the engagement, and was not afterwards competent to repudiate it. **MAHOMED NUZZEROOLLAH v. FEROUSON . . . 3 Agra 139**

22. ——— **Agreement signed by parties and acted on, but . . .**

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

under seal as provided in Madras Act III of 1871—*Tolls, farming of*. An agreement was entered into between the Commissioners of the town of V and the defendant, farming the tolls of the town of V for the defendant for one year. The agreement was duly signed by the defendant, but was not executed under seal by the Commissioners as required by Madras Act III of 1871. In a suit by the President, on behalf of the Commissioners, brought after the expiry of the year, for a portion of the sum due to them by the defendant:—*Held*, that, inasmuch as the plaintiff had fully performed all things to be performed on his part and both parties had acted under the agreement, though it was not formally executed by the Commissioners, and as the defendant had had the full benefit of the contract, it would be contrary to equity and good conscience to allow him to set up as a ground of defence that there was no contract in point of law. *GOODRICH v. VENKANA*  
I. L. R. 2 Mad 104

23. ——— Account made up in accordance with usual course of dealing.

defendant could not refuse to be bound by it. *THAKOOR PERSHAD SINOH v. MOHESH LALL*

24 W. R. 390

24. ——— Disputing validity of will by devise—*Previous acquiescence in will*. Where devisee under a will had, on attaining majority, made no objection to the will, but had, on the contrary, impliedly adopted the acts of their mother and guardian, and had by their conduct and acts agreed to treat the will as a valid will, they were held to be estopped from disputing its provisions. *LAKSHMIBAI v. GUNPAT MOROBA*  
*GUNPAT MOROBA v. LAKSHMIBAI*

5 Bom. O. C. 128

25. ——— Repudiation of character of heir—*Proceedings disclaiming inheritance*. An heir is not deprived of what he is entitled to as such by having, in proceedings taken against the property claimed, repudiated heirship and denied that he had inherited. *KHEMUNDECKE DOSSEE v. GOOROO PRASAD MITER*

11 W. R. 379

26. ——— Setting up will giving larger share. Nor by having set up a will by which he claimed a larger share and failed to prove it. *ABHEDPOOLAH v. GOVINDRAJEE BISWAS*

15 W. R. 251

27. ——— Disclaimer of will—*Suit subsequently setting up will*. Where A, having used a document in a suit and disclaimed all right under it as a will, on the ground that it was not of a testamentary nature, brought a suit to recover property in which he set up the document as a

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

valid will and testament, the Privy Council held

*PERYA OODYA TAVER v. KATTAMA NAUCHEAR*  
10 W. R. P. C. 1; 11 Moo. I. A 60

28. ——— Permitting conduct of suit as if fact were admitted—*Tacit admission*. Where parties allow a suit to be conducted in the lower Courts as if a certain fact was admitted, they cannot afterwards, on special appeal, question it and recede from the tacit admission. *MOHIVA CHUNDER ROY CHOWDHRY v. RAM KISHORE ACHARJEE CHOWDHRY*

15 B. L. R. 142; 23 W. R. 174

29. ——— Waiver of objection to remand—*Alleging illegality of procedure in remanding*. A party who submits without resistance to a remand cannot afterwards be allowed to complain of the legality of the step as an integral part of the proceedings. *GHOLAM MORTFEZA CHOWDHRY v. GOLUCK CHUNDER ROY*

3 W. R. 191

30. ——— Contesting suit—*Subsequent objection to being made a party*. A person cannot at one time set himself up as a substantial party in a suit, contesting it in both the lower Courts on the merits, and then turn round and say in special appeal that he has nothing to do with it, and has been unnecessarily brought in. *KRISHNO GOPAL SHANAH v. KASREENAATH SHAN*

8 W. R. 66

31. ——— Evidence Act (I of 1872), s. 115—*Decree, if binding on a person who ought*

suit wrongly brought against her, knowing all the time that he, and not the mother, should have been sued, but there being nothing to show that it was by reason of any representation or conduct of the son that the plaintiff was led to think that the mother was the right person to be sued. *Held*, that the decree in that suit was not binding on

32. ——— Settlement of issues—*Omission of material issues—Consent of parties*.

object on special appeal that a material issue was omitted. *SABITHA MOONEE v. MUDNOO SOONDY SINOH*

March. 519

33. ——— Valuation of suit—*Adoption by defendant of plaintiff's valuation*. A defendant to a suit, having adopted a certain valuation, cannot

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

in the same suit object to that valuation. **KRISTO INDRO SAMA v. HUPOMONEE DOSSEE**

**I. R. 11 A. 84**

34. Failure to appear at local investigation—Right to object to stay erroneous. A judgment-debtor who fails to appear before an Amcen deputed to make a local enquiry as to the

35. Suit for declaration of title. Where the defendant rests the plaintiff's title, he is estopped from afterwards objecting that a suit for a declaratory decree will not be **SURE JARON ROY v. PANCHANAN BOSE**

**3 B. L. R. Ap. 55  
11 W. R. 487**

36. Omission to plead co-parcenership—Joint property—Onus probandi. Suit for share of joint ancestral property. The plaintiff claimed under A, who, when sued in 1812 as trustee for the defendant's father, then a minor, never pleaded that he was a co-parcener. **Held**, that the plaintiff, if not estopped from contending that the property was joint, had still the full burden of proving that it was joint. **SURMOYEE DEBTA v. GUNGA GOSWAMI ROY**

**2 W. R. 264**

37. Omission to plead jurisdiction in foreign Court—Raising plea in suit on decree of foreign Court. Defendants appeared in the French Court at Mahé, defended a suit, and made no objection to the jurisdiction. In a suit upon the decree of the said Court, defendants pleaded want of jurisdiction. **Held**, that a man who has thus taken the chances of a judgment in his favour, which would, if obtained, have relieved him from all liability, is equitably estopped from afterwards pleading want of jurisdiction. **KANDOTH MAMMI v. NEELANCHERAIL ABDO KALANDAN**

**8 Mad 14**

38. Suit on judgment of foreign Court—Waiver of objection to jurisdiction. In a suit in a foreign Court where the defendant took no objection to the jurisdiction, but appeared by an agent and defended the suit on the merits—**Held**, that he must be held to have waived the jurisdiction; and in a suit brought on the judgment of the foreign Court, he was estopped from taking any exception to the jurisdiction. **FARAZ SHAH KHAN v. GAFAR KHAN**

**I. L. R. 15 Mad. 82**

39. Defence suppressed in former suit—Right to rely on it in subsequent suit. In a former suit, the defendant suppressed a defence which he was entitled to rely on in a subsequent suit.

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

on the basis of a family agreement made between

based upon a valid family compact varying the

rendering it wholly inequitable to permit her now to insist upon it. **Semble**. Where a defendant has been sued by a plaintiff upon his right of ownership, plaintiff's recovery negates all grounds of defence to that action then existent and within the plaintiff's knowledge. **JANAKI AHUJA v. KAMALATJAMMAL**

**7 Mad 263**

40. Omission to object to decree—Portion of case referred to arbitrators—Objection to award. The plaintiff in the suit, which was one on an account stated, agreed to refer to arbitration the question whether the accounts were correct or not. It was unnecessary for the arbitrators to determine whether the account stated was proved. The decree was passed on the very day the award was filed. The plaintiff was not estopped from taking objections to the award by reason of his silence when the decree was pronounced. **PHIRAN v. BAHORAN**

**7 N. W. 387**

41. Arbitration—Umpire—Acquiescence in award, though irregular. Where the

August, was that an award

**KUPU RAU v. VENKATARAMAIAH**

**I. L. R. 4 Mad. 311**

42. Omission to plead agreement—Suit to set aside decree for rent. When an

**MONEY DOSSEE** **2 W. R., Act A. v.**

43. Omission to assert a claim in execution proceedings—Execution of decree. Defendants Nos. 1 and 2 were sued by a creditor of their undivided grand-uncle D as his legal representatives, and a decree was obtained against them as such. In execution of that decree, the house in dispute was put up for sale and purchased by the plaintiff. After satisfying the decree, the

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

surplus of the sale-proceeds was paid to the defendants, who received it and divided it between themselves. Plaintiff, having been obstructed by the defendants in obtaining possession of the house, brought the present suit to recover possession. The Court of first instance rejected the plaintiff's claim on the ground that the house was the undivided family property of the defendants, and that the plaintiff should bring a partition suit. The plaintiff appealed to the Assistant Judge, who was of opinion that the defendant's omission to set up their title to the property in question at the execution-sale and the acceptance of the surplus of the proceeds of sale estopped them from impeaching the sale and setting up their title. He therefore reversed the lower Court's decree, and awarded the house to the plaintiff. On appeal by the defendants to the High Court:—*Held*, reversing the decree of the lower Appellate Court, that the defendants were not estopped from setting up their title. Proceedings in execution are in invitum as regards the judgment-debtor, and he is in no way called upon to notice them. It was not suggested that the defendants took any part in the execution-proceedings or stood by so as to induce bidders to suppose that they claimed no interest other than as representatives of the original judgment-debtor, or that their silence misled the bidders at the sale. As to the reception of the residue of the purchase-money after satisfaction of the judgment-debt, it took place after the sale was completed. *OTRUTADARA v. IRARA*

I. L. R. 14 Bom. 558

44. ——— Acceptance of sum and receipt in full in satisfaction of decree—*Omission to allow for difference in exchange on Privy Council decree.* A obtained a decree against B in the Privy Council for the sum of £213-10. A applied to the High Court to direct execution of this decree for the sum of Rs 2,500-1, being the equivalent of £213-10, at the then rate of exchange. This application, together with the Privy Council decrees was sent down to the lower Court, where execution was issued for the amount.

taking the

This sum

a receipt. *under the circumstances, the decree-holder was not bound by the receipt in full, and that he was entitled to receive the further sum of Rs 365-1 which the judgment-debtor had paid into Court.* *LAKHPATRY THAKOORANI v. LEEHANUND SINGH*

2 C. L. R. 322

45. ——— Return to Compromise after contesting suit. A defendant cannot fall back on a deed of compromise conceding to the plaintiff a portion of his claim after he has run his case. *plaintiff* *FATTER* *1884, 211*

ESTOPPEL—*contd.*5 ESTOPPEL BY CONDUCT—*contd.*

DWARKANATH SETHIA MOJOONDAN v. UNKODA SOONDARE. 5 W. R. M.S. 30

48. ——— *attaining majority, the respondents, being desirous of settling the matter, executed a kistbandi and a kistbandi was accordingly executed.*

attaining majority, the respondents, being desirous of settling the matter, executed a kistbandi and a kistbandi was accordingly executed.

attaining majority, the respondents, being desirous of settling the matter, executed a kistbandi and a kistbandi was accordingly executed.

8 Moo. I. A. 447

47. ——— Suit after compromise and decree—*Cause of action—Res judicata.* A, who was in partnership with B, C, and D, brought a suit in the Zillah Court of Jessore against B, C, and D, for an account and division of the partnership estate

principal place of business of the defendants was

that A was not barred from bringing a suit in the High Court to compel the defendants to perform the agreement, upon the basis of which the decree was obtained in the Zillah Court, either by the fact of the compromise or the decree.

48. ——— Compromise of execution of decree—*Execution of compromise as a decree—Acquiescence.* The parties to a decree for the

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd**

and such application, should, therefore, be disallowed. *Held* (OLDFIELD, J. dissenting), that such agreement could not be executed as a decree, and such application could not be entertained, and that the judgment-debtor was not, by reason that he had submitted to the execution of such agreement as a decree, estopped from objecting to its continued execution as a decree. *DEBI RAI v. GOKAL PRASAD*  
I. L. R. 3 All. 585

See *STOWELL & BILLINGS*. I. L. R. 1 All. 350

*RANLAKHAN RAI v. BAKHTAUR RAI*

I. L. R. 6 All. 623

40. *Contract superseding decree* A judgment-debtor, against whom a decree for money was in course of execution, presented a petition to the Court executing the decree, in which it was stated that a part of the money payable under the decree had been paid, that it had been agreed that a part of the balance should be set-off against a debt due to the judgment-debtor to be realized by the decree-holder, and the remainder should be paid by the judgment-debtor by certain instalments; and that, if default were made in payment of any one instalment, the decree-holder should be at liberty to execute the decree for the whole amount, and the judgment-debtor asked the Court to sanction the arrangement. The decree-holder expressed his assent to the arrangement, and the Court recorded a proceeding reciting the arrange-

ment for execution of the decree. *Held*, that the petition of the judgment-debtor set out above did not amount to, nor was it any evidence of, a new contract superseding the decree, and the decree-holder was not estopped therefore from executing the decree, which therefore the Court allowed to be executed. *DEBI RAI v. GOKAL PRASAD*, I. L. R. 3 All. 585, distinguished. *CANOA v. MURLI DHAR*  
I. L. R. 4 All. 240

See *DARBHA VENKAMMA v. RAMA SUBBARAYADU*  
I. L. R. 1 Mad. 387

50. *Evidence Act, s. 115—Sale in execution of decree—Erroneous impression of what was sold* In execution of a decree for costs, the defendants caused the "rights and interest of the judgment debtor to the extent of 16 annas" in a particular mouzah to be put up for sale. It appeared that in a former suit the defendants had already been adjudged a 12-annas share in the mouzah. The plaintiff, who became the purchaser, claimed to be entitled to the whole 16 annas, alleging that he had been misled by the description of

of the Evidence Act the following findings were necessary: (1) that the plaintiff believed that the

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd**

judgment-debtor, whose rights and interest were

... there was no estoppel. *SOLOMON v. LALLA RAM LALL*

7 C. L. R. 481

51. *Petition to postpone sale in execution of decree* To petition for the postponement of a sale in execution of decree is not an intentional causing or permitting the decree-holder to believe that the judgment-debtor admits that the decree can be legally executed, and occasions no estoppel within the Evidence Act, 1872. s. 115. The judgment-debtor can, notwithstanding his having filed such a petition, maintain that execution is barred by lapse of time. *MINA KOWARI v. JEGGA SETANI*. I. L. R. 10 Calo. 186  
13 C. L. R. 885  
L. R. 10 I. A. 119

52. *Causing sale of right—Subsequent plea that right was barred* A party by whom *malikana* was payable obtained a decree

plea of limitation, and say that what was purchased was not a substantial right actually existing at the time. *ALAI AHMED v. BODHO SINGH*

14 W. R. 204

53. *Sale of non-transferable holding by kobala—Landlord and tenant* Where a non-transferable holding is sold by a tenant by a kobala, he is estopped from setting up the invalidity of the sale by him. The remarks of GARTH, C.J., in *Ganges Manufacturing Co. v. Soorajmull*, I. L. R. 5 Calo. 669, 678, referred to *BHAGIRATH CHANGA v. HAFIZUDDIN*

4 C. W. N. 679

54. *Acquiescence of decree-holder—Waiver of heir* Where a decree-holder brings to sale in execution of his decree, property on which he holds a mortgage, without notifying his encumbrance upon it, and, on being asked by any intending bidder at the time of the sale whether there is any encumbrance on the property, gives an evasive answer which misleads the bidder and induces him to purchase the property as unencumbered, he cannot subsequently claim as against such bidder to enforce his mortgage. *McCOSNELL v. MAYER*  
2 N. W. 315

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

DOOLAB SIRCAR v. KRISTO COOMAR BERNIER  
3 B. L. R. A. C. 407, 2 W. R. 303

55. — Inducing person to buy property by denying existence of claim upon it—*Subsequent attempt to enforce charge.* A man who has represented to an intending purchaser that he has not a security in the property to be sold and induced him under that belief to buy, cannot, as against that purchaser, subsequently attempt to put his security in force. *MURDOO LALL v. LALLA CHOONEE LALL.* 21 W. R. 21

I. L. R. 11 A. 144

58. — Evidence Act (I of 1872), s. 115—*Execution-purchaser without notice of mortgage.* The plaintiff sued to realize his security under a mortgage executed to him by defendant No. 1, by sale of the mortgaged premises which were in the possession of defendants Nos. 2 and 3. It appeared that the plaintiff had previously attached and brought to sale the mortgaged premises in execution of a decree against defendant No. 1, and that the other defendants had purchased at the Court-sale without notice of the plaintiff's mortgage, which was not referred to in the attachment lists or sale certificates. *Held*, that the plaintiff was estopped from setting up his present claim. *JAGANATHA v. GANGI REDDI.*

I. L. R. 15 Mad. 303

57. — *Omission to give notice of prior encumbrance to executing decree-holder—Subsequent suit to enforce encumbrance.* A hypothecation bond executed in 1878 by the husband (deceased) of defendant No. 1 to secure a debt due by him to a partner of the plaintiff was assigned to the latter in 1888. In 1882 the plaintiff, who was aware of the existence of this instrument, brought the land comprised in it to sale in execution of a money-decree obtained by him against the executant, and defendant No. 3 became the purchaser. At the time of the sale the plaintiff gave no notice of the existence of the encumbrance. In a suit to recover the principal and interest due on the hypothecation bond; *Held*, that the plaintiff was estopped from recovering the secured debt against the land. *KASTURI v. VENKATACHALAPATHI.* I. L. R. 15 Mad. 412

58. — Sale in execution of decree against wrong person as representative of deceased—*Subsequent claim by proper representative—Quiescence of real representative.* One S

possession of A, was sold in execution, and the first defendant, R, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

1880 R was put into possession. On the 10th of December 1880, one S B presented a petition on behalf, as he alleged, of the plaintiff T, the widow of S, to set aside the sale. He did not produce any

1880 A used the present suit on behalf of her adopted son B to set aside the sale and to recover this house. *Held*, that the plaintiff was entitled to have the sale set aside, and to recover possession of the house. The estate was vested in T as legal representative of her deceased husband. Had T wilfully put forward B as the representative of S so as to deceive and mislead M, then, no doubt, she might be held bound by the decree obtained by this latter against B. Her mere quiescence while M wilfully sued the wrong person could not affect her legal rights or deprive her adopted son, the plaintiff B, of his rights. He could not be bound by suit and sale

decree. This rule—that one who, knowing his own

part. In this case there was nothing more than mere quiescence on the part of T. *BASWANTAPA SHIDAPA v. RANU.* I. L. R. 9 Bom. 86

59. — Acquiescence in execution proceedings—*Representatives of judgment-debtor—Death of party to suit before final decree in appeal—Subsequent proceedings in execution taken against representatives of such party.* A decree was given to the defendant (then plaintiff) in 1856 for possession of land and mesne profits against numerous defendants, including one Dawan Rai. Some of the judgment-debtors, including Dawan Rai, appealed to the Sadr Diwani Adalat, but before the decrees of the Sadr Diwani Adalat was passed, Dawan Rai died. No application was made to put any representative of Dawan Rai on the record; but in 1881 (the amount of the mesne profits payable under the decree having been finally determined in 1877), certain persons were made

it had not been shown that by reason of the plaintiff's not objecting that they had been improperly brought on to the record of the execution of proceedings the defendant had been induced to accept a less



ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

60. ——— Mistake as to what was sold in proclamation of sale—*Purchase by*

and was subsequently put up for sale and purchased by T. In a suit brought by T against M to restrain M from entering on the land. *Held*, that M was estopped by his conduct from setting up his title as purchaser against T. *TUMAPPA CHETTI v. MURUGAPPA CHETTI* . . . I. L. R. 7 Mad. 107

61. ——— Disclaimer of title in former suit—*Evidence Act, s 115—Sale in execution of decree—Intervenor in rent suit.* A purchase by a mortgagee, at a sale in execution of a decree upon his mortgage, of the right, title, and interest of the mortgagor who has been estopped from asserting

interest to others against whom the former afterwards obtained a decree, and brought the darpatni to sale in execution, buying their right, title, and interest therein himself. From the darpatnadar who had thus disclaimed title, a third party claimed to be mortgagee, and set up a decree on his mortgage followed by a purchase of the tenure at a sale in execution.

the intervening mortgagee was bound by the estoppel arising out of the mortgagor's disclaimer of title in the suit above mentioned. *PORESHNATH MUKERJEE v. ANATHNATH DEB* . . . I. L. R. 9 Calc. 265; I. L. R. 9 I. A. 147

*Shankar Lal v. Anand Lal Deb*, I. L. R. 3 Cal. 265; I. L. R. 9 I. A. 147, followed. *KISHORY MOHUN ROY v. MAHOMED MUJAFER HOSSEIN*

I. L. R. 16 Calc. 166

63. ——— Assertion of title by auction-purchasers independently of sale—*Admission of title by purchase.* It was held that the auction-purchasers at a sale in the execution of a decree were not estopped from asserting, as against

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

a person claiming to be a mortgagee prior to the sale of the property purchased, that in fact the property was their own, independently of the auction-sale. At the most, their conduct in making the purchase could only be regarded as some evidence of an admission of title in the judgment-debtor, which they could explain or rebut. *HANUMAN DAT v. ASSADULLAH* . . . 7 N. W. 145

64. ——— Benami purchase—*Mortgage by benami purchaser.* A purchased immovable property in the name of B, and allowed B to occupy and retain possession of the property. B

PAUL . . . Marsh. 569

See *RAM MOHINEE DOSSEE v. PRAN KOOMAREE* . . . 3 W. R. 88

and *SMITH v. MORRIS MANTON* . . . 18 W. R. 528

85. ——— Purchaser at

appeal, that R acquired the property adversely to A, not as his representative, and that there was no estoppel against him. *Dinendranath Sannal v. Ramkumar Ghose*, I. L. R. 7 Calc. 107. I. L. R. 8 I. A. 65, and *Lala Parbhu Lal v. Mylar*, I. L. R. 14 Calc. 401, followed. *BASHI CHUNDER SEN v. ENAYET ALI* . . . I. L. R. 20 Calc. 236

66. ——— Benami transaction—*Execution of deed.* A executed a deed of sale of a house in favour of B, which was duly registered. B afterwards transferred the house to C. *Held*, that A, and

as house continued notwithstanding to be the true owner. *RAKHALDAS MODUCK v. BINDOO BASHINEE DEBIA* . . . Marsh. 293; 2 Hay 167

See *RAM MOHINEE DOSSEE v. PRAN KOOMAREE* . . . 3 W. R. 88

67. ——— Right of creditor to question acts of debtor's benamidar. The creditor of a deceased proprietor is not estopped, in the way in which the deceased would have been, were he alive, from questioning acts done by the said proprietor's benamidar; for the rule of law by which an heir or assignee stands in no better position

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

than the party through whom he derives his title admits of an exception in favour of those who would be themselves aggrieved or defrauded by the party through whom they claim. *LEKHRAJ ROY v. MOTEE MADHUR SEIN* 15 W. R. 333

68. ——— Benami suit—Suit brought by one person in name of another. Defendant, in consideration of money advanced by A, chose to enter into a mortgage with B, who now sued for possession after foreclosure. *Held*, that it did not lie in the defendant's mouth to object to the suit being brought by A in B's name. *SURENATH NAO v. CHUNDER NATH GHOSE* 17 W. R. 102

69. ——— Recital in conveyance—Purchaser, effect of admissions on—Admissions by conduct The deed of conveyance of land in Calcutta recited that the vendor was "seised of, or otherwise well entitled" to the property intended to be sold "for an estate of inheritance in fee-simple," and it purported to convey such an estate. In a suit for dower by the vendor's widow against the heirs of the purchaser; *Held*, that, although, as between the plaintiff and the defendants, there was no estoppel which could prevent the defendants from proving that the estate sold was other than an estate in fee-simple, yet, as the purchaser bought the property as and for an estate of inheritance and paid for it as such, the recital was *prima facie* evidence against the purchaser and persons claiming through him, that the estate conveyed was what it purported to be, it being an admission by conduct of parties, which amounted to evidence against them. *SARKIES v. PROSONO-MOYEE DOSAHE*

I. L. R. 8 Calc. 794; 8 C. L. R. 79

70. ——— Endorsement on deed of

brother and sister of S J) When S J gave the conveyance, it was endorsed by his sister. This endorsement amounted to an estoppel as against her, or any one claiming through her, against saying that S J had not a full right to convey *BLAQUIERE v. RAMDHONE DOSA*

Bourke O. C. 319

71. ——— Alteration of written

72. ——— Failure to put in defence in former suit—Consent implied. The failure of

ESTOPPEL—*contd.*6. ESTOPPEL BY CONDUCT—*contd.*

a party to put in an answer in a former suit, which

73. ——— Consent to allow joint property to be dealt with in certain way—Power to withdraw consent. After the several owners of joint property have given their assent to its being employed in a particular way, and such consent has been acted on, it is not competent to an individual owner or a purchaser under him to retract his consent. *ROOF DEBEE v. GUNGO MULL*

3 N. W. 68

74. ——— Disqualification of a brother to share—Intention as evidenced by conduct—Waiver of rights—Hindu law—Inheritance—Mitakshara family Between the two surviving brothers of a Mitakshara family, the action of the elder to the younger, who had been born deaf and

family, and entitled to equal rights until it had become clear that his disqualification would never

would they hold that his acts operated to create a new title in the younger. *LALI MUDDUN GOPAL LAL v. KIRKHANDA KOER* I. L. R. 18 Calc. 341

I. L. R. 18 I. A. 9

75. ——— Agreement between widow and reversioners as to distribution of estate—Reversioner witness to deed. A Hindu widow in possession of her deceased husband's separate landed estate, her deceased husband's mistress, and his illegitimate daughter, and the next reversioner to such estate, with the object of adjusting family disputes, entered into an arrangement by an instrument in writing for the distribution of such estate. A remoter reversioner to such estate was a witness to such instrument, and took a prominent part in making such arrangement, and the same had his full consent. *Held*, that such remoter reversioner was estopped by such conduct from afterwards questioning the legality and genuine character of such distribution and the validity of assignments made by the persons who shared in such distribution. *SIA DASI v. GUR SAHAI*

I. L. R. 3 All. 362

76. ——— Acquiescence in decree binding joint family for debts—Sale in execution of joint property for decree against manager. In a suit by A, a member of a Mitakshara joint family, to recover possession of a share of certain

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

property sold in execution of a decree, dated 21st April 1870, against his father only in a suit to which

13 G. L. L. 101

77. ——— Recognition of adoption by widow—Subsequent objection on ground of its invalidity. Where it was not intended by the widow that her adopted son should succeed her in the management and enjoyment of the property without her consent, she may resist the claim of the adopted son to eject her, on the ground of the invalidity of the adoption under the Hindu Law, notwithstanding her previous treatment and recognition of the plaintiff as her adopted son, and her acknowledgment having been received and acted upon by the authorities without question **GOVINDO SINGH v. MAHTAB KOONWAR**

3 Agre 103A

78. ——— Adoption made in full belief it is valid—Inducing adopted person from claiming share of inheritance in his natural family. The rule of estoppel by conduct does not apply where an adoption is made by a person in full belief that the adoption is valid in law, and thereby, and by the subsequent conduct of the adopter, the

ERANJOLI ILLATH VISHNU NAMIBUDRI v. ERANJOLI ILLATH KRISHNAN NAMIBUDRI I. L. R. 7 Mad. 3

79. ——— Conduct of ancestor—Acquiescence. A person on attaining majority cannot contest an arrangement which the person from whom he inherited had during his minority acquiesced in. **TRIPOORA SOONDARE v. GOPAL NATH ROY** [25 W. R. 358]

80. ——— Estoppel by acts of ancestor when claiming through him—Taking lease from Government. In a suit against S and G to recover possession with mesne profits of land of which the plaintiff had been dispossessed by G as lessee of the Government, he claimed the land as

him a title. The lower Court made the Govern-

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

ment a party, and finding that the plaintiff's father had repeatedly taken from Government a farm of the villages in question after they had been declared not to be a portion of M, but of a resumed taluk, concluded that the plaintiff was estopped by the conduct of his father. *Held*, that the Government

21 W. R. 192

81. ——— Acquiescence—Estoppel by acts of mother. The plaintiff having known the nature of an arrangement and himself recognized

them now by the law of limitation, the present suit having been brought more than twelve years subsequent to the death of the mother. **PUDDOMONKE DOSSEE v. DWARKANATH BISWAS** . 25 W. R. 335

82. ——— Acquiescence in adoption—Subsequent objection to validity of adoption.

occurred in the performance, by the plaintiff, of the funeral ceremonies of his adoptive father, *Held*, that the defendant was estopped from disputing the validity of the adoption. **SADASHIV MORESHVAR GHATE v. HARI MORESHVAR GHATE**

11 Bom. 190

CHINTU v. DHONDU . . . 11 Bom. 192 note

83. ——— Adoption—Evidence Act, s. 115—Auction-purchase—Representation. A, a Hindu governed by the Mitakshara law, died on the 12th May 1867, leaving a widow B and a brother R, who

ment executed as guardian of D a mortgage of mouzabs in favour of M. The money was advanced and the mortgage executed at the instigation of R and with his consent, and on his representation that D was the duly adopted son of A, and it was admitted that the money was advanced for, and specifically applied towards the payment of, decrees obtained against A in his lifetime and against his estate after his death. Died in 1878. On the 14th August 1890, M instituted a suit against D upon his

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

mortgage, and in that suit he made *S* a party defendant, as being a purchaser of the mortgagor's interest in one of the mouzabs included in his mortgage. On the 26th June 1832, *M* obtained a decree declaring that he was entitled to recover the amount due by sale of the mortgaged mouzabs. In the proceedings taken in execution of that decree, *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had, on the 8th November 1830, purchased five out of the seven mouzabs at a sale in execution of certain decrees against *R*. On the 28th February 1831, *L*'s claim was allowed, and on the 11th August 1831 *M* brought this suit against *L*, *S*, *R*, and *D* and the decree-holders in the suit against *R* for a declaration of his right to follow the mortgaged property in the hands of *S*. It was found as a fact that the adoption of *D* was invalid; that the advance by *M* to *B* was justified by legal necessity, and that *L* was the benamidar of *S*. It also appeared that *M* had himself become the purchaser of one of the mortgaged mouzabs. The lower Court gave *M* a decree declaring him to be entitled to recover the full amount of the mortgage-money from the five mouzabs in the hands of *S*, *L* and *S* appealed, and *M* filed a cross-appeal, alleging the adoption to be valid and binding on *S*. It was contended that *S*, as the representative of *R*, was estopped from denying the validity of *D*'s adoption, and thus, having been a party to *M*'s first suit, the question as to the liability of the mouzabs to satisfy the mortgage was *res judicata* as against him. *Held*, that a purchaser at an execution-sale is not as such

ESTOPPEL—*contd.*5 ESTOPPEL BY CONDUCT—*contd.*

adopted son, and permitted him to perform the funeral ceremonies of her husband. *Land to which*

adoption was said as having been unauthorized. *Held*, that the plaintiff was estopped from raising this contention. *KANNAMMAL v. VIRASAMI*

I. L. R. 15 Mad. 488

80. *Admission—Conclusion proof of adoption—Description of person as adopted son.* *A*, a Hindu, died leaving him surviving a mother *B* and three sisters. *A* had a brother *P*, who had been given in adoption to his maternal uncle *R*. On *A*'s death, his property devolved on his mother *B*. *B* mortgaged the property to the defendant. The mortgage bond was attested by *P*, who described himself as the adopted son of *R*. The defendant obtained a decree on the mortgage, and himself became the auction-purchaser at the execution sale. Thereupon *A*'s sisters sued as reversionary heirs, for a declaration that the sale to the defendant was valid only to the extent of *B*'s life-interest in the property sold. The defendant pleaded that *P*'s adoption was invalid, that on *A*'s death the property vested in *P*, and that the plaintiffs had, therefore, no interest, in the property in dispute. The Court of first instance allowed these pleas, and dismissed the suit. The Appellate Court held that the description in the mortgage-bond, that *P* was the adopted son of *R*, amounted to an admission of the adoption by the defendant (mortgagee), and that he was therefore estopped from contesting the adoption. *Held*, that the defendant was not estopped. The mere fact that *P* was described in the mortgage-bond as *R*'s adopted son was not any evidence of an admission; and even, if it were, it was not conclusive proof of the adoption (s. 31 of the Evidence Act, 1 of 1872). *Held*, further, that the fact treated by the lower Appellate Court as an estoppel had no such effect, as it had not caused or permitted the plaintiffs to believe the adoption to be valid and to act upon such belief. *YASHVANT-PUTTU SHENVI v. RADHABAI*

I. L. R. 14 Bom. 312

87. *Suit to set aside adoption in which the plaintiff has concurred—Hindu law, adoption.* The plaintiff, claiming a

took place. *GURULINGASWAMI v. RAMALAKSHI-MAMMA*

I. L. R. 18 Mad. 53

88. *Hindu law, adoption—Treating invalid adoption as effective and subsequently repudiating it—Suit to uphold adoption.* A childless Hindu widow, aged 19, agreed

84. *Adoption—Suit*

defendant was estopped from denying the fact

85. *Hindu law—Adoption.* A Hindu widow, professing to have authority from her husband to do so, took the second defendant in adoption, brought him up as her

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

with the plaintiff's father to adopt the plaintiff, stating that her husband, who died at the age of 12, had given her authority to adopt. Subsequently she adopted the plaintiff and had his *upnayanam* performed in the adoptive family next day, and administered her husband's property as the minor's guardian for about 18 months, when she repudiated the adoption and refused to maintain the plaintiff. Held, that, the adoption being invalid on the ground that the widow had not, as a fact, acted under authority from her husband, she was not estopped from denying the adoption by the fact of her having treated it as effective for the period of 18 months. In order that estoppel by conduct may raise an invalid adoption to the level of a valid adoption, there must have been a course of conduct long continued on the part of the adopting family and the situation of the adoptee in his original family must have become so altered that it would be impossible to restore him to it. *Gopalayyan v. Raghubhatagyan*, 7 *Mad* 250, followed. *PARVATI-BAYAMMA v. RAMAKRISHNA RAU*

I. L. R. 18 *Mad* 145

89. ———— *Treating adoption as valid for a long period.* In a suit to recover possession of certain land to which the plaintiff claimed title as the adopted son of a deceased Saraswati Brahman, it appeared that he had been taken in adoption by the widow of the deceased acting on the authority of her late husband, that *datta homam*

PAYYA v. RANGAPPAYYA. I. L. R. 18 *Mad* 397

90. ———— *Mistake of law—Acknowledgment of adoption—Effect of recognition of status of adopted son as to property in Native State on his status as to property in British territory.* One G was possessed of considerable property both in British territory and in the territory of the Gaekwar of Baroda. He died in 1858, leaving three childless widows, L, S, and B. Shortly after his death, the plaintiff K, who was then a minor, was taken to Baroda by L, and, on her representations as well as those of her co-widows, he was acknowledged by the Gaekwar as their adopted son, and as such entitled to succeed to all the estate and

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

ceased G." In one case the widows obtained a

husband's estate, the ladies now dropped the allegation of adoption and dealt with the property in British territory in their own right, and not as trustees or guardians of the minor K. In 1871, K

but failed, the revenue authorities having eventually resolved to leave the question of K's title by adoption to be determined by the Civil Court. In 1881, K filed the present suit against the widows of G for a declaration of his adoption by G and for possession of G's estate in British territory. The widows denied the factum of the adoption, and disputed its validity. They also contended that the suit was barred by limitation. The Agent for Sardars in the Dekkan, who tried the case, dismissed the suit, holding that the plaintiff's adoption by G was not proved and that the claim was barred by limitation, the widows having been in adverse possession of the pro-

not estopped. *Per BIRDWOOD, J.*—The fact that

I. L. R. 19 *Bom* 314

91. ———— *Contradicting conduct in former case—Allowing attachment of property.* Plaintiffs, who have in a former case allowed property attached as theirs by their creditors to be claimed and taken by the defendants, are estopped in a subsequent suit from making a contrary averment. *ESKINE & Co. v. ORHOY CHUNDRA DUTT*

W. R. 1884, 58

widow heirs, and the minor K the son heir, of the de-

ESTOPPEL—*contd.*ESTOPPEL BY CONDUCT—*contd.*

84. — **Transfer for fraudulent purpose—Subsequent suit to recover property** A who transferred property to his sons for the purpose of defrauding creditors, and permitted the sons to forward claims on the property founded on a statement inconsistent with his own, was held to have estopped himself from denying the same.

## Transfer by trustee in

The mortgagee took the mortgage in good faith for valuable consideration and without notice of the trust. The mortgagee obtained a decree against the trustee for the sale of the land, the land was sold in execution of that decree. The trustee subsequently brought a suit to recover the land from the purchaser on the ground that the same was trust property, and that he had no power to transfer it. To this suit none of the beneficiaries of the trust were parties. *Held*, that the plaintiff was estopped by his conduct from recovering possession of the land. **GULZAR ALI v. FIDA ALI** I. L. R. 6 All. 24

14. — **Declaration of husband as wife's ownership of property—Subsequent suit of his heirs.** Where the husband during his lifetime did in every way, both publicly and privately, whenever called upon to make any representation on the subject, always represented at certain immovable property was his wife's, and the purchasers from her could not after his death equitably be turned out of property in favour of his heirs. The heirs after his death would be as much bound by the father's misrepresentations as if they would have been during his life. **LACHMUN CHUNDER GEER GOSSAIN v. KALLI CHURN SINGH** 19 W. R. 292

85. — **Benami transaction—Misrepresentation.** A person who transferred property to his son for the purpose of defrauding creditors, and permitted the son to forward claims on the property founded on a statement inconsistent with his own, was held to have estopped himself from denying the same.

obtained a consent decree under which he took possession. S then, on attaining majority, instituted a suit to set aside the decree and to obtain possession of the property. *Held*, that the plaintiff was estopped by his conduct from recovering possession of the property.

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

tuted a suit against C for the recovery of the property as the heir and representative of his father on the ground that K was a mere benamidar. The defence taken by C, amongst others, was that K was the real owner he believed her to be. *Held*, that on the authority of **Lachmun Chunder Geer Gossain v. Kalli Churn Singh**, 19 W. R. 292, it was a good defence, for, even on the assumption that the purchase was benami, S as heir of B was bound by the misrepresentation of the latter. **CHUNNER COOMAR v. HARBANS SAAHAI** I. L. R. 16 Calc. 137

86. — **Persons claiming under person who creates the benami.** The mere fact of a benami transfer does not in itself constitute such misrepresentation as to bind all persons claiming under the person who creates the benami. O made a benami gift of his property to his wife A. The deed of gift was registered and purported to be made in consideration of the fixed dowry due to A. There was no mutation of names, but O managed the property as A's am-muktār under a general power-of-attorney executed by her in his favour. On

acts of O were not such as to constitute an estoppel as against his heirs, and therefore the plaintiff was entitled to the relief he sought. **Lachmun Chunder Geer Gossain v. Kalli Churn Singh**, 19 W. R. 292, explained **SARAT CHUNDER DEY v. GOPAL CHUNDER LAHA** I. L. R. 16 Calc. 148

87. — **Equitable estoppel—Exclusion of third parties.** A person who transfers property to his son for the purpose of defrauding creditors, and permits the son to forward claims on the property founded on a statement inconsistent with his own, is held to have estopped himself from denying the same.

property, by an instrument which set out that it was his absolutely. After this he paid the annuity till the death of the grantee, whose heir he was. The grantee's heirs then claimed the property, and the plaintiff claimed the annuity under the terms of the grant. *Held*, that the plaintiff was estopped by his conduct from recovering possession of the property.

the mortgagees and their vendees. **RADHEY LAL v. MAHESH PRASAD** I. L. R. 7 All. 884

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

## 98. Evidence Act

application was disallowed, and the whole interest of the judgment-debtors put up for sale, and the prior decree-holder, who was present, made a bid. Ultimately, however, a portion of the property was withdrawn, and the remainder only was sold, including part of the property sold in execution of the prior decree. The prior decree-holder did not bid again. Afterwards the prior decree holder brought a suit for a declaration that the share which he had purchased at the sale in execution of his decree was not affected by the auction-sale in execution of the subsequent decree. *Held*, that the plaintiff was not estopped from claiming such a declaration.

*MacCon-*  
*Singh v.*  
*v Ram*  
*IERAN v.*

KUNJ BEHARI . . . I. L. R. 9 All. 413

99. Sale of mortgaged property in execution of decree—*Effect of sale—Purchaser, right of.* Where mortgaged property is sold in execution of a decree in a suit brought upon the mortgage, the interest of the mortgagee, at whose instance the sale is made, is held to pass to the purchaser, and the mortgage is estopped from disputing that such is the effect of the sale. *KHEVRA JUSRU v. LINGAYA* . . . I. L. R. 5 Bom. 2

100. Effect of sale—*Purchaser, right of.* Where a decree is obtained upon a mortgage by a mortgagee and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both

in the mortgaged property. It is not the practice to the purchaser. The transfer takes place by estoppel. *SESHUR SHANBHO V. SALVADOR VAS* . . . I. L. R. 5 Bom. 5

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

*See MACANLAL V. SHAKRA GIRDHAR*  
I. L. R. 22 Bom. 845

101. Prior incumbrancer bidding at auction sale in execution of decree and not announcing his incumbrance—*Sale by first mortgagee in execution of decree upon second mortgage held by him—Interest acquired by purchaser at such sale—Sale of portions of mortgaged property—Mortgagee not compelled to proceed first against unsold portions—Enforcement of mortgage against purchaser not having obtained possession* At a sale in execution of a decree for enforcement of a hypothecation-bond, the decree-holder, by permission of the executing Court, made bids, but the property was purchased by another. At that time the decree-holder held a prior registered incum-

brance against the property. *Held*, that there was no estoppel; that under s. 114 of the Evidence Act the Court was entitled to presume that the provisions of s. 237 (c) of the Civil Procedure Code had been complied with, and that consequently the notification of sale disclosed the existence of the incumbrance now sued upon; that the plaintiff was

referred to. *Held*, also, that it could not be said that under the circumstances the plaintiff must be taken to have sold in execution of his decree the interest which he held under the bond now in suit; that he could not be compelled to proceed first against those portions of the mortgaged property which had not been sold; and that the bond was enforceable against a purchaser of part of the mortgaged property who had never obtained possession. *BARWANI DAS V. MUHAMMAD MASHIAT* . . . I. L. R. 9 All. 690

102. Sale of mortgaged property in execution of a money-decree without express notice of mortgage—*Omission to declare mortgage at time of sale—Civil Procedure Code, 1882, s. 237—Right of mortgagee to enforce mortgage against the property in hands of purchaser.* A mortgagee under a registered mortgage-deed obtained a money-decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 237 of Civil Procedure Code (Act XIV of 1882) and the auction-purchaser had no actual knowledge of the mortgage.

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

In a suit brought by the mortgagee against the mortgagors and the auction purchaser to recover the mortgage-debt by sale of the mortgaged property: *Held*, that the omission to declare the mortgage at the time of the sale could not be treated as an estoppel. **DIXONO BALKRISHNA KANIKAR v. RAOJI** . . . **I. L. R. 20 Bom. 280**

**103.** ——— *Rights of purchasers at sale in execution of a mortgage-deed—Purchase without notice that mortgagor was only benami-holder for the judgment-debtor.* The plaintiffs and defendants, either party holding a separate decree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the plaintiff's for money against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title, and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution and defended the possession which they obtained. *Held*, that the defendants, in whose favour the decree had been made upon a *bond fide* mortgage, without notice that the mortgagor had been only holding *benami* for her husband, had the better title; that the High Court had rightly disallowed an objection taken by the plaintiffs that

same principle applied to these plaintiffs, who had purchased his right, title, and interest; and that they were bound equally with him. **Romcoomar Coondoo v. Macqueen, L. R. I. A. Sup. Vol 40 11 B. L. R. 46**, referred to and followed as to the application of estoppel. **MAHOMED MOZUFFER HOSSAIN v. KISHORI MOHUN ROY** . **I. L. R. 22 Cal. 809**  
**L. R. 22 I. A. 129**

**104.** ——— *Lease by mortgagor to mortgagee—Subsequent sale of equity of redemption by mortgagor—Suit by purchaser to redeem and for possession—Acquiescence.* The purchaser from the mortgagor of the equity of redemption having brought a redemption-suit, the mortgagee contested his right to recover possession on the ground that prior to the purchase, the mortgagor had granted to him (the mortgagee) a *mukani* or permanent lease. *Held*, that the plaintiff was not bound by the lease, although a long period had elapsed since it was granted, it having appeared that the plaintiff had on a former

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

occasion contended that the lease was a forgery and fraudulent; and as the mortgagee was then entitled to possession under his mortgage, no acquiescence in the lease could be inferred from the mere fact of the mortgagee having remained in possession, it not being alleged that rent was ever paid to the plaintiff. **SUBBAO MANGENHAYA v. MANJAPA SHETTI** . . . **I. L. R. 16 Bom. 705**

**105.** ——— *Suit for sale by mortgagee against auction-purchaser, mortgagee having accepted part of the proceeds of former sale.* On the 10th of February 1873, one *S R* mortgaged to the plaintiff an undefined one *biswa* share out of three *biswas* owned by him. On the 20th of March 1877, *J P* and *G P* brought to sale, in execution of money-decrees against *S R*, two out of those three *biswas*, which two *biswas* were purchased by the defendant. The sale was confirmed on the 23rd of April 1877. Out of the proceeds of that sale, **Rs. 1464-14-9** were appropriated by the plaintiff in part satisfaction of his mortgage. On the 16th of April 1877, the plaintiff sued the auction-purchaser for sale of one *biswa* in satisfaction of his mortgage. *Held*, that, even if it could be shown (which it could not) that the particular *biswa* mortgaged to the plaintiff was one of those which had passed into the defendant's possession, the plaintiff was estopped by his previous conduct from suing to bring it to sale under his mortgage. **JHINKA v. BALDEO SAHAI**

**I. L. R. 14 All. 509**

**106.** ——— *Yeomiah lands—Madras Rent Recovery Act, ss 3, 9, 79, 80—Unregistered holder rendering service and granting pottahs—Estoppel by acquiescence of person entitled to the yeomiah holding.* A yeomiahdar died leaving a brother who was then out of India. . . .

him to the raiyats who had already accepted pottahs from, and executed muchalkas to, the assignee. *Held*, that the suit was not maintainable, as under the circumstances the plaintiff's conduct justified tenant's belief that the assignee was entitled to collect rent from them until the assignment was questioned by the plaintiff and notice of his title given them. **KHADAR v. SUBRAMANYA**

**I. L. R. 11 Mad. 12**

**107.** ——— *Mortgaged land subsequently sold by mortgagee in execution of money-deed—Purchaser at such sale without notice of mortgage—Mortgagee stopped from subsequently enforcing his mortgage as against purchaser.* Where a judgment-creditor in execution of a money-deed sells property as belonging to his judgment-debtor, he is afterwards estopped from,



ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

enforcing, as against the purchaser, a previous mortgage of the property which has been created in

I. L. R. 12 Bom. 676

RANCHANDRA VITHURAM v. JAIRAM

I. L. R. 22 Bom. 686

108. ——— Assignee of mortgagor—*Evidence Act (I of 1872), s. 115—Right to sue for redemption* Where the plaintiff in a suit for redemption of a usufructuary mortgage was the ori-

have put forward the original mortgagor as the

have done in consequence of the assignee's conduct, the latter was not estopped by s. 115 of the Evidence Act (I of 1872) or by any principle of equitable estoppel from afterwards suing on his own account for redemption. *MUHAMMAD SAMI-UD-DIN KHAN v. MANNU LAL* I. L. R. 11 All. 386

109. ——— Sale of mortgaged property under a decree other than a decree on the mortgage—*Mortgage not disclosed—Effect of such non disclosure on mortgagee's rights under his mortgage.* Held, that a mortgagee who causes the mortgaged property to be sold in execution of a decree other than a decree obtained upon his mortgage, without notifying to intending purchasers the existence of his mortgage lien, is es-

SHEB SARAI I. L. R. 21 All. 500

110. ——— Acts of agent—*Authority of agent—Member of Hindu joint family* A per-

tain property, and afterwards (without any authority from them) cancelled the sale, received back the consideration-money, and surrendered the koba-la; Held, that the brothers were not estopped from suing the parties in possession of the whole property to set aside what the single brother had done, and to obtain possession of the share in question. *BUDJONANUD MYTEE v. RADHA CHURN MYTEE* 7 W. R. 335

ESTOPPEL—*contd.*5. ESTOPPEL BY CONDUCT—*contd.*

111. ——— Purchase by agent—*Setting up character as principal.* Where a man steps in during an auction-sale and assumes the character of a principal agent, and, depositing another who is really acting as agent, purchases the property, he cannot afterwards be allowed, in equity, to turn round and claim to have purchased not for the principal, but for himself, and to obtain a profit out of his purchase. *LOKHEE NARAIN ROY CHOWDHURY v. KALLY PUDDO BANDOPADHYA* 23 W. R. 358; I. L. R. 2 I. A. 154

112. ——— Estoppel by assent to delivery order—*Evidence Act, Ch VIII—Vendor and purchaser.* A contracted to buy from B & Co. 180,000 gunny bags for cash on delivery. Subsequently C agreed with A to advance Rs. 15,000 against 87,500 bags. B & Co. gave delivery orders to A, although the goods remained unpaid for. A then endorsed certain of the delivery orders over to C. On these orders the agents of B & Co., at the request of A, wrote the following words: "The bearer of this will personally take delivery of each lot as required." C took delivery of 50,000 bags, but B & Co. refused to deliver to him the remainder on the ground that A had not paid them according to the terms of his contract. Held, that, although there had been no actual appropriation of any goods to A, yet as B & Co., by their agents, had consented to the transfer, and had thereby induced C to ad-

Act. A man may be estopped not only from

113. ——— Acquiescence of mortgagee—*Waiver of priority* When a prior encumbrancer with a full knowledge of his title stands by and through his agency allows the mortgagor to deal with the property as if it was unencumbered; Held, that by such conduct he loses that priority to which the prior date of his encumbrance would, had he acted otherwise, have entitled him. *RAI SEETA RAM v. KISHUN DASS alias KISHNARAYAN* 3 Agra 402

114. ——— Right of appeal by de-

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

possession on behalf of N, and that the mortgage was a forgery. N did not appear. The Munsif decreed for the plaintiff. P appealed. The Subordinate Judge dismissed the suit on the ground that the mortgage was not proved. *Held*, on second appeal, that P had no *locus standi*, and could not appeal from the Munsif's decree. **SRIHAYAR v. PATTAVARA-DAYANAR**. I. L. R. 6 Mad. 185

**115. — Acquiescence—Mortgage executed during plaintiff's minority.** The plaintiff sued the defendant on mortgages executed to the plaintiff by the adoptive mothers of the defendant (who were also defendants) subsequently to his adoption. The plaintiff contended that the mortgages had become effective against the defendant by

allowed the plaintiff to carry out the provisions of the mortgage-deeds to his own detriment by paying maintenance to the defendant's adoptive mothers

I. L. R. 6 Bom. 483

**116. — Intervenor made party by plaintiff—Appeal by plaintiff against order making him party.** When an intervenor in a suit to recover rent is made a party at the request of the plaintiff, the latter cannot afterwards, by special appeal, get rid of the effect of his own act. **SHAM CHAND GHOSH MUNDUL v. DOWNSHORE MONDEL-NZE**. 9 W. R. 338

**117. — Representation as to transfer of property—Suit for rent—Intervenor—Evidence Act, s. 115** In a suit for rent brought

a person was made a co-defendant, and intervened for the purpose of supporting his title to the rent. It appeared that in the year 1259 A purchased the dar-patni estate, and sold it in 1256 to his wife B, and son C. Afterwards A successfully resisted a suit for rent brought against him by the present plaintiff as superior landlord on the ground that he had parted with his interest in the estate to B and C. The plaintiff then sued B and C for the rent and obtained a decree, under which the dar-patni was sold to him. He now sued the ijaradar. The intervening defendant contended that A had mortgaged the property to him, and that such proceedings had

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

been taken on the mortgage that he was entitled in the A's right to the rent of the property as the owner of it. *Held*, that the mortgage was not proved.

chase their interest in the property, the intervening defendant could not set up a claim to the rent in the present suit as against the plaintiff. **AUSATH NATH DEB v. BISTU CHUNDER ROY**

I. L. R. 4 Calc. 783

**118. — Joint decree—Amount of shares in joint property** The mere fact of two parties having jointly sued and obtained a decree by

13 Agra 235

**119. — Acceptance by landlord of lower than decretal rate of rent.** Where a decree has declared a certain rate of rent payable, the landlord is not prevented, by the mere fact that he has not insisted on the rent being paid at that rate, but has accepted a lower one, from recovering at the rate given by the decree. **MAZ-ZOM ALLY KHAN v. PIRIHEE SINGH**. 3 Agra 263

**120. — Effect of condition in wajib-ul-urz—Suit to set aside condition.** Where a wajib-ul-urz contained a condition restricting the landlord's right to enhance; *Held*, that, having signed it, he must be held to be bound by it until he establishes his right by a civil suit to have the condition in the wajib-ul-urz set aside. **KYALEE RAY v. MAHOMED ALI KHAN**. 1 Agra Rev. 82

**121. — Assertion of proprietary right—Subsequent claim to maintenance.** Under special circumstances, a widow who had asserted a proprietary right in certain property, without putting forward any claim for maintenance, not allowed afterwards to enforce her claim for maintenance against such property in the hands of a purchaser. **GOOLABEE v. RANTARAL RAI**

1 N. W. 191; Ed. 1873, 275

**122. — Grant of mukurari pottah by parties who afterwards acquire permanent settlement.** Parties holding a permanent settlement from Government cannot question the

**123. — Recognition of talukhdari right—Purchaser at sale for arrears of revenue.** At a sale for arrears of revenue, Government purchased a pergunnah containing a certain talukh

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

belonging to A. The talukh was not cancelled, and the Government made successive temporary settlements with A, in which his talukhdari right was recognized. The right and interest of Government in the pergunnah were afterwards sold to B, who ousted A. A afterwards joined with C in taking a patti lease of the same land which he had in the talukh.

**CHUCKERBUTTY** . . . . . **2 C. L. R. 216**

**124. —** Registration in Collectorate—*Onus probandi*. In a suit to recover possession of certain land and houses, in which the plaintiffs

to the common ancestor, and had permitted their names to be registered as such in the Collector's

proving the allegation on which they rested their claim. **AORAWAL SINGH v. FOUJDAH SINGH**

**8 C. L. R. 348**

**125. —** Deposit of money—Rate of interest. The plaintiff deposited money with defendants, bankers, on 30th August 1867. On 2nd January 1867, an account was stated and a balance found to be due to the plaintiff consisting of the ori-

at 4 and at 6 per cent. *Held*, that the defendants were estopped from disputing the plaintiff's demand for interest at the latter rate. **MAKUNDI KUR v. BALKISHEN DAS**

**I. L. R. 3 All. 328**

**126. —** Construction of document making suit premature—*Subsequent contention that suit is barred*. In a suit brought to recover

**21 W. R. 514**

**ESTOPPEL—contd.****6. ESTOPPEL BY CONDUCT—contd.**

**127. —** Giving notice of action—under s. 53, Mad. Act XXIV of 1859—*Contention of non-applicability of section*. The plaintiff, a constable of police, sued the defendant, an inspector of police, for money had and received to the plaintiff's use. The defendant had received the pay of the plaintiff, but failed to give it to the plaintiff. Notice of suit was given by the plaintiff under s. 53 of the Madras Police Act, XXIV of 1859.

**5 Mad. 466.**

**128. —** Agreement not to appeal—*Subsequent appeal*. After a plaintiff had obtained a decree and under it, in execution, arrested his judgment-debtor, the latter filed a petition in Court agreeing not to prefer any appeal against the judgment obtained by the plaintiff, and the judgment-creditor at the same time agreed to release the judgment-debtor from arrest and to take payment of the sum decreed to him by instalments. An order was passed by the Court embodying this arrangement. The judgment-debtor, in contravention of this arrangement, preferred an appeal. *Held*, that the judgment-debtor, having induced the decree-holder to believe and having expressly undertaken that he would not prefer an appeal, and having by the representation and undertaking procured his own release from arrest, was estopped from acting contrary to his deliberate representation and undertaking. **PROTAP CHUNDER DASS v. ARATHOON. ARATHOON v. PROTAP CHUNDER DASS**

**I. L. R. 8 Calo. 455; 10 C. L. R. 443**

*See* **AMIR ALI v. INDRAJIT KOER** 9 B. L. R. 460

**RAJMOHUN GOSSAIN v. GOURMOHUN GOSSAIN**

**4 W. R. P. C. 47; 6 Moo. I. A. 91**

**129. —** Acquiescence in use of trade mark—*Subsequently denying right to use it*. Where the plaintiffs by their conduct let the defendant to believe that they claimed no right to a certain trade mark and that it was open to the defendant to adopt it as his own, and the defendant did adopt it, and by his industry secured a wide popularity for it in the Indian market, *Held*, that the plaintiffs were estopped from denying the defendant's right to use the trade mark in the Indian market. **LAVERONE v. HOOPER**

**I. L. R. 6 Mad. 149**

**130. —** Refusal of registered letter—*Presumption of knowledge*. A person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents. **LOOTI ALI MEHAR v. PEAREE MOHUN ROY**

**16 W. R. 223**

**131. —** Alienation of service-vatan land by the holder of it—*Impeachment of such alienation by the alienor—Hereditary Offices*

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

*Act (Bombay Act III of 1874, s. 5)—Vatandar.* The plaintiff, who was a vatandar kulkarni, sued to recover from the defendant possession of certain land with meane profits, alleging that it was his service vaten land wrongfully taken possession of by the defendant in 1880. The defendant set up a mortgage of the land alleged to have been executed to the defendant by the plaintiff's mother in the plaintiff's name during his minority. Both the lower Courts found that the land was the plaintiff's kulkarni vaten land; that it had been mortgaged by the plaintiff's mother to the defendant for good consideration; and that the mortgage was binding on the plaintiff. On appeal

not justify a departure from the rule. The plaintiff, although an hereditary public officer, was not a trustee for the purposes of the Veten Act, and it could not be presumed that the grantee knew that the plaintiff's guardian had not obtained the previous sanction of Government to the mortgage. The plaintiff was, therefore, estopped from saying that the grant was forbidden by the Act. *NARAYAN KHANDU KULKARNI v. KALOAUNDA BUDAR PATEL*. I. L. R. 14 Bom. 404

**132.** ——— Payment of a tax for one year without protest—*Payment of the tax in a subsequent year under protest—Suit to recover money*

rejected on the ground that he was estopped from recovering the alleged excess by reason of his having paid the tax for 1890 without protest. *Held*, that the suit was not barred. The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum

**133.** ——— Order of Court made without jurisdiction—*Order of same Court for redemption of mortgage—When a Court has no jurisdiction*

**ESTOPPEL—*contd.*****5. ESTOPPEL BY CONDUCT—*contd.***

quently passed by it, directing him to refund a sum realized under the order for execution. *GOVIND VAMAN v. SAKHARAM RAMCHANDRA*. I. L. R. 3 Bcm. 42

**134.** ——— Party not bound by pro.

been brought within due time after the plaintiff's application in the execution proceedings was dismissed, he could not take advantage of the execution proceedings to resist a claim otherwise admissible against him. *BALVANT SANTARAM v. BABAJI DIN SANTHORA*. I. L. R. 8 Bom. 602

**135.** ——— Acting on order containing reservation—*Disputing validity of reservation.* Where an application for leave to institute a suit was granted under cl. 12 of the Charter, leave being reserved in the order to the defendant to move to have it set aside, and the plaintiff had acted on the order: *Held*, that he could not afterwards object to the validity of the reservation it contained. *RADHA BISH v. MUKESOODEN DASS*. 21 W. R. 204

**136.** ——— Fictitious sale—*Relief—Promoting public policy* *Held*, that, though the law under the ordinary rule would not assist parties who have colluded in order to evade its provisions by restoring them to their original status, yet relief may be granted if public policy is promoted by so doing. *RAM PERSHAD v. SHEVA PERSHAD*. 1 Agre 71

**137.** ——— Repudiation of authority of guardian—*Adoption of beneficial acts* A person who disputes the authority of another to act as his guardian, and repudiates the acts done by such guardian in that capacity, cannot take advantage of those acts so far only as they are beneficial to him. *SOOBAN PRITHEE LALL JHA v. SOOBAN DOORGAN LALL JHA*. *SOOBAN DOORGAN LALL JHA v. NEELANUND SINGH*. 7 W. R. 73

**138.** ——— Recognition of tenure by Government—*Purchaser, Right of.* The Government having once recognized the plaintiff's talukh by selling it for arrears of rent to the parties through whom the plaintiff claimed, and no disclaimer of his talukhdari right having ever been made by the plaintiff, *Held*, that it was not competent to the Government to deny the title of a tenure which it had by selling once guaranteed to the purchaser. *JEEBUN SINGH BURNONG v. COLLECTOR OF BAKKERSGUNGE*. 2 W. R. 77

*GOLUCK CHUNDER SEIN v. COLLECTOR OF BAKKERSGUNGE*. 2 W. R. 139

## ESTOPPEL—contd.

## 5. ESTOPPEL BY CONDUCT—contd.

139. ————When the zamindari rights in a property have been purchased by Government at a sale for arrears of revenue, and Government guarantees the rights and position of certain talukhdars therein, and then sells its zamindari rights, the second purchaser is bound by the acts of the Government, and the talukhdars, if dispossessed, may recover possession under cl. 6, s. 23, Act X of 1859. *BURVER KHANUM & MOHD. SOODUN Doss*. . . . 3 W. R., Act X, 127

*JOOGUL KISHORE ROY v. AHSANULLAH*  
4 W. R., Act X, 6

140. ————*Legacy—Legacy in satisfaction of indebtedness.* It was contended that plaintiff was estopped from claiming a legacy under the will as he had disputed the validity of the latter, and had elected to take the Rs 10,000 as a debt due to him.

*legally was not elected by that claim. RAJAMAN-  
NAR v. VENKATASUBRAMANIAM* (1902)

I. L. R. 25 Mad 361

141. ————*Minor—Sut by minor.* A minor who, representing himself to be a major and competent to manage his own affairs, collects rent and gives receipts therefor, is estopped by his conduct from recovering again the money once paid to him, by instituting a suit through his guardian. *RAM RATU SINGH & SRIW NANDAN SINGH* (1901) . . . . I. L. R. 29 Cal 126  
s.c. 6 C. W. N. 132

142. ————*Acquiescence—Evidence Act (I of 1872), s. 115—Question of legal inference—Plea of estoppel appearing for the first time in issue in appeal.* Acquiescence is not a question of fact, but of legal inference from facts found. This principle applies also to estoppel. To create an estoppel it is not sufficient to say that it may well be doubted whether the plaintiff would have acted in the way he did but for the way in which the defendants had acted. It must be found that the plaintiff would not have acted as he did. It must be found that the defendants by the "declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief." A plea of estoppel should not be given effect to in appeal when it was not suggested in the written statement, nor made one of the issues in the first Court, nor one of the issues in the appeal.

143. ————*Mortgage by minor—Statement known to be false by person to whom it is made—Evidence Act (I of 1872), s. 115—Age, false*

## ESTOPPEL—contd.

## 5. ESTOPPEL BY CONDUCT—contd.

*representation as to—Contract by infants—Contract Act (IX of 1872), ss. 11, 19, 61, 65—Persons competent to contract—Void contract—Advances on mortgage declared invalid, re-payment of.* S. 115 of the Evidence Act (I of 1872) does not apply to a case where the statement relied upon is made to a person who knows the real facts and is not misled by the untrue statement. There can be no estoppel where the truth of the matter is known to both parties. A false representation made to a person who knows it to be false is not such a fraud as to take away the privilege of infancy. *Nelson v. Stocker, 4 De G. & J. 458*, followed. On the true construction of the Contract Act (IX of 1872), a person who, by reason of infancy, is incompetent to contract, cannot make a contract within the meaning of the Act. A mortgage, therefore, made by a minor is void; and a money-lender who has advanced money to a minor on the security of the mortgage is not entitled to repayment of the money on a decree being made declaring the mortgage invalid; ss. 64 and 65 of the Contract Act being based on there being a contract between competent parties, and being inapplicable to a case where there is not, and could not have been, any contract at all. *Thurston v. Nottingham Permanent Benefit Building Society* [1902], 1 Ch. 1 [1903] 4 C. 6, followed. *MONORI BISER v. DHANMODAS GHOSH* (1902) I. L. R. 30 Cal. 539  
s.c. 7 C. W. N. 441  
I. R. 30 I. A. 114

144. ————*Mortgage—Evidence Act (I of 1872), ss. 115, 116.* Certain property was mortgaged in 1834. In 1880, the appellant took from the mortgagors and another person a lease of certain lands which included a portion of the mortgaged property. In a suit by the mortgagee on his mortgage, to which the appellant was made a party de-

*PROSUNNO KUMAR SEN v. MAHADEHARAT SAHA*  
(1903) . . . . 7 C. W. N. 575

145. ————*Sale—Equitable estoppel—Contract Act (IX of 1872), s. 115—Age, false*

compromise petition to which the decree-holder consented, and it was agreed that the judgment debtor should have time up to a certain date to pay the debt.

the judgment-debtor paid a portion of the debt and obtained further time from the Court to pay the balance.

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

balance. On the judgment-debtor's tendering the balance on the day fixed by the Court for payment, the decree-holder refused to accept the money. The Court tried the case on the merits, and set aside the sale. *Held*, that the judgment-debtor was bound by the agreement and that he was estopped from contesting the legality of the sale. *Protap Chunder Das v. Arathoon*, I. L. R. 8 Calc. 455, referred to. *UTAM CHANDRA KRISHN v. KHETRA NATH CHATTOPADHYA* (1901) . I. L. R. 29 Calc. 577

148. — Execution against surety—Surety guaranteeing payment of judgment-debt—Execution against surety, when proper—Remedy by suit—Civil Procedure Code (Act XIV of 1852), s. 336. In the course of the execution of a money decree the judgment-debtor was arrested and brought before the Court. Thereupon the respondents, who were not parties to the proceeding, put in a surety bond covenanting to pay the decretal amount in the event of the judgment-debtor not paying it within a month, and stipulating that, if they failed to pay "the decree-holder would be at liberty to realise the amount by auction sale of their moveable and immoveable properties and by arresting them." The judgment-debtor not having paid the money within a month as stipulated, the decree-holder sought to execute the decree against the sureties, who came in and applied for two months' time to pay in the decretal amount and time was allowed. No payment was, however, made and the decree-holder applied for execution and had one of the sureties' properties sold. The sale was subsequently set aside. *On a fresh sale*

to institute a separate suit against the sureties, still having regard to the agreement that was come to and the conduct of the parties in the previous proceedings it ought to be taken that the sureties had waived their right to insist upon a separate suit being brought against them. *Countray v. Tulsi Prasad*, 8 C. W. N. 672, and *Sadasiva Pillai v. Ramalinga*, L. R. 2 I. A. 219, relied on. *KAZIMUDDIN PATARI v. FAUZI KHAN* (1906).

10 C. W. N. 630

147. — Sale of occupancy holding—Evidence Act (I of 1872), s. 115—Non transferable occupancy—Jote—Presumption of transferability without consent of landlord from purchase by him. Where a landlord in execution of a money decree causes the sale of an occupancy holding and purchases it himself, he is not estopped from pleading non-transferability without his consent in a subsequent suit brought by the mortgagee of the occupancy. *The Bank of India v. The Government of Madras*, 10 C. W. N. 630.

**ESTOPPEL—contd.****5. ESTOPPEL BY CONDUCT—contd.**

*section. Asanuddin Nayya v. Sriish Chandra Banerji*, 11 C. W. N. 76, distinguished. *ASMAT. ENESA KHATUN v. HARFENDRA LAL BISWAS* (1903) . I. L. R. 35 Calc. 904  
s.c. 12 C. W. N. 721

149. — Lease—Leave unregistered when admissible in evidence—Conduct of parties to lease—"Collateral purpose"—Transfer of Property Act (IV of 1882), s. 107—Lien—Charge—Assignment. Section 107 of the Transfer of Property Act does not say that if the parties without any such instrument (i.e., a lease) conduct themselves towards each other as if they were landlord and tenants and moneys pass from one to the other in pursuance of that conduct upon the understanding that it would be repaid in a certain event, there shall be no right to recover that money. In such a case the right to recover arises not upon the lease, because according to law no lease exists, but upon an independent equity arising from the conduct of the parties and founded upon the law of estoppel. *Cornish v. Abington*, 4 H. & N. 549, referred to. *ARDEAR BEJONJI SERTI v. SYED SIRDAR ALI KHAN* (1903) . I. L. R. 33 Bom. 610

**EUROPEAN BRITISH SUBJECT.**

See CRIMINAL PROCEDURE CODE, ss. 44, et seq. . I. L. R. 27 All. 397

See EXTRADITION ACT, 1870.

I. L. R. 0 Bom. 333

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL, 8 Bom. Or. 92  
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See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES

I. L. R. 8 All. 420

See MAJORITY, AGE OF . 8 B. L. R. 372  
3 N. W. 338

1 B. L. R. O. C. 10

I. L. R. 7 All. 490

See OFFENCE COMMITTED ON THE HIGH SEAS . 1 B. L. R. O. C. 1  
7 Bom. Cr. 39

I. L. R. 21 Calc. 782

See POLICE ACT, 1861, s. 20 3 N. W. 128

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R. 18 Calc. 247

— in Bangalore,

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL

I. L. R. 12 Mad. 39

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See FOREIGN JURISDICTION ACT, 1879,  
ss. 4, 6 and 8 I. L. R. 28 Mad. 807

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EUROPEAN BRITISH SUBJECT—*contd.*

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See HABEAS CORPUS, WRIT OF.

I. L. R. 28 Calc. 286

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See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

I. L. R. 14 Bom. 180

See MAGISTRATE—JURISDICTION OF—  
POWERS OF MAGISTRATE.

I. L. R. 16 Mad. 308

1. Opportunity to plead being European British subject—*Plea not taken till too late—Wanter.* A Deputy Magistrate ought to give an opportunity to a prisoner to plead that he is a European British subject. The mere statement of a prisoner that he is a European British subject, made before the Deputy Magistrate after the trial was completed, cannot be acted on. *CLARK v. BEANE* . . . 5 W. R. Cr. 53

2. Mode of procedure—*Charge against European British subject.* Mode of procedure by a Magistrate with regard to European British subject accused of an offence. *QUEEN v. SHERIFF* . . . 6 W. R. Cr. 13

3. European British subject—*Claim of status at a European British subject without claim to be tried by a jury—District Magistrate—Jurisdiction.* Ono G. D., who was sent for trial before a District Magistrate on a charge of rioting under s. 147 of the Indian Penal Code, claimed that he was a European British subject, but did not ask to be tried by a jury. The Magistrate after inquiry found that G. D. was not a European British subject, tried, and convicted him under

tion being again raised, found that G. D. was a European British subject, and thereupon set aside his conviction and sentence and directed that he should be retried by the District Magistrate. *Held*, that this procedure was erroneous, inasmuch as the appellant had never claimed to be tried by a jury, and the Magistrate, who had tried and convicted him, was competent to try him as a European British subject and had passed a sentence, which was

4 *All. 141*, distinguished. *FURFROH v. GEORGE POWELL* (1905) . . . I. L. R. 27 All. 897

4 Criminal proceeding against—

The provisions of s. 443 of the Criminal Procedure Code apply to an inquiry held under s. 107 thereof.

EUROPEAN BRITISH SUBJECT—*concl.*

The party against whom such an inquiry is instituted is in the position of an accused. *Queen-Empress v. Mutasaddi Lal*, I. L. R. 21 All. 107, *Queen-Empress v. Mona Puna*, I. L. R. 16 Bom. 661, and *Jhoja Singh v. Queen-Empress*, I. L. R. 23 Calc. 493, referred to. *HOPFROTH v. EMPEROR* (1908) . . . I. L. R. 38 Calc. 163

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See DILUVION . . . I. L. R. 39 Calc. 858

## EVIDENCE.

See CHAURIDARI CHAKRAN LAND.

I. L. R. 32 Calc. 1107

See CIVIL PROCEDURE CODE, 1882, s. 189.  
8 C. W. N. 419, 420

See CIVIL PROCEDURE CODE, 1882, s. 389,  
390 . . . 9 C. W. N. 794

See CHEATING . . . I. L. R. 39 Calc. 573

See COMMISSION . . . I. L. R. 35 Calc. 28

See CRIMINAL BREACH OF TRUST.  
I. L. R. 32 Calc. 1085

See CRIMINAL PROCEDURE CODE, s. 107  
I. L. R. 26 All. 190

See CRIMINAL PROCEDURE CODE, s. 215.  
9 C. W. N. 829  
I. L. R. 28 All. 683

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See EVIDENCE—CRIMINAL CASES

See EVIDENCE—PAROL EVIDENCE.

See EVIDENCE ACT (I of 1872).

See FALSE EVIDENCE.

See HINDU LAW—PARTITION.

10 C. W. N. 338

See LEGAL PRACTITIONERS' ACT.

10 C. W. N. 57

See MAHOMEDAN LAW . . . 9 C. W. N. 352  
10 C. W. N. 449

See ONUS OF PROOF.

See OUDH ESTATES ACT, ss. 22, 23.

I. L. R. 31 All. 457

See PENAL CODE, s. 232 9 C. W. N. 438

See REGISTRATION ACT (III of 1877).

12 C. W. N. 59

See SALE . . . I. L. R. 32 Calc. 508, 544

See SECOND APPEAL.

I. L. R. 33 Calc. 200

See STAMP ACT (II of 1899), SCH. I, ART. 1.  
I. L. R. 28 All. 439

See WAJIB-UL-AZAR . . . 10 C. W. N. 720

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I. L. R. 38 Calc. 629

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See ADOPTION . I. L. R. 36 Calc. 780

See EVIDENCE . I. L. R. 31 All. 116

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I. L. R. 38 Calc. 976

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See OUDH ESTATES ACT, ss 22, 23.

I. L. R. 31 All. 457

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See TITLE . I. L. R. 36 Calc. 311

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See CRIMINAL PROCEDURE CODE, s. 123.

13 C. W. N. 623

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13. SECONDARY EVIDENCE—*contd.*

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## 1. MODE OF DEALING WITH EVIDENCE.

1. Discussion of mode of dealing with. The mode in which evidence is to be dealt with discussed MATHURA PANDEY v. RAM RUCHA TEWARI . 3 B. L. R. A. C. 108 : 11 W. R. 482

BHABU SING v. KAIKYNATH TEWARI

3 B. L. R. A. C. 332

2. Conflicting evidence, inves-

tigation of cases of "the negotiorum actio"

USUDOOILLAH v. INAMAN

5 W. R. P. C. 26 : 1 Moo. I. A. 18

EVIDENCE—CIVIL CASES—*contd.*1. MODE OF DEALING WITH EVIDENCE—*contd.*

3. Native testimony—Suspicion

4. Probability—  
Ground for decision on evidence. The general fallibility of native evidence in India is no ground for concluding against a transaction when the probabilities are in favour of it. BUNWAREE LALL v. HETNARAIN SINGH  
4 W. R. P. C. 128 : 7 Moo. I. A. 1485. Native cases—Presumption—  
Case supported by false evidence. A native case is not necessarily false and dishonest because it rests on a false foundation, and is supported in part by false evidence. WISE v. SUNDULONISSA CHOWDRANEE . 7 W. R. P. C. 13 : 11 Moo. I. A. 177TEELUCRO KOOR v. NIBBAN SINGH  
8 W. R. 439RAMANANI ANNAL v. KELANTHAI NAICHEAR  
17 W. R. 1 : 14 Moo. I. A. 346

6. Judgment on facts—Probability of the case—Rule of Privy Council. Where a Judge, whose judgments have been observed to

said down by the Privy Council, not to interfere in a judgment on facts, unless the conclusion be clearly shown to be a mistaken one. In this country,

7. Sufficiency of evidence—Evidence which might have been, but was not adduced, as being unnecessary. Where there is sufficient

8. Consent to decision on such evidence as there is. Even if the evidence

CHOLIE LALL v. KOKIL SINGH 19 W. R. 248

8. Conflict between Judge's memoranda and recorded evidence. Where there is a conflict between a Judge's memoranda of evidence and the recorded depositions of witnesses,

EVIDENCE—CIVIL CASES—*contd.*1. MODE OF DEALING WITH EVIDENCE—*contd.*

the Court must be guided by the latter. *HEERA-NATH KOORER v. BURN NARAYN SINGH*

15 W. R. 375; 9 B. L. R. 274

10. ——— Questions of evidence. Questions as to the admissibility of evidence should be decided as they arise, and should not be reserved until judgment in the case is given. *JADU RAI v. BHUBOTARAN NUNOV* . . . I. L. R. 17 Calc. 173

*RAMJIBUN SEROWJY v. GOBRORE NATH CHATTERJEE* . . . I. L. R. 25 Calc. 401  
2 C. W. N. 198

11. ——— Documentary evidence, dealing with—*General rules*. When a document is

under the class which requires proof, it should be distinctly noted that it is admitted on the record

110 W. R. 400

12. ——— Evidence not adduced in former suit—*Ground for rejecting evidence*. Documentary evidence tendered by a plaintiff cannot be rejected merely because it has not been adduced in a former suit to which plaintiff was a party. *PUREJAN KHATOON v. BYRUNT CHUNDER CHUKERBERRY* 9 W. R. 390

13. ——— Production of false document—*Duty of Court*. The production in evidence of a forged document by a party to a suit does not relieve the Court from the duty of examining the whole evidence adduced on both sides, and of deciding the case according to the truth of the matters in issue. *SURMONOYE v. SUTTEACHENDER ROY* 2 W. R. P. C. 13

*CHOWDERY CHUTTARSAI SINGH v. GOVERNMENT* 3 W. R. 57

*KULTOO MAHOMED v. HURDEB DASS* 19 W. R. 107

*GORIBOOLLA GAZEE v. GOOROODASS ROY* 2 W. R., Act X, 39

*BENGAL INDIGO CO. v. TARINEE PERSHAD GHOSE* 3 W. R., Act X, 149

14. ——— Alteration in document—*Admissibility in evidence of altered document*. If a document on which a case depends appears to have been altered, it cannot be received in evidence or be acted upon till it is most satisfactorily

5 W. R. P. C. 53  
1 Moo. L. A. 420

EVIDENCE—CIVIL CASES—*contd.*1. MODE OF DEALING WITH EVIDENCE—*contd.*

15. ——— Possession of title-deeds—*Absence of proof of acquisition of possession*. The mere fact of possession of title-deeds without any very satisfactory proof of the mode by which possession of them was acquired was held by the Privy Council to be outweighed by the other adverse circumstances of the case. *KRIPAMOYEE DEBIA v. ROMANATH CHOWDERY* . . . 2 W. R. P. C. 1

*KRIPAMOYEE DEBIA v. GIRISH CHUNDER LAHOREE* . . . 8 Moo. L. A. 467

16. ——— Reasons for disbelief—*Omission to state the reasons*. Where by the whether within

cured," and rejected survey papers coming from proper custody, as being papers easy to alter and

particular witnesses or refused to receive certain documents, it should give its reasons for the refusal with reference to these documents in particular, or for its disbelief of the particular witnesses, and not with reference to documents or witnesses in general. *CHANDRA MADHAB ROY v. KHEMANATH DAS* 1 B. L. R. S. N. 19

*OMAN v. KUNAR PRAMATHANATH ROY* 1 B. L. R. S. N. 25; 10 W. R. 256

17. ——— Unopposed evidence—*Suit for damages—Non-appearance of defendants*. In a suit for damages, if the defendants do not appear, the evidence given by the plaintiffs is to be accepted, unless it is manifestly

18. ——— Settlement of accounts. The

EVIDENCE—CIVIL CASES—*contd.*. MODE OF DEALING WITH EVIDENCE—*contd.*

set out, and inconsistent with the existence of the alleged settlement. *ASGHAR ALI KHAN v. KHURSHID ALI KHAN* (1901) . I. L. R. 24 All. 27 : s.c. I. L. R. 28 I. A. 127

19. ——— *Res inter alios acta—Documents.* Documents which would be admissible

20. ——— *Consideration and weight of evidence—Alleged substitution of one boy for another in infancy—One-sided enquiries made to support allegation—Evidence not judiciously taken and without notice to interested parties.* The question in issue was whether the appellant, defendant in the suit, was entitled to the name he bore and to the property in dispute of which he had long been in possession, or whether, as maintained by the

evidence taken on enquiries made under official orders, the effect of which was to place the services

taken to support a foregone conclusion the enquiries were secret: no notice was given to anybody on behalf of the boy, nobody was present throughout the enquiries to represent the boy or protect his interests; there was nobody to check the mode in which the alleged statements were elicited, whether by leading questions or otherwise, nobody to test the statements by cross-examination, nobody to watch the accuracy with which they were recorded. Considering the purpose, the nature and the circumstances of the enquiries, which, if they were official in any sense, were certainly not judicial, no weight could be given to the proceedings at, or the results of, those enquiries. The judgment of the High Court was therefore reversed. *CHANDRASANJI v. MOHANSANJI* (1906) . I. L. R. 30 Bom. 523

21. ——— *Tender of documentary evidence after closing case—Judicial discretion, exercise of—Practice.* The plaintiff ten-

EVIDENCE—CIVIL CASES—*contd.*1. MODE OF DEALING WITH EVIDENCE—*contd.*

*BARODA PRASAD CHATTERJEE v. MADHAR CHANDRA GHOSH* (1906) . I. L. R. 33 Calc. 1345

22. ——— *Additional evidence on appeal—Evidence taken preliminary to hearing of appeal on the merits—Civil Procedure Code (Act XIV of 1882), ss. 568, 623.* The legitimate occasion for a 568 of the Civil Procedure Code (XIV of 1882) is when on examining the evidence as it stands some inherent lacuna or defect becomes apparent, and not where a discovery is made outside the Court of fresh evidence and the application is made to import it; that is the subject of the appellate enactment in s. 623. On an appeal on the merits of the case being filed the appellate Court without recording any reason as required by s. 568 of the Code allowed such further evidence to be taken, not after the appeal on the merits had been heard and the evidence as it stood had been examined by the judges but on appeal and preliminary application: *Held*, that the appellate Court had no jurisdiction to admit the additional evidence, that it was wrongly admitted and must be disregarded. *KESROWJI ISSUE v. GREAT INDIAN PENINSULA RAILWAY COMPANY* (1907)

I. L. R. 31 Bom. 381 : L. R. 34 I. A. 115

23. ——— *Proof of adoption—Illiterate pardanashin widow lady—Non appearance of plaintiff in Court as witness—Absence of any account of expenditure on ceremony—Mode of carrying on business—Inability to give date of adoption—Inconsistent and contradictory evidence—Practice for each litigant to cause his opponent to be cited as a witness.* Where the question on an appeal was whether his claim to be the adopted son of a illiterate pardanashin widow lady had been established by the respondent, who lived in her house and was the manager of her business consisting mostly of "zamindari and money dealings" and on whom the burden of proof rested: *Held* by the Judicial Committee (reversing the decision of the High Court), that having regard to the contradiction between the principal witnesses examined on the respective sides on almost every important point; the improbabilities of the respondent's story; its inconsistency with the conduct and action of the principal parties concerned, as well as with the mode in which the business of the firm was conducted and carried on; the suppression of documents; the non-appearance of the respondent as a witness at the trial to explain, if he could, the many circumstances which called for explanation from him; the

neighbourhood where it took place, the respondent had failed to discharge the burden of proof which lay upon him, and had not established his claim. The practice common in litigation in the United Provinces in India for each litigant to cause his opponent

EVIDENCE—CIVIL CASES—*contd.*1. MODE OF DEALING WITH EVIDENCE—*contd.*

to be summoned as a witness with the design that each party shall be forced to produce the opponent so summoned as a witness, and thus give the counsel for each litigant the opportunity of cross-examining his own client, disapproved of by their Lordships of the Judicial Committee as resulting in the em-

## 2. ACCOUNTS AND ACCOUNT BOOKS.

1. — Books kept in course of business. Books proved to have been regularly kept in course of business are admissible as corroborative, but not independent, proof of the facts stated. *DWARAKA DASS v. DWARAKA DASS*  
2 Agra 308

2. — Account books—*Act II of 1855, s. 43.* The books of a creditor are not admissible as evidence against his debtor to prove the debt, unless there is other evidence of the debt, in which case entries in such books may be admitted as corroborative evidence under Act II of 1855, s. 43. *RANKISTO PAUL CHOWDHURY v. HURRY DASS KOONDO*  
Marsh. 219 : 1 Hay 568

3. — *Evidence Act, s. 34.* It is only such books as are entered up as transactions take place that can be considered as books regularly kept in the course of business within s. 34 of the Evidence Act. *MENCHERSHAW BEZONJI v. NEW DHURMSEY SPINNING AND WEAVING COMPANY*  
I L R. 4 Bom. 576

4. — *Effect of account books.* One party, by merely producing his own books of account, cannot bind the other. *SORABJEE VACHA GANDA v. KOONWARJEE MAXICKJEE*  
5 W. R. P. C. 29 : 1 Moo. I. A. 47

5. — *Entries in account books—Evidence Act, s. 32, cl. 2, and s. 34—Account books kept on behalf of firm by servant or agent—Admission.* Account books containing entries not made by nor at the dictation of a person who had a personal knowledge of the truth of the facts stated, if regularly kept in course of business, are admissible as evidence under s. 34 of the Evidence Act I of 1872, and *semble* under s. 32, cl. 2. Account books, though not proved to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm. *QUEEN v. HANUMANTA*  
I L R. 1 Bom. 610

6. — *Evidence Act, s. 145—Statement.* A was employed by B at intervals of a week or fortnight to write up B's account books, B furnishing him with the necessary information either orally or from loose memoranda. *Held,*

EVIDENCE—CIVIL CASES—*contd.*2. ACCOUNTS AND ACCOUNT BOOKS—*contd.*

that the entries so made could not be given in evidence to contradict A, under s. 145 of the Evidence Act, as to previous statements made by him in writing. The statements were really made, not by A, but by B, under whose instructions A had written them. *MENCHERSHAW BEZONJI v. NEW DHURMSEY SPINNING AND WEAVING COMPANY*

I L R. 4 Bom. 576

7. — *Absence of entry in a book irrelevant—Evidence Act I of 1872, s. 34.* Though under s. 34 of the Evidence Act the actual entries in books of account regularly kept in the course of business are relevant to the extent provided by the section, such a book is not by itself relevant to raise as inference from the absence of any entry relating to a particular matter. *QUEEN-EMPRESS v. GRISH CHUNDER BANERJEE*

I L R. 10 Calc. 1024

8. — Where a Judge considered it inequitable to reject plaintiff's books when they made for him, viz., as to amounts lent to defendant, and to accept them when they were against his interest, viz., in the amount of repayment credited to defendant, and therefore disregarded both descriptions of entries equally, but gave a decree in plaintiff's favour for such entries as were proved, without deducting the items credited to defendant:—*Held*, that entries in an account book, whether on the credit or debit side of the account, are not inadmissible on the ground of amounts paid

credit those, if any, which he believed to be false. *ISAN CHANDRA SINGH v. HARAN SINGH*  
3 B. L. R. A. C. 135 : 11 W. R. 525

9. — *Entry against interest of witness.* In a suit for account by the representatives of A, deceased, a document was offered as evidence purporting to be a copy made by deceased of an account furnished him by the defendant

inadmissible. But when further evidence was given by a witness that the deceased had stated to him that the document was a correct statement of his account with the defendant:—*Held*, that such evidence was admissible; and that, with the addition of this evidence, the document also was admissible as containing an entry by the deceased against his interest. But, *quære*, whether the circumstance that the entry only indicated a conversion of the money into a new shape did not take away the character of its being an entry against interest. *ZAYNAB v. HADJEE BABA CAZANJEE*

3 Ind. Jur. N. S. 54

10. — *Hat-chilla book—Evidence against vendors.* A hat-chilla book is a

EVIDENCE—CIVIL CASES—*contd.*2. ACCOUNTS AND ACCOUNT BOOKS—*contd.*

document kept especially as a security for the vendor and in the absence of fraud, it must be considered binding upon him. *GOREMONTU ROR R. AEDCOL RAJAH SUPJEN SACODA*

1 Ind. Jur. N. E. 358

11. *Disputed items of account, proof of* In an action by a banking firm against another firm to recover a balance upon an account between them, the plaintiff put in evidence the account books of his firm, and the Inspector of the Court certified that the books were regularly kept, consistently with the rules of banking, and that they agreed with the account rendered by the plaintiff to the defendant. The plaintiff, however, examined no witness to prove that the books were regularly kept or the general accuracy of the particular charges constituting the demand; he proved admissions by the defendant of the correctness of the account and of the facts stated therein.

although the plaintiff's books and the Inspector's report were not conclusive evidence, yet that the necessity of strict proof was removed by the admission of the defendant, and the fact of the absence by him of any evidence to impeach the accuracy of the accounts, the disputed items being satisfactorily accounted for. *DWARKA DASS v. JANKEE DOSS*

6 Moo. L. A. 88

12. *Evidence Act (I of 1872), s. 34—Evidence as to whether hundis are genuine or not—Comparison of handwriting—Entries in account books regularly kept—Tests of correctness of such books—Interest on decree.* The High Court had reversed the finding of the first Court on an issue which, in effect, was whether certain hundis were genuine or false. Under s. 34 of Act I of 1872 (The Indian Evidence Act), the plaintiff's account books were produced by the plaintiff as relevant evidence, and were relied on as corroborating direct testimony. The books were tested by reference to entries corresponding with other independent evidence. The Judicial Committee, on

S.C. TEWARI JASWANT SINGH v. LALA SHEO NABAIN LAL

1 L. E. 21 L. A. 6

13. *Corroborative evidence necessary to render defendant liable upon*

EVIDENCE—CIVIL CASES—*contd.*2. ACCOUNTS AND ACCOUNT BOOKS—*contd.*

One of the plaintiffs gave evidence as to the entries in the account books kept by the defendant.

It was shown by the books, the books were cross-examined, but no questions were asked him to show that he was not speaking as to his personal knowledge. *Held*, that the evidence given as above should be interpreted in the manner most favourable to the plaintiffs, and might be accepted in support of the entries in the plaintiffs' account books which by themselves would not have been sufficient to charge the defendants with liability. *DWARKA DASS v. SANT BAKSHI*

I. L. R. 18 All. 82

14. *Admissibility of books of account containing entries after transaction—Corroborative evidence—Evidence Act (I of 1872), s. 34.* By s. 34 of the Indian Evidence Act, 1872, the admissibility of books of account regularly kept in the course of business is not restricted to books in which entries have been made from day to day, or from hour to hour, as transactions have taken place. The time of making the entries may affect the value of them, but should not, if they have

been entered by hand at the head office, where they were abstracted and entered in an account book under the date of entry, that being in some cases many days after the transaction of payment or receipt, but the entries were made in their proper order, on the authority of the officer whose duty it was to receive or pay the money. *Held*, that the entry in the account book was admissible as corroborative evidence of oral testimony to the fact of a payment for what it was worth, objection being only to be made to its weight, not to its relevance under s. 34. The opinion expressed in the judgment in *Munchershow Bezonji v. New Dhurumsey Spinning and Weaving Co.*, I. L. R. 4 Dom. 576, against the reception of an account book containing an entry not made at the time of the transaction was not approved. *DEPUTY COMMISSIONER OF BARA BANKEI v. RAM PARSAD*

I. L. R. 27 Cal. 118

I. L. R. 28 L. A. 254

4 C. W. N. 417

15. *Account books of factory—Payment of rent.* The account books of a factory, regularly sworn to by the manager, are legal evidence of payment of rent. *KALEE KANT MOJOOB DASS v. WATSON* 2 W. R., Act X, 75

16. *Evidence Act, 1872, s. 34.* Factory books can be used as independent primary evidence of the payment to which

EVIDENCE—CIVIL CASES—*contd.*2. ACCOUNTS AND ACCOUNT BOOKS—*contd.*

the entries refer; Act I of 1872, s. 34. *QUEEN v. HURDEEP SANY* . . . 23 W. R. Cr. 27

VASUDEVAN . . .

16. ———— Accounts—Evidence of reputation as to ownership of property—Suit to recover forest tracts from Government. In a suit by a zamindar to recover certain forest tracts from Govern-

dence was produced to show for what purpose, by whom, and in what circumstances, these accounts were prepared, and what guarantees existed to ensure their accuracy. *Held*, that, inasmuch as they were from time to time prepared for administrative purposes by village officers and were produced from proper custody and otherwise sufficiently proved to be genuine, they were admissible as evidence of reputation. No distinction can be drawn between evidence of reputation to establish and to disparage a public right. *SIVA SUBRAMANIAM v. SECRETARY OF STATE FOR INDIA*

I. L. R. 9 Mad. 285

19. ———— Partnership books—Act II of 1855, s. 53 *A & Co.* and *B & Co.* entered into a joint adventure in opium. *A & Co.* were to send

proof was the arrival of the money at *A & Co.*'s places of business supported by entries in *A & Co.*'s books at each place, but there was no proof of payment to the agents save such entries. As to re-

4 B. L. R. P. C. 31 : 13 W. R. P. C. 36  
13 Moo. I. A. 385

20. ———— Bankers' account books—Suit against representatives of customer for balance of account. In an action by bankers against the re-

ing to the established custom of mahajans in India, as not of itself sufficient evidence to establish such

EVIDENCE—CIVIL CASES—*contd.*2. ACCOUNTS AND ACCOUNT BOOKS—*contd.*

a claim, strict proof of the debt being required.

*RAT SRI KISHEN v. RAT HURI KISHEN*

5 Moo. I. A. 432

21. ———— Account books of banking firm—Suit for money unaccounted for—Proof of payment. Where the fact of payments by a banking firm is distinctly put in issue, the books of the firm being at most corroborative evidence, the mere general statement of the banker to the effect that his books were correctly kept is not sufficient to discharge the burden of proof that lies upon him; particularly if he has the means of producing much better evidence. In a suit to recover moneys unaccounted for, where defendants plead payments endorsed on documents, and the endorsements pur-

plaintiffs sign or could speak to the handwriting or generally what took place. *GUNGA PERSHAD v. INDIRAJIT SINGH* . . . 23 W. R. P. C. 390

22. ———— Suit for balance of unadjusted account. In a suit for a sum of money on an unadjusted account, plaintiff filed a memorandum (A) with her plaint, from which the amount claimed in the plaint could not be made out. In her examination by the Court the plaintiff put in another memorandum (C) to explain memorandum (A). Defendant admitted that memorandum (C) was signed by him. It had reference to a period immediately preceding that for which the suit was brought. *Held*, that memorandum (C) was rather evidence to support the originally stated cause of action, than an amendment of the claim or the substitution of one claim or cause of action for another. The case was one which should have been decided not merely on the discrepancy between the two statements made by plaintiff, but on the whole of the evidence. The mere omission of an accountable party, framing his own account, to carry forward into a new account a balance against himself existing in a former one can constitute no evidence in his own favour. To prove the existence of the balance, such omission might be considered in conjunction with other evidence in the case. *MULEA MUKHDA v. TEKAETH ROY*

14 W. R. P. C. 24

23. ———— Suit for balance of account—*Dekhan Agriculturists' Relief Act (XVII of 1879)*, s. 56—Signed balance of account—Attestation of account. A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot therefore be admitted in evidence, unless written by, or under the superintendence of, and attested by, a village registrar, as required by s. 56 of Act XVII of 1879. *KANJI LADRA v. DHOND KONDARI* . . . I. L. R. 6 Bom. 729

See *DINGHA KAVARJI v. HARGOVANDAS GOVARDHANDAS* . . . I. L. R. 13 Bom. 215

EVIDENCE—CIVIL CASES—*contd.*

## 3. ACCOUNT-SALES.

1. ——— Account-sale—Goods consigned from London. A at Calcutta consigned goods through Bat Calcutta to C at London for sale on his (A's) own account and risk. B advanced

balance due to him on account of the goods so advanced after giving credit to A for the amount realized by the sale of the goods according to the account-sale. *Held*, that the account-sale was *prima facie* conclusive of the amount realized; and if A wished to falsify the account, the onus lay upon him. DOONUN L. STEVENS. 2 Ind. Jur. N. S. 5

2. ——— Consignment of goods to foreign market—Implied contract. Where goods are consigned to be disposed of in a foreign market, it is an implied term of the agreement by the consignor that the account-sales furnished by the correspondents abroad shall be taken as *prima facie* evidence of what the goods realized. *Held*, that this was so, even though the consignor objected to the correctness of the account-sales when furnished to him. ROBINSON v. RITCHIE & HAZARD. 6 Bom. O. C. 39

3. ——— In an action brought by the plaintiffs for the balance due to them from the defendant in respect of shipments

4. ——— Evidence Act (I of 1872), s. 32. In a suit to recover loss sustained on the sale by the plaintiffs of goods consigned to them by the defendant for sale by their London firm, account sales are good *prima facie* evidence to prove the loss, unless and until displaced by substantive evidence put forward by the defendants. BARLOW v. CHUNI LALL NEOOGI (1901)

I. L. R. 26 Calc. 209

## 4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.

## (a) GENERALLY.

1. ——— Decree of competent Court—Presumption. The decree of a competent Court must be presumed to be valid and binding on the

2. ——— Proceedings and decrees in former suit—Decision as to execution of will. Where plaintiff and defendant respectively put in a evidence different portions of the proceedings in a

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(a) GENERALLY—*contd.*

3. ——— Decree in previous suit—Admissibility of, in evidence. Effect of a previous decree as evidence in a subsequent suit stated. RAMJAN KHAN v. RAMAN CHAMIAN

I. L. R. 10 Calc. 89

4. ——— Decree as to authenticity

II W. R. 509

5. ——— Decree as to situation of chur for a portion of which suit is brought. A former decision as to the situation of a chur, when an eight-anna share was in dispute, is not binding as an estoppel, although it is strong evidence in a suit in which the other moiety is disputed. NAZIMOODDIN AHMED CHOWDHURY v. WISE

5 W. R. 282

6. ——— Decree for possession—Suit under Act XIV of 1859, s. 15. A decree for possession in a suit under s. 15 of Act XIV of 1859 is *prima facie* evidence that the plaintiff in that suit is entitled to recover from the defendant therein mesne profits for the period of dispossession. RADHA CHURN GHATAK v. ZAMIRUNNISSA KHANUM

2 B. L. R. A. C. 67 : 11 W. R. 83

Reversing on appeal under Letters Patent ZAMIRDOONISA v. RADHA CHURN GHATTACK

9 W. R. 590

7. ——— Decree in summary suit—

rent being due; but such a decree is *prima facie* evidence in support of a claim for rent for the next ensuing year. ARSUPOODEN v. SHOROSHEE BULA DABEE

Marsh, 558 : 2 Hay 664

8. ——— Decree declaring amount of rent payable—Suit for rent. A decree in a former suit declaring the rent payable by a raiyat is evidence of the rent still payable by him unless rebutted by him by proof of change in the rent. CHUNDER COOMAR ROY v. ZEENUNTOOLLAH SIRDAR

W. R. 1864, Act X, 85



**EVIDENCE—CIVIL CASES—*contd.*****4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*****(a) GENERALLY—*contd.***

MONMOHENE DEBEE v. BINODE BEHAREE SHAHA 25 W. R. 10

9. ———— Proceedings in former suit—*Reversed decree* Where a plaintiff had been successful in both the lower Courts, and the decree which he had obtained was only reversed by the High

10. ———— Decision between co-defendants—*Admissibility of decree in former suit—*

22 W. R. 401

11. ———— Decision of Appellate Court where there is a decision of High Court in different proceedings on same point—*Decrees declaring decree a simple money-decree, and one creating a lien* The decision of the High Court that a certain decree was only a money-decree and carried no lien has not any binding effect on a previous decision of a lower Appellate Court

12. ———— Former suit for partition—*Partition of property as evidenced by deed without possession under it.* A partition of property between members of a family, though evidence that the property is probably theirs, is no evidence against a third party unless it is shown that there has been some possession in accordance with the partition. DOORGA PRESHAD SINGH v. OPENDRONATH CHOWDRAY 12 W. R. 145

13. ———— Depositions of witnesses in former suit in Collector's Court—*Evidence of relationship of landlord and tenant.* In a suit for arrears of rent of land for which no rent has ever been paid where the plaintiff asks also for assessment of the rate of rent, and where the tenure had commenced thirty years previously and had been in the possession of defendant's grandfather, father, and himself without any rent having been paid:—*Held*, that, in deciding whether the

**EVIDENCE—CIVIL CASES—*contd.*****4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*****(a) GENERALLY—*contd.***

relation of landlord and tenant existed between the parties, the Civil Court was entitled to look at evidence taken in the Collector's Court, being that of witnesses who had been examined and cross-examined by the present defendant when the suit was originally tried there. KEDAR NATH CHUCKERBUTTY v. GOPAL NATH GHOSH 23 W. R. 426

14. ———— Depositions of witnesses in former suit—*Different parties.* Copies of depositions given in suits in which defendant was not a party cannot be treated as evidence in a case in which he is a party. SHUMBO GEER GOSSAIN v. RAM JEWAN LALL 8 W. R. 509

15. ———— Copy of *hustabood*—*Different*

SING MITTER v. TRIPPOORA SOONDERY DASSIA 9 W. R. 105

16. ———— Evidence of conduct—*Statements made by parties managing properties in suit.*

plant properties and as evidence of conduct. *Held*, that the documents were inadmissible in evidence. SUBRAMANYAN v. PARAMASWARAN 11 Mad. 116

17. ———— Decree for possession under s. 8, Specific Relief Act (I of 1877)—*Subsequent suit "inter partes" for mesne profits—*

by the defendants in a subsequent suit against the same defendants to recover mesne profits. GUPTA LALL v. FATEH LAL, I. L. R. 6 Calc. 171; Brojo Behari Mitter v. Kedar Nath Mozundar, I. L. R. 12 Calc. 530; Surendra Nath Pal Chowdhry v. Brojo Nath Pal Chowdhry, I. L. R. 13 Calc. 352; and Radha Churn Ghutack v. Zumroonissa Khatoon, 11 W. R. 33, distinguished. Ran Bahadur Singh v. Lucko Koer, I. L. R. 1 Calc. 301, referred to. JAUHAN SHEIKH v. INU KHAN I. L. R. 23 Calc. 693

(b) UNEXCUTTED, BARRED, AND EX PARTE DECREES.

18. ———— Decree for *kabuliat*—*Unexecuted decree—Evidence of amount of rent.* A decree



EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(b) UNEXECUTED, BARRED, AND *EX PARTE* DECREES—*contd.*

30. ———— *Estoppel—ex parte decree, effect of—Rate of rent—Rent-suit—Civil Procedure Code (Act XIV of 1882), s. 13.* A mere statement of an alleged rate of rent in a plaint in a rent-suit in which an *ex parte* decree has been obtained is not a statement as to which it must be held that an issue within the meaning of s. 13 of the Code of Civil Procedure was raised between the parties, so that the defendant is concluded upon it by such decree. Neither a recital in the decree of the rate of rent alleged by the plaintiff nor a declaration in it as to the rate of rent which the Court considers to have been proved would operate in such a case so as to make that matter a *res judicata*, assuming that no such declaration were asked for in the plaint as part of the substantive relief claimed, the defendant having a proper opportunity of meeting the case. *MODHUSUDUN SHAHA MUNDUL v. BRAE* . . . I. L. R. 16 Calc. 300

31. ———— *Ex parte decree—Evidence of amount of rent.* An *ex parte* decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution-proceedings were fraudulent, and that no steps had been taken which gave finality to the decrees—*Held*, that the decree was not conclusive evidence of the amount of rent due from the defendant or of the questions with which it dealt. *Birchunder Manickya v. Hurrish Chunder Dass*, I. L. R. 3 Calc. 333, distinguished. *NILMONEY SINGH v. HEERA LALL DASS* . . . I. L. R. 7 Calc. 23; 8 C. L. R. 257

32. ———— *Ex parte decree for arrears of rent—Evidence of rate of rent.* An *ex parte* decree for arrears of rent which has been

*MATI LAL PODDAR v. NRIPENDRA NATH ROY CHOWDHURY* . . . 2 C. W. N. 172

33. ———— *Decree against registered co-tenant—Acquiescence of others in the name being registered—Evidence of rate of rent.* When the joint tenants of a homestead holding allow one of them to have his name registered in the landlord's books, a decree obtained by the landlord

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(b) UNEXECUTED, BARRED, AND *EX PARTE* DECREES—*contd.*

against such registered tenant is admissible in evidence against the other tenants as to the rate of rent. *MOTI LAL PODDAR v. NRIPENDRA NATH ROY CHOWDHURY* . . . 2 C. W. N. 172

## (c) DECREES AND PROCEEDINGS NOT INTER PARTES.

34. ———— *Former decrees and proceedings—Different parties.* Decrees and proceedings to which the defendants were not parties are not admissible as evidence against them. *SUTO SURN GHOSAL v. DHONE KRISTNO SIKAR* . . . 1 W. R. 88

*MAHOMED ALI v. SHURUM ALI* . . . 8 W. R. 422  
*LALL SINGH v. MODHOSUDUN ROY* . . . 8 W. R. 428

*JOY PROKASH SINGH v. ANEER ALLY* . . . 9 W. R. 91

*SURUT SOONDUREE DERIA v. RAJENDUR KISHORE ROY, CHOWDHURY* . . . 9 W. R. 125

*MOHA MOYER DOSSEE v. JOODHESTER DES* . . . 10 W. R. 112

*SHEO DYAL POOREN v. MOHABEE PERSHAD* . . . 10 W. R. 477

*ANIKEROONNISA KHATOON v. JUGGER NATH ROY* . . . 11 W. R. 113

*KASHEE CRUNDER MOJOOODAR v. SEETUL CHUNDER TULLAPATTUR* . . . 17 W. R. 151

*MAHOMAD BUX v. ABDUL KUREEN ALIAS ABDOO* . . . 20 W. R. 458

*ANUND MOHAM GHUTTUCK v. SOORJI KANTO ACHARJEE CHOWDHURY* . . . 22 W. R. 538

*LALLA MOHADEO DYAL SINGH v. CHUNDER PERSHAD* . . . 25 W. R. 57

35. ———— *Judgment in former case—Different parties—Similar interest.* A judgment in another case is of itself insufficient evidence against a party to the present case. . . .

36. ———— *Different parties—Inapplicability of English rule.* Remarks on . . .

through whom the parties actually in litigation claim. *DOORGA DASS ROY CHOWDHURY v. NUREN. BRO COOMAR DUTT CHOWDHURY* . . . 6 W. R. 232

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

37. ————— *Subsequent suit brought by strangers to former suit.* The judgment in a former suit against the same defendants in respect of the same subject-matter is admissible.

38. ————— *Judgment admissible against third party.* A judgment *inter partes* may be received in favour of a stranger as against a party thereto, not as concluding such party, but as evidence for what it is worth. *BIHAR NATH TIKU v. KALLY CHANDEN CHOWDHURY*

18 W. R. 112

39. ————— *Suit by the purchaser at execution-sale to recover the purchase-money.* The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor; he now sued in 1839 to recover the purchase-money paid by him on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that the son of the judgment-debtor had obtained a decree in 1829 against the plaintiff and others, declaring

former suit was not evidence against the defendant.

*KANAI D. ISMAHAB* . 1, 11, R. 10 MAU. 501

40. ————— *Evidence Act (I of 1872), ss 8, 9, 13, 40, 43—Admissibility in evidence of judgments not inter partes—Judgment in*

the only defendant, and she maintained that the child in question was her son by her deceased husband. The suit was dismissed on the merits by the Court of first instance, and by the High Court on appeal. After K's death, P brought a suit against D, whom the Collector, as manager of the Court of Wards, had accepted as the minor son of K, and against the Collector as such manager, for possession of the same villages upon the same grounds as those put forward in the former suit. *Held*, by the Full

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

Bench, that the judgments of the Court of first instance and the High Court in the former suit did not operate as *res judicata* in the present suit, but

the alleged right of the plaintiff to the property now

denon Act, the question was whether the existence of the former judgments was a fact in issue or relevant under some other provision of the Act. Here the question was not as to the existence of the former judgments, but as to the existence of a fact in issue or

thing that might be proved *abunde*. The former judgments and decrees were not themselves a "transaction" or "instances" within the mean-

estate was claimed and recognized, and to establish that such a transaction or instance took place, they were the best evidence. *Per BRODHURST, J.*—

was not the prosecutor) had got up the case:—*Held* by EDGE, C.J., and BRODHURST and TYERELL, JJ.,

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUIT—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

that the judgment of the Criminal Court was not admissible in evidence. *Held* by STRAIGHT, J., with doubt, and on the principle, that in cases of doubt a Judge should decide in favour of admissibility, rather than of non-admissibility, that the judgment was a fact which went to establish the identity of the defendant with the person he admitted was a defendant in the former suit, and, if not, COLLEC-

12 All. 1

41. ————— Decree not inter partes—*Proceedings of Revenue Court.* Decrees obtained by

per. COLLECTOR OF FURIEDPOORE v. KALEE DASS HAZARAH 17 W. R. 194

42. ————— Evidence to explain inconsistency. *Held*, that the Subordinate Judge was quite justified in using a decree between other parties to explain an apparent inconsistency between certain statements in the plaint and in the evidence of the plaintiff's witnesses, on the ground of which inconsistency the Munsiff had rejected that evidence. RADHANATH DASS v. KHELU CHANDER GHOSE 17 W. R. 558

43. ————— Ownership of property. In a suit to have it declared that a certain house was the property of W, plaintiff's judgment-debtor, defendants contended that it had been the property of another person and that they had

clared to be W's. *Held*, that the decree could not bind the plaintiffs who were not parties to it. GOLUCKMOONEE DEBIA v. RAMMOONEE ROSE

12 W. R. 21

44. ————— Evidence of possession—Admissibility in evidence of decree in former suit. The plaintiffs, as purchasers of a share of an estate

present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in posses-

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

sion and were liable to pay to the then plaintiff his share of the rent. *Held* (MITTEN, J., dissenting), that the decree in the former suit was not admissible as evidence in the present suit. SURENDER NATH PAL CHOWDHRY v. BROJO NATH PAL CHOWDHRY I. L. R. 13 Cal. 552

45. ————— Decree in former suit showing lands were mortgaged—*Suit by auction-purchaser for rent—Evidence Act, s. 11.* Where the plaintiff, who was an auction-purchaser of a share in certain lands and the decree of the court in the

plots as lakhiraj. The plaintiff put in evidence certain decrees in

46. ————— Decrees as to rate of rent in former suits. Decisions as to rates of rent in previous suits are admissible in a subse-

47. ————— Rent suit—De-

the parties were not before them were raised they

EVIDENCE—CIVIL CASES—*contd.*4 DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

48. ———— *Evidence of adoption.* In a former *bona fide* litigation to which the defendant was not party, the status of the plaintiff as an adopted son was in issue and disposed of in his favour. *Held*, that that was good evidence of the adoption in this case, in the absence of better evidence for the defendant. *SEETARAM v JEGGOBUNDOO BOSE* . . . 2 W. R. 187

49. ———— *Evidence of adoption.* A decree to which the defendant was not a party is admissible as evidence of great weight, though not as an estoppel against him, on the question of the plaintiff's adoption, which was established by it in the presence of certain members of the plaintiff's family who were interested in contesting its validity. *ANNUNDRATH ROY v THAKOOR DOSS MOZOONDAR* . . . 2 Hay 472

50. ———— *Evidence Act (I of 1872), s. 35—Judgments and private documents.* In a suit for partition of family property, a decree

defendant No. 1 by D was also put in issue, and to prove it, defendant No. 1 tendered in evidence decrees in which the alleged adopted son was so

*Held*, that the documents tendered in evidence of the two adoptions above mentioned, respectively, were admissible in evidence. *KEISHINAWAMI AYYANGAR v RAJAGOPALA AYYANGAR*

I. L. R. 18 Mad. 73

51. ———— *Former suit on same matter between different parties—Decision on public right.* In a suit by the trustees of certain pagodas for the recovery of six villages on behalf of the pagodas from the defendant, the manager of the pagoda—*Held*, that the judgment in another suit in which the cousin of a former manager sued him for a partition of certain villages, some of which

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

a stranger. *NALLATHAMBI BATTAR v. NILLAKUMARA PILLAI* . . . 7 Mad. 308

52. ———— *Evidence Act, ss. 13, 43.* In a suit to establish an *itemceer* right

in the *Evidence Act, 1872, s. 13*, and were admissible as evidence in the case under s. 43, not as conclusive, but as of such weight as the Court might think they ought to have. *NEAMUT ALI v. GOOROO DOSS* . . . 22 W. R. 306

*OMER DUTT JHA v. BURN* . . . 24 W. R. 470

53. ———— *Evidence Act, ss. 13, 42—Relevancy of judgments in suits in which right was asserted to collect dues for a temple.* In a suit brought by the trustees of a temple to recover from the owners of certain lands

erted.  
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I. L. R. 12 Mad. 9

54. ———— *Record of transaction by which rights of parties were recognized—Evidence Act, s. 13.* Where a suit was disposed of according to a compromise, of which the judgment set out the terms in the form of a recital—*Held*, that the judgment, though not in the ordinary form of a decree, was the record of a transaction by which the rights of the parties were recognized, and was therefore relevant as evidence under the provisions of Act I of 1872, s. 13. *ROOP CHAND BRUKUT v. HIR KISHEN DASS* . . . 23 W. R. 182

55. ———— *Evidence Act (I of 1872), s. 35—Title-deeds—Petition of plaintiff's predecessor asserting title—Judgment obtained by*

the defendants nor their predecessors were parties

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTE—*contd.*

to any of these instruments or proceedings. *Held*, that all these documents were relevant and admissible in evidence. **VENKATASAMI VENKATREDDI**

**I. L. R. 15 Mad. 12**

56. — *Evidence Act (I of 1872), s. 13—Document executed by other tenants—Suit for ejectment.* In a suit for possession of land, the plaintiffs claimed title under a lease from the shrotriendars of the village where the land was situated. The defendants, who had obstructed the plaintiffs, from taking possession of part of the land, claimed to have permanent occupancy rights, and asserted that the shrotriendars were entitled not to the land itself, but to melvaram only. To meet this allegation, the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely. The defendants had received no notice to quit before suit. *Held*, that the documents above referred to were admissible under Evidence Act, s. 13. **VRINLINGA v. VENKATACHALA**. **I. L. R. 16 Mad. 194**

57. — *Decision as to boundaries of land.* Where the boundaries of a piece of land, as given respectively in a sale-certificate and in a plaint, serve to identify it as the land in respect of which a former decision has been passed, then, although the present holders of the land may not be the legal representatives of the persons who were bound by the former decision, yet the decision is entitled under s. 13, Evidence Act, to consideration as evidence in support of the plaint. **ANUNO CHUNDER CHUND v. GUNEE GAZEE** 25 W. R. 180

58. — *Road-cess papers—Deed of sale—Evidence Act, s. 13* Under the Evidence Act, s. 13, road-cess papers and a deed of sale are evidence *quantum valent*. So is a decree, although the party against whom it is treated as evidence was no party to it. **DAITARI MOHANTI v. JUDOO BUNDHOO MOHANTI**. **23 W. R. 293**

59. — *Decrees in former suits as to custom—Evidence Act, s. 13.* In determining the right to the office of audhikari of the Difu Sastur at Nowgong, where defendant claimed to be audhikari and alleged the headship was elsewhere, previous judgments or decrees involving instances in which the right and custom in question had been successfully asserted were held admissible in evidence under the provisions of Act I of 1872, s. 13. **KOOKDO NATH SORNA GOSWAMEE v. DHEER CHUNDER SORNA ODHIAK GOSWAMEE**. **20 W. R. 345**

60. — *Evidence Act (I of 1872), s. 13—Custom—Admissibility in evidence of judgments not "inter partes"* In a suit for rent the amount of the land held by the defendant was questioned, and it was contended that the land must be measured with a hath of 21½ inches and

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

not one of 18 inches, as claimed by the plaintiff zamindar. Certain decrees obtained by the zamindar against other tenants in the same pergunnah in suits in which 18 inches had been taken as the hath were tendered in evidence in support of the plaintiff's contention that the customary hath in the pergunnah was one of 18 inches. *Held*, that such decrees were admissible in evidence under the provisions of s. 13 of the Evidence Act, as they furnished evidence of particular instances in which a custom was claimed. **JIANUTULLAH SIRDAR v. ROMONI KANT ROY. PIR BUKSH MUNDUL v. ROMONI KANT ROY**

**I. L. R. 15 Calc. 233**

61. — *Decrees of competent Courts—Evidence of custom—Matter of public interest.* The decrees of competent Courts are good evidence in matters of public interest, such as the existence of customs of succession in particular communities. Such decisions form an exception to the general rule, which excludes *res inter alios acta*. **BAI BAIJI v. BAI SANTOK**. **I. L. R. 20 Bom. 53**

which, by the rules of pleading, it was for defendant to rebut. **ABDOOL KAREEM v. SUFFER ALLY**

**11 W. R. 118**

cessors in title were not parties. *Held*, that the judgment was admissible in evidence. **PEARL MOHUN MUKERJI v. DROBOVOYI DABIA**

**I. L. R. 11 Calc. 745**

62. — *Liability of land for rent* In a suit for khas possession of land upon the allegation that the defendant refused to give up possession or to pay rent for it, a decree

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

the auction-purchaser who had in fact been treated as a trespasser and ejected *Held*, that the ruling in the case of *Gujju Lal v. Fattah Lal*, 1. L. R. 6 Cal. 171, governed the case and that the decree was inadmissible in evidence. Although the case of *Hira Lal Pal v. Hills*, 11 C. L. R. 528, *inter partes* may be received in evidence, it does not lay down that such judgments can be treated as conclusive evidence of the facts with which they deal. MOHENDRA LAL KHAN v. ROSOMONY DASI

I. L. R. 12 Cal. 207

65. *Evidence Act, ss. 11, 13, and 40—Admissibility of such judgment*  
The plaintiff sued to recover arrears of rent for a certain shop, alleging the annual rent to be Rs. 250. The defendant contended that it was only Rs. 60. The defendant and the plaintiff's brother were partners in business, and the plaintiff relied upon the evidence of his brother and on two entries in the

L. R. 3 Bom. 3, distinguished. RANCHHODAS KRISHNADAS v. BAFU NARIHAR

I. L. R. 10 Bom. 439

66. *Subjects of public nature—Proof of custom of pre-emption Held*, that in subjects of a public nature, such as to prove custom of pre-emption, etc., previous judgments between other parties are admissible as evidence, but must not be regarded as conclusive evidence. TOTA RAM v. MOHUN LALL

2 Agra 120

67. *Suit for pre-emption—Evidence of custom—Decrees enforcing right*. In suit for pre-emption based on custom, evidence of decrees

*Gujju Lal v. distinguished*  
Shaha, 5 Rev. v. Goodar, 3 Agra 138, and Luchman Bai v. Albar Khan, 1. L. R. 1 All. 419, referred to. GURDIAL MAL v. JHANDU MAL

I. L. R. 10 All. 585

68. *Evidence of*

EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*contd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*contd.*

co-owners and to have two of the shares delivered to him as one of the co-owners. In 1851 another co-owner had, in a suit to which only some of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853 such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal. *Held*, that, though the decree of 1851 was only a judgment *inter partes*, it was, as against such of the present defendants as were not parties to the former suit, cogent evidence of the existence and validity of the custom. VENKATASWAMI NAYAKHAN v. SUBBA RAU. SANKARA SUBBAIYAN v. SUBBA RAU

2 Mad. 1

69. *Evidence Act (1 of 1872), ss. 11 and 13—Admissibility in evidence of judgment in former case, the subject-matter of the*

1. L. R. 13 Cal. 352, has been materially qualified by the decisions of the Privy Council in the cases of *Ram Ranjan Chatterbully v. Ram Narain Singh*, 1. L. R. 22 Cal. 533; 1. L. R. 22 I. A. 60, and *Billo Kunwar v. Kasho Pershad*, L. R. 24 I. A. 10. Under certain circumstances, in certain cases, the judgment in a previous suit, to which one of the parties in the subsequent suit was not a party, may be admissible in evidence for certain purposes and with certain objects in the subsequent suit. In a case where the previous suit was to recover a two-thirds share of the property in question, and the subsequent suit was by a different plaintiff to recover the remaining one-third share of the same property—*Held*, that in the subsequent suit the judgment in the previous suit was not admissible in evidence, the subject-matter in the two suits not being identical. TERU KHAN v. RAJANI MOHAN DAS

I. L. R. 25 Cal. 522

2 C. W. N. 501

70. *Evidence Act (1 of 1872), ss. 13 and 43—Judgments not inter partes*

parties, or particular instances of the exercise of a



EVIDENCE—CIVIL CASES—*contd.*4. DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—*concl'd.*(c) DECREES AND PROCEEDINGS NOT INTER PARTES—*concl'd.*

and C was a fraudulent and colourable transaction. Held, that the judgments in the former litigation, though not *inter partes*, were admissible under s. 13 of the Evidence Act. **LAKSHMAN GOVIND v. AMRIT GOPAL**, I. L. R. 24 Bom. 591

71. ——— Decree not inter partes—Decree obtained by some of the mortgagees against the mortgagors, vendors of the purchasers, is evidence against and binding upon purchasers. A decree obtained by the mortgagees against the original mortgagors, the vendors of the appellants, is no

passed; and the purchasers are in no way bound by the result of that suit. **BASUDEN GIRI v. BROJO MOHAN JANA** (1902) 7 C. W. N. 54

72. ——— Proceedings not inter partes—Evidence of possession. In a suit for possession, where plaintiff put in a copy of a solehnamah to which defendant was not a party—Held, that, although no question of right or title could be decided adversely to the defendant on the basis of that agreement, yet it would be evidence that by an order of Court passed on that solehnamah the plaintiff was put in possession. **SREENUTTY DASSEE v. PELARAN DASSEE** 15 W. R. 261

73. ——— Admissibility of proceedings between defaulting proprietor and third parties in suit by auction-purchaser at sale for arrears of revenue. An auction-purchaser at a sale for arrears of revenue cannot disavow his title from proceedings between

third parties with respect to the title to the land are not admissible in evidence in a subsequent suit brought by the auction-purchaser as against him. **RADHA GOBINDO KOER v. RAKHAL DASS MOOKERJEE** I. L. R. 12 Calc. 82

74. ——— *Roobookari*—Evidence Act, s. 13. A roobookari (Court proceeding) in a case in which certain decree-holders sought to attach the mokurrari rights of an ancestor of the defendants in this jaghir was held to be relevant evidence under the Evidence Act (I of 1872), s. 13. **LACHMEEDRUR PATTUCK v. RUDHOOR SINGH** 24 W. R. 284

## 5 HEARSAY EVIDENCE.

1. ——— Evidence in cases of pedigree, death and marriage. Hearsay evidence

EVIDENCE—CIVIL CASES—*contd.*5. HEARSAY EVIDENCE—*contd.*

and marriage. In India, in cases of such description the declarations of the declarant are

1 May 528

2. ——— Declarations of deceased persons in cases of pedigree—Evidence Act, II of 1855, s. 47. S. 47, Act II of 1855, does not refer

Such declarations, after the death of the declarant, are admissible as evidence in the same manner and to the same extent as those of deceased members of the family. **MOHINA CHUNDER CHUND v. MOTHOOBANATH GHOSH** 9 W. R. 151

3. ——— Statements of ancestor of parties—Suit for property as shebait. In a suit to recover property claimed by plaintiffs as shebait lately in possession, and wrongfully ousted therefrom, it was held that statements made by the ancestors of plaintiffs and defendants were receivable as evidence. **NUND PANDAY v. GYADHUR** 10 W. R. 89

4. ——— Evidence as to lands being *mal*. The oral evidence of persons able from their position to testify as to certain lands being *mal* is not to be rejected as hearsay when they depose that

5. ——— Admissions in relation to property—Evidence Act, s. 60—Admissions of plaintiff's vendor. The admissions of a person whose position in relation to property in suit it is

I. L. R. 6 Mad. 209

EVIDENCE—CIVIL CASES—*contd.*5. HEARSAY EVIDENCE—*concltd.*

*Moo. I. A. 137*, followed. *BOHNAIRAIN SINGH v. UMRAO SINGH. AJODHYA PERSAD SINGH v. UMRAO SINGH* 6 B. L. R. 500; 15 W. R. P. C. 1  
13 Moo. I. A. 510

7. ——— Hearsay evidence disregarded by Privy Council as not relevant. *NARAIN DAS v. RAMANUJ DAYAL*

I. L. R. 20 AH. 200

*LALA NARAIN DASS v. LALA RAMANUJ DAYAL*

L. R. 25 I. A. 48  
2 C. W. N. 193

8. ——— Pedigree, proof of—*Evidence of witnesses who have heard names of ancestors recite—Evidence of relatives—Grounds for discrediting evidence—Mode of dealing with evidence—Witnesses, credibility of.* Evidence of competent witnesses as to their having heard the names of the ancestors recited by members of the plaintiff's family on ceremonial and other occasions was held to be admissible evidence in support of the pedigree on which the plaintiff based his claim. Such evidence is not open to criticism merely on the ground that the witnesses are relatives. The relationship of a class of witnesses should be considered only with the ordinary caution with which testimony is sifted where sympathy with one side is to be taken for granted, and should not be treated as making them interested or unreliable witnesses. The fact that one of such persons besides being a relative was assisting the plaintiff in the case, and that the other witnesses were connected with this person by blood or service, is not necessarily sufficient ground for discrediting their evidence. The rejection of certain specific statements of a witness is not necessarily a ground for disbelieving the whole of his evidence; nor is the fact that a Judge has not acted on certain portions of his evidence, which may be due to caution on the part of the Judge or inaccuracy on the part of the witness. *DEBI PERSHAD CHOWDHRY v. RADHA CHOWDHRAIN* (1905)

I. L. R. 32 Cal. 84  
s.c. 9 C. W. N. 164  
L. R. 31 I. A. 160

## 6 JUMMABUNDI AND JUMMA-WASIL-BAKI PAPERS

1. ——— Jummabundi papers—*Corroborative evidence* Jummabundi papers can be used only as corroborative evidence. *GAJJO KOER v. ALLY AHMED*

6 B. L. R. Ap. 62; 14 W. R. 474

*NEWAJEE v. LLOYD* . . . 8 W. R. 464

2. ——— *Independent evidence.* Jummabundi papers can never be treated as independent evidence of any contested fact. *CHAMARNEE BIBEK v. AYENGOOLAH SINGHAR*

9 W. R. 451

*HEERA NATH v. SHUNSHERE SAHEE* . 1 N. W. 14

EVIDENCE—CIVIL CASES—*contd.*6 JUMMABUNDI AND JUMMA-WASIL-BAKI PAPERS—*contd.*

3. ——— *Evidence of rate of rent.* Where the jummabundi was shown not

4. ——— *Amount due by mortgagee.* Unless evidence be adduced to show the jummabundi papers to be unreliable, they may be taken as proof that the amounts entered in them are the amounts for which the mortgagee in possession may be called upon to account. *GUNGA PERSAD SINGH v. GUNGA KOONWER*

2 Agra, Pt. II, 210

5. ——— *Evidence of rate of rent.* Held, that the entry in the jummabundi

1 Agra Rev. 85

8. ——— *Suit for mesne profits.* It is the practice of the Courts to accept the jummabundi papers which are filed by the patwaris under the zamindar's supervision as *prima facie* evidence of the profits of the estate, it being open to the mortgagee in possession to show that the amounts entered could not with due diligence be collected. *DEONARAIN SINGH v. NAEK PERSHAD*

2 N. W. 217

7. ——— *Evidence of amount of rent collected.* Jummabundi papers for the year in respect of which rent is claimed, made

those years, would be conclusive in respect of the claim. *DHANOOGDHAREE SAHEE v. TOOMEY*

20 W. R. 142

*BRUJWAN DUTT JHA v. SHEO MUNGUL SINGH*

22 W. R. 258

6. ——— *Partition proceedings—Suit for arrears of rent.* Jummabundi papers filed by a malik in batwara proceedings to which the tenant is not necessarily a party cannot be used as evidence against such tenant in a suit for arrears of rent. *KISHORE DOSS v. PURSUN MAHTOON* . . . 20 W. R. 171

9. ——— *Jumma-wasil-baki papers—Use of, as evidence.* The use of jumma-wasil-baki papers as evidence observed upon. *ROUSHAN BIBI v. HURRAY KRISTO NATH* . I. L. R. 8 Cal. 820

*ALLYAT v. JEGGAT CHUNDER ROY* 5 W. R. 242

EVIDENCE—CIVIL CASES—*contd.*6 JUMMABUNDI AND JUMMA-WASIL-BAKI PAPERS—*contd.*

10. ————— *Proof of their genuineness.* Jumma-wasil-baki papers (when objected to by the other side) are not receivable in evidence until some proof beyond mere conjecture is given of their genuineness and authenticity. GOVIND CHUNDER ADDY v. ANLOO BEBEE

1 W. R. 49

11. ————— *Evidence Act, 1855, s. 43—Corroborative evidence.* Jumma-wasil-baki papers ought not to be regarded as anything else than "books proved to have been regularly kept in the course of business;" and by s. 43, Act II of 1855, they are "admissible as corroborative,

1879, in favour of a defendant who has been found to hold lands at a uniform payment of rent for more than twenty years. RAM LALL CHUCKERBUTTY v. TARA SOONDARI BURMONTA

8 W. R. 280

12. ————— *Corroborative evidence—Evidence Act, 1855, s. 43* Jumma-wasil-baki papers are at the best corroborative evidence, not independent testimony. *Quere.* Can such papers be dealt with as a "book," or be described as "kept in the regular course of business," within the meaning of s. 43, Act II of 1855? BEEJOY GOBIND BURAL v. BHEEKOO ROY

10 W. R. 291

13. ————— *Corroborative evidence—Evidence Act, 1855, s. 43* It is doubtful whether, under s. 43, Act II of 1855, jumma-wasil-baki papers are admissible as corroborative evidence. SHEO SURAYZ ROY v. GOODR ROY

8 W. R. 328

14. ————— *Evidence Act, s. 34—Corroborative evidence.* Under s. 34 of the Evidence Act, jumma-wasil-baki papers have no weight except as corroborative evidence. SRO-MOYI v. JORUR MAHOMED MASYO

10 C. L. R. 545

15. ————— *Party holding under adverse title.* Held, that jumma-wasil-baki and peahgi papers, though corroborative evidence against tenants, cannot be admitted as against a party holding under an adverse title. MOHIMA CHUNDER CHUCKERBUTTY v. POORNO CHUNDER BANERJEE

11 W. R. 165

16. ————— *Right of witness preparing them to refresh his memory from them.* Jumma-wasil-baki papers are not admissible as independent evidence of the amount of rent mentioned therein, but it is perfectly right that a person who has prepared them should be allowed to refresh his memory from them.

EVIDENCE—CIVIL CASES—*contd.*6. JUMMABUNDI AND JUMMA-WASIL-BAKI PAPERS—*concl.*

17. ————— *Evidence Act, 1855, ss. 39, 43, 45—Right of witness to refresh memory from them.* In a suit for enhancement of rent, a collection account or jumma-wasil-baki filed many years previously by the plaintiff's predecessor in title is admissible in evidence.

mentioned therein. *Semore;* that, it proved to have been regularly kept in the course of business, the original might have been put in evidence under s. 39. *Semore;* That a series of collection accounts or jumma-wasil-baki papers appearing to be regularly kept may be evidence and entitled to credit on the same principle as other contemporaneous records made and kept by the party producing them in the ordinary course of his business. KHEERO MONTE DASSEE v. BEEJOY GOBIND BURAL

18. ————— *Evidence to rebut presumption of uniformity of rent.* Held, in a

PROSAD DOOSEY v. PROMOTHONATH GHOSE

10 W. R. 193

19. ————— *Evidence Act,*

tenant, — *g.*, in a suit for enhancement of rent, to rebut a presumption arising from uniform payment for twenty years. BELAET KHAN v. RASHI BEHABEE MOOKERJEE

22 W. R. 549

## 7. LEGITIMACY.

Possible length to which the period of gestation may be protracted, dis-

the mother had been married to her husband for 10 years, and that he had no children by him, and the conclusion, the legitimacy of KUNWAR

(1902)

I. L. R. 24 All. 445

EVIDENCE—CIVIL CASES—*contd.*

## 8. MAPS.

1. ——— Map—*Evidence of title—Evidence of possession.* A map is not evidence of title, but only of possession, even though prepared by the gomastahs of both plaintiff and defendant. *GOWDAS v. HURFE KISHORE ROY*. 10 W. R. 338

2. ——— Map prepared for another purpose. Maps drawn for one purpose are not admissible as evidence in a suit for a totally different purpose. *KEER v. NUZZAR MAHOMED*. 2 W. R. P. C. 29

3. ——— Map of nazir not called as witness. The report and map of a nazir who is not examined in a case are no evidence whatever. *GEORGE MITTON v. GEORGE RUGGERT*. 16 W. R. 4

4. ——— Map made by ameen—*Suit to establish title.* Held in a suit to establish title to land, where an ameen's map which professed to show the dachs of a hustabud chitah was not questioned by either party, it was not open to the Court to question its correctness, and to try whether it was possible to construct any map from the chitah. *BRIJANATH CHOWDRY v. LALL MEHAN MUKHEE POOREE*. 14 W. R. 391

5. ——— Collectorate map—*Map not made by authority of Government.* Where a civil ameen makes a local enquiry as to the situation of certain disputed lands with reference to the Collectorate map put in by the plaintiffs, and not objected to by the defendants who are present and recognize the boundary indicated as that whereon the enquiry is to be based, the map must be taken to be one which the parties recognize as correct and trustworthy, irrespective of the question whether it was prepared with the authority of Government. *GUNOA NARAIN CHOWDRY v. RADHIKA MORUN ROY*. *RADHIKA MORUN ROY v. GUNOA NARAIN CHOWDRY*. 21 W. R. 115

6. ——— Schedule map, copy of—*Measurement and demarcation of land.* Where a copy (the original having been filed in another suit) of a schedule map showing the boundaries of a plot of land is produced, it is not evidence of title, but only of possession, even though prepared by the gomastahs of both plaintiff and defendant.

previous occasion, and relied upon by the parties to this suit, including the plaintiffs when it suited their purpose to do so, and where it appeared moreover that plaintiffs had on many previous occasions admitted the correctness of the map, and that their shares had been demarcated therein: Held, that the plaintiffs could not now sue for a fresh measurement and demarcation of the land.

7. ——— Survey and thak maps. A survey map as well as a thak map is admissible as

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*contd.*

evidence. *JUNDISH CHUNDER BISWAS v. CHOWDRY ZHOONUT, Htg.* 24 W. R. 317

8. ——— Maps, certified copies of. Certified copies of maps are admissible in evidence. *GOPEENATH SINGH v. ANEND MOYEE DEBIA*. 8 W. R. 167

9. ——— Survey map—*Ameen's report.* A survey map sought to be set aside may be used for the purpose of testing the correctness of an ameen's report. *PUNDO MONEE DOSSEE v. BISSHUR DUTT CHOWDRY*. 5 W. R. 34

10. ——— *Evidence of area and boundary.* A survey map may be resorted to for assistance in considering the evidence of a thak map as to area and boundary. *BURN v. ACHUNUT LALL*. 20 W. R. 14

11. ——— But it is a piece of evidence only like other evidence in a case. *ROY*. 2nd W. R. 296

12. ——— *Memo. on survey map—Evidence of title and possession.* Pencil memoranda on a Government survey map held to be admissible as evidence. Survey maps prepared under the authority of Government are evidence of possession and therefore also of title. *SHASEE BLOOKEE DOSSEE v. BISSESSURE DEBEE*. 10 W. R. 343

13. ——— *Evidence Act, 1855, s. 13—Evidence of rights.* Under s. 13, Act II of 1855, Government survey maps are evidence, not only with regard to the physical features of the country depicted, but also with regard to the other circumstances which the officers deputed to make the maps are specially commissioned to note down. Further than this, they are not evidence as to rights to ownership. *KOOVODINT DEBIA v. POORSOO CHUNDER MOOKFEEZE*. 10 W. R. 301

14. ——— *Suit for right of fishery—Evidence of title.* Survey maps are not evidence of title in a dispute regarding a right of fishery. *BROMA v. LALLITNARAIN DAO*. W. R. 1864, 120

15. ——— *Suit for possession—Evidence of title.* A survey map is not sufficient, in the absence of other satisfactory proof of title or of long antecedent possession, to establish a plaintiff's right to the land and to disturb the defendant's present possession. *COLLECTOR v. RAJSHAHYE v. DOORGA SOONDERY DEBIA*. 2 W. R. 210

16. ——— *Proof of title.* A survey map and proceedings may in certain cases form evidence sufficient to prove title; and it is beyond the province of the High Court in special appeal to lay down any rule as to what weight is to

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*contd.*

be attached to that evidence. *OOMMUT FATIMA v. BUDJO GOPAL DASS* . . . 13 W. R. 50

17. ————— Evidence of title—Boundary dispute. Maps made on the occasion of a boundary dispute are evidence of title in a subsequent suit where the question of boundaries arises. *RADHA CHURN GANGOOLY v. ANUND SEIN* . . . 15 W. R. 444

18. ————— Evidence of title—Evidence of possession. Survey officers having no jurisdiction to enquire into questions of title, a survey map is not direct evidence of title in the same way that a decree in a disputed cause is evidence of title, but it is direct evidence of possession at the time of the survey being made. *NORO COOMAR DOSS v. GOBIND CHUNDER ROY* . . . 8 C. L. R. 305

19. ————— Boundary dispute. In a case involving a boundary dispute, a

20. ————— Boundary dispute—Conduct of parties. In a boundary dispute, where the question relates to the situation of the pillars which formed the line and the sketch map left by the officer who laid down the pillars afford a room for ambiguity as to the direction of the line, it is of importance to see what has been the conduct of the parties since the line of pillars was decreed to be the boundary. If there has been a Government survey, the survey map must be taken as evidence; and if

21. ————— Boundary disputes. Where a plaintiff claimed to be holding certain lands under two potties, and the defendants contended that plaintiff's possession extended only to the cultivated and not to the uncultivated plots

served by the talukdar: *Held*, that, though the testimony of a survey map was not conclusive, it should not be disregarded unless there was clear and direct evidence to the contrary. *PROSOWO CHUNDER ROY v. LAND MORTGAGE BANK OF INDIA* . . . 25 W. R. 453

22. ————— Suit for possession—Ejectment—Evidence of possession and title. In a suit for possession of certain land as appertaining to a certain estate and for ejectment of the defendant, brought by a purchaser at a revenue sale, the only evidence adduced by the plaintiff was two survey maps of the years 1846-47 and 1865-66. The lower Court gave the plaintiff a decree for only

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*contd.*

a portion of the land claimed, such portion being included in both of the maps. The remainder of the land claimed was not included in the map of 1846-47. *Held*, that a survey map is evidence of possession at a particular time, viz., the time at which the survey was made, and may be evidence of title, but as to whether it is sufficient evidence or not is a question to be decided in each particular case. *Held*, further, that, as the two maps showed that the portion of the land decreed to the plaintiff was in his predecessor's possession at the date of both surveys—that is to say, at two periods with an interval of nearly twenty years between them—they might be sufficient evidence of title, and the decree of the lower Court was correct. *Moresh Chundra Sen v. Jugut Chundra Sen*, I. L. R. 5 Cal. 212, discussed. *SYAM LAL SAHU v. LUCHMAN CHOWDHURY* . . . I. L. R. 15 Cal. 353

23. ————— Thakbust map—Right of fishery in tidal navigable river. Value as evidence of the thakbust map in the decision of a case of right of fishery in a tidal navigable river discussed. *Syam Lal Sahu v. Luchman Chowdhury*, I. L. R. 15 Cal. 353, and *Syama Sundari Dassya v. Jogobundhu Sootar*, I. L. R. 16 Cal. 136, referred to. *SATCOWRI GHOSH MONDAL v. SECRETARY OF STATE FOR INDIA* . . . I. L. R. 22 Cal. 252

24. ————— Evidence Act (I of 1872), s. 83—Thakbust survey map—State-

at a revenue survey. The ameen who made it had

Evidence Act, 1872, on the question as to the amount of debutter land in one of the villages map-

raised. *JARAO KUMARI v. DALMONYI* . . . I. L. R. 18 Cal. 324  
I. R. 17 I. A. 145

25. ————— Ownership of alluvial land, again formed after diluvion—Evidence of the identity of the sites—Thak and survey maps. Riparian owners disputed the right of property in plots of alluvial land formed by the action of the current at a place where similar land, within

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*contd.*

a revenue mahal, bounded on one side by a river had been carried away by diluvion some years before. The claimants in these three separate suits, each claiming possession had title as zamindars to the formerly existing plots. The new formations now claimed were alleged to have been thrown upon the sites of the former plots, and to be part of the claimants' several estates. These estates were re-

thak map there were discrepancies as to the boundary lines. There were also differences between the thak and the state of the locality as existing when, for the purposes of this suit, a local investigation was made by an ameen appointed by the Court of first instance. *Held*, that it was not a necessary part of the claimants' cases that there should be a complete agreement between the above maps or that the thak should be shown to accurately represent the former plots. To ascertain the precise boundaries would require more accuracy than could be well expected in a thak map; and the identity of the sites of the reformed plots with those of the plots formerly existing had, in the judgment of their Lordships, been established by evidence reasonably sufficient. *MONMORINI DEBI & WATSON & CO* *SANMOSHINI DEBI & WATSON & CO* *HENANTA KUMARI DEBI & WATSON & CO*

I. L. R. 27 Calc. 336

L. R. 27 I. A. 44

4 C. W. N. 113

26. ————— *Thakbust map—Record of tenures—Evidence of extent of interest of shikmi talukhdar* A thakbust map is not intended to represent, and is in no sense a record of, tenures subordinate to Government revenue-paying estates, and is of no value as evidence in a suit in which the extent of the interest of a shikmi talukhdar is matter for determination. *MOHINI CHUNDER ROY* *CROWDERY & WISE* . . . 25 W. R. 277

27. ————— *Admissibility in evidence in future suits* In a suit for confirmation of possession by demarcation of boundaries which the plaintiff alleged had been wrongly described in the thakbust map, a decree was refused to him. *Quare*. Whether or not the map would be admissible in evidence in a future proceeding upon a question of boundary to which the plaintiff may be a party. *MOTEE LAL & BROOF SINGH*

2 Ind. Jur. N. S. 245 : 8 W. R. 64

28. ————— *Evidence of possession—Possession. Value of thak maps as evidence of possession discussed.* *JOYTARA DASSEE & MAHOMED MORANUCK*

I. L. R. 6 Calc. 975 : 11 C. L. R. 399

29. ————— *Suit for possession—Ejectment.* In a suit for possession, the only evidence for the plaintiff was a thakbust map which had been signed as correct by predecessors in title

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*contd.*

*MOHESH CHUNDER SEN & JAGGUT CHUNDER SEN*  
I. L. R. 5 Calc. 212

30. ————— *Thakbust maps where they are evidence of possession are also some evidence of title, though not conclusive.* *POGOOR & MOKOND CHUNDER SURMA* . . . 25 W. R. 36

CHABOO &amp; ZORIDA KHATOON . . . 25 W. R. 54

31. ————— *Boundary—Title, question of.* The sole question for determination being a question of the boundary of two talukhs,

the boundary lines of the talukhs at the time; no evidence was given showing that these boundary lines had ever been altered. *Held*, that the map was clearly evidence of what the boundaries of the properties were at the time of the Permanent Settlement, and also as to what they admittedly were in 1859. *SYAMA SUNDARI DASSYA & JOGUBUNDHU SOOTAR* . . . I. L. R. 16 Calc. 166

32. ————— *Thak or survey map as evidence.* Unless it can be proved that the person against whom a thak or survey is attempted to be used expressly consented to the delineation or admitted the correctness of such maps, they have no binding effect. *KRISTOVONI GUPTA & SECRETARY OF STATE FOR INDIA* 3 C. W. N. 99

33. ————— *Thak map, value of—Onus of proof—Suit for declaration of title.* In a suit for recovery of possession of certain lands and declaration of title, defendants said that the lands belonged to them as their *lakhray*, and that the burden of proving that the lands were *mal* lay on the plaintiff, and further contended that the thak map of the village (which showed no such *lakhray* lands) was no evidence in the case. *Held*, that the thak map was evidence in the case, as, at the time the thak map was made in the present case, it was necessary to show in such maps such *lakhray* lands as might be claimed. Also that there was no ground for interfering with the lower Appellate Court's judgment with regard to the objection as to *onus*. *JARAO KUMARI & LALON MONI*, I. L. R. 13 Calc. 224, distinguished and explained. *RAJ KUMAR PAUL CHAUDHURI & BANANTA KUMAR GUHA* (1902) . . . 7 C. W. N. 612

34. ————— *Thakbust maps, value of entries in—Evidence Act (I of 1872), s. 36—Presumption—Continuance of the same state of things from the time of the Permanent Settlement.* The object of the thak map being to delineate the various estates borne on the Revenue roll of the district, the entry in a thak map that certain lands formed part of a certain estate becomes a relevant fact

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*contd.*

under s. 36 of the Evidence Act, and such entries in *thakbust* maps are evidence on which a Court may act. It is open to a Court to hold that the same state of things existed at the time of the Permanent Settlement. *Jagadindra Nath Roy v. Secretary of State for India*, 1. L. R. 30 Cal. 291, and *Nobo Koomar Dass v. Gobindo Chunder Roy*, 1. L. R. 9 Cal. 305, relied on. *Kristo Moni Gupta v. The Secretary of State for India*, 3 C. W. N. 99, and *Jarno Kumari v. Laloni Moni*, 1. L. R. 18 Cal. 224, referred to *ABDUL HAMID MIAN v. KIRAN CHANDRA ROY* (1903) . . . 7 C. W. N. 849

35. ——— *Thakbust and survey maps* — *Thak and survey maps*—Relative value of each as evidence—Principle which should guide Court in following either—Reference to local land-marks. As a general rule, the *thak* and the survey maps should agree; where they differ, the one that more clearly agrees with the local landmarks is the one which should be followed. There is no general or definite rule making it incumbent upon the Court to follow either the one or the other; the Court may, if it considers the *thak* map more reliable, follow that in preference to the survey map. *ABID HOSSEIN MANDUL v. DOWCURRY PAL* (1900) . . . 6 C. W. N. 629

36. ——— *Thakbust and survey maps*—Act IX of 1847, ss. 3, 5 and 6—Permanent Settlement of 1793—Liability of lands to assessment—Onus of proof—Suit for wrongful assessment. Maps and surveys made in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made. They are not conclusive, and may be shown to be wrong; but in the absence of evidence to the contrary they may be judicially received in evidence as correct when made. *Satowari Chosh Mondal v. Secretary of State for India*, 1. L. R. 22 Cal. 252; *Syama Sundari Dassyo v. Jogobundhu Sootar*, 1. L. R. 16 Cal. 186; *Saral Sundari Dabi v. Secretary of State for India*, 1. L. R. 11 Cal. 784; *Dewan Ram Jewan Singh v. Collector of Shahabad*, 14 B. L. R. 221 (note), and *Ram Jewan Singh v. Collector of Shahabad*, 19 W. R. 127, referred to. In every case, the question what lands are included in the Permanent Settlement of 1793 is a question of fact and not of law. The onus of proving that the Government revenue fixed in 1793 is assessed on any particular lands as being included in the Permanent Settlement is on those who affirm that such is the case. Assuming lands not to be within the Permanent Settlement of 1793, the last survey made under s. 3 of Act IX of 1847 is to be taken as the starting point for deciding when the next survey is made, whether lands are within ss. 5 and 6 of that Act. But when the question is whether lands, shown on a particular *thak* or survey map made since 1793, were or were not included in the lands charged with

EVIDENCE—CIVIL CASES—*contd.*8. MAPS—*concl.*

the assessment permanently fixed in 1793, the last *thak* or survey map cannot in all cases be acted upon as final.

defendant. *JAGADINDRA NATH ROY v. SECRETARY OF STATE FOR INDIA* (1902)

I. L. R. 30 Cal. 291;  
s.c. 7 C. W. N. 193;  
1. L. R. 30 I. A. 44

37. ——— Map made by Deputy Collector for particular purpose—Evidence Act (I of 1872), ss. 36 and 83—Proof of accuracy of map. A map made by a Deputy Collector for the purpose of the settlement of land forming the silted bed of a river is not one which is admissible in evidence under ss. 36 and 83 of the Evidence Act; but it is a map the accuracy of which must be proved before it can be admitted in evidence. *KANTO PRASHAD HAZARI v. JAGAT CHANDRA DUTTA* 1. L. R. 23 Cal. 335

## 9. RECITALS IN DOCUMENTS.

1. ——— Recital in deed—Evidence against third persons. A recital in a deed or other instrument is in some cases conclusive and in all

which, like any other statement, is always evidence against the persons who make it. But it is no more evidence as against third persons than any other statement would be. *BRAJESHWARE PESHAKAR v. BUDHANUDDI*

I. L. R. 6 Cal. 268; 7 C. L. R. 6

See *FULLI BIBI v. BUSSTRUDDI MIDHA*  
4 B. L. R. F. B. 54

and *MANIKLAL BABOO v. RANDAS MOZENDAR*  
1 B. L. R. A. C. 92

2. ——— Effect on evidence of recitals in instrument of mortgage. Recitals in an instrument may be conclusive and are always evidence against the parties who make them, but they are not evidence against third parties. *Brageswore Peshakar v. Budhanuddi*, 1. L. R. 6 Cal. 268, referred to. *MANOHAR SINGH v. SUMRITA KUAR* . . . I. L. R. 17 All. 428

3. ——— Evidence of legal necessity for alienation. A recital in a deed that it is necessary to contract a debt binding on a minor, or a member of a joint family, is some evidence of legal necessity to the minds

EVIDENCE—CIVIL CASES—*contd.*9. RECITALS IN DOCUMENTS—*contd.*

the existence of a legal necessity. But such a recital is not evidence sufficient to establish the fact so recited. *SIKHAR CHUND v. DULPITY SINGH*

I. L. R. 5 Cal. 363; 5 C. L. R. 374

*OBHOYCHURN DOSS v. MEER SAKER ALI*  
5 W. R. 244

*ROOPMOONJOREE DOSSEE v. RAMLALL SINGAR*  
1 W. R. 144

4. ————— *Evidence of legal necessity for alienation.* A recital in a deed of sale by a Hindu widow of her deceased husband's property setting forth that the alienation was necessary for the purpose of paying his debts, is not of itself evidence of such necessity. *RAJLAKSHI DEVI v. GOPAL CHUNDRA CHOWDHRY*

3 B. L. R. P. C. 57; 12 W. R. P. C. 47  
13 Moo. I. A. 209

See *RAJARAM TEWARI v. LUCHMAN PRASAD*  
4 B. L. R. A. C. 118; 12 W. R. 478

5. ————— *Recital in bond for money borrowed by Hindu widow—Evidence*

5 W. R. 200

8. ————— *Untrue recital in bond—Contradiction by obligor allowed.* In a suit on a bond containing an agreement, by which an insolvent who has obtained his personal, but not his final, discharge, without notice to the Official

on behalf of the obligor to prove that a recital in it that all the other creditors had been settled with was untrue. *NAOROJI NUSSRAWANJI THOONTJI v. SIDICK MIRZA*

I. L. R. 20 Bom. 836

7. ————— *Recital as to possession.* The recital in a deed that a certain party was in possession held not sufficient to prove a case which depended on proof of that party's possession. *MAMUNED HAMIDULLAH v. MOHDIOO DOODEN GHOSE*

11 W. R. 298

8. ————— *Evidence of intention.* The recital of the terms of an old mortgage-deed of 1844 in the *wajib-ul-urz* prepared in 1862 held not to amount to a new contract to be evidenced by the terms of the *wajib-ul-urz*, but was only a record of existing rights, and therefore did not estop the mortgagor's claim for redemption under the old usury law. *PAO KIRAM SINGH v. MENTAE KOONWER*

3 Agre 150

9. ————— *Evidence of separation.* A recital in a deed of mortgage granted by one of two undivided brothers to a third party, that a division had taken place between the mort-

EVIDENCE—CIVIL CASES—*contd.*9. RECITALS IN DOCUMENTS—*contd.*

gagor and his brother, is no evidence of separation as against the latter or his representatives. *GOPAL v. NARAYAN BIN TEKAJI*

1 Bom. 31

10. ————— *Estate of inheritance—Admission by conduct of parties.* The

the purchaser bought the property as and for an estate of inheritance and paid for it as such, the recital was *prima facie* evidence against the purchaser and persons claiming through him that the estate conveyed was what it purported to be, it being an admission by conduct of parties which amounted to evidence against them. *SARKIES v. PROSONOMOYEE DOSSEE*

I. L. R. 8 Cal. 794; 8 C. L. R. 76

11. ————— *Statement of payment of consideration.* According to the practice in India, the statement in a deed of compromise of the payment of consideration-money is not conclusive evidence of payment. *CROWDHRY DABEY PERSHAD v. CHOWDHRY DOWLAT SINGH*

6 W. R. P. C. 55; 3 Moo. I. A. 347

*LOLITA DOSSIA v. RUTTEN MOLLER BRUTTA-CHARJEE*

10 W. R. 208

*NEYNUM v. MAZUFFER WAHID*

11 W. R. 265

12. ————— *Recital in lease—Evidence of existence of mooktearnamah.* The recital in a lease granted by a husband of his wife's property that he was empowered by mooktearnamah to manage her business generally, is not evidence against the wife that such a mooktearnamah existed. *BIHENARAIN SINGH v. NEROT KOER*

Marsh, 373; 2 Hay 446

13. ————— *Recital in will—Evidence of*

14. ————— *Age of child.* The incidental mention of a child's age in the recital of a will is no proof of the exact age of that child. *NILMONZE CHOWDHRY v. ZUHEERUNISSA KHANUM*

8 W. R. 371

15. ————— *Statement in will of value of property—Acceptance of share on partition.* The statement in a will as to the value of the testator's property is no evidence thereof



EVIDENCE—CIVIL CASES—*contd.*9. RECITALS IN DOCUMENTS—*concl'd.*

The acceptance by one brother of a certain sum of money in satisfaction of his own share in 1868, though it might be evidence of the value of the ancestral property in that year, affords no indication of the value of that property in 1876. **LAKSHMAN DADA NAIK v. RAM CHANDRA DADA NAIK. RAM CHANDRA DADA NAIK v. LAKSHMAN DADA NAIK** . . . I. L. R. 1 Bom. 561

## 10. RENT RECEIPTS

1. \_\_\_\_\_ Receipts for rent—*Mode of*  
\_\_\_\_\_ Dakhilas should be attested or proved by

will then remain for the zamindar to deny their genuineness, and he also should be examined regarding them. **RAJESSURER DEBIA v. SHINNATH CHATTERJEE** . . . 4 W. R., Act X, 42

2. \_\_\_\_\_ Unattested dakhilas. Unattested dakhilas, without corroborative evidence, are not in law sufficient evidence of payment of rent. **ODITT ZUMAN v. MOHIOODDEEN AHMED alias MOGUL JAN** . . . 9 W. R., 241

**LUCHMEEPUT SINGH v. JUNGULEE KULLYAN DOSS** . . . 9 W. R., 147

3. \_\_\_\_\_ Unattested dakhilas. Dakhilas unattested, or attested only by the evidence of a manager and mooktear, were held to be no legal evidence of uniform payment of rent. **REAZGONISSA v. BOOKOO CHOWDHRAIN** . . . 12 W. R. 267

4. \_\_\_\_\_ Proof of handwriting of. Receipts for rent purporting to have been given by the former owners of a jote are

**DOSSEE** . . . I. L. R. 10

5. \_\_\_\_\_ Proof of receipts. To prove receipts, it is not necessary to produce the writer of them. The raiyat can prove his own receipts. **GANO A NARAYAN DASS v. SARODA MOHUN ROY CHOWDHRY** . . . 3 B. L. R. A. C. 230 : 12 W. R. 30

6. \_\_\_\_\_ Proof of receipts. Dakhilas or rent-receipts filed by a raiyat in a suit for arrears of rent or for enhancement must be proved, whether denied by the zamindar or not. **KIRTEBASH MAYETEE v. RANDHUN KHORIA** . . . B. L. R. Sup. Vol. 658

**S C KIRTEBASH MYTEE v. RANDHUN KHARAZ**  
2 Ind. Jur. N. S. 187 : 7 W. R. 526

7. \_\_\_\_\_ Proof of receipts. Dakhilas relied upon by a defendant in a suit for arrears of rent at enhanced rates, to obtain the benefit of the presumption arising under

EVIDENCE—CIVIL CASES—*contd.*10. RENT RECEIPTS—*contd.*

s. 4, Act X of 1859, must be proved even if not positively denied. **RAMJADOO GANGOOLY v. LUCKHEE NARAIN MUNDUL** . . . 8 W. R. 486

8. \_\_\_\_\_ Proof of uniform payment. In a suit for enhancement of rent, where the defendant filed receipts with a written statement duly verified as proving uniform payment of rent, but was not examined as to the genuineness of the receipts filed.—*Held* (by LOCH, J.), that the receipts were not proved; (by GLOVER, J.) that there was legal evidence of uniform payment; and as the lower Court believed it, bowever weak, its decision could not be interfered with. **LUCHMEEPUT SINGH DOOGUR v. WOOSMANATH MUNDUL** . . . 10 W. R. 490

9. \_\_\_\_\_ Proof of dakhilas. Where a party filing dakhilas deposed that the amounts of rent he had paid were, according to the sums entered in the dakhilas, such statement

10. \_\_\_\_\_ Rent receipts, proof of genuineness of—*Bengal Tenancy Act (VIII of 1855), s. 50—Suit for enhancement of rent—Appellate Court, power of* In a suit for enhancement of rent the defendant produced certain dakhilas and deposed to having receipted them on payment of rent. *Held*, that this was sufficient evidence to prove them. *Held*, further, that it was perfectly open to the lower Appellate Court which had to deal with the facts of the case, to say whether, taking the receipts which extended over a number of years together, and having regard to the fact that the receipts did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years. **SURJA KANTA ACHARJEE v. BANESWAR SHARMA** . . . I. L. R. 24 Cal. 251

11. \_\_\_\_\_ Proof of payment of rent or debt. A party is perfectly competent to prove the payment of a debt or rent by the production of the receipt and proof that it is the document which he received on paying the money. He is not bound to summon the parties who gave the receipts to prove their signatures, nor is his own evidence secondary evidence. **RAJ MAHOMED v. BANOO RASMAH** . . . 12 W. R. 34

12. \_\_\_\_\_ Undisputed dakhilas. A Civil Court has every right to accept

13. \_\_\_\_\_ Dakhilas, proof of. The party producing dakhilas is bound to give

EVIDENCE—CIVIL CASES—*contd.*10. RENT RECEIPTS—*contd.*

some evidence of their having been signed by the person by whom the receipt was given, although signature of the person by whom the receipt was given is not sufficient to prove the receipt.

14. *Dakhilas, proof of.* The evidence of a tenant deposing to the genuineness of dakhilas produced by him, if not rebutted, is legally sufficient to prove them. *MADHUB CHUNDER CHOWDHURY v. PROMOTHNATH ROY* 20 W. R. 284

15. *Acknowledgment of receipt of rent—Presumption.* An acknowledgment of the plaintiff in a former case of having realized a certain sum of money on account of rent paid for three years may afford some presumption that the other items in the account were satisfied, and, if that presumption could not be rebutted, might be an answer to an action on the older demand. *ENAYET HOSSEIN v. DEEDAR BUX* W. R. 1864, Act X, 97

16. *Receipts by agent of landlord.* Receipts signed by the landlord's agent, if shown to be authentic, are *prima facie* evidence of payment of rent, but not conclusive evidence. *AMEER BUKSH v. YUSOOF ALI* 22 W. R. 489

17. *Evidence of rate of rent—Rate admitted in other cases.* In suits

*HANTON v. JESSUR DOTAL SINGH* 24 W. R. 4

## 11. REPORTS OF AMEENS AND OTHER OFFICERS

1. *Report of ameen—Report on local enquiry.* Of the value of a local enquiry report made by a competent official as evidence, see *SARAT SUNDARI DABI v. PROSUNNO COOMAR TAGORE* 8 B. L. R. 877, 15 W. R. P. C. 20 13 Moo. I. A. 607

*KALEE MOSS ACHARJEE v. KELITRO PAL SINGH ROY* 17 W. R. 472

*CHUNDER COOMAR DUTT v. JOI CHUNDER DUTT MOJUMDAR* 19 W. R. 213

2. *Reports on local*

GORDON STUART & CO.

14 Moo. I. A. 453; 17 W. R. 285

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*contd.*

*PROTAP CHUNDER BURROOH v. SURNOMOYEE* 10 W. R. 361

3. *Civil Procedure Code, s. 180.* Where local enquiry is ordered by a lower Court, and evidence is taken by an ameen and a report made, the return made by the ameen becomes legal evidence under s. 180, Act VIII of 1859, which the Appellate Court is not justified in refusing to consider. *RAJNATH PANDAY v. DOORGA LALE* 12 W. R. 136

*SHEO DOTAL SINGH v. HODGKINS* 24 W. R. 342

4. *Evidence on special points.* Where a Court ameen is appointed a commissioner under the Civil Procedure Code, his report is only evidence on the point to which the commissioner refers; any report he chooses to make on any other point is no legal evidence in the case. *ABDOOL ALI v. MULICK SUDDEROONEP AHMED* 14 W. R. 493

See *DOORGA CHURN SURNATH CHOWDHURY v. NEPM CHANH SURNATH CHOWDHURY* 24 W. R. 208

5. *Local investigation not objected to.* Where an order for a local

*BUKHA ROY v. GOBIND DASS BYRAGEE* 15 W. R. 291

6. *Act X of 1859, s. 73.* The report of an ameen under s. 73, Act X of 1859, is receivable as evidence, and a decision can be legally based upon it. *SEJUN KOOR v. HEITHOO* 1 N. W. 185; Ed. 1873, 244

7. *Local investigation.* The report of an ameen upon a local inves-

8. *Further evidence, however, may be taken.* Whether it should

9. *An ameen's report is evidence without any specific documents corroborating his finding.* *ESMAN CHUNDER SEIN v. HURKE CHURN DEY* 2 W. R. 276

I. L. R. 27 Calc. 951

I. L. R. 27 I. A. 110

4 C. W. N. 631

EVIDENCE—CIVIL CASES—*contd.*9 RECITALS IN DOCUMENTS—*concl.*

The acceptance by one brother of a certain sum of money in satisfaction of his own share in 1868, though it might be evidence of the value of the ancestral property in that year, affords no indication of the value of that property in 1878. **LAKSHMAN DADA NAIK v. RAM CHANDRA DADA NAIK. RAM CHANDRA DADA NAIK v. LAKSHMAN DADA NAIK** . . . . . **I. L. R. 1 Bom. 561**

## 10. RENT RECEIPTS

1. ——— Receipts for rent—*Made up proving.* Dakhilas should be attested or proved by some oral evidence in the same manner as all other documentary evidence; the tenant should be required to attest them himself as far as he can. It will then remain for the zamindar to deny their genuineness, and he also should be examined regarding them. **RAJESSURIE DEBIA v. SHINNATH CHATTERJEA** . . . . . **4 W. R., Act X, 42**

2. ——— *Unattested dakhilas.* Unattested dakhilas, without corroborative evidence, are not in law sufficient evidence of payment of rent. **ODIUT ZUMAN v. MOHIOODDEEN AHMED alias NOGUL JAN** . . . . . **9 W. R. 241**

**LUCHMEEPUT SINGH v. JONGULEE KULLYAN Doss** . . . . . **9 W. R. 147**

3. ——— *Unattested dakhilas.* Dakhilas unattested, or attested only by the evidence of a manager and mooktear, were held to be no legal evidence of uniform payment of rent. **REAZOONISSA v. BOOKOO CHOWDHURAI** . . . . . **12 W. R. 367**

4. ——— *Proof of handwriting of.* Receipts for rent purporting to have been given by the former owners of a jote are not admissible in evidence without proof as to the

**DOSSEE** . . . . . **4 W. R. 10**

5. ——— *Proof of receipts.* To prove receipts, it is not necessary to produce the writer of them. The raiyat can prove his own receipts. **GANGA NARAYAN DASS v. SARODA MOHUN ROY CHOWDHURY** . . . . . **3 B. L. R. A. C. 230 : 12 W. R. 30**

6. ——— *Proof of receipts.* Dakhilas or rent-receipts filed by a raiyat in a suit for arrears of rent or for enhancement must be proved, whether denied by the zamindar or not. **KIRTEEBASH MATTEE v. RANDRUM KHORJA** . . . . . **B. L. R. Sup. Vol. 656**

**S C KIRTEEBASH MATTEE v. RANDRUM KHARAL** . . . . . **2 Ind. Jur. N. S. 197 : 7 W. R. 526**

7. ——— *Proof of receipts.* Dakhilas relied upon by a defendant in a suit for arrears of rent at enhanced rates, to obtain the benefit of the presumption arising under

EVIDENCE—CIVIL CASES—*cont.*10. RENT RECEIPTS—*contd.*

s. 4, Act X of 1859, must be proved even if not positively denied. **RAJADOO OANGOOLY v. LUCKHEE NARAIN MUNDUL** . . . . . **8 W. R. 488**

8. ——— *Proof of uniform payment.* In a suit for enhancement of rent, where the defendant filed receipts with a written statement denying the same, it was held that

there was legal evidence of uniform payment; and as the lower Court believed it, however weak, its decision could not be interfered with. **LUCHMEEPUT SINGH DOGOUR v. WOOMANATH MUNDUL** . . . . . **10 W. R. 490**

9. ——— *Proof of dakhilas.* Where a party files dakhilas denying that

**KOYLASH NATH HALDAR v. OOMANATH ROY CHOWDHURY** . . . . . **11 W. R. 170**

10. ——— *Rent receipts, proof of genuineness of—Bengal Tenancy Act (VIII of 1859), s. 50—Suit for enhancement of rent—Appellate Court, power of.* In a suit for enhancement of rent the defendant produced certain dakhilas and deposed to having receipted them on payment of rent. *Held*, that this was sufficient evidence to prove them. *Held*, further, that it was perfectly open to the lower Appellate Court which had to deal with the facts of the case, to say whether, taking the receipts which extended over a number of years together, and having regard to the fact that the receipts did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years. **SURJA KANTA ACHARYA v. BANISWAR SHAHA** . . . . . **I. L. R. 24 Calc. 251**

11. ——— *Proof of payment of rent or debt.* A party is perfectly competent to prove the payment of a debt or rent by the production of the receipt and proof that it is the document which he received on paying the money. He is not bound to summon the parties who gave the receipts to prove their signatures, nor is his own evidence secondary evidence. **RAJ MAHOMED v. BANOO RASWAH** . . . . . **12 W. R. 34**

12. ——— *Undisputed dakhilas.* A Civil Court has every right to accept

**13. ——— Dakhilas, proof of. The party producing dakhilas is bound to give**

**12 W. R. 350**

EVIDENCE—CIVIL CASES—*contd.*10. RENT RECEIPTS—*contd.*

some evidence of their having been signed by the person by whom they were produced, although signature of the person by whom they were produced is not sufficient to prove them. *MADRAN CHUNDER CHOWDHURY v. PROMOTHNATH ROY* 20 W. R. 284

14. *Dakhilas, proof of.* The evidence of a tenant deposing to the genuineness of dakhilas produced by him, if not rebutted, is legally sufficient to prove them. *MADRAN CHUNDER CHOWDHURY v. PROMOTHNATH ROY* 20 W. R. 284

15. *Acknowledgment of receipt of rent—Presumption.* An acknowledgment of the plaintiff in a former case of having realized a certain sum of money on account of rent paid for three years may afford some presumption that the older items in the account were satisfied, and, if that presumption could not be rebutted, might be an answer to an action on the older demand. *ENAYET HOSSEIN v. DEEDAR BUX* W. R. 1864, Act X, 67

16. *Receipts by agent of landlord.* Receipts signed by the landlord's agent, if shown to be authentic, are *prima facie* evidence of payment of rent, but not conclusive evidence. *ANEER BUKSH v. YUSOOF ALI* 22 W. R. 469

17. *Evidence of rate of rent—Rate admitted in other cases.* In suits

been awarded in other cases. *BUDDHA CRAWAN BHATTARAY v. JAGANNATH DOYAL SINGH* 24 W. R. 4

## 11. REPORTS OF AMEENS AND OTHER OFFICERS

1. *Report of ameen—Report on local enquiry.* Of the value of a local enquiry

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KALLE DOSS ACHARJEE v. KHETTRO PAL SINGH ROY 17 W. R. 472

CHUNDER COOMAR DUTT v. JOY CHUNDER DUTT MOJUMDAR 19 W. R. 213

2. *Reports on local investigations.* Unless there be very good grounds

1. *Report of ameen—Report on local enquiry.* Of the value of a local enquiry

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GORDON STUART & Co. 14 Moo. I. A. 453; 17 W. R. 285

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*contd.*

PROTAP CHUNDER BURROOH v. SURMONOFFER 19 W. R. 361

3. *Civil Procedure Code, s. 180.* Where local enquiry is ordered by a lower Court, and evidence is taken by an ameen and a report made, the return made by the ameen

SHEO DOYAL SINGH v. HODGKINSON 24 W. R. 342

4. *Evidence on special points.* Where a Court ameen is appointed a commissioner under the Civil Procedure Code, his report is only evidence on the point to which the commission refers; any report he chooses to make on any other point is no legal evidence in the case. *ARDOOL ALI v. MULLICK SUDDEROODEEN AHMED* 14 W. R. 493

See DOORGA CHURN SURMAH CHOWDHURY v. NERN CHAND SURMAH CHOWDHURY 24 W. R. 206

5. *Local investigation not objected to.* Where an order for a local investigation under s. 180, Code of Civil Procedure,

BUKHA ROY v. GOBIND DASS BYRAGER 15 W. R. 291

6. *Act X of 1859, s. 73.* The report of an ameen under s. 73, Act X of 1859, is receivable as evidence, and a decision can be legally based upon it. *SURIN KOOR v. HETHROO* 1 N. W. 165; Ed. 1673, 244

7. *Local investigation.* The report of an ameen upon a local investigation

1. *Report of ameen—Report on local enquiry.* Of the value of a local enquiry

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6. *Further evidence, however, may be taken.* Whether it should be taken or not is a matter for the discretion of the Court in each case. In this case the Court was held to have exercised a proper discretion in refusing to receive further evidence. *GRISH CHUNDER LAHRIE v. SHOSHNI SHIKARESWAR ROY* 17 W. R. 27

1. *Report of ameen—Report on local enquiry.* Of the value of a local enquiry

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8. *An ameen's report is evidence without any specific documents corroborating his findings.* *ESHAN CHUNDER SEIN v. HUREE CHURN DEY* 2 W. R. 278

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*contd.*

GOUREE NARAIN MOZOOMDAR v. MODHOSOODUN DUTT . . . . . 2 W. R., Act X, 1

10. ———— *Report as to measurement—Oral evidence.* It is necessary that oral testimony should be taken in order to effect a measurement, or that an ameen's report must have depositions attached to it to make it legal evidence. CHUNDER MONEE DOSSEE v. NILAMBER MBSTOFFEE 7 W. R. 43

11. ———— *Civil Procedure Code, 1859, s. 180* The report of a civil ameen and the depositions taken by him are admissible as evidence under s. 180, Act VIII of 1859. NUTHOO v. GHUNESSAM SINGH . . . . . 6 W. R. 287

ABDOOL GUNNEE v. BUTTOO SHEIKH 22 W. R. 350

BHIRUR ROY v. NOBIN ROY . 9 W. R. 601

12. ———— *Evidence taken under powers given him* A civil ameen's report and the depositions taken by him are admissible as evidence by him must be considered, even though the Court exercised its discretion unwisely and wrongly in giving him too extensive powers. UMBICA CHURN DEY v. GOLUCKE CHUNDER CHUCKERBUTTY . . . . . 9 W. R. 596

13. ———— *Depositions without report.* An ameen had been deputed to

penses. *Held*, that the depositions of the witnesses without the ameen's report were not admissible in evidence. DEBNARAIN DEB v. KALI DAS MITTER 6 B. L. R. Ap. 70 : 14 W. R. 397

Affirming on appeal KALEE DASS MITTER v. DEB NARAIN DEB . . . . . 13 W. R. 412

14. ———— *Civil Procedure Code, 1859, s. 180.* Where an ameen who had been deputed to make a local enquiry took the depositions on oath of several witnesses on both sides and afterwards for further satisfaction recorded the statements of certain persons whose religious pre-

COBIND SINGH v. CHAMOO SINGH . 10 W. R. 312

15. ———— *Evidence taken by ameen* The report of an ameen and the evidence recorded on a local enquiry are evidence in the suit, and there is no legal objection to the parties to the suit agreeing that the evidence should be taken before the ameen, and that the matters in dispute should be referred to him for enquiry. SARAT CHANDRA ROY v. COLLECTOR OF CHITTAGONG 2 B. L. R. Ap. 3

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*contd.*

16. ———— *Report and map made by ameen.* A lower Appellate Court was held to have erred in law in taking an ameen's

24 W. R. 338

17. ———— *Ameen giving credit to local rumour.* In a suit for enhancement of rent, when the defendant objected in his grounds of appeal that the rates of the village in which his land was situated were lower than the pergunnah rates:—*Held*, that the Judge had no right to take

18. ———— *Ameen's report and map.* When an ameen's map is received in evidence by consent, and admitted by both parties

DER GHOSE . . . . . 21 W. R. 262

19. ———— *Question of possession* The report of an ameen, however valuable in clearing up difficulties as to the identity and position of lands, is, generally speaking, of no value in determining questions connected with the possession of lands in dispute in past times. PRAN-NATH CHOWDHURY v. MIRNOMOYEE CHOWDHURY W. R. F. B. 39

20. ———— The Judge is bound, under a 180 of Act VIII of 1859, to take notice of, and pronounce an opinion upon, evidence taken by an ameen as to possession. JANNOMEE CHOWDHURAI v. COLLECTOR OF MYMENSING 6 W. R. 287

21. ———— *Proof of possession.* An ameen's report held not sufficient of itself to prove possession. AMEENOODDEEN SHAHA v. ASGER ALI . . . . . 8 W. R. 464

22. ———— *Suit for rent*

23. ———— *Civil Procedure Code, 1859, s. 180.* The report of an ameen in a proceeding to make a partition, which is a

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*contd.*

judicial proceeding under s. 180, Act VIII of 1859, must be treated in the same way as the report of an ameen in an ordinary suit. The report and depositions are to be taken as evidence in the suit and to form part of the record. The Court is not bound by the report, but ought to enquire further into the matter if there is any necessity for so doing, and to examine witnesses *bona fide* tendered for examination. *AZIM SARUNO v. ALIMOODDEEN*

17 W. R. 270

24. ——— Without jurisdiction. The proceeding of a Court ameen in a subdivision where he has no jurisdiction cannot be a legal proceeding or legal evidence. *NIDHOO SIRCAR v. PHILLIPPE*

10 W. R. 153

25. ——— Reports of officers appointed under Bengal Regulation I of 1814. Reports of officers appointed under Regulation I of 1814, if received as evidence in the first Court and not objected to in the Appellate Court, may, under certain circumstances, be accepted *quantum valent*. *BIHOO SAROO v. TEIK ALI KHAN*

9 W. R. 86

26. ——— Reports made by Collectors acting under Madras Regulation VII of 1817—Evidence of private rights. Reports made by Collectors acting under Madras Regulation VII of 1817 are not to be regarded as having judicial authority when they express opinions on the private rights of parties; but being the reports of public

far as they are relevant to explain the conduct and acts of the parties in relation to them and the proceedings of the Government founded on them. *MUTTU RAMALINGA SETURPATI v. PERIAYATAGUAM PILLAI* *ZAMINDAR OF RAMNAD v. PERIAYATAGUAM PILLAI*

I. L. R. 1 I. A. 209

27. ——— Report of special commissioner. The report of a special commissioner was held to be inadmissible as evidence, as it did not come within any provision of the Evidence Act which would make it admissible. *LEFLAND SIMON v. LAKSHMITTEE THAKOURANI*

22 W. R. 231

28. ——— Commissioner appointed to prepare a map—Civil Procedure Code (Act XIV of 1882), s. 392—Statement of village officers made to such commissioner and recorded by him—Practice. In a suit as to a right of way a

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*contd.*

29. ——— Report of mouzadar—Report of officer not competent under s. 180, Civil Procedure Code, 1859. The report of a mouzadar, not being that of a person competent within the meaning of s. 180, Act VIII, 1859, to report upon matters in process of judicial decision, may be disregarded by a Civil Court. *RAJARAM KALITA v. ROOPA KAGATEE KALITA*

13 W. R. 113

30. ——— Facts derived from local investigation as evidence—Evidence Act (I of 1872), s. 3. The information derived from a local investigation by a Judge; though not evidence as defined in Evidence Act, is a matter which he can take into his consideration in order to determine whether a fact is "proved" within the meaning of the Act. *Joy Coomarr v. Bundhoo Lall*, I. L. R. 9 Cal. 363, referred to. *DWARKA NATH SARDAR v. PROSUNNO KUMAR HAJRA*

1 C. W. N. 883

31. ——— Report of Munsif on local investigation. A Munsif's report of a local investigation when not shown to be a statutory one

32. ——— Judgment on facts observed by Judge, but not proved. In a suit respecting boundaries, the Munsif, before settling

ment. *Held*, that, though the result of the enquiry instituted by the Munsif was not evidence according to the definition in the Evidence Act, it was a matter before the Court which might have been taken into consideration. *Held*, also, that the Munsif should have put the result of his investigation upon paper. *Joy Coomarr v. Bundhoo Lall*. I. L. R. 9 Cal. 363: 12 C. L. R. 490

33. ——— Report of nazir—Civil Procedure Code, 1859, s. 180—Ameen—Act XII of 1856. The report of a nazir deputed to enquire into the condition of property in dispute under s. 180,

W. R. 1864, 171

34. ——— Report of sheristadar—Civil Procedure Code, 1859, s. 180. The report of a sheristadar is not, under s. 180 of the Code of Civil Procedure, and in view of the fact that there was a commissioner attached to the Court, legal

EVIDENCE—CIVIL CASES—*contd.*11. REPORTS OF AMEENS AND OTHER OFFICERS—*concl'd.*

evidence. *BYRNATH SINGH v. INDRAJEET KOOR*  
8 W. R. 331

35. ———— *Local investigation.* The report of a sheristadar, after local investigation, cannot be legal evidence, unless it is shown that no Civil Court ameen was available for the duty in the district. *GOLUCK CHUNDER KOOL v. DOORHEE RAM* . . . 12 W. R. 208

## 12. MISCELLANEOUS DOCUMENTS

Acknowledgments

stated, received in evidence as an acknowledgment in a suit for recovery of the debt admitted by such acknowledgment. *EDULJEE FRAMJEE v. AEDoola HAJEE CHERAK*

1 Moo. I. A. 461 : 5 W. R. P. C. 56

2. ———— *Books of history—Evidence of usage or local custom.* Observations on the use of books of history to prove local custom. *VALLABHA v. MADUSUDANAN* . . . I. L. R. 12 Mad. 495

3. ———— *Evidence Act (I of 1872), ss. 57, 87—Books of history.* In deciding a suit the District Judge referred to a Portuguese work dated 1606, "*India Orientalis Christiana*," published in 1794, and Hough's "*History of Christianity in India*," published in 1839. *Held*, that the District Judge was justified, under ss. 57 and 87 of the Evidence Act, in referring to the books above mentioned. *AUGUSTINE v. MEDYCOFF*  
I. L. R. 15 Mad. 241

4. ———— *Bundobust papers—Evidence of commencement of tenure and assessment of rent.* Bundobust papers are nothing more than a contemporaneous record or tenures as they existed in the years specified, and do not in any way import the commencement of a tenure or a fixing of the rent at that particular time. *DHUN SINGH ROY v. CHUNDER KANT MOOKERJEE*

4 W. R., Act X, 43

5. ———— *Canoongoe papers—Proceedings of settlement officers—Evidence of pergunnah rates and measurement.* Canoongoe papers and proceedings of settlement officers are good evidence in questions of pergunnah rates, standards of measurement, and the like. *NUND DUNTPAT v. TARA CHAND PRITHEEHAREE*

2 W. R., Act X, 13

6. ———— *Evidence of rate of rent.* How far and when Canoongoe papers are admissible as evidence for the zamindar as to the rate of rent paid by the raiyat. *KHEEROMDASS DOSSSE v. BEEJOY GOBIND BURAL*

7 W. R. 533

7. ———— *Evidence of proper custody.* Old canoongoe-papers cannot, in the

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

absence of evidence to show what they are and that they came out of proper custody, be received in evidence; before such papers can be admitted as evidence against a party, it must be shown how they can be used against him. *DWARKA NATH CHUCKERBUTTY v. TARA SOONDARY BURMONSE*  
8 W. R. 517

8. ———— *Collection papers—Papers to refresh memory.* Collection papers are no evidence *per se*; they can only be used when they are produced by a person who has collected rent in accordance with them, and who merely uses them for the purpose of refreshing his memory. *MAHOMED MAHMOOD v. SAFAR ALI* . I. L. R. 11 Calc. 407

9. ———— *Confessions—Suit against approver—Confession and evidence at criminal trial of admissible—Criminal Procedure Code (Act V of 1898), s. 339—Sessions Court's finding binds Civil Court—Civil suit if barred—Merger of tort in felony, rule of—Applicability in India—Civil Procedure Code (Act XIV of 1882), s. 11.* *Held*, that the confession and sworn evidence of an approver in a criminal trial for dacoity, are admissible in evidence against him in a suit for damages brought against him by the complainant for having instigated the dacoity. *Held*, further, that the Civil Court could act upon such statements even though the Sessions Judge did not think it safe to convict the accused upon such statements. "The conditions for receiving and acting on evidence in Civil Courts are very different to those governing the procedure of Criminal Courts. Specially is this the case with respect to the statements of accused persons and accomplices." Having regard to the provisions of s. 11 of

10. ———— *Criminal Court, proceedings in—Suit for damages for assault—Previous conviction of defendant.* In a suit for damages for an assault, the previous conviction of the defendant in a Criminal Court is no evidence of the assault. The factum of the assault must be tried in the Civil Court. *ALI BUKSH v. SANIRUDIN*

2 B. L. R. A. C. 31 : 12 W. R. 477

11. ———— *Plea of guilty—Verdict of conviction.* A plea of guilty in the Criminal Court may, but a verdict of conviction cannot, be considered in evidence in a civil case. *SURMAO CHUNDER CHOWDARY v. MODHOO KHYBUR*  
10 W. R. 56

12. ———— *Finding on facts.* A proceeding of a Criminal Court is not admissible as evidence; a Civil Court is bound to find the facts for itself. *KERAMUTOOLLAH v. GHOLAN HOSSEIN*  
9 W. R. 77

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

13. ————— *Malicious prosecution—Suit for damages—Evidence, admissibility of judgment of acquittal.* In a suit for damages for malicious prosecution, the order of the Criminal Court acquitting the plaintiff is admissible in evidence. Although the reasoning in the judgment and the conclusions drawn from them are not binding or conclusive, yet the judgment may be looked into for the purpose of seeing what the circumstances were which resulted in the acquittal. *RAJ JUNG BAHADUR v. RAJ GUDOR SARTOV*

1 C. W. N. 537

14. ————— *Judgment in criminal case.* In a suit for arrears of rent from

no such dacoity had taken place, he claimed full rents:—*Held*, that the High Court's judgment was admissible, with a view to ascertain the truth of plaintiff's case. *ENAYAT HOSSEIN v. KHOORUN NISSA*

9 W. R. 248

15. ————— *Title to stolen property—Verdict of Criminal Court.* The verdict of a Criminal Court with respect to the alleged theft of notes is no evidence of the ownership of such notes. *PANNA LALL v. GOPIRAM BIZURIAH*

3 B. L. R. Ap. 2

17. ————— *Documents filed in case under Criminal Procedure Code, s. 318.* Documents filed in a case under s. 318, Code of Criminal Procedure, cannot be accepted as evidence in a suit before a Deputy Collector. *CHORUN SINGH v. DHORUB SINGH*

11 W. R. 171

18. ————— *Criminal Procedure Code (Act XXV of 1861), s. 318 (Act X of 1872), s. 530, and (Act X of 1882), s. 145—Reports accompanying orders for possession—Evidence Act (I of 1872), s. 13—Maps, proof of—Suit for possession where defendant is in possession under order of Criminal Court—Onus of proof—Boundaries of land delineated and reformed. Orders for possession under Act XXV of 1861, s. 318, Act of X 1872, s. 530, and Act X of 1882, s. 145, relating to "Disputes as to immovable property," are merely police orders made to prevent breaches*

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

tain possession. For this purpose and to this extent

who know the locality. If the order refers to a map, that map is admissible in evidence to render the order intelligible, and the actual situation of the objects drawn or otherwise indicated on the map must, as in all cases of the sort, be ascertained by extrinsic evidence. Reports accompanying the orders or maps and not referred to in the orders, may be admissible as hearsay evidence of reputed possession; but they are not otherwise admissible unless they are made so by s. 13 of the Evidence Act. Although an order for possession under the Criminal Procedure Code confers no title, yet the person in possession can only be evicted by a person who can prove a better right to the possession himself. Where, therefore, the plaintiff

stances which have led the Court below to its conclusion. The principle laid down in *Raj Kumar Roy v. Gobind Chunder Roy*, 1 L. R. 19 Cal. 680, followed. In a case of disputed boundaries, to

I. L. R. 29 Cal. 187;

s. c. 6 C. W. N. 388;

L. R. 29 I. A. 24

19. ————— *Deceased person, statement by—Statement against his interest or proprietary right.* The principle upon which the admissibility of a written statement made by a deceased person is determined is whether it has been





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... that the value of the produce of the land

of years. The District Judge considered this evidence to be no safe guide to the value of produce,

27. — Entries by officer of Court—*Evidence Act (II of 1855), s. 5—Entries by nazir—Issue of warrant* Under a 4, Act II of 1855, a Court is entitled to refer to entries made by its own officer, the nazir, and find thereon that a warrant had been issued in accordance with an application admitted to have been made. *NILKUNT CRUCKENBUTTY v SHEO NARAIN KOONWAR*

8 W. R. 276

28. — Government Gazette—*Conditions of sale, proof of—Suit to cancel patta tenure.* The Government Gazette containing the advertisement of sale and a printed paper purporting to be the conditions of sale alluded to in the Gazette and issued from the Master's office in the name of the Master, were admitted in evidence to prove the actual conditions of the deed of sale. *JOTENDRO MOHUN TAGORE v. BROJESODHARY.*

W. R. 1864, 50

29. — Handwriting—*Forgery* Where evidence could have been adduced, and was not as to a handwriting being forged, and the Judge by comparison with other handwriting, held it to be a forgery, such finding was disapproved of. *KURALI PRASAD MISSEER v. ANANTARAM MAJRA* 8 B. L. R. 490; 16 W. R. P. C. 16

30. — Income-tax returns—*Production and admissibility in evidence of income-tax papers—Income Tax Act (II of 1886), s. 38—Rule 16 of rules made by Local Government under Income Tax Act.* Rule 16 of the rules made by the Local Government under s. 38 of the Income Tax Act (II of 1886) does not apply to the production of income-tax papers in a Court of law in a suit between two partners. *Lee v. Lurrel*, 3 Camp. 337, and *Mayne's Commentary on the Criminal Law*, pp. 86, 87, cited. *JADOSHAM DEY v. BULLOKAM DEY* I. L. R. 28 Calc. 281

31. — Issuance of papers—*Enhancement of rent—Possession.* In a suit by a purchaser of a patta at a sale for arrears of rent

EVIDENCE—CIVIL CASES—*contd.*12 MISCELLANEOUS DOCUMENTS—*contd.*

32. *FARGHARSHAN v. GOVERNMENT OF BENGAL* 14 Moo. I. A. 259; 16 W. R. P. C. 29

*Affirming ERSKINE v. GOVERNMENT*

8 W. R. 223

and *GOVERNMENT v. FERGOUSON* 9 W. R. 158

32. — *Kabuliats—Evidence against third parties.* In a suit for declaration of title and confirmation of possession, where plaintiff claimed

part of their mautai tenure obtained from the same zamindar; *Held*, that attested kabuliats filed by the plaintiff, though good evidence as between plaintiff and the tenants of the land, could not, in regard to a third party, be held as evidence in the absence of the tenants themselves, who should have been examined. *MOHINA CHUNDER CHUCKERBUTTY v. POORNA CHUNDER BANERJEE*

11 W. R. 165

33. — *Kursinama—Evidence Act (I of 1872), s. 32, cl. (5)—Statements by members of family as to relationship—Document admitted in first Court without objection—Objection to admissibility not allowed on appeal* In an application for Letters of Administration, the right of the applicants to be considered the next heirs of the deceased depended on proof that the relationship between their great-great-grandfather and the great-great-grandmother of the deceased was that of full brother and sister. To prove this, a *kursinama*, or genealogical table, made by the ancestors of the deceased "by the pen of gomasta," and alleged to have been filed by her in 1804 in a suit to establish the same fact, and a

which were pronounced genuine and admissible in evidence by the District Judge, were held by the High Court to be forgeries. *Held*, that the *kursinama* was admissible in evidence. *Held*, also, that it was too late on this appeal to object to the admissibility in evidence of a document which had been admitted without objection in the first Court. The certified copy of the *examinama* was also held

WAS ESTABLISHED. *SHANZADI DELAM v. SECRETARY OF STATE FOR INDIA* (1907)

I. L. R. 34 Calc. 1059;

L. R. 34 I. A. 184

34. — *Letters—Letter from Judge as to irregularity in return to commission.* A letter from a Judge cannot be given in evidence to show that a formal return, made by him on a commission

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to examine witnesses, was wrong. *LAND MORTGAGE BANK OF INDIA v. MUNSUR ALI*

1 C. L. R. 239

35. ——— Letters between members of a joint family and the karta of the family. In a suit by a member of a joint Hindu family to

## 38. ——— Record of market rate—

Ascertainment of market rate in suit on an agreement of indemnity. Where the Court has had the advantage of having in evidence before it a record of the market rate of any particular day made up by a broker of intelligence and experience, such a record should be received as evidence of the particular state of the market on that day. *NARAIN CHUNDER DATTA v. COHEN* 1 L. R. 19 Cal. 565

37. ——— Marriage register—Registration of Mahomedan marriages—Restitution of conjugal rights—Bengal Act I of 1876, s. 6, Sch. A—Copy of entry in register—Evidence. A husband and wife, Mahomedans, registered their marriage under Bengal Act I of 1876, setting out in the form prescribed in Sch. A to the Act as "a special condition" that the wife under certain circumstances, should set aside the marriage.

38. ——— Bill of lading—Mercantile custom—Usage of carriers—Liability of carriers for damage to goods. The defendants, carriers for

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

trade. *PENINSULAR AND ORIENTAL STEAM NAVIGATION CO. v. MANICKJI NARAINJI PADSHA*

4 Bom. O. C. 169

39. ——— Mutation proceedings—Evidence Act, s. 80—Statement in mutation proceeding—"Documents." In a suit for recovery of lands claimed partly in virtue of rights obtained under a kobala and partly in virtue of rights purchased at a sale in execution of a decree in which the lower Appellate Court refused to recognize a statement made before a Collector in a mutation proceeding as a "document" under the Evidence Act:—*Held* by the High Court, that a statement made before a Collector in a mutation proceeding is a document entitled to be received as evidence under s. 80 of the Evidence Act. *BUNDEE LALL v. BROOSEE KHAN* 25 W. R. 134

40. ——— Notes of depositions—Evidence irregularly taken. Rough notes taken down by an Assistant Collector of what was said by witnesses whose depositions are not recorded, are not evidence such as is required by law, and an opinion based on such evidence is without legal validity. *BALA TRAKOOR v. MOHIBURN SINGH* 14 W. R. 289

41. ——— Partition papers—Evidence of rate of rent. Butwara papers are only evidence of the proportionate assessment of Government revenue payable by proprietors after partition, not evidence binding raiyats as to what holdings are theirs, or what are their arrears, rates, or periods of occupancy. *DROBO MOYEE GOSMANEE v. DRUMBO DOSS KOONDOR* 10 W. R. 197

42. ——— Butwara chittas—Suit to set aside summary award. A butwara between zamindars is not binding in any way on the raiyats, and butwara chittas are no evidence in a suit for possession of a jote and to set aside a summary award under Act XIV of 1859, s. 15. *GOPAL CHUNDER SHAHA v. MADHUB CHUNDER SHAHA* 21 W. R. 29

43. ——— Butwara papers—Lands comprised in estate. Private butwara papers are good evidence towards showing what lands were in fact comprised in the estate at the time of butwara. *DWARKANATH ROY CHOWDHURY v. HUKANATH ROY CHOWDHURY* W. R. 1864, 238

44. ——— Pedigree—Aliyasantana law—Partition—Evidence—Admissibility as to pedigree in a document that has been set aside by the Court. In a suit for division of the property of an extinct divided branch of the family of the parties who

goods from Hongkong to Bombay. In an action brought to recover damages for injury to the packages:—*Held*, that evidence of mercantile usage or custom would be admissible to show that the words "insufficiency of package" should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China

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of pedigree, and that the plaintiff was entitled to the decree sought for. *TYNIA v. DARRAVIA*  
I. L. R. 10 Mad. 362

45. ——— Petitions—Petitions relating fact of conveyance—*Suit for possession*. In a suit to recover the possession of land, the petitions of

alleged owners had ever been in possession of the property. *Held*, that the petitions were not admissible in evidence. *CLARKE v. BINDARUN CHUNDER SIRCAR*

Marsh. 75; 1 Hay 137; W. R. F. B. 20  
1 Ind. Jur. O. S. 97

46. ——— Admissibility of petition signed by a person available, but not called as witness. A, the son of a deceased zamindar, sued B and C, his widow and brother, for possession of the zamindari, which was impartible. In order to prove that A was illegitimate, C filed two petitions purporting to have been signed and sent to the Collector of the district by C in 1871, referring to A's mother as a concubine. C was not examined as a witness. *Held*, that their contents were not evidence, but the petitions were themselves evidence to show that a complaint was made as mentioned therein. *PARVATHI v. THIRUMALAI*  
I. L. R. 10 Mad. 334

47. ——— Petitions—Landlord and tenant—Admissibility in evidence—Petition of claim on behalf of a person by her attorney—Authority, want of proof of. A petition purporting to emanate from a particular person and filed on his behalf by a pleader acting on a *valalatnama* signed by one who represented himself to be the attorney of that person is *prima facie* evidence that it proceeds from him; and is, as such, admissible in evidence in a subsequent suit. *Soorendra Nath Roy v. Heeramonce Burmoneah*, 12 M. 1 A. 81; *Bhagani Megh Ranee Koer v. Gooroo Pershad Singh*, 25 W. R. 68, followed. *LALITA SUNDARI v. SURENMOYEE DAS* (1900)  
5 C. W. N. 353

48. ——— Petition—Compromise—Criminal proceedings—Value of such deed—Admissibility in evidence of such document in a later case. An unregistered compromise petition, which was the root of the plaintiff's claim to an increased rent and was filed in previous criminal proceedings, was not incorporated in the order in such proceedings. *Held*, that it was not admissible in evidence in a later civil suit. *Pranof Anni v. Lakshmi Anni*, I. L. R. 22 Mor. 503; I. R. 26 I. A. 101; *Kali Charan Ghosal v. Ram Chandra Mandal*, I. L. R. 30 Cal. 783, and *Birhadra Rath v. Kalpaluru Panda*, 1 C.

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L. J. 338, referred to. *BIRAJ MOHINEE DASSEE v. KEDAR NATH KARMOKAR* (1908)  
I. L. R. 35 Cal. 1010  
s.c. 12 C. W. N. 854

49. ——— Pleadings—Statements in verified written statement. Statements made in a verified written statement of a party are not admissible in evidence (BAYLEY, J., *dubitante*). *MOOKTA KESAZ DOSSEE v. KOYLASH CHUNDER MITTEN*  
7 W. R. 493

50. ——— Declaration in pleadings. Declarations made in pleading, in suits instituted before the Code of Civil Procedure came into operation, were inadmissible as evidence of the facts stated therein. *NARAPPA BINAPPA HEGDI v. GAPPAY BIN KAPPA* 2 Bom. 361; 2nd Ed. 341

51. ——— Written statement. A written statement is not legal evidence, although the same penal consequences may follow from it if false as from a false deposition. *ISJOTOLAH KHAN v. RAM CHURN GANGOOLY*, 12 W. R. 39

52. ——— Possession, fact of—Admissibility of evidence—Statement by witness. A statement by a witness that a party was in possession is in point of law admissible evidence of the fact that such party was in possession. *MANIRAM DEB v. DEBI CHURN DEB*  
4 B. L. R. F. B. 97; 13 W. R. F. B. 42

(*Contra*) *ISAN CHUNDER BEHARA v. RAMLOCHUN BEHARA*  
9 W. R. 79

53. ——— Probate. Executor named in the

200—Date for arrears of rent—Incumbrances, annulment of—Notice—Disclaimer—Bengal Tenancy Act (VIII of 1885), s. 167 Under ss. 179, 187, and 200 of the Indian Succession Act, where probate of a will has been granted, the executor, in order to bring a suit as such, is bound to prove his title; to do which in case of dispute he must file, not merely a copy of the grant of administration, but also the copy of the will attached to it, the two together forming the probate as defined by s. 7. But a Court, not being the Court of Probate, cannot go behind the grant and interpret and modify its terms by the provisions of the will. In a suit for possession after annulment of an under tenure under s. 167 of the Bengal Tenancy Act, absence of due service of notice on a person, who in the suit disclaimed all interest therein, cannot prejudice the

54. ——— Registers—Registration of tenure—Common registry—Act XI of 1859, s. 39. The fact that a tenure is registered in the Common Registry under Act XI of 1859, s. 39, is not of

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

itself *prima facie* evidence that such a tenure exists. **LAKEYNARAIN CHUTTOPADHYA v. GORACHAND GOSWAMY**. 1 L. R. 8 Calc. 116; 12 C. L. R. 89

55. ————— *Register prepared by a Special Commissioner appointed under the Chota Nagpur Tenure Act (Bengal Act II of 1869), effect to be given to, as evidence—Conclusive nature of such register.* A register of tenures prepared by a Special Commissioner appointed under Bengal Act II of 1869 (The Chota Nagpur Tenures Act) after it has been confirmed by the Commissioner of the Division, and such confirmation has been duly published in the *Calcutta Gazette*, is conclusive evidence of all matters recorded therein and it is not open to a Civil Court to hold that because a special Commissioner did not rightly understand a decision of the Commissioner, and because the register was not prepared in accordance with such order, it is otherwise than conclusive, nor is a Court competent even to discuss the question whether a Special Commissioner, in preparing such register, rightly appreciated the Commissioner's decision, when his own order has been given effect to by the register prepared, and has been confirmed by the Commissioner under s. 25 of the Act. **PERTAP UDAI NATH SAHU DEO v. MAJI DAS**. 1 L. R. 22 Calc. 112

56. ————— *Bhumihari register prepared under the Chota Nagpur Tenures Act (Bengal Act II of 1869)—Evidence of title*

57. ————— *Registers of chakran lands—Public records.* The registers of chakran lands are public records supposed to

58. ————— *Register of members—Winding up Company—Proof of person being shareholder—Presumption of Membership* The evidence adduced by the official liquidator to show that the defendant was a member of the company and so liable as a contributory consisted of the register of members, a letter written by the objector, a reply thereto written by a managing director of the company, and the oral testimony of the director himself. The objector adduced no evidence at all. *Held*, that the official liquidator might, if he had chosen to do so, have put the register in evidence and waited before giving any further evidence until the objector had given some to displace the *prima facie* evidence afforded by the register or to impugn the character of the register; but his case must be looked at as a whole, and having taken the line which he did he must take the consequence of his other evidence contradicting or impugning the *prima facie* evidence of the

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register, and, notwithstanding that the objector gave no evidence, the register was not conclusive. **RAM DAS CHAKRABARTI v. OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY**

1 L. R. 6 All. 366

59. ————— *Proof of registration of documents—Suit on bond.* Before infor-

endorsed thereon when registered, becomes a record and is of itself *prima facie* proof of registration, and this with reference to the further agreement, as well as to the instrument itself. **HOBZEBO SOBAIN v. HORSEIN ALI**

5 W. R. S. C. C. Ref. 14

60. ————— *Rent-roll—Suit for arrears of rent.* In a suit for arrears of rent the rent-roll is not to be accepted as conclusive evidence. **SUNFRAZ KHAN v. TASAWUN ALI**. 2 Agri 253

61. ————— *Road-cess papers—Evidence Act, s. 13.* Under the Evidence Act, s. 13, road-cess papers are evidence *quantum valent*. **DAITARI MOHANTI v. JUGO BUNDHO MOHANTI**. 23 W. R. 293

62. ————— *Road-cess return by shareholder—Sch. of Beng. Act X of 1871.* A road-cess return made by a shareholder under the schedule of Bengal Act X of 1871, is not admissible as evidence against another shareholder. **NUSSFER v. GOURT SUNKER SINGH**. 22 W. R. 192

63. ————— *Road-cess Act (Bengal Act X of 1880), s. 95—Road cess return signed by one of the plaintiff's vendors and the defendant, whether admissible in evidence as against plaintiff and in favour of the defendant.* A road-cess return, signed by one of the plaintiff's vendor and the defendant, was filed by two plaintiffs' vendors. It consisted of two parts, in one of which the joint properties of the plaintiff's vendor and the defendant were set out, and in the other the properties belonging to the defendant alone mentioned. In a suit by the plaintiff for some lands as being the joint property of his vendors and the defendant,

evidence merely because, by admitting it as evidence against the plaintiff, it becomes evidence in favour of the defendant. **BENI MADHAN DANDAPAT v. DINA BUNDRU DUTT**. 3 C. W. N. 343

64. ————— *Road-cess Returns—Returns made under s. 95, Bengal Cess Act (Ben-*

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

*Act IX of 1880—Admissibility in evidence—Grounds*

talukdari tenure, road-cess returns rendered under s. 95 of the Bengal Cess Act (Ben. Act IX of 1880), though not conclusive, were held to be admissible in evidence as a basis on which to ascertain the assets of the taluk, and so fix a fair and equitable limit of enhancement. When such returns, produced by the plaintiff, showed that the talukdars were receiving from their sub-tenants a considerably higher rent relatively than that which they were paying to their superior landlords, and that the claim for enhancement could *prima facie* be supported on the ground that the existing rate was consequently not "fair and equitable" within the meaning of the Bengal Tenancy Act, they were held sufficient to shift the onus to the defendants to rebut the presumption so raised against them. To rebut such presumption, the defendants might have produced their collection papers, but did not do so. *Held*, that the Court was justified in acting on the presumption under s. 114, III (g), of the Evidence Act (I of 1872) *HEM CHANDRA CHOWDHURY v. KALI PROBANNA BHADURI* (1903)

L. L. R. 30 Cal. 1033 :  
s.c. L. R. 30 I. A. 177

65. *Settlement papers.* In a suit for arrears of rent it was held that settlement papers were only corroborative evidence and under the circumstances insufficient to prove the yearly rental. *BUNWARI LALL v. FORLONO*

9 W. R. 239

68. *Entry by settlement officer—Evidence of facts recorded.* An entry made by a settlement officer on the report of a co-sharer and on the strength of the report of the patwar and canoongoe, is, as a record framed by a public officer, admissible as evidence of the facts recorded. *KINBAR DANSHA v. GOEKURUN*

3 Agri 316

67. *Entries duly made in settlement proceedings.* Entries duly made in settlement proceedings with respect to matters that a memorial recorded on account of "settlement"

L. L. R. 30 I. A. 177

68. *Papers on settlement proceedings by Deputy Collector—Evidence of acquiescence of Collector.* Where a memorandum of an order made, or proposed to be made, by a Collector upon a reference by his subordinate, which was found on a paper taken from the middle of a settlement record, was produced in Court in that form without explanation, and used by the Judge as evidence of acquiescence: *Held*, that it was not susceptible of use in that way, nor could it bind the

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

Collector. *RUSNIK LAL SHAHA CHOWDHURY v. PREM DHUN BURAL* . . . 24 W. R. 279

69. *Signature—Proof of signature.* In considering whether a signature is genuine or not, it should not be compared with a document not before the Court, or with one of which the authenticity is doubtful. *GERUMURITI NAYUDU v. PAPPANAYUDU* . . . 1 Mad. 164

70. *Evidence Act, s. 32, cl. (2)—Evidence—Deed—Proof of deed denied by the party by whom it was executed, where attesting witnesses were dead.* A deed of conveyance was tendered in evidence which purported to bear the mark of G as vendor, and which was duly attested by four witnesses. G, however, denied that she

511, that the deed was admissible in evidence, its execution by G being sufficiently proved. *ABDULLA PASU v. GANNIDAI* . . . L. L. R. 11 Bom. 690

71. *Small Cause Court, proceedings in—Suit on decree of Small Cause Court*

72. *Record of proceedings of Small Cause Court—Summons-book.* The summons-book of the Small Cause Court, Calcutta, is admissible in evidence, though not signed by the presiding Judge. *QUEZEN v. NAKUR SINGAR* . . . 6 B. L. R. 729

73. *Authentication of record.* The record of proceedings in the Small Cause Court is not admissible in evidence unless authenticated by the signature of the presiding Judge. *QUEZEN v. SHIR CHANDRA DOSS* . . . 6 B. L. R. 730 note

74. *Survey and measurement papers—Survey proceedings—Evidence Act, 1855, s. 15.* Survey proceedings, if made without reference to litigation then pending are not only evidence, but are to be presumed to be correct, and it is beyond the functions of the High Court in special appeal to lay down any rule as to corroboration of such documents. *RAM NARAIN DOSS v. MOHESH CHANDRA BAYELLEE* . . . 19 W. R. 202

75. *Chittas—Unattested chittas.* Where a party putting in chittas called in a witness to attest them, but the witness did not do so, and the party did not apply to the Court to compel him to do so, the chittas were held to be no facts

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

78. \_\_\_\_\_ *Government chittas—Act III of 1851, s. 58.* Under s. 58, Act III of 1851, Government chittas are admissible as evidence in cases in Chittagong. *MARQUEE FREDY SIRDAR v. OZEEGOOREN* . 10 W. R. 340

77. \_\_\_\_\_ *Chittas—Boundary disputes.* Chittas are evidence of title in boundary disputes, if an account is given of them, and they are properly introduced and verified. *SUDUKHINA CHOWDHRAIN v. RAJ MOHUN BOSE* . 11 W. R. 350

78. \_\_\_\_\_ *Chittas made on boundary disputes.* Chittas made on the occasion of a boundary dispute are evidence of title where the question of boundaries arises in another suit. *RADHA CHURN GANGGOOLY v. ANUND SEIN* . 15 W. R. 444

79. \_\_\_\_\_ *Chittas in resumption proceedings.* Chittas and maps made in contemplation of resumption proceedings in the presence of both sides and signed by the parties, are legal evidence. *SHAM CHAND GHOSE v. RAM KRISTO BEWRAN* . 19 W. R. 309

80. \_\_\_\_\_ *Copies of measurement papers and maps.* Certified copies of survey measurement chittas and field books are admissible in evidence. *GOPENATH SINGH v. ANUND MOYEE DEBIA* . 8 W. R. 187

81. \_\_\_\_\_ *Chittas—Attestation of chittas.* Where chittas were produced by the parties as evidence of title, they are admissible.

the chittas of the village where he was gomastah, and that he had been present when, with their assistance, a purlal measurement had been carried out in the village. *DABEE PERSHAD CHATTERJEE v. RAM COOMAR GHOSAL* . 10 W. R. 443

82. \_\_\_\_\_ *Chittas made by revenue officers.* Chittas made by the revenue authorities in the course of measurement of a Government estate are admissible as evidence of title.

the court cannot approve them of the character of public proceedings upon matters of public interest. *TARUCK NATH MOOKEEJEE v. MOHIN-PRONATH GHOSE* . 13 W. R. 58

*MOOCHYEE RAM MAJHEE v. BISSAMHUR ROY CHOWDHURY* . 24 W. R. 410

83. \_\_\_\_\_ *Measurement papers—Evidence of title.* Measurement papers of a zamindar made for the purpose of a partition are admissible

EVIDENCE—CIVIL CASES—*contd.*12. MISCELLANEOUS DOCUMENTS—*contd.*

as evidence as to title as showing what the zamindari consisted of, though the partition may not have been carried out. *ANUND CHUNDER ROY v. HURO-NATH ROY* . 4 W. R. 28

84. \_\_\_\_\_ *Measurement papers.* Measurement papers cannot be treated as inadmissible in evidence because set aside by the decisions of the lower Courts, if these decisions have been reversed by the High Court. *GOPIND MURTHO v. GOORKE BRUGGUT* . 18 W. R. 4

85. \_\_\_\_\_ *Measurement papers.* Measurement papers cannot be treated as inadmissible in evidence because set aside by the decisions of the lower Courts, if these decisions have been reversed by the High Court. *GOPIND MURTHO v. GOORKE BRUGGUT* . 18 W. R. 4

86. \_\_\_\_\_ *Suit for abatement of rent—Lands washed away—Measurement papers.* In a suit for abatement of rent on the ground that part of the talukh has been washed away by a river, measurement papers prepared by the revenue authorities in a case between Government and the talukhdar, in respect of a share belonging to Government in the zamindari of the talukh, are not admissible as evidence against the talukhdar. *AFZUHOOD* . 2 May 884

87. \_\_\_\_\_ *Thakbust papers—Lozima and thaka papers.* Lozima and thaka papers are legal evidence quantum valent. *SHUSEE MOOKER DASSER v. BISSESTREE DABER* . 10 W. R. 343

88. \_\_\_\_\_ *Evidence against proprietors of estates.* Thakbust papers are *prima facie* evidence against the proprietors of estates comprehended in them. *KALEE TARA DEBIA v. NITTIA-KUND SHAKA* . 12 W. R. 80

89. \_\_\_\_\_ *Translations—Translation of document by Court interpreter, authority of.* Held, that the translation of a deed by the interpreter of the Court is admissible as evidence.

90. \_\_\_\_\_ *Variation of rent, proof of—Zamindar's papers.* Zamindar's papers filed of the varying rate, but that the raiyat has paid at a varying rate. *GOPAL MUNDUL v. NORD KISHEN MOOKERJEE* . 5 W. R. Act X, 83

91. \_\_\_\_\_ *Wajib-ul-urq—Pre-emption—Custom—Records of rights—Onus probandi.* A *wajib-ul-urq* prepared and attested according to law is *prima facie* evidence of the existence of any custom of pre-emption which it records, such evidence

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being open to be rebutted by any one disputing such custom. When such a *wajib-ul-urz* records a right of pre-emption by contract between the shareholders, it is evidence of a contract binding on all the parties to it and their representatives, and there will be a presumption that all the shareholders assented to the making of the record and in consequence were consenting parties to the contract of which it is evidence, and it will be for those shareholders repudiating such contract to rebut such presumption. *ISRI SINGH v. GANOA*  
I. L. R. 2 All. 876

92. — — — — — Evidence of custom—Improper use of *wajib-ul-urz* to record wishes of sole proprietor of village—*Primogeniture*. The object of the *wajib-ul-urz* is to supply a reliable record of existing local custom. It was never intended that the *wajib-ul-urz* should be used as an indirect means of giving effect to the wishes of a sole proprietor with regard to the nature of his tenure or the mode of devolution of the property which should obtain after his death. *SUPERUNDHWAJA PRASAD v. GARTRADHWAJA PRASAD*  
I. L. R. 15 All. 147

Case reversed on appeal by Privy Council in *GARTRADHWAJA PRASAD SINGH v. SUPARADHWAJA PRASAD SINGH*. I. L. R. 27 I. A. 238

## 13. SECONDARY EVIDENCE.

## (a) GENERALLY.

1. — — — — — Production of best evidence—Written documents—Evidence of authority of agent. It is a cardinal rule of evidence, not one of

which is not satisfactorily accounted for. *DIXONOVY DEBI v. ROY LUCHIMPOT SINGH*. I. L. R. 7 I. A. 8

*MAN SING MAHTOON v. BHAKT NARAYN MAHTOON*  
19 W. R. 210

2. — — — — — Condition for admission of secondary evidence—Accounting for non-production of original of document—Evidence of contents of document. By the law of evidence adminis-

*SURMA MONTRA*

I. L. R. 8 Calc. 720 : 9 C. L. R. 337

3. — — — — — Evidence Act, s. 91—Oral evidence where *pottah* is not produced.

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(a) GENERALLY—*contd.*

Where the contents of a lease (*pottah*) are in any way in question, it is necessary to prove them by the production of the document; where this is not the case, but it is only necessary to prove possession for 12 years, then, although the lease would have shown it, oral evidence of the *pottah* is admissible. *KEDAR NATH JOARDAN v. SURFOONISSA BIBER*  
24 W. R. 425

4. — — — — — Non-procurability of original document. Until a party has exhausted all the means prescribed by law for compelling a witness to produce a document known to be with him, and as long as the original is procurable, or its loss not satisfactorily accounted for, secondary evidence cannot be admitted. *GREEN CHUNDER LAHOOREE v. RASULL SIRCAR. ROOFMONJOREE CHONDURAIN v. RASULL SIRCAR*. 1 W. R. 145  
*MUHAMMAD WALAD ABDUL MULUA v. ISRAHIM WALAD HASAN*. 3 Bom. A. C. 168

*WUZEER ALI v. KALBE COOMAR CHUCKERBUTTY*  
11 W. R. 220

5. — — — — — Evidence Act (I of 1872), ss. 65 and 74—Secondary evidence of contents of document—Public document. Secondary evidence of the contents of a document cannot be

*KISHORI CHAUDHURI v. KISHORI LAI ROY*  
I. L. R. 14 Calc. 488  
I. L. R. 14 I. A. 71

6. — — — — — Evidence Act (I of 1872), ss. 65, 66—Admission of secondary

secondary evidence had been properly admitted in a case that had arisen for its admission. The question was decided in the affirmative by their Lordships on the ground that, whether the evidence offered would itself prove the making of the docu-

I. L. R. 10 I.

7. — — — — — Evidence Act (I of 1872), ss. 65, 66, 74 and 86—Judicial proceedings in Foreign-State Record not specified in s. 86—Public document. The



EVIDENCE—CIVIL CASES—*contd.*13 SECONDARY EVIDENCE—*contd.*(a) GENERALLY—*contd.*

uncertified record thereof. The latter thereby becomes secondary evidence under ss. 65 and 66 of the certified record (being a public document under s. 74) admissible without notice to the adverse

*L. L. L. I. A. I.*  
4 C. W. N. 429

8. ——— Secondary evidence not objected to—Evidence Act (I of 1872), ss. 65, 66. *Per BANERJEE and RAMPINI, JJ.* Where oral evidence was given to prove the contents of a letter which was neither produced nor called for, but no objection was raised to the giving of the evidence:—*Held*, that this was secondary evidence of

*I. L. R. 26 Calc. 63*  
2 C. W. N. 649

9. ——— Secondary evidence—Public document—Evidence Act (I of 1872), ss. 65, cl (e) and (g), 74. Where the fact to be proved is the general result of the examination of numerous documents and not the contents of each particular document and the documents are such as cannot be conveniently examined in Court, evidence may be given, under s. 65, cl (g) of the Evidence Act, as to the general result of the documents by a person who has examined them and who is skilled in the examination of those documents although they may be public documents within the meaning of s. 65, cl (e) and s. 74 of the Evidence Act. *SUNDAR KUAR v CHANDRESHWAR PRASAD NARAIN SINGH* (1907) *I. L. R. 34 Calc. 293*

10. ——— Evidence Act (I of 1872), ss. 91, 95, 97—Where sale-deed gives wrong survey numbers to the land sold, evidence admissible to show the real lands intended to be sold. The general rule laid down in s. 91 of the Evidence Act is subject to the exceptions laid down in ss. 95 and 97 of the same Act. Where a sale-deed describes the land sold by wrong survey numbers, extrinsic evidence is admissible to show that the lands intended to be sold and actually sold and delivered were lands bearing different survey numbers. *KURUPPA GOUNDAN v PERIATHAMBI GOUNDAN* (1907) *I. L. R. 30 Mad. 397*

11. ——— Proof of coming from proper custody. In accordance with former rulings, *Allucha v. Kashee Chunder Dutt*, 1 W. R. 131, and *Gooroo Pershad Roy v Bykunto Chunder Roy*, 6 W. R. 82, it was held that, before a document, of whatever age it may be, can be put in as legal evidence, there must be sworn testimony as to the

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(a) GENERALLY—*conclld.*

custody from which it has come. *KALEZ TABA DEBI v. NITIANUND SHAHA* 12 W. R. 90

12. ——— Proper custody—Identity of signature. Where a pottah had no attesting witnesses and was not capable of direct proof, it was held to have been established by the fact of having come from proper custody, corroborated by the exact identity of the grantor's signature with his admitted signature on other documents. *BINODE BEHARZ ROY v MASSEYK* 15 W. R. 493

## (b) UNSTAMPED OR UNREGISTERED DOCUMENTS.

13. ——— Unstamped document—Lost unstamped document requiring stamp. Secondary evidence cannot be given of a lost instrument requiring a stamp which was not stamped. *ARUNCHELLUM CHETTY v. OLAGAPPAH CHETTY* 4 Mad. 312

14. ——— Notice to produce—Evidence Act, s. 91. Secondary evidence tendered to prove the contents of an instrument which is retained by the opposite party after notice to produce it can only be admitted in the absence of evidence to show that it was unstamped when last seen. *SENNANDAN v. KOLLIKIRAN* *I. L. R. 2 Mad. 208*

15. ——— Evidence Act, s. 91—Oral evidence of written contract. Where a

16. ——— Parol evidence—Proof of delivery—Suit for goods sold and deli-

17. ——— Evidence Act (I of 1872), s. 91—Bought and sold notes—Contract reduced to writing and unstamped. The plaintiffs sued to recover damages for the non-acceptance of wheat which the defendant on the 16th May 1889, by two contracts, agreed to purchase. At the hearing, in order to prove the terms of the contracts, the plaintiffs tendered two notes or memoranda of the contracts which purported to be signed by the broker and also by the defendant. These notes were in fact the sold notes which the broker had given to the plaintiffs. Each of those notes had been

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS  
—*contd.*

stamped with an anna stamp, but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation except a small part of the first letter of the defend-

stamp all, a on 1873. The Court showed the objection and rejected the notes. The plaintiffs then sought to prove the contracts by oral evidence contending that the sold notes did not themselves constitute the contracts, but were only memoranda of parol contracts prepared by the broker for the information of the parties. *Held*, that the terms of the contracts were reduced to writing, and no evidence, except the documents themselves, could be given in proof of them—s. 91 of the Evidence Act, I of 1872. *RALLI v. CARAMALLI FAZAL*

I. L. R. 14 Bom. 102

## 18. ————— Evidence Act,

s. 91—Admissibility of evidence—Proof of consideration. The plaintiff in a suit on a promissory note written on unstamped paper is not debarred from giving independent evidence of consideration. *GOLAP CHAND MARWARER v. MONOKOON KOOAREE*

I. L. R. 3 Calc. 314 : 2 C. L. R. 412 note

See *KANHAYA LAL v. STOWELL*

I. L. R. 3 All. 581

and *BEHARSI DAS v. BHUKHARI DAS*

I. L. R. 3 All. 717

## 19. ————— Evidence Act,

s. 91—Debt—Promissory note—Written acknowledgment of debt—Oral acknowledgment—Evidence of debt. *H* lent Rs5 to *D* on a pledge of moveable property. *D* repaid *H* Rs40, and at the time of the repayment acknowledged orally that the balance of

property was returned to him. *H* subsequently sued *D* on such oral acknowledgment for Rs5, ignoring the promissory note, which, being insufficiently stamped, was not admissible in evidence.

I. L. R. 4 All. 135

## 20. ————— Suit for money

lent, secured by unstamped promissory note—Decree against Hindu family. A promissory note, which being improperly stamped was inadmissible in evidence, was executed in favour of *R* by *K* and *N*, members of an undivided Hindu family, in consider-

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS  
—*contd.*

used and the money lent. *Held*, that the existence of the promissory note was no bar to the suit, and that *R* was entitled to a decree against *K* and *N* and against *P* to the extent of the family property in his hands. *KRISHNASAMI PILLAI v. RANGASAMI CHETTY*

I. L. R. 7 Mad. 113

## 21. ————— Promissory note

—Note of agreement in account book—Evidence of terms of agreement. In 1876 accounts were stated between *B* and *D*, and a balance of Rs800 was found to be due from *D* to *B*. *D* gave *B* an instrument whereby he agreed to pay the amount of such balance in four annual instalments of Rs200. *B* at the same time noted in his account book that "such balance was payable in four instalments of Rs200 yearly." In July 1879 *B* sued on the instrument for

I. L. R. 3 All. 117

See *GOLAP CHAND MARWARER v. MONOKOON KOOAREE*

I. L. R. 3 Calc. 314

and *KANHAYA LAL v. STOWELL*

I. L. R. 3 All. 581

## 22. ————— Evidence Act,

s. 91—Suit for money lent—Unstamped promissory note—Cause of action. The terms of a contract to repay a loan of money with interest having been settled and the money paid, a promissory note specifying these terms was executed later in the day by defendant and given to plaintiff. This promissory note was not stamped. *Held*, that the plaintiff could recover the money on the contract to pay.

I. L. R. 10 Mad. 94

## 23. ————— Evidence Act,

s. 91—Contract—Promissory note executed by way of collateral security—Admissibility of evidence of consideration aliunde. A decree-holder agreed with the defendant to

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

that being a promissory note and not stamped as required by Art. 11 of Sch. I of the General Stamp Act (I of 1879), it was inadmissible in evidence with

to give evidence of consideration, and to maintain the suit as for money lent, apart from the note altogether. **BALEHADAR PRASAD v. MAHARAJA OF BETTIA** I. L. R. 9 All 351

24. ———— *Evidence Act, s. 65, cl. (b), and s. 91—Stamp Act (I of 1879), s. 34, prov. 1.—Suit on an unstamped promissory note.* The plaintiff sued to recover from the defendant the balance of a debt due on an unstamped note passed to him by the defendant for consideration of Rs. 38. The note recited that the defendant had received the amount, and would repay it after three months from the date of its execution. The defendant admitted by his written statement, execution of the note and

ment of the stamp duty and the penalty, under s. 31 of the Stamp Act I of 1879, which he offered to pay. The Subordinate Judge was of opinion that the note in question was a promissory note, but that the defendant's admission of the consideration enable the plaintiff to sue, although the note itself was inadmissible. On reference to the High Court:—*Held per JARDINE, J.*, that the document sued on was a promissory note, and that the suit being brought on it as the original cause of action, the admission of its contents by the defendant did not avail the plaintiff, the document itself being inadmissible for want of a stamp. *Held per BIRNWOOD, J.*, that the plaintiff could not recover irrespectively of the promissory note, as he did not seek to prove the consideration otherwise than by the note which was inadmissible in evidence. The admission contained in the defendant's written statement did not amount to an admission of the claim as for money lent. The case was one in which

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

no secondary evidence under s. 65, cl. (b), of Act I of 1872 was admissible, the primary evidence, the document itself, being forthcoming. The plaintiff not having offered any independent evidence of the advance alleged by him, and the defendant not

liability, the plaintiff's suit should be rejected. **DAMODAR JAGANNATH v. ATMARAM BABAJI** I. L. R. 12 Bom. 443

25. ———— *Evidence Act, s. 91.—Bill of exchange—Original consideration—Evidence—Stamp—Account stated.* When a cause of

rit, may always, as a rule, sue for the original consideration, provided that he had not endorsed, or lost, or parted with the bill or note, under such

tracts by a promissory note to repay it with interest at six months' date, here there is no cause of action for money lent or otherwise than upon the note itself, because the deposit is made upon the terms contained in the note, and no other. In such a case the note is the only contract between the parties, and if for want of a proper stamp or some other reason the note is not admissible in evidence, the creditor must lose his money.

**AKBAR v. SEIKH KHAN** I. L. R. 7 Cal. 258: 8 C. L. R. 533

26. ———— *Evidence Act, s. 91.—Accounts stated—Bond given for balance—*

**KUAR v. CHANDRAWATI** I. L. R. 4 All 330

27. ———— *Unstamped balance of account—Stamp Act (I of 1879), s. 34.—Acknowledgment or admission of liability—Limita-*

knowledge of an existing liability in respect of goods sold. **FATECHAND HARCHAND v. KISAN** I. L. R. 18. Bom. 614

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*(Contra) MULJI LALA v. LINGU MAKAJI  
I. L. R. 21 Bom. 201

28. *Insufficiently stamped document—Suit on hathchutta—Right of suit if document is not stamped for mo*  
In a suit on a hathchutta bearing a stamp of one anna, the defendant admitted the loan, but pleaded payment. The Judge coming to the conclusion that the document sued upon was promissory note, and should have been stamped with a two-anna stamp, refused to admit it in evidence. He also came to the conclusion that the plaintiff had no cause of action independently of the document, and dismissed the suit. *Held*, that the plaintiff had a cause of action independently of the document. *Held*, also, that an implied contract to repay money lent always arises from the fact that the money is lent, even though no express promise, either written or verbal, is made to repay it. Therefore, in a case where the defendant admits the loan, and has not repaid it, the plaintiff may maintain an action against him for breach of his implied promise or contract, entirely independent of any security which may have been given for the advance. *Alkar v. Sheik Khan*, I. L. R. 7 Cal. 256, explained. *Colap Chand Marwaree v. Mohokom Kooaree*, I. L. R. 3 Cal. 314, followed. *PRA. MATHA NATH SANDAL v. DWARAKA NATH DEY*  
I. L. R. 23 Cal. 851

29. *Hundi insufficiently stamped—Proof of original consideration by parol evidence.* V R drew a hundi in favour of M K upon M & Co., who, upon presentation, paid part of the amount due and referred the payee to the drawer for the balance. M K sued V R to recover the balance. V R pleaded that the hundi was inadmissible in evidence, not being properly stamped.

I. L. R. 5 Mad. 168

30. *Suit on unstamped hundi—Stamp Act (I of 1879), s. 34—Ad-*

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

*mission of liability by defendant.* In a suit brought upon two hundis, which were inadmissible in evidence for want of stamped stamp.

31. *Evidence Act, s. 91—Bill of exchange insufficiently stamped, admissibility of—Amendment of plaint—Stamp Act, 1869, ss. 20, 28—Evidence independent of the bill.* Where a bill of exchange for the sum of Rs. 1,000, drawn, accepted, and endorsed, is insufficiently stamped, it is not receivable in evidence in a suit on the note, even on payment of a penalty. Where such a suit is brought by the endorsee against his immediate endorser, the Court may not, if the application be not made in proper time, allow the plaint to be amended so as to recover on account for money paid to the defendants, even though the plaintiff has not obtained a decree. *Sa. 5, 8, 19, ct, XVIII of Ari v. Moho. C. L. R. 412*  
*HUN ROY v. PEARY MOHUN SHAW.* 2 C. L. R. 409

*See AUKUR CHUNDER ROY CROWDHRY v. MA. DUDU CHUNDER GOSW.* 21 W. R. 1

32. *Hundi inadmissible in evidence for want of stamp—Independent admission of loan—Suit on the original consideration—Admission by pleader erroneous in law—Binding effect—Dishonour—Notice.* Where there is an

33. *Stamp Act (I of 1879), s. 35—No secondary evidence admissible the receiving which will be to give some effect to an unstamped document.* In a suit by plaintiffs to redeem lands alleged to have been mortgaged under an instrument in 1841, the document was not produced and therefore secondary evidence was not receivable to prove the contents of the document. The plaintiff sought to rely on the oral evidence as to execution of the document and the passing of possession under the deed as showing that the defend-

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

ant by such possession acquired only a mortgagee's

trary to the provisions of s. 35 of the Indian Stamp Act. An admission of the mortgage by the defendant's ancestor was also held not receivable on the same grounds. *Chenbasapa v. Lakshmanan Ramchandra*, I. L. R. 18 Bom. 369, referred to. *THAI BEEBI v. TIRUMALAIAPPA PILLAI* (1907)

I. L. R. 30 Mad. 386

34. ——— Unregistered document—*Sodi racinama*—*Deed of relinquishment to landlord*. The document called a *sodi racinama* (whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold) is not a document of the kind mentioned in s. 91 of the Evidence Act, and therefore does not exclude the Courts from basing their findings upon other evidence, should any such exist. *VENKATESA v. SENGODA*

I. L. R. 2 Mad. 117

35. ——— Unregistered bond—*Contract Act, s. 91*—*Hypothecation-bond given for amount of account stated*—*Suit on account stated*. The plaintiff sued (i) for registration of a hypothecation-bond executed by the defendant; (ii) in the alternative for recovery of the amount of the bond upon an account stated. The defendant denied execution of the bond, and that she had had any dealings or stated any account with the plaintiff. The Courts below disallowed the first claim as barred by limitation and disallowed

its being unregistered, and the registration having been refused owing to the denial of execution by the defendant, the claim on the account stated failed. *Held*, that this decision was wrong, and that the plaintiff was entitled to sue upon the account stated. *Sirdar Kuar v. Chandrawati*, I. L. R. 4 All. 303, distinguished. Where two parties enter into a contract of which registration is necessary, it is essential that each should do for the other all that is requisite towards such registration. *KALMADIN v. RAJJO*

I. L. R. 11 All. 13

36. ——— Evidence Act, s. 91—*Deed of partition*. A deed of partition was executed, and three houses, had been effected, and it purported to divide those houses among the brothers. In a suit

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

brought by C's widow for the recovery of the house which fell to C's share:—*Held*, that, although the deed did not exclude secondary evidence of the partition of the family property previously divided, yet it affected to dispose of the three houses by way of partition made on the day of its execution, and therefore secondary evidence of its contents was inadmissible under s. 91 of the Evidence Act. *KACHUBHAI BIN GULABCHAND v. KRISHNABAI*

I. L. R. 2 Bom. 635

37. ——— Evidence Act (I of 1872), s. 91—*Terms of tenancy proved orally, although contained in a document*—*Landlord and tenant*—*Lease, terms of*. The plaintiffs alleged that in 1866 the defendant's father had let land to their predecessor in title in perpetuity on *fazindari* tenure for building purposes, subject to a certain rent. They complained that the defendant sought to eject them and they prayed for a declaration that they were entitled to the land in perpetuity, subject only to payment of the yearly rent. In the event of its being held that they were not perpetual tenants, they prayed that the defendant might be ordered to pay them Rs. 7,000, the value of the buildings on the land. The plaintiffs made out a *prima facie* case without showing or its being shown, that there was any agreement or lease. Before the case had concluded, however, a document was produced which was said to be a counterpart of the agreement of letting made in 1866. It was not registered, and

a decree, even though it afterwards appeared that a written contract had been made. If the defendant intended to rely upon a written contract, it was for him to produce it as part of his evidence. In the present case, as the document was not referred to in the plaint, written statement, or issues, and was not before the Court, the evidence should be looked at to ascertain the terms of the tenancy by which the plaintiffs and their predecessors in title held the property. *YESHWADARAI v. RANGCHANDRA TUKARAM*

I. L. R. 18 Bom. 68

38. ——— *Proof of lease not necessary to prove tenancy*. Even if he has a lease, a tenant can prove his tenancy right without proving his lease, though it is unregistered. *LALA SURABH NARAIN LAL v. CATHERINE SOPHIA*

I. C. W. N. 248

39. ——— *Endorsement on Deed of sale*. The plaintiff executed a deed of sale of a moiety, and a lease of the other moiety, of certain land to B. B instituted a suit under Act XIV

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

... than returned the

transaction was inchoate, and not final, so as to require a re-conveyance. GIRISH CHANDRA ROY CROWDERY v. AMINA KHATUN 3 B. L. R. AP, 125

40. ————— *Instalment bond*

—*Unregistered pottah and kabuliati*—*Set-off*. Plaintiff sued in a Small Cause Court on an instalment-bond for Rs1. The bond had been executed for nuzur or salami contemporaneously with the execution of a pottah and kabuliati by which the defendants agreed to pay the plaintiff Rs335 a year for two years, as rent for certain land. The pottah

against the amount claimed under the bond on the footing of a contract contained in the pottah and kabuliati. The Judge refused to receive them in evidence, or to receive oral evidence of their contents, and gave a decree in favour of the plaintiff,

41. ————— *Evidence Act, s. 65—Mortgage—Suit for ejectment* Where a mortgage-deed had not been registered in accordance with s. 13 of Act XVI of 1864:—*Held*, in a suit for ejectment where the mortgage-deed was set up by the defendant, who claimed possession under it, that secondary evidence of it could not be given under s. 65, Evidence Act. DIVYATI VARADA AYYANGAR v. KRISHNASAMI AYYANGAR

I. L. R. 6 Mad. 117

42. ————— *Document inadmissible from want of registration—Admission as to contents*. A written contract can only be proved by the production of the writing itself; and if the document is inadmissible from want of registration, no secondary evidence of the contract can be received. A party's admission as to the contents of a document not made in the pleadings, but

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(b) UNSTAMPED OR UNREGISTERED DOCUMENTS—*contd.*

in a depositum, is secondary evidence, and cannot supply the place of the document itself. INDRAM VALAD LADLI MIYA v. PARVATA VALAD HARI 8 Bom. A. C. 163

43. ————— *Destruction of*

and prayed leave to put in evidence a registered copy thereof, which the Court allowed, and at the same time ordered the fragments of the original to be produced. At the trial the plaintiff produced the fragments, and under s. 11, Madras Regulation XVII of 1802, put in as evidence a registered copy of the bond. He called no witnesses to prove that the fragments produced formed part of the original bond. The Court admitted the registered copy as evidence and found for the plaintiff. The Judicial Committee on appeal reversed this finding on the ground that the registered copy, in the absence of satisfactory evidence of the destruction of the original bond, was improperly admitted as secondary evidence. ABEAS ALI KHAN v. YADDEEM RAO REDDY 3 Moo. I. A. 158

44. ————— *Proof of reason for its non-registration*. It is not enough for a party desirous of adducing secondary evidence of the contents of a document which ought to have been registered to show that he cannot produce it because it is not registered; he must show that its non-registration was not due to any fault or want of diligence on his part, or he must show that the party against whom he desires to use it was guilty of such fraud in the matter of non-registration that he cannot be allowed to object on that ground to the production of the secondary evidence. KUNDEEZOODEEN HALDAR v. RAJIB ALI SHAHA 9 W. R. 528

45. ————— *Document not produced because unregistered* The fact that a pottah on which a plaintiff's title is based has not

## (c) LOST OR DESTROYED DOCUMENTS.

46. ————— *Lost deed—Attesting witnesses*. Where a Court is satisfied that a deed was executed, and has been lost or destroyed, it should receive secondary evidence of the contents, documentary or oral; and it is not necessary that the

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(c) LOST OR DESTROYED DOCUMENTS—*contd.*

witnesses called in to give oral testimony should be attesting witnesses. *LOTFOOLLAH v. NUSSEERUN*  
10 W. R. 24

47. ———— *Evidence Act (I of 1872), s. 65—Necessity of accounting for non-production of original document—Discretion of*

rested on the case that an *anamat* photo was given by the defendant's deceased husband, but failed to show that there had been a sufficient search for, and to establish the loss of, the original document, so as to render secondary evidence of its contents admissible. *HARBIPRIA DEBI v. RUKMINI DEBI*  
I. L. R. 19 Cal. 438  
I. L. R. 19 I. A. 79

48. ———— *Lost record—Additional evidence.* Where a party obtained a decree which was appealed from, and in transit from the first to the second Court the record was irrecoverably lost, the High Court directed the lower Appellate Court to receive secondary evidence from both sides as to the contents of the record, and to make up the entire record under the supervision of the High Court. *DOVAL SINGH*  
7 W. R. 18

49. ———— *Destroyed document—Claim for zamindari dues.* A claim for zamindari dues in respect of the sale of garden trees ought not to

PANDAY . . . . . 1 Agra 139

50. ———— *Loss or destruction of document—Evidence Act (I of 1872), s. 65, cl (c)*

ed B with notice to produce, tendered secondary evidence of its contents. B was not examined as a witness, and no evidence was given of the loss or destruction of the bond. Held by POTTER, J. and MORRIS, J.J. (PRINCE, J., dissenting), that second-

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(c) LOST OR DESTROYED DOCUMENTS—*contd.*

ary evidence was not admissible. *WOMESH CHUNDER GHOSH v. SHAMA SUNDARI BAI*  
I. L. R. 7 Cal. 98 : 8 C. L. R. 489

51. ———— *Evidence Act (I of 1872), ss 63 (c), 114, cl. (g)—Copy of a copy*

mortgagor's ancestor had granted to their own

It appeared that the alleged *gawath* papers, original mortgage-deed, and the decree of the 17th May 1813 were at one time in the defendants' possession, but the defendants alleged that all three documents were destroyed by fire in 1872. The plaintiff sought to support his case by putting in a copy on plain paper purporting to have been transcribed from a certified copy of the decree of the 17th May 1813, and the destruction or loss

s. 114 of the Evidence Act, if produced, could be and is not produced would, if produced, be admissible to the person who withholds

*Narendar Lahaadoot Singh, et al.*  
to. RAM PRASAD & RAGHUNANDAN PRASAD  
I. L. R. 7 All 738

EVIDENCE—CIVIL CASES—*contd.*13 SECONDARY EVIDENCE—*contd.*(c) LOST OR DESTROYED DOCUMENTS—*contd.*

52. ——— Loss or destruction of document.—*Evidence Act, s. 65.* In a case falling under cl. (f), s. 65 of the Evidence Act, and also under cl. (a) or (c) of the same section, any secondary evidence is admissible. In the matter of a collision between the "AVA" and the "BRENDA" .

I. L. R. 5 Calc. 568 : 5 C. L. R. 331

53. ——— *Evidence Act (1 of 1872), s. 65, 91—Limitation Act (XV of 1877), s. 19—Acknowledgment in writing* Limitation Act, s. 19, must be read with Evidence Act, ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65, as in cases of lost or destroyed documents. CHATHU v VIRARAYAN . I. L. R. 15 Mad. 491

54. ——— Destroyed mortgage-deed.—*Suit to redeem mortgage—Destruction of mortgage-deed.* In a suit to redeem a mortgage it was proved that the mortgagees and their assignee had fraudulently destroyed the deed by which the property was

ment. ABDULLA v MUHAMMAD . 1 Bom. 177

55. ——— Loss of award—*Civil Procedure Code, s. 525—Loss of award, procedure on* When an award has been lost, a Court acting under s. 525 of the Code of Civil Procedure cannot take secondary evidence of its provisions and pass a decree accordingly. GORI REDDI v MAHANANDI REDDI . I. L. R. 12 Mad. 331

56. ——— *Suit on award—Civil Procedure Code, s. 525* Secondary evidence of the contents of an award is admissible on proof of its being lost. GORI REDDI v MAHANANDI REDDI . I. L. R. 15 Mad. 99

57. ——— Deed lost in Mutiny.—*No copy made* Where a suit was brought on a mortgage deed alleged to have been destroyed in the Mutiny : —Held, that, if it were established that the original

SHEOSURUN OJHA v GOOLBANEE KOOR . W. R. 1664, 264

## (d) NON-PRODUCTION FOR OTHER CAUSES

58. ——— Lotbundi—*Evidence of certificate of sale.* A lotbundi cannot be accepted as secondary evidence in lieu of the certificate of sale unless the absence of the certificate is sufficiently accounted for, and no better evidence than the lotbundi can be produced. USTOORIN v MOHUR LAL . 21 W. R. 333

EVIDENCE—CIVIL CASES—*contd.*13 SECONDARY EVIDENCE—*contd.*(d) NON-PRODUCTION FOR OTHER CAUSES—*contd.*

59. ——— Document in party's custody, but not produced.—*Ikramamah—Proof of document.* The proprietary right in a talukh was

they might be in possession. In the suit in which that judgment was given, the ikramamah not having been produced, the Court of first instance would not admit secondary evidence of its contents. On appeal inspection of the document having been offered to, and declined by, the Appellate Court, secondary evidence was admitted. On this appeal, the error was pointed out of allowing the plaintiff to give secondary evidence of the contents of a document, the original of which was in his custody, without the Court's looking at the document. HIRA LAL v GANESH PERSHAD . I. L. R. 4 All. 408 : 11 C. L. R. 109

L. R. 9 I. A. 64

60. ——— Failure to produce.—*Hibnamah—Evidence Act, s. 65.* Where a person's claim to some property rested on a hiba which had been executed in her favour by the brother of the parties who contested her claim to that property ; and the hiba had not been made over to her because it related to various properties of which the property

61. ——— Notices to produce—*Notice* applied with—*Evidence Act, s. 41.* A notice issued out of the jurisdiction of the Court was returned to produce a letter and the Court, on the summons, but appeared by default at the moment at the hearing of the notice to produce the letter. The Court held that the notices have been nugatory, and the contents of the letter was admitted.



EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(d) NON-PRODUCTION FOR OTHER CAUSES—*contd.*

proviso 6, of the Evidence Act. *MFILUS v. VIGAR*  
*APOSTOLIC OF MALABAR* . I. L. R. 2 Mad. 295

62. ——— Refusal to produce—*Evidence taken on commission—Documentary evidence, objection to admissibility of—Evidence taken by commissioner beyond jurisdiction—Notice to produce original document—Evidence Act (I of 1872), s. 63, sub-se. 3, 65, 66.* If, when evidence is taken before commissioners, a document is tendered and

document when it is first tendered, but the party objecting is at liberty to take any fresh objection whenever the party producing the document tenders it in evidence. Where a commission to take evidence is issued to any place beyond the jurisdiction of the Court issuing the commission, it is not necessary, in order to admit secondary evidence of the contents of a document, that the party tendering it should have given notice to produce the original, nor is it necessary for him to prove a refusal to produce the original. *RALLI v. GAD KIM SWEE* . I. L. R. 9 Calc. 939

63. ——— Power of attorney to register referring to power to execute—*Admission of original deed* A power-of-attorney authorizing the registration of a deed of mortgage, and recognizing a previous power to execute the deed of mortgage, is admissible as original evidence by way of admission of the previous deed. *HOSSEIN JAN v. MURDOOMUN* . 2 W. R. 44

64. ——— Counterpart of lease—*Non-production of original lease. Held, that the*

65. ——— Production of kabullat—*Absence of pottah* A let lands to B, who sublet to C, a rayat. C sued for possession of part, after an

given by him to B, and the grant from A to B, or sufficiently account for their absence, and that, as he did not do either, the kabullat (which was merely secondary evidence of C's pottah) was inadmissible, even though it was produced from the possession of the landlord A. *SRIJO NARAIN GHOSE v. HURPI NARAIN MOLLO* 1 C. L. R. 547

66. ——— Non-production of account books—*Beng Reg VI of 1793.* In a suit for a sum alleged to be due on the balance of partnership accounts, the Sudder Court ought,

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(d) NON-PRODUCTION FOR OTHER CAUSES—*concl'd.*

under s. 16, Regulation VI of 1793, to have used the evidence to be supplied by the original account books, or to have ascertained that the sum mentioned as the balance due, subject to the objections, was a balance due without objection. *SEPTUL BOHOO v. HUKISHEN DOSS* . 5 W. R. P. C. 76

67. ——— Written contract, effect of failing to prove when alleged—*Mahomedan Law—Dower.* A suit was brought by a Mahomedan wife for dower alleged to be due to her under a kabinnamah executed by her husband at the time of the marriage. She alleged the amount of dower to be R10,000, of which R5,000 was prompt and R5,000 deferred, and she claimed to be entitled to the whole on the ground that she had lawfully divorced her

*ASHUR v. MANIJA KHANUM alias BAKKA KHANUM*  
 I. L. R. 14 Calc. 420

## (e) COPIES OF DOCUMENTS AND COPIES OF COPIES.

68. ——— Copies of documents—*Cause*

— as more links of a chain

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(c) COPIES OF DOCUMENTS AND COPIES OF COPIES—*contd.*

latter case. Dealing with the present document, their Lordships were not prepared to say that the High Court had miscarried in concluding it to be genuine, but the High Court did not rest upon

THE COM. NANGOPAL ROY v. GORDON, STUART & Co. . . . 17 W. R. 285; 14 Moo. I. A. 453

89. ———— *Permission to file original.* Documents tendered as evidence are properly rejected on the ground that they are copies inadmissible under the Law of Evidence, and it is entirely a matter of discretion of the Court in rejecting a copy to allow the party to file the original. HUREECHUR MOJOMDAR v. CHURN MAJHEE

22 W. R. 355

70. ———— *Accounting for absence of original.* A copy of a document should not be received in evidence until all legal means have been exhausted for procuring the original. Where a document is alleged to be in the possession or power of a certain party, such party's denial in pleading that he has ever had the document is not sufficient to justify the omission of the processes the law provides for his testimony, and of his being called on to produce the original. If a Judge is satisfied of a plaintiff's inability to produce an original pottah on which he relies, he ought to allow secondary evidence to be given of the contents of the document; but he should be satisfied, on reasonable grounds, that the evidence gives a true version of its contents, and he should require sufficient evidence of the execution of the pottah. SNOOK-RAN SOOKUL v. RAM LALL SOOKUL . . . 9 W. R. 248

71. ———— *Accounting for absence of original.* A copy of a document cannot be admitted as evidence, unless the absence of the original is properly accounted for; the mere fact of the latter being in another Court is not a sufficient reason. COORMONZEE v. HUREE KISHORE ROY

10 W. R. 338

RAKHAL DASS BUNDOFADHYA v. INDERNONEE DABEE . . . 1 C. L. R. 155

72. ———— *Attested copy where original is filed in another case.* An attested

POORNO CHUNGER BHUTTACHARJEE

19 W. R. 85

73. ———— *Copy of deed—Admissibility in evidence—Explaining absence of original.* Copy of a deed refused in evidence as the absence of the original was not sufficiently accounted for. ANUNDA MOYEE DASSEE v. MACKENZIE

W. R. 1864, 5

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(c) COPIES OF DOCUMENTS AND COPIES OF COPIES—*contd.*

WATSON & Co. v. SHAM LALL PANDAI

10 W. R. 73

ISHAN CHENDER CHOWDHURY v. BHUYEE CHUNDER CHOWDHURY . . . 5 W. R. 21

74. ———— *Explaining absence of original.* A plaintiff filing copies of documents is bound to explain why the originals have not been filed. RAM JOY SURMA v. FRANKISHEN SIKOR. BUDODA DEBIA v. RAM KISHEN SINGH. PRONGDA DEBIA v. FRANKISHEN SIKOR

2 W. R. 80

75. ———— *Admission of evidence of original.* A copy of a disputed deed cannot be taken as evidence without proof that the original is out of the power of the party producing the copy. The admission of the existence of the original is not tantamount to an admission of the correctness of the copy. KURUM v. RUTTIM BRUGGOTT . . . W. R. 1884, 188

76. ———— *Proof of cor-*

21 W. R. 257

LUKHMONI DOSSEE v. KORUNA KANT MOITRO

3 C. L. R. 509

77. ———— *Proof of execution of document where copy is produced.* In order to prove legally the execution of a document, of which a copy only is on the record, it is not enough for the witness to depose that he executed a document of that nature; the purport of the copy must be read to him, and he must be asked whether the original of the same was what he executed. KAM-OOLA KHANUM v. MOHAMMED ESA KHAN

13 W. R. 429

78. ———— *Absence of ob-*

ject of document should not be

inferred from the fact that the

document is not produced.

78. ———— *Evidence Act,*

1872, s. 63—Comparison of copy with original.

78. ———— *Evidence Act,*

1872, s. 63—Comparison of copy with original.

78. ———— *Evidence Act,*

1872, s. 63—Comparison of copy with original.

EVIDENCE—CIVIL CASES—*contd.*13 SECONDARY EVIDENCE—*contd.*(c) COPIES OF DOCUMENTS AND COPIES OF COPIES—*contd.*

dary evidence of the contents of the original decree.  
RAM PRASAD v. RAGHUNANDAN PRASAD

I. L. R. 7 ALL 738

80. ————— *Certified copy*  
—Evidence Act, s. 65, cl. (f)—Secondary evidence of  
destroyed record—Certified copy not essential. The  
rule laid down in s. 65 of the Evidence Act that a

I. L. R. 10 MAH. 50

81. ————— *Mortgage de-*  
*creed lost—Evidence of foreclosure—Evidence Act,*  
s. 63. In 1840 K mortgaged a certain house to two  
brothers, R and C. The mortgage-deed contained a  
gahan-jahan clause, or clause of conditional sale. It  
appeared that in 1852 the mortgage house passed  
into the possession of R and C, and it was alleged  
that in that year the mortgage had been foreclosed.

1881 T brought this suit to redeem the property.  
The foreclosure-decree of 1852 was not forthcoming,  
and the defendants alleged that it has been burned  
along with other judicial records at the burning of  
the Budhvar Palace at Poona in 1873. The only  
evidence that such a decree had been passed was a re-  
ference to a copy of the decree contained in a judg-  
ment passed in another suit, and a statement by C  
(who was dead in 1881) that the mortgage had been  
foreclosed. The lower Courts held that the refer-  
ence in the above-mentioned judgment to the copy  
of the foreclosure decree was sufficient evidence of  
the original decree under s. 63 of the Evidence Act  
(1 of 1872). On appeal.—*Held*, by the High Court,  
that there was no legal evidence that the mortgage  
had been foreclosed. A written statement of the  
contents of a copy of a document, the original of  
which the person making the statement has not seen,  
cannot be accepted as an equivalent of that which  
s. 63 of the Evidence Act renders admissible,  
namely, an oral account of the contents of a docu-  
ment given by some person who has himself seen it.  
C's statement could not be made use of to establish  
the foreclosure. KANAYALAL v. PYARABAI

I. L. R. 7 BOM. 139

82. ————— *Copy of docu-*  
*ment alleged to be lost* A copy of a document, pur-  
porting to be the copy of an original *kobala* alleged  
to have been registered by a *kazee*, is not admis-  
sible in evidence within the provisions of Regulation  
XXXVI of 1793, s. 17. It might possibly be  
receivable as evidence if the accuracy of the first  
copy, and the execution and loss of the original,

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(c) COPIES OF DOCUMENTS AND COPIES OF COPIES—*contd.*

were proved. SREEMUNT KOWAR v. AKBAR  
MUNDUL . . . . . 8 W. R. 438

83. ————— *Copy of kaze's*  
*register—Proof of loss.* A copy of a *kazee's* register  
is not receivable in evidence. The register itself  
should be produced or proof given of its loss and the  
entry should be verified. JAFFREE KHANUM v.  
IMDAD HOSSEIN . . . . . 2 N. W. 314

84. ————— *Copy of trans-*  
*lation of Magistrate's order in English—Evidence*  
*of admission.* A copy of translation of what a  
Magistrate is supposed to have said in English in  
a proceeding under Act IV of 1840 is no evidence of  
an admission. RAMJEE LALL v. ANDERSON  
7 W. R. 141

85. ————— *Copy of income-*  
*tax returns.* Copies of income-tax returns should  
not be admitted as evidence without proof that the  
persons who made them are dead. LALLA GOOROO  
SAHAYE SINGH v. BROMO DEONABAI  
W. R. 1884, Act X, 105

86. ————— *Copy of public*  
*document—Practice of native Courts in India.*  
The native Courts of India, in receiving evidence, do

evidence, subject to further enquiry if it were dis-  
puted. NARAGENTY LOCHNEDAYAMAH v. VENKAYIA  
NAIDOO . . . . . 1 W. R. P. C. 30  
9 Moo. I. A. 66

87. ————— *Proper custody*  
*—Certified copy.* A copy of a document coming out  
of a public office, and certified by the officer in  
charge of that department to be a true copy, is  
admissible in evidence. UNDEE RAJAH RAJI  
VENKATAPERIMAL RATHE v. PEMMASANY VENKA-  
TADRY NAIDOO

4 W. R. P. C. 121 : 7 Moo. I. A. 128

See DEVAJI GOTAJI v. GODABHAI GODHRAI  
11 W. R. P. C. 35-

88. ————— *Copy of record-*  
*keeper's report.* A copy of a record-keeper's report  
is not evidence, nor is a copy of a Magistrate's pro-  
ceeding in a suit regarding other property covered by  
the deed in dispute. DWARKANATH BOSE v. CHIT-  
DEE CHURN MOOKERJEE . . . . . 1 W. R. 339

89. ————— *Copy of quinquennial*  
*register—Non-production of original.* An  
examined copy of a quinquennial register is evidence  
without the production of the original. OOPOR  
MOSEE DABEE v. BISHONATH DUTT . . . . . 7 W. R. 14

90. ————— *Copy from*  
*office of Registrar of Deeds.* The circumstances  
that a copy of a document has been obtained from

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—*contd.*

the office of a Registrar of Deeds does not make that registered document evidence, or render it operative against the persons who appear to be affected by its terms. **FYEZ ALI v. OMEDEE SINGH**

21 W. R. 265

91. ————— Copy of decree  
—Decree, destruction of. After an appeal was filed,  
the decree was destroyed.

Marsh. 213 : 1 Hay 584

92. ————— Destruction of  
document. Where a wajib-ul-urz was destroyed in  
the Mutiny, and the plaintiff tendered in evidence a  
book obtained from the tahsil office, which pur-  
ported to contain ————

was satisfied that there was no reason to doubt its  
being a genuine copy. —Held, that such copy was  
evidence, not of a contemplated wajib-ul-urz, but of  
one which had been executed and completed.  
**DABER DUT v. ENAIT ALI**

2 N. W. 395

93. ————— Lost document  
—Certified copy. Secondary evidence of the con-  
tents of a document is admissible where the Court  
is satisfied that the document has been lost, and in  
such a case it is open to the Court to receive oral  
evidence of the transaction involved, and ————  
necessar  
copy.

certified  
evidence, i.e., to be given in evidence in the first

94. ————— Evidence Act,  
ss. 16, 114—Company—Winding up—Contribu-  
tories—Shareholders—Notice of allotment—Second-  
ary evidence of notice—Press-copy letter—Evidence  
of original letter having been properly addressed and  
posted. Upon the settlement of the list of con-  
tributors to the assets of a company in course of  
liquidation under the Indian Companies Act, one of  
the persons named in the list denied that he had  
agreed to become a member of the company or  
was liable as a contributory. The District Court ad-  
mitted as evidence on behalf of the ————

EVIDENCE—CIVIL CASES—*contd.*13. SECONDARY EVIDENCE—*contd.*(e) COPIES OF DOCUMENTS AND COPIES OF COPIES—*contd.*

of the original letter or of the address which it  
bore; but the press copy was contained in the  
press copy book of the ————

LIQUIDATOR OF THE COTTON GINNING COMPANY  
I. L. R. 9 All. 386

95. ————— Evidence Act  
(I of 1872), ss. 65, 66—Admission of secondary  
evidence. On an appeal to the Judicial Committee  
from a decree given on first appeal by an Appellate  
Court, and maintaining a finding of fact by the  
Original Court, the only question was whether the  
evidence offered constituted secondary evidence of  
the matter in dispute, which was the making of a  
document. The question was decided in the affir-  
mative by their Lordships. Because the evidence  
consisted of a copy which was ————

presided in the Court, who alone was authorized to  
compare and accept such copy, there were grounds  
for considering it genuine. **LUCHMAY SINGH v.**  
**PUNA**

I. L. R. 18 Calc. 753  
I. R. 16 I. A. 125

96. ————— Secondary evi-

dissented from **KISHORI LAL GOSWAMI v. RAKHAL**  
**DASS BANERJEE** (1901) . I. L. R. 31 Calc. 155

97. ————— Copy of copy of document  
—Proof of execution of original. An authenti-  
cated copy of an authenticated copy of a deed is  
admissible as secondary evidence; but proof of the  
execution of the deed itself must be given before the  
copy can be admitted. **TATVUNNISA BIRI**  
**v. KWAR SHAN KISHORE ROY**

7 B. L. R. 621 : 15 W. R. 228

98. ————— Previous failure  
to produce original. An original document upon  
which the plaintiff based his suit was proved to  
be in the possession of the defendant. In a previous  
suit the defendant's mother had filed the document,  
and on removing it had, according to the rules of

EVIDENCE—CIVIL CASES—*concl.*13. SECONDARY EVIDENCE—*concl.*(c) COPIES OF DOCUMENTS AND COPIES OF COPIES—*concl.*

practice, placed a copy there instead. The defend-

99. \_\_\_\_\_ Public document—*I* ment m from a have be  
WARDS v. BUNWARD LALL THAKOOR

15 W. R. 102

100. \_\_\_\_\_ Absence of  
of a copy of a sanad is not admissible in evidence.

101. \_\_\_\_\_ Sanad A copy  
of a copy of a sanad is not admissible in evidence.

6 W. R. 80

## 14. PRESUMPTION OF DEATH.

Presumption of death  
—Onus of proof—Evidence Act (I of 1872),  
s 108 S 108 of the Evidence Act raises no presumption as to the time of a person's death. It is incumbent on him, who alleges that a person died at some antecedent date, to prove that fact by evidence. *Per OMDT, J.* The question, for which provision is made in s 108 of the Evidence Act, is the question, whether a man is alive or dead when the question of death is raised, and not whether he was alive or dead at some antecedent date. *FANI BHUSHAN BANERJI v. SURAJA KANTO ROY CHOWDHRY* (1907). I L. R. 35 Calc. 25

## EVIDENCE—CRIMINAL CASES.

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See DEFAMATION I. L. R. 28 Cal. 794

## I. CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE

1. — Evidence of robbery considered in trial for murder—*Trial for robbery and murder—Offences constituting parts of the same transaction—Verdict of jury.* Persons con-

on its appearing that the two offences constituted parts of the same transaction:—*Held*, that recent and unexplained possession of the stolen property which would be presumptive evidence against the prisoners on the charge of robbery was similarly evidence against them on the charge of murder. QUEEN-EMPRESS v. SAMI I. L. R. 13 Mad. 426

2. — Evidence showing commission of another offence by accused other than that for which they are being tried—*Evidence, admissibility of.* In a criminal trial evidence otherwise admissible is not rendered inadmissible by the fact that it discloses the commission of an offence other than that in respect of which the trial is being held. *Reg. v. Dwyer, 2 M. & R. 199*, referred to. QUEEN-EMPRESS v. MELUA I. L. R. 14 All. 502

3. — Duty of Judge in trial by jury—*Admission of inadmissible evidence.* In cases tried by jury it is the duty of the Judge to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties. Evidence relating to proposals of compromise ought not, in the exercise of a proper discretion, to be allowed to go in as evidence of guilty knowledge

EVIDENCE—CRIMINAL CASES—*contd.*1. CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE—*concl.*

against the accused. ABRAHAM PRADA v. QUEEN-EMPRESS . . . I. L. R. 25 Cal. 736  
2 C. W. N. 484

4. — Statement by dying person—*Murder—Incomplete evidence—New trial—Further evidence—Admissibility of evidence—Dying person, statements of, recorded and attested, if admissible—Indian Evidence Act (I of 1872), s. 32, cl. (1)—Refreshing the memory—First information—Criminal Procedure Code (Act V of 1898), s. 154.* Case in which the lower Court passed sentence of death on the accused, but the High Court, on reference, ordered a new trial on the ground that the evidence was incomplete and it was necessary to take further evidence before judgment could properly be pronounced against the accused. Where, upon information received from the *chaulidar* of the offence (and which information was duly recorded in the station diary), the Sub-Inspector had gone to the hospital to see the wounded man and had there recorded the statement made by him:—*Held*, that this record of such statement could in no sense be regarded as a first information of the offence, within the meaning of s. 154 of the Code of Criminal Procedure. *Held*, further, that the writing containing the statement so recorded by the Sub-Inspector and attested by witnesses could not be regarded as evidence. In order to make it evidence, the course indicated in the case of *Empress v. Samuruddin, I. L. R. 8 Cal. 211*, should have been followed. KING-EMPRESS v. DULAT KUNRA (1902) 6 C. W. N. 921

5. — Theory of prosecution—*Evidence, concocted, to fit in with wrong theory of prosecution—Theory of case started before collection of evidence.* The theory of a murder upon which prosecution proceeded in this case was arrived at by the Sub-Inspector of Police the day following the night of the occurrence:—*Per curiam*—It is scarcely necessary to say that a theory should succeed and not precede the collection of evidence, otherwise it is a matter of common knowledge that the evidence may be made to fit in with the theory such as the police-officer in this case propounded. EMPRESS v. GAYATHI DAS (1901) 13 C. W. N. 622

## 3. CHARACTER.

1. — Bad character, evidence of—

6 B. L. R. Ap. 108; 5 W. R. Cr. 37

QUEEN v. PHOOLCHAND alias PHOLEL AHIR  
6 W. R. Cr. 11

QUEEN v. GOPAL THAKOOR . . . 6 W. R. Cr. 72

QUEEN v. BHAIRY DOSADH . . . W. R. Cr. 7

EVIDENCE—CRIMINAL CASES—*contd.*2. CHARACTER—*contd.*

2. ——— It is improper to allow witnesses for the prosecution to state that the accused is not of good character. *Rao. v. TIRUM* . . . 2 Bom. 131; 2nd Ed. 125

3. ——— Previous conduct and character. Evidence of character and previous conduct of a prisoner, being matters of prejudice and not of fact, is not admissible to the charge against

10 W. L. Cr. 11

4. ——— In charging a jury, a Sessions Judge should not tell them that the prisoners had previously been bad characters. That fact might be taken into consideration by a Sessions Judge in passing sentence when the prisoners are convicted. *QUEEN v. KULUM SHRIKH*

10 W. L. Cr. 39

## 5. ——— Previous conviction—Evidence

character of the accused. *Idem*, that this amounted to a misdirection: for, though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant" yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. *ROSHUN DOSAIH v. EMPRESS*

I. L. R. 5 Calc. 768; 6 C. L. R. 219

## 6. ——— Evidence of general repute—Criminal Procedure Code (1882), s. 117—Rumours—Security for good behaviour

Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions, that he has badmaashes in his employ to assist him, and generally that he is a man of bad character, is not evidence of general repute under s. 117 of the Criminal Procedure Code. Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character. It cannot be said that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these

EVIDENCE—CRIMINAL CASES—*contd.*2. CHARACTER—*contd.*

rumours are in themselves evidence under s. 117 of the Code. *RAI ISRI PERSHAD v. QUEEN-EMPRESS*  
I. L. R. 23 Calc. 621

7. ——— Evidence of bad character—Evidence Act (I of 1872), ss. 14 and 51, as amended by Act III of 1891—Gang of persons associated for purpose of habitually committing theft. The character of the accused not being

See SHIRIRAM VENKATASAMI v. QUEEN

6 Mad. 120

8. ——— Criminal Procedure Code, ss. 107, 117—Security for keeping the peace—Evidence of general repute not available in such cases. It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. Where a person is called upon to furnish security to keep the peace, evidence of general repute cannot be made use of to

quality *EMPEROR v. BIDHYAPATI (1903)*

I. L. R. 25 All. 273

## 3. CHEMICAL EXAMINER.

1. ——— Report of Chemical Examiner—Criminal Procedure Code (Act XXV of 1861), s. 370. Under s. 370, Act XXV of 1861, the report of a Chemical Examiner is evidence in a criminal trial if it bear the signature of the Examiner. The original should be produced. *QUEEN v. BISWANATH DAS*

6 B. L. R. Ap. 122; 15 W. L. Cr. 49

2. ——— Criminal Procedure Code, 1869, s. 380A. The report of the Chemical Examiner to Government may be acted upon as evidence by all Criminal Courts by virtue of a 380A of the amended Code of Criminal Procedure. *ANONYMOUS*

6 Mad. Ap. 11

3. ——— Report of "Additional Che-

him for analysis and report, cannot be received as evidence under s. 510 of Act X of 1882. *QUEEN EMPRESS v. AUTAL MUKHI*

I. L. R. 10 Calc. 1026

EVIDENCE—CRIMINAL CASES—*contd.*3. CHEMICAL EXAMINER—*concl'd.*

4. ——— Inquest report—*Bom. Reg. XII of 1827, s. 52—Bombay Act VIII of 1867.*

## 4. DEPOSITIONS.

See EVIDENCE ACT, 1872, s. 33.

1. ——— Mode of recording depositions—*Criminal Procedure Code, 1861, s. 355—Criminal Procedure Code, 1861, s. 195—Memo. of depositions of witnesses.* A memorandum by a Judge that certain witnesses had deposed the same as the former witnesses, is not in accordance with the requirements of s. 195, Code of Criminal Procedure. *QUEEN v. MUTTEE NUSHYO*

W. R. 1864, Cr. 18

2. ——— Mode of recording deposition, evidence of. The evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him is a deposition taken before the Assistant Commissioner; it appears to have been taken in due form upon solemn affirmation, and is attested by the signature of the Assistant Commissioner," is not sufficient evidence of the prisoner having duly deposed. *QUEEN v. MATI KHAWA*

3 B. L. R. A. Cr. 36; 12 W. R. Cr. 31

3. ——— Depositions of witnesses taken by Magistrate—*Evidence on appeal* Before depositions of witnesses taken before a Magistrate can be used on appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses. *QUEEN v. PARBUTTY CHURN CHUCKERBUTTY*

14 W. R. Cr. 13

4. ——— Depositions in previous case. Previous statements of witnesses on oath are not available as evidence in a subsequent trial. *QUEEN v. KISTO MUNDUL*

7 W. R. Cr. 8

5. ——— The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put in to contradict him. *QUEEN v. NOBOKISTO GNOSHE*

8 W. R. Cr. 87

6. ——— Evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. *QUEEN v. ZULFUKUR KHAN*

8 B. L. R. Ap. 21  
18 W. R. Cr. 38

7. ——— The prisoners were convicted, under s. 154 of the Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside. *In the matter of the petition of BETTS*

8 B. L. R. Ap. 83  
15 W. R. Cr. 8

EVIDENCE—CRIMINAL CASES—*contd.*4. DEPOSITIONS—*contd.*

charge. *QUEEN v. RAJKISHNA MITTER*

1 B. L. R. C. Cr. 36

9. ——— In a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which

10. ——— *Absence of accused.* Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out

mony, but to corroborate it. A new trial was ordered. *QUEEN v. BISHONATH PAL*

3 B. L. R. A. Cr. 20  
12 W. R. Cr. 3

11. ——— Depositions not read over to accused—*Oral evidence—Statement of mooktear as to faulty record—Criminal Procedure Code (Act X of 1862), s. 360—Evidence Act (I of 1872), s. 91* A Sessions Judge, after hearing a general statement made by a mooktear engaged in the case, considered that the depositions of certain witnesses taken in the Magistrate's Court did not conform with the requirements of s. 360 of the Code of Criminal Procedure, and refused to admit the depositions as evidence, and also refused to allow oral evidence to be given as to the statements made by these witnesses. No objection was taken to the admission of these depositions on behalf of the Crown; the accused were eventually convicted and sentenced to rigorous imprisonment. *Held*, on appeal, that the conviction and sentence must be set aside. *ADYAN SING v. QUEEN-EMPEROR*

1 L. R. 13 Cal. 121

12. ——— Depositions taken by Col-

10 W. R. Cr. 23

13. ——— Depositions before Magistrate—*Criminal Procedure Code, 1861, s. 369—Depositions of gosha ladies.* The depositions of gosha ladies examined before the committing Magistrate in the presence of the accused are not admissible in evidence on the trial before the Sessions Court under



EVIDENCE—CRIMINAL CASES—*contd.*4. DEPOSITIONS—*contd.*

s. 369 of the Criminal Procedure Code, 1861.  
ANONYMOUS . . . . . 4 Mad. Ap. 15

14. ———— *Discrepancies in depositions.* In a trial before a Sessions Court the attention of the jury may be called to the discrepancies between the evidence given by witnesses in such Court and that given before the committing Magistrate without the depositions before the Magistrate being put in. *EXPRESS v. HARAN CHUNDER MITTAR* . . . . . 8 C. L. R. 390

15. ———— *Criminal Procedure Code 1861, s. 369.* When a . . . . .

Doss . . . . . 7 W. R. Cr. 114

16. ———— *Depositions taken before Civil Court—Criminal Procedure Code, 1861, s. 369—Evidence Act (II of 1855), s. 57.* When a . . . . .

simply refers the proceedings and leaves it to the Magistrate to commit or not, as he thinks proper, the depositions taken before the Civil Court are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under s. 369, Code of Criminal Procedure. But by s. 57, Act II of 1855, the improper admission of such evidence . . . . .

6 W. R. Cr. 41

17. ———— *Deposition in previous inquiry under Companies Act (VI of 1852), ss. 162 and 163—Accused tried jointly.* A deposition on oath made by one of several accused, as a witness in a previous inquiry under ss. 162 and 163 of the Indian Companies Act (VI of 1852), was admitted in evidence against himself only, and not against the other accused. *QUEEN-EMPEROR v. MOSS* . . . . . I. L. R. 16 All. 88

18. ———— *Depositions taken on commission—Evidence Act, s. 38—Evidence of witness taken upon commission when admissible in criminal trial—High Court's Criminal Procedure Act (X of 1875), s. 76.* The evidence of a witness taken upon commission is not admissible . . . . .

JABEE PERSHAD

I. L. R. 9 Calc. 532

19. ———— *Deposition taken in absence of accused where he has absconded—*

EVIDENCE—CRIMINAL CASES—*contd.*4. DEPOSITIONS—*contd.*

*Criminal Procedure Code, 1861, s. 512.* Where an accused person has absconded and it is intended to record evidence against him in his absence, it is requisite, under s. 512 of the Code of Criminal Procedure, that the fact of the absconding of the . . . . .

20. ———— *Deposition of absent witness—Act I of 1859, s. 111.* The deposition of a person other than a merchant seaman is not admissible in evidence under s. 111 of the Merchant Seaman's Act (I of 1859). *QUEEN v. RAMCOMAL MITTAR* . . . . . 1 Hyde 195

21. ———— *Deposition of dead witness.* When it is proposed to read as evidence the depo- . . . . .

MOYALU . 4 B. L. R. Ap. 50: 12 W. R. Cr. 80

22. ———— *Written reports of depositions—Criminal Procedure Code, 1861, s. 369.* Written reports of depositions are not evidence, except in the case provided for by s. 369 of the Code of Criminal Procedure, 1861. *QUEEN v. KALLY CHARN GANGOOLY* . . . . . 6 W. R. Cr. 92

23. ———— *Documents tendered in civil case—False evidence, trial for giving Documents which were tendered in the civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence.* *QUEEN v. KARTICK CHUNDER HALDAR* . . . . . 9 W. R. Cr. 58

25. ———— *Records of former trial—*

26. ———— *Depositions taken in former sessions cases—Criminal Procedure Code, s. 512—Act I of 1872, ss. 33, 157—Witness, threatening—Duty of Magistrate.* In 1874 five out of six per- . . . . .

EVIDENCE—CRIMINAL CASES—*contd.*4. DEPOSITIONS—*contd.*

against the prisoners then under trial. In the Sessions Court the Judge did not record that the sixth accused person had absconded, and the evidence was recorded against the prisoners then under trial only.

cial circumstances the deposition taken in 1874 of the surviving witness was admissible under s. 157 of the Evidence Act as corroboration of her evidence given at the trial of the prisoner. *QUEEN-EMPERESS v. ISHREE SINGH* . . . I. L. R. 8 ALL. 673

27. ————— Depositions in counter case. The depositions of witnesses given in a counter case may be used as evidence against them on their trial

I. L. R. 11 Cal. 302

28. ————— Deposition of medical witnesses taken by Magistrate tendered at sessions trial—*Criminal Procedure Code s. 509*

*illus. (e).* Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Criminal Procedure Code, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record or be proved by the evidence of witnesses to have been

29. ————— *Criminal Procedure Code, s. 509*—Magistrate's record not showing, and evidence not adduced to show, that deposition was taken and attested in accused's presence—*Evidence*

EVIDENCE—CRIMINAL CASES—*contd.*4. DEPOSITIONS—*contd.*

*s. 509 of 1872* . . . Although all depositions . . .

attestation of the deposition by the Court in the presence of the accused obligatory. S. 80 of the Evidence Act, therefore, does not warrant the presumption that the deposition of a medical witness taken by a committing Magistrate has been taken and attested in the accused's presence, so as to make such deposition admissible in evidence at the trial before the Court of Session under s. 509 of the Criminal Procedure Code. *QUEEN-EMPERESS v. RIDING, I. L. R. 9 ALL. 720*, referred to. *QUEEN-EMPERESS v. POOR SINGH* . . . I. L. R. 10 ALL. 174

30. ————— Deposition of medical witness—*Criminal Procedure Code (X of 1882), s. 509*—Deposition wrongly admitted in evidence—*Evidence Act (I of 1872), ss. 80 and 114, ill. (e)* Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Code of Criminal Procedure, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record, or be proved by the evidence of witnesses, to have been taken and attested by the Magistrate in the presence of the accused. The Court is neither bound to presume under s. 80 nor ought it to presume under either

approved. *KACHALI HARI v. QUEEN-EMPERESS* I. L. R. 18 Cal. 129

31. ————— Depositions of witnesses before Magistrate—*Criminal Procedure Code, s. 238*—*Evidence—Confession retracted—Corroboration*. Where a prisoner was convicted of murder on a confession, retracted at the trial, corroborated by depositions read under s. 238 of the Code of Criminal Procedure, and also retracted at the trial:—*Held*, that the prisoner should not have been convicted on such evidence. *QUEEN-EMPERESS v. BHARNAFFA* . . . I. L. R. 12 Mad. 123

32. ————— Previous statements of witnesses, admissibility of—*Criminal Procedure Code (1882), s. 238* Although previous statements made by witnesses may be used, under s. 145 of the Evidence Act, for the purpose of contradicting statements made by them subsequently at the trial of an accused person, they cannot, if they have been made in the absence of the accused, be treated

33. ————— Self-incriminating statements of witness—*Evidence Act, ss. 80 and 132*

EVIDENCE—CRIMINAL CASES—*contd.*4. DEPOSITIONS—*concl.*

—*Proof and admissibility of depositions containing such statements in proceedings against the witness.* A revenue official was charged with the offence of attempting to receive a bribe from certain raiyats who gave evidence for the prosecution, and he was convicted. He subsequently charged the raiyats with having conspired to bribe him, and in their trial their depositions in the previous case were tendered in evidence for the prosecution. *Held*, that the depositions should have been admitted in evidence. *QUEEN-EMRESS v SANTIAPPA*

I. L. R. 15 Mad. 63

34. ——— Deposition of deceased witness—*Evidence Act, s. 33—Admissibility of such deposition in subsequent proceedings.* Where a witness for the prosecution was examined

deposition was admissible under s. 33 of the Evidence Act (I of 1872) *QUEEN-EMRESS v RAYVANTA* (1900)

I. L. R. 25 Bom. 163

35. ——— Previous depositions—*Criminal Procedure Code (Act V of 1898), s. 283—Statement of witness before committing Magistrate treated as evidence at a trial before Court of Session—Evidence duly taken.* Under s. 283 of the Code of Criminal Procedure, the Court is not restricted to admitting the evidence of a witness duly taken before the committing Magistrate merely for the purpose of contradicting that witness when he is called as a witness at the Sessions Court. The section is intended to enable the Court to read the previous evidence as substantive evidence in the case, at the trial, where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. *QUEEN-EMRESS v DURASAMI AYYAR* (1901)

I. L. R. 24 Mad. 414

## 5. DYING DECLARATIONS.

1. ——— Proof of state of deceased person—*Mode of recording declaration.* A dying declaration is admissible in evidence in all criminal cases, provided the conditions attaching to its admission have been fulfilled, and is not confined to cases in which the death of the injured party is the sole object of enquiry. There must be evidence of the state of the deceased person at the time of making the declaration. The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death. *QUEEN v UIRAIL*

3 N. W. 212

2. ——— Criminal Procedure Code, 1891, s. 371. In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under s. 371, Code of Criminal Procedure, a Sessions Judge ought to direct his attention to the point

EVIDENCE—CRIMINAL CASES—*contd.*5. DYING DECLARATIONS—*contd.*

whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their own personal

3. ——— Procedure. Before a dying declaration can be received in evidence, it must be distinctly found that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. Where a Sessions Judge sees from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration, he should, call for that evidence. A Magistrate should in all cases in which dying declarations are made, examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination. *In the matter of TANON*

15 W. R. Cr. 11

4. ——— Statement made by deceased—*Evidence Act, s. 32, cl. 1—Murder.* In a case of murder the statement made by the deceased

QUEEN v. DECEMBER THAKOOR

19 W. R. Cr. 44

5. ——— Declaration made before Magistrate other than the committing Magistrate—*Evidence of making of declaration.*

6. ——— Dying statement—*Presence of accused.* The dying statement of a deceased

7. ——— Statement of deceased as to cause of death—*Evidence Act, s. 32.* Where the accused was charged with culpable homicide not amounting to murder, the question was whether the deceased had died from the effects of a beating. *Held*, that a statement by the deceased that he had

EVIDENCE—CRIMINAL CASES—*contd.*5 DYING DECLARATIONS—*contd.*

been beaten by the accused was admissible in evidence under s. 32 of the Evidence Act, without proof that at the time of making the statement the deceased was conscious of any fatal effect of such beating. *EMRESS v. BLECHYNDFX*

8 C. L. R. 278

**S.** ——— Signs made by deceased whether "verbal statements"—*Cause of death signified in answer to question—Admissibility of evidence as to signs—Evidence Act (I of 1872), s. 3, s. 8, expls. 1, 2; s. 9 and s. 32—"Fact"—"Conduct"—"Verbal" statement* In a trial upon a charge of murder, it appeared that the deceased, shortly before her death, was questioned by various persons as to the circumstances in which the injuries had been inflicted, and that she made certain signs.

Full Bench (MAHMOOD, J., dissenting), that the

*Per STRAIGHT, J.*, that statements by the witnesses as to their impressions of what the signs meant were inadmissible, and should be eliminated; but that, assuming that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances were covered by s. 32. *Per MAHMOOD, J.*, that the expression "verbal statements" in s. 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased were being verbal statements inadmissible in evidence under s. 32 of the Evidence Act.

inasmuch as, taken alone, and without reference to the questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant; while the questions could not be proved either under explanation 2 of s. 8 or under s. 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to effect, or of the facts which they were intended to explain. The "conduct" made relevant by s. 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact, and it does not include actions resulting from some intermediate cause, such as the present case.

by a fact in issue or relevant fact; that the signs

EVIDENCE—CRIMINAL CASES—*contd.*5. DYING DECLARATIONS—*contd.*

made by the deceased were the conduct of "a person an offence against whom was the subject of any proceeding" and were relevant as such under s. 8, and that the questions put to her were admissible in evidence either under explanation 2 of the same section or under s. 9 by way of an explanation of the meaning of the signs. *QUEEN-EMRESS v. ABDULLA* I. L. R. 7 All. 385

**10.** ——— *Sessions Court, record of* The dying declaration of a deceased person is admissible, and should form part of the sessions record. *QUEEN v. SOYUMBER SINGH*

9 W. R. Cr. 2

*In the matter of the petition of CHINTAMUNEE NYE*

11 W. R. Cr. 2

**11.** ——— *Indian Penal Code (Act XLV of 1860), s. 396.* Appellant was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was the statement, in the nature of a dying declaration, made to the jamadar of police by one Fakira Shimpi, who received wounds during the dacoity, and who died before the trial commenced. The Assistant Surgeon, who made the *post-mortem* examination on the deceased, was not called, being on leave; but the Civil Surgeon, on a perusal of the notes left by the Assistant Surgeon, gave evidence that the cause of the death of the deceased was pneumonia aggravated by a stab. In the notes themselves, no mention of death was made.

Now the opinion was formed that the pneumonia was aggravated by the injury, and there was nothing in the notes to support it. *Held*, that the statement of the deceased ought not to have been admitted in evidence in the absence of evidence to show that his death was caused or accelerated by the wounds received at the dacoity, or that the dacoity was the transaction which resulted in his death. *EMPERATRIX v. RUDRA* (1900)

I. L. R. 25 Bom. 45

**12.** ——— *Proof of record of declaration—Language in which declaration is made—Admissibility in evidence—Evidence Act, 1872, s. 32 (1).* A declaration, made by a person in expectation of death, recorded in the absence of the accused and in a language different from the one in which it is made, by an officer who is not examined in the case, cannot properly be used in evidence.

from them to show what was done by each of the accused persons, so that the Court may be in a

EVIDENCE—CRIMINAL CASES—*contd.*5. DYING DECLARATIONS—*contd.*

position to judge of the culpability of each individual. Witnesses should not be allowed to prove a dying declaration as if it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made by a deceased person admissible under s. 32 of the Evidence Act; and that statement is not the document made by the Magistrate, but the verbal statement made by the deceased person. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over by him at or about the time the statement is made. When such a declaration is not a continuous statement made by the dying person, but is elicited in answer to one or more questions, the document, to be really of use, should clearly set out the exact questions put and the answers made to them. *KING-EMPEROR v. MATHURA THAKUR* (1901). 6 C. W. N. 72

## 6. EXAMINATION AND STATEMENTS OF ACCUSED.

1. ——— Statements made by accused person. Statements of accused persons can only be used in evidence against the parties

*QUEEN v. BUSSIRUDDI* . S W. R. Cr. 35

2. ——— Statements of prisoners—*Depositions before Magistrate* Bare statements of prisoners are not admissible in evidence; nor are depositions taken before the Magistrate unless to contradict the evidence of the same witnesses as given before the Sessions Court. *QUEEN v. BHEKOO SINGH* . 7 W. R. Cr. 108

3. ——— Confession of prisoner made to Magistrate or to private person.

confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made. *QUEEN v. GOOPREENATH KOLLY* . 13 W. R. Cr. 69

4. ——— Admission by husband of having kicked his wife—*Causing death*. An admission by a husband in the presence of several witnesses that he had kicked his wife, and that she died after receiving the kick, was held to be direct evidence against him. *QUEEN v. BISSANO NISHYO* . 8 W. R. Cr. 29

5. ——— Withdrawal of uncorroborated evidence by the witness—*Criminal Procedure Code, ss 342, 364—Confessions*. A and B were charged with the murder of C, the husband of

EVIDENCE—CRIMINAL CASES—*contd.*6. EXAMINATION AND STATEMENTS OF ACCUSED—*contd.*

B. There was some evidence that B had said her husband was dead a few days after his death.

committing Magistrate, and subsequently before the Sessions Court. On her appeal to the High Court after she had been sentenced to death, she retracted her former statements and made the usual charge of ill-treatment against the police. A made a statement to the committing Magistrate which he subsequently repudiated before the Sessions Court, to the effect that he had assisted in disposing of the corpse of C at the request of his brother-in-law, who corroborated the statement in two depositions before the Magistrate, which were likewise repudiated by the deponent before the Sessions Court. *Held*, that the conviction of A was wrong, and further (*PARKER, J.*, dissenting) that the conviction of B was wrong. *Per KERNAN, J.*—“As the second prisoner has withdrawn all the confessional statements made by her, it is necessary, according to the rulings of this Court, to examine the evidence and see if there is reliable independent evidence to corroborate to a material extent and in material particulars the statements contained in the withdrawn confessional statements. If no such corroborative evidence exists, then the contradictory statements of the second prisoner remain and doubts exist as to which statement is true, and the statement cannot be safely relied on.”

*EMPRESS v. RANGI* . 1 L. R. 10 Mau. 200

*See QUEEN-EMPRESS v. JADUH DAS*  
1 L. R. 27 Cal. 295

*Criminal Procedure Code* It is a misdirection to

EVIDENCE—CRIMINAL CASES—*contd.*6. EXAMINATION AND STATEMENTS OF ACCUSED—*contd.*

7. ——— Statement under promise of pardon. A statement made under promise of pardon is no evidence against a prisoner. *QUEEN v. RADHANATH DOSADH* . . . 8 W. R. Cr. 53

8. ——— Statement made by prisoner after acceptance of pardon—*Subsequent retraction of statement.* A person accused of an offence was offered a pardon the conditions of which he accepted. On being examined, he stated in detail the circumstances of the offence, and named the prisoner as an accomplice. He afterwards retracted his statement. *Held*, that the statement could not be used as evidence against the prisoner. *QUEEN v. HARDEWA* . . . 5 N. W. 217

9. ——— Examination of accused person—*Witness—Criminal Procedure Code, s. 347.* It is not competent to a Magistrate to convert an accused person into a witness, except when a pardon has been lawfully granted under s. 347 of the Code of Criminal Procedure. Evidence given by such a person who had received a

I. L. R. 1 Bom. 610

See *QUEEN-EMPRESS v. DURANT*

I. L. R. 23 Bom. 213

10. ——— Statement of prisoner after tender of pardon—*Evidence Act (I of 1872), s. 80.* A deposition given by a person is not admissible in evidence against him in a subsequent proceeding without its being first proved that he was the person who was examined and gave the deposition. A pardon was tendered to an accused, and his evidence was recorded by the Magistrate. Subsequently the pardon was revoked, and he was put on his trial before the Sessions Judge along with the other accused. At the trial the deposition given by him before the Magistrate was put in and used in evidence against him without any proof being given that he was the person who was examined as a witness before the Magistrate. *Held*, that the deposition was inadmissible without proof being given as to the identity of the accused with the person who was examined as a witness before the Magistrate. *QUEEN-EMPRESS v. DEEGA SONAR*

I. L. R. 11 Cal. 580

11. ——— *Criminal Procedure Code, 1861, ss. 205, 211, and 366.* Where a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge, in exercising the power given him by s. 211 of the Code of Criminal Procedure, ought not to try him along with the prisoners in whose case he has already given testimony. *QUEEN v. FITZGER DNOOREZ*

14 W. R. Cr. 10

EVIDENCE—CRIMINAL CASES—*contd.*6. EXAMINATION AND STATEMENTS OF ACCUSED—*contd.*

12. ——— Statement of person to whom pardon has been wrongly tendered—*Criminal Procedure Code, 1872, s. 347.* Where a

13. ——— Statements of accused illegally pardoned. In cases not of the kind contemplated in s. 337 of the Criminal Procedure Code (X of 1882), it is not competent to a Magistrate holding a preliminary enquiry to tender a pardon to the accused, or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant. *QUEEN-EMPRESS v. DALA JIVA* . . . I. L. R. 10 Bom. 190

See *QUEEN-EMPRESS v. DURANT*

I. L. R. 28 Bom. 213

14

been arrested, was produced as a witness for the defence. *Held*, that his evidence was admissible. *Queen v. Ashruff Sheikh*, 6 W. R. Cr. 91, and *Reg. v. Hanmanta*, I. L. R. 1 Bom. 610, distinguished. *MONESH CHUNDER KAPALI v. MONESH CHUNDER DASS* . . . 10 C. L. R. 553

15. ——— Examination of accused, language of—*Mode of recording evidence.* The examination of an accused person should be taken down in the language in which it is delivered and as far as possible in the words used by him. *QUEEN v. MOONSJI BIBEE* . . . 24 W. R. Cr. 54

16. ——— Statement of accused before Magistrate—*Mode of recording evidence—Criminal Procedure Code, s. 347.*

mining him), was admitted as a proper deposition within the provisions of the Criminal Procedure Code, and the memorandum was taken under s. 80, Code of Criminal Procedure, as evidence of the facts stated in it, and as affording some evidence that the translation was correct. *QUEEN v. GONOWAI*

22 W. R. Cr. 2

EVIDENCE—CRIMINAL CASES—*contd.*6. EXAMINATION AND STATEMENTS OF ACCUSED—*contd.*

17. — *Omission to make memorandum of evidence by Civil Court in case of perjury.* The failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it, does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court. *In the matter of BEHARY LALL ROSE* . . . 9 W. R. Cr. 89

18. — *Evidence Act, s. 91—Criminal Procedure Code, 1872, s. 339—Prosecution for false evidence.* In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given or which he understood; nor was it read over in accordance with the requirements of s. 339, Code

before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction. *QUEEN v. MONOUL DASI* . . . 23 W. R. Cr. 28

19. — *Statement of accused, informality in—Evidence Act, s. 91—False evidence in judicial proceedings—Deposition of the accused when admissible as evidence—Criminal Procedure Code (Act X of 1877), ss. 173, 182, 193, and 647.* Failure to comply with the provisions of ss. 182 and 183 of Act X of 1877 (Criminal Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of the Evidence Act (I of 1872), no other evidence of such deposition is admissible. *In the matter of the petition of MAYADEB GOSSAIL*. *EMPRESS v. MAYADEB GOSSAIL* . . . 11 L. R. 9 Cal. 782; 9 C. L. R. 292

20. — *Examination of accused—Criminal Procedure Code, 1861, ss. 205, 366—Attestation of Magistrate.* Before the examination

10 W. R. Cr. 63

21. — *Record of statements.* When the examination of the prisoner by the Magistrate has not been recorded in full so as to include the questions as required by s. 205 of the Code of Criminal Procedure, it cannot be given in evidence at the trial before the Court of Session,

EVIDENCE—CRIMINAL CASES—*contd.*6. EXAMINATION AND STATEMENTS OF ACCUSED—*contd.*

under s. 366, without further proof. *REG. v. KALLA LAKUMAGI* . . . 2 Bom. 419; 2nd Ed. 395

*REG. v. PEVADI BIN BASAPPA* . . . 2 Bom. 421; 2nd Ed. 397

*REG. v. VITROJI* . . . 2 Bom. 422; 2nd Ed. 399

*REG. v. GANU BAPU* . . . 2 Bom. 422; 2nd Ed. 399

But see *EMPRESS v. SAGAMBUR* . . . 12 C. L. R. 120

22. — *Criminal Procedure Code, 1861, s. 205.* Where a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain the certificate directed by s. 205 of the Code of Criminal Procedure, it does not of itself constitute *prima facie* evidence of the examination within the meaning of s. 366 of that Code, and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the sessions. *QUEEN v. PETAMBUR DUOOBEE* . . . 14 W. R. Cr. 10

23. — *Criminal Procedure Code, Act XXV of 1861, s. 205.* A Deputy Magistrate committed certain prisoners for trial on

Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate, and taking his evidence in the matter. *Held*, that the examination of the prisoners was inadmissible in evidence. *QUEEN v. RADHU JANA*

3 B. L. R. A. Cr. 59; 12 W. R. Cr. 44

24. — *Statement of prisoner on examination before Magistrate—Criminal Procedure Code, 1861, s. 205—Signature of Magistrate.* To make the examination of an accused person before a Magistrate legal evidence in a Sessions Court, something more than the mere signature of the Magistrate thereto is necessary. The certificate under the Magistrate's hand (i.e., not necessarily in his writing, but with his signature. *Queen v. Regja Hossein*, 5 W. R. Cr. 55), required by s. 205 of the Criminal Procedure Code, must be attached. *QUEEN v. BHEEBEKEE* 4 N. W. 16

See *QUEEN v. NIRUNI* . . . 7 W. R. Cr. 49

and *QUEEN v. BHAKAREE* . . . 15 W. R. Cr. 93

25. — *Attestation of Magistrate.* The attestation of the Magistrate is *prima facie* proof of such examination, and it is to be presumed the proceedings were regular. *QUEEN v. JAGA POLY* . . . 11 W. R. Cr. 39

See *QUEEN v. JOOR POLY* . . . 7 B. L. R. 67 note

EVIDENCE—CRIMINAL CASES—*contd.*6. EXAMINATION AND STATEMENTS OF ACCUSED—*concl.*

REG. v. TIMMI . 2 Bom. 131; 2nd Ed. 125

26. *Attestation of Magistrate.* The attestation of a Magistrate stating why he could not proceed with the further examination of a witness, is *prima facie* proof of the fact, and may be laid before a jury. *QUEEN v. RASOOGOLLAH* . . . 13 W. R. Cr. 61

27. *Evidence in Sessions Court.* If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out. *ANONYMOUS* . . . 5 Mad. Ap. 4

28. *Statement of prisoner before Magistrate—Attestation of Magistrate.* It is not necessary for a Sessions Judge to read

29. *Statements made before Magistrate as approvers—Refusal of Judge of Sessions Court to put them on record—Criminal Procedure Code, s. 237.* It is not optional with the prosecution, on the trial before the Court of Session, to put in confessional statement of persons who have been examined before the Magistrate: where the Sessions Judge refused to place on the record such statements, he was held to have committed an irregularity. *QUEEN v. EUNESS v. RANA TEVAN J.* . . . 1 L. R. 15 Mad. 352

## [7. GOVERNMENT GAZETTE. 47]

1. *Gazette of India—Calcutta*

from the Secretary to the Government of the Punjab, to the Secretary to the Government of India, was properly resorted to by the Court for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. *QUEEN v. AMRUNDIX* . . . 7 B. L. R. 63; 15 W. R. Cr. 25

## S. HANDWRITING.

1. *Handwriting, knowledge of.* The knowledge by the Sessions Judge of the  
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EVIDENCE—CRIMINAL CASES—*contd.*8. HANDWRITING—*concl.*

S.C. QUEEN v. FOTTEALI BISWAS

10 W. R. Cr. 37

9. *Handwriting, proof of—Statement by third party—Memorandum.* N was charged with having made a false statement before a Sub-Registrar in identifying K, a person who had executed a mortgage-deed in favour of R, and who

and certain facts. A memorandum, alleged to be in the handwriting of N, was also tendered and

## D. HEARSAY EVIDENCE.

1. *Hearsay evidence, inadmissibility of.* The admission of hearsay evidence prohibited. *QUEEN v. KALLY CHURU GANGOOLY* . . . 7 W. R. Cr. 2

*QUEEN v. PITAMBUR SIRDAR* . 7 W. R. Cr. 25

2. *Statement in absence of accused.* A statement by a witness that he heard A say, in the absence of the accused, that he had paid a sum of money to the accused as a bribe, is hearsay evidence and is not admissible. *RAJONI KANT BOSE v. ASAN MULLICK* 2 C. W. N. 672

## 10. HUSBAND AND WIFE.

1. *Admissibility of wife's evidence for or against husband or person charged jointly with him.* Upon a criminal trial in the absence of the evidence of a wife was held to be admissible for or against her husband or person charged jointly with him. *NORMAN, J.*, dissented. *QUEEN v. KUTIBOOLLA*

B. L. R. Snp. Vol. Ap. 11  
6 W. R. Cr. 21

REG. v. KADIR VALAD BALU . 7 Bom. Cr. 50

2. *Privileged communication—Letter from husband to wife—Letter taken on search of wife's house—Evidence Act (1 of 1872),*



EVIDENCE—CRIMINAL CASES—*contd.*10. HUSBAND AND WIFE—*contd.*

s. 122. On a trial for the offence of breach of trust by a public servant, a letter was tendered in evidence for the prosecution which had been sent by the accused to his wife at Pondicherry and had been

DONAGHUE . . . I. L. R. 22 Mad. 1

## 11. ILLEGAL GRATIFICATION.

1. ———— *Illegal gratification—Evidence of person bribing.* The evidence of the person who bribes is admissible against the person bribed. *QUEEN v. ARNOY CHURN CHUCKERBUTTY*

3 W. R. Cr. 19

2. ———— *Receiving illegal gratification—Penal Code (Act XLV of 1860), ss. 161, 165—Evidence of subsequent but unconnected receipt, showing footing on which parties stood—Evidence Act (I of 1872), ss. 5 to 13 and 14.* The accused was charged with having received illegal gratification from C & Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C & Co. were doing business as commissariat contractors, and the accused was the manager of the Commissariat office. Held, that evidence of similar but unconnected

1876. *EMPRESS v. VYAPOORY MOODELIAR*

I. L. R. 6 Calc. 655  
8 C. L. R. 197

## 12 JUDGMENT IN CIVIL SUIT.

1. ———— *Judgment in civil suit out of which criminal prosecution arises.* In a suit by A against the obligors of a bond, the Court held, for the reasons stated in its judgment, that the signatures of the obligors were not genuine, and directed the prosecution of A on a charge of forgery. On the trial of A before a jury, this judgment of the Civil Court was put in evidence on behalf of

EVIDENCE—CRIMINAL CASES—*contd.*12 JUDGMENT IN CIVIL SUIT—*contd.*

GOGUN CHUNDER GHOSH v. EMPRESS

I. L. R. 6 Calc. 247; 7 C. L. R. 74

2. ———— *Admissibility in criminal prosecutions of judgment in a civil suit.* *Per RAMPRIT, J.*—A judgment in a civil action cannot be given in evidence in a criminal prosecution for establishing the truth of the facts upon which it is rendered. Whatever may be the nature of the decision of the Civil Court, the Magistrate ought to decide the question of the accused's criminality by himself. *Per GHOSH, J.*—The decision in a civil suit would be admissible in evidence in a criminal case if the parties are substantially the same and the issues in the two cases are identical. *RAJ KUMARI DEBI v. BAMA SUNDARI DEBI*

I. L. R. 23 Calc. 610

## 13. LETTERS.

1. ———— *Letters implicating prisoner found in his house.* Letters, etc., found in a man's house after his arrest are admissible in evidence, if their previous existence has been proved. *QUEEN v. AMIR KHAN*

9 B. L. R. 38  
17 W. R. Cr. 15

## 14. MEDICAL EVIDENCE.

1. ———— *Examination of medical witness—Criminal Procedure Code, 1872, s. 323.* *Per FIELD, J.*—Under the provisions of s. 323 of the Criminal Procedure Code, 1872, a medical witness is not to be called in evidence in a criminal case unless he has been examined in person. In the matter of the petition of JUREBOO MANTON. *EMPRESS v. JUREBOO MANTON*

I. L. R. 6 Calc. 739; 12 C. L. R. 233

2. ———— *Experts, evidence of—Medical witnesses, evidence of—Opinion of experts how elicited—Evidence Act (I of 1872), s. 45.* A medical man who has not seen a corpse which has been subjected to a post-mortem examination, and who is called to corroborate the opinion of the medical man who made such post-mortem examination, and who has stated what he considered was the cause of death, is in a position to give evidence of his opinion as an expert. The proper mode of eliciting such opinion is to put the signs observed at the post-mortem to the witness and to ask what in his opinion was the cause of death on the hypothesis that those signs were really present and observed. *QUEEN-EMPRESS v. MEHER ALI MULICK*

I. L. R. 15 Calc. 589

3. ———— *Expert's opinion—Report of post-mortem examination.* The

EVIDENCE—CRIMINAL CASES—*contd.*14. MEDICAL EVIDENCE—*concl.*

evidence of a medical man who has seen and has made a *post-mortem* examination of the corpse of the person touching whose death the enquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and, secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. A medical man in giving evidence may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom. *RAJNUNI SINGH v. EMPRESS*

I. L. R. 8 Calc. 455 : 11 C. L. R. 569

4. — Report of subordinate medical officer—*Concurrence of superior officer.* The substance of a report from a subordinate medical officer, with an expression of concurrence by his superior, cannot be read in evidence under s. 368 of the Code of Criminal Procedure. *In the matter of the petition of the CHINTAMONNI NYR*

11 W. R. Cr. 2

5. — Letter from medical officer—*Letter expressing opinion.* A letter of a medical officer expressing an opinion is not evidence under ss. 368 and 370 of the Code of Criminal Procedure. *QUEEN v. KAMINER DOSSEE*

12 W. R. Cr. 25

8. — *Post-mortem report.* A *post-mortem* report cannot be used as evidence at the Sessions trial, except by way of refreshing the memory of the person who made it, or to contradict him. *RAM SARUP RAI v. EMPRESS (1901)*

8 C. W. N. 98

## 15. NATIVE SEALS.

— Comparison of native seals—*Evidence Act, 1855, s. 48.* S. 48, Act II of 1855, is applicable to criminal trials. The test of comparison of native seals is at best but a fallible one, and must always be received with extreme caution. *QUEEN v. AMANOULLAH MOULAH*

6 W. R. Cr. 5

## 16. NOTES OF INQUIRY.

— Notes on inquiry by registering officer. The notes of an inquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion. *QUEEN v. PURNANUND BARICK*

11 W. R. Cr. 13

## 17. POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS.

1. — Evidence of police officer—*Act II of 1855, s. 31.* The practice of not examining a police officer who investigates a case

EVIDENCE—CRIMINAL CASES—*contd.*17. POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS—*contd.*

condemned. The statement—

2. — Statement of constable of police. Where the accused was charged with attempting to murder her child, the chief constable's statement (he having gone to search the house of the accused) that he "had information that the accused was about to kill the child," was most improperly admitted as evidence against the accused. *REG. v. CIMA*

8 Bom. Cr. 164

3. — Police diaries—*Corroborative evidence.* Under s. 154, Code of Criminal Procedure, police diaries cannot be admitted as corroborative evidence. *QUEEN v. THAKOOR CHUND SURMA*

13 W. R. Cr. 22

4. — Corroborative evidence. Police diaries cannot be legally used as substantive evidence or read to the jury. *QUEEN v. HORDUT SURMA*

8 W. R. Cr. 68

5. — Use of portion of diary—*Criminal Procedure Code, 1861, s. 154.* Where a portion of a diary is used as evidence, the whole of it must be read.

8 W. R. Cr. 87

6. — Police papers—*Judicial notice.* Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test evidence. *QUEEN v. BUSSIRUNDI*

8 W. R. Cr. 35

7. — Police reports. Police reports are not evidence, except against the reporting police officer. *GOVERNMENT v. MURUN DASS*

6 W. R. Cr. 52

8. — Statements not made in Court—*Evidence Act, II of 1855, s. 31.* It is not competent to a Court of Session to inspect an

person who received them or by some one who heard them given. *QUEEN v. BISSEN NATH*

7 W. R. Cr. 31

9. — Breach of the peace, Likelihood of—*Report of police officer.* The report made by a police officer that there is a likelihood of a breach of the peace is not evidence.

10. — Breach of the peace, Likelihood of—*Report of police officer.* The report made by a police officer that there is a likelihood of a breach of the peace is not evidence.

EVIDENCE—CRIMINAL CASES—*contd.*17. POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS—*contd.*

QUEEN v. BHAYO DAYAL SINGH

3 B. L. R. A. Cr. 4 : 11 W. R. Cr. 48

In the matter of BHADRESWARI CHOWDHURI

7 B. L. R. Cr. 329

In the matter of the petition of SHAMASANKER MAZUMDAR

9 B. L. R. Ap. 45

S. C. SAMASANKER MOZOONDAR v. ANNEND NOYEE DOSHYA

18 W. R. Cr. 64

10. ——— Written statement recorded in investigation

of 1864, s. 162 of the Code of Cr. P. There is nothing in s. 162 of the Code of Cr. P.

tends also to the fact that the person who is alleged to have made the statement came

to put the whole of a statement in evidence at once. A conviction on such a charge could properly be had only on proof that the accused person had made to the police-officer each and every statement contained in the document. ISAR MANDAL v. QUEEN-EMPERESS (1900)

I. L. R. 28 Cal. 348 :  
S.C. 5 C. W. N. 65

## 18. PREVIOUS CONVICTIONS

1. ——— Previous convictions—Admissibility of evidence. Previous convictions are not admissible in evidence. QUEEN v. THAKOOR DAST CHOOTUR

7 W. R. Cr. 7

QUEEN v. PHOOLCHAND alias PHOOLCHAND

8 W. R. Cr. 11

2. ——— Determination of amount of punishment. Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged. ROBINSON DOOSADH v. EMIRENS

I. L. R. 5 Cal. 768 : 3 C. L. R. 219

3. ——— Report from Record office. A *kaifut*, or report from the Record office, that A had been convicted of a crime, is no evidence of a previous conviction. QUEEN v. RANJAN

9 B. L. R. Ap. 16 : 15 W. R. Cr. 53

EVIDENCE—CRIMINAL CASES—*contd.*18. PREVIOUS CONVICTIONS—*contd.*

QUEEN v. NUZEE NUSHYO

15 W. R. Cr. 52

4. ——— Previous conviction for the purpose of increasing the evidence at the trial against accused—Evidence Act (I of 1872), s. 54—Criminal Procedure Code (Act X of 1900), s. 310. Under s. 54 of the Evidence Act, a

5. ——— Previous commissions and convictions of dacoity—Conviction subsequent to the charge—Penal Code (Act XLV of 1860), s. 400. Having regard to the character of the offence under s. 400, Penal Code, previous commissions of dacoity are relevant under s. 14 of the Evidence Act. Convictions previous to the time specified in the charge are relevant under explanation 2 of s. 14, but convictions subsequent to the time specified in the charge are not so admissible. QUEEN-EMPERESS v. KARTICK CHUNDER DAS, I. L. R. 14 Cal. 721, referred to. EMPRESS v. NABA KUMAR PATRAIK

1 C. W. N. 146

6. ——— Accused, examination of, in respect of previous convictions—First offences—Sentence—Evidence Act (I of 1872), s. 91—Criminal Procedure Code (Act V of 1898), s. 411

of a previous conviction, or some fact of such kind as to show that the accused is guilty of the offence charged. The fact of the conviction is without legal effect. *See* *Bozanta Kumar Ghallal*, I. L. R. 26 Cal. 49, followed.

## 19. PROCEEDINGS OF CRIMINAL COURTS.

1. ——— Proceedings in criminal trial and proof of. The proceedings in a criminal trial, when necessary to be proved, should be proved by their production. *See* *REO. v. RAVJI VALAD TAJU*

8 Bom. Cr. 37

2. ——— Evidence—Order unsupported by evidence—Criminal Procedure Code (Act V of 1898), s. 147. In proceedings under s. 147 of the Criminal Procedure Code, the first party filed their written statement, and the Magistrate, having

heard the second party, made an order that second recording rate ought to be made on the allegations and that, there be order could



EVIDENCE—CRIMINAL CASES—*contd.*

## 10. STATEMENTS TO POLICE OFFICERS

—*contd.*

... evidence of such state-

11 Bom. 223

10. — Statements made by prisoners during police custody—*Evidence Act, s. 27.* Under s. 27 of the Evidence Act, not every statement made by a person accused of any offence while in the custody of a police officer connected with the production or finding of property is admissible. Those statements only which lead immediately to the discovery of property, and in so far as they do lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus immediately, but not necessarily or directly, connected with the fact discovered, are not admissible. That a witness says

11 Bom. 223

11. — *Criminal Procedure Code (Act X of 1832), s. 162—Statements of witnesses before police—Evidence Act (I of 1872), s. 157.* The positive prohibition under s. 162 of the Criminal Procedure Code (Act X of 1832), viz., that statements to the police other than dying declarations shall not be used in evidence against the accused, cannot be set aside by reference to s. 157 of the Evidence Act (I of 1872). *QUEEN-EMPRESS v. JINDBAI GOVIND* . I. L. R. 22 Bom. 596

12. — *Evidence Act (I of 1872), s. 157—Criminal Procedure Code, 1832, s. 162.* S 157 of the Evidence Act, which lays down the general rule, must be taken subject to the exception contained in the special rule enacted

13. — *Evidence Act, ss. 155 and 159—Criminal Procedure Code (Act*

EVIDENCE—CRIMINAL CASES—*contd.*

## 20. STATEMENTS TO POLICE OFFICERS

—*contd.*

X of 1832), s. 162—Statement taken down by police officer under s. 162—*Evidence.* A statement reduced to writing by a police officer under

may be cross-examined upon it by the party against whom the testimony shewn by it is given. The person making the statement may also be questioned about it; and with a view to impeach his credit, the police officer, or any other person in whose hearing the statement was made, can be examined on the point under s. 155 of the Evidence Act. *Reg. v. Uthamchand*, 11 Bom. 120, followed. *QUEEN-EMPRESS v. SITABAI VITHAL*

I. L. R. 11 Bom. 65

14. — *Criminal Procedure Code, 1832, s. 161—Statement taken down by police officer.* A statement taken down in the course of a police investigation by a police constable under s. 161 of the Criminal Procedure Code (Act X of 1832) is not evidence at any stage of a judicial proceeding. *QUEEN-EMPRESS v. ISMAIL VALAD FATARU* . I. L. R. 11 Bom. 636

15. — Statement

MULLICK . I. L. R. 10 Cal. 309

16. — *Evidence Act*

I. L. R. 12 Mau. 100

27. — *Criminal Procedure Code (Act X of 1832), ss. 161, 172, 211—Statements of witnesses recorded by police officers investigating under Ch. XIV, Criminal Procedure Code,—right of accused to call for and inspect police diaries.* Statements of witnesses recorded by a police officer while making an investigation under s. 161 of the Criminal Procedure Code form no portion of the police diaries referred to in s. 172, and an accused person on his trial has a right to call for and inspect such statements and cross-examine the witnesses thereon. *BIRAO KHAN v. QUEEN-EMPRESS* . I. L. R. 16 Cal. 610

EVIDENCE—CRIMINAL CASES—*contd.*20. STATEMENTS TO POLICE OFFICERS  
—*contd.*

MAHOMED ALI HADDIS V. QUEEN-EMPRESS  
I. L. R. 16 Cal. 612 note

16. *Criminal Procedure Code, s. 161—Penal Code (Act XLV of 1860), ss. 191 and 193—False evidence—Statement made to a police officer investigating a case—Mode of recording such statement.* It is not necessary that the statement of a witness recorded under s. 161 of the Code of Criminal Procedure, 1882, should be elicited and recorded in the form of alternate question and answer. It is sufficient if such statement is substantially an answer to one or more questions addressed to the witness before the statement is made. The provisions of ss. 191 and 193 of the Penal Code apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. It is not illegal, though unnecessary, for a police officer recording a statement under s. 161 of the Code of Criminal Procedure, 1882, to obtain the signatures of persons present at the time to authenticate his record of such statement.

QUEEN-EMPRESS V. BHAGWANTIA  
I. L. R. 15 All. 11

19. *Criminal Procedure Code, ss. 161 and 162—Statement made by a witness to police officer making an investigation—Use of such statement to contradict witness—Use of statement against accused.* A statement made by a witness under s. 161 of the Code of Criminal Procedure to a police officer investigating a case, may be proved at the trial of such case to contradict such witness, the witness having been first cross-examined on the point in respect of which it is sought to contradict him. But where it appeared that, but for the principal witness for the defence having been discredited by means of proof of a previous inconsistent statement made by the said witness before the investigating officer, the accused would have been acquitted, it was held that this statement could not be used to contradict him.

20. *Criminal Procedure Code (Act X of 1882), ss. 161 and 172—Statements of witnesses recorded by police officers investigating under Ch. XIV of the Criminal Procedure Code—Police diaries.* The privilege given by s. 172 of the Code of Criminal Procedure does not extend to statements taken under s. 161, but recorded in the diary made under s. 172.

SNEHU SHA V. QUEEN-EMPRESS  
I. L. R. 20 Cal. 642

21. *Criminal Procedure Code (1882), ss. 161 and 162—Statements made to police officer in the course of an investigation—Use of notes of such statements at trial before the Court of Session—Police diaries—Practice.* A

EVIDENCE—CRIMINAL CASES—*contd.*20. STATEMENTS TO POLICE OFFICERS  
—*contd.*

police officer's notes—*contd.*

council. QUEEN-EMPRESS V. NASIR-UD-DIN  
I. L. R. 16 All. 207

22. *Criminal Procedure Code (1882), ss. 161 and 162—Use at trial in Sessions Court of statements made to police officer investigating case.* Though, speaking generally, statements, other than dying declarations, made to a police officer in the course of an investigation under Ch. XIV of the Code of Criminal Procedure may be used at the trial in favour of an accused person, such statements are not admissible in evidence against him.

statement favourable to the accused, which the witness denies having made; and if the statement was at the time reduced into writing by the police officer, he would be allowed to refresh his memory by referring to it, but the written statement itself when the statement was made and not later.

to the police officer. QUEEN-EMPRESS V. TAJ KHAN  
I. L. R. 17 All. 57

23. *Criminal Procedure Code (Act V of 1893), s. 161—Impropriety of taking down statements of persons immediately before their arrest—Evidence Act (I of 1872), s. 25.* Where there is evidence in the hands of a police officer that a statement was made to him by a person immediately before his arrest, it is not admissible in evidence against him.

Procedure Code and reduce it to writing; and by virtue of s. 25 of the Evidence Act such statement is inadmissible in evidence. QUEEN-EMPRESS V. JADUB DAS  
I. L. R. 27 Cal. 295  
4 C. W. N. 129

24. *Special diary—Criminal Procedure Code (1882), ss. 161, 162, 167, and 172—Police diaries—What the diary should or should not contain—Statements recorded under s. 161 of the Code of Criminal Procedure—Use which may be made of the special diary by the Court—Sessions Judge, v. P. K. S. v. P. K. S.*

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EVIDENCE—CRIMINAL CASES—*contd.*

## 20. STATEMENTS TO POLICE OFFICERS

case, if he thinks it necessary to peruse them,

with the Magistrate's record of the case. Such an order is illegal. In no case is an accused person entitled as of right to a copy of any statement recorded by a police officer in the special diary prepared under the authority of s. 172 of the Code of Criminal Procedure. The special diary may be

the purpose of doing justice between the Crown and the accused; but entries in the special diary cannot be

date, fact,  
special diar  
purpose of  
made it, and the special diary may be used by the  
police officer who made it and by no witness other  
than such officer, for the purpose of refreshing  
his memory. If the special diary is used by the  
Court to contradict the police officer who made it  
or by the police officer who made it to refresh his  
memory, the accused person or his agent has a  
right to see that portion of the diary which has

Court, is necessary in that particular matter to the full understanding of particular entry so used, but no more. So held by the Full Bench. *Per* EGGE, C.J., KNOX, BLAIR, and BURKETT, JJ.—A police officer investigating a case may lawfully reduce into writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s. 161 of the Code of Criminal Procedure, and if he does so, his record

into writing in the special diary, and not elsewhere. *Per BANERJEE, J., and ARUN, J.*—Statements recorded under s 161 of the Code of Criminal Procedure by a police officer making an investigation were not intended by the Legislature to be entered in the special diary, and if they are so entered, do not form an integral part of the diary and are not privileged, but the accused person or his agent is entitled to see them. A mere summary, however, of facts ascertained by an investigating officer from persons examined by him, not being a report of their actual statements, may properly find a place in the special diary. The following cases were referred to:—*Empress v. Kali Churn Chunari, I. L. R. 8 Cal. 153, Kallu v. Queen-Empress,*

EVIDENCE-CRIMINAL CASES-*cont'd.*

20. STATEMENTS TO POLICE OFFICERS  
—*concl.*

29 Panj. Rec. Cr. 55; Queen-Empress v. Nasir-  
ud-din, I. L. R. 16 All. 207; Queen-Empress  
v. Jhubboo Mahton, I. L. R. 8 Cal. 739; In the  
matter of Mahomed Ali Haji v. Queen-Empress,  
I. L. R. 16 Cal. 612 note; Bilal Khan v. Queen-  
Empress, I. L. R. 16 Cal. 110; Sheru Sha v.  
Queen-Empress, I. L. R. 20 Cal. 642; Queen-  
Empress v. Rudr Singh, All. W. N. (1896) 120; and  
Reg. v. Utmachand Kapurchand, 11 Bom. 129.  
QUEEN-EMPRESS v. MANU I. L. R. 19 All. 390

25. \_\_\_\_\_ Statement as to owner-  
ship of " \_\_\_\_\_"  
Criminal I. \_\_\_\_\_  
and §23-C \_\_\_\_\_  
ability of \_\_\_\_\_  
Statement made to the \_\_\_\_\_ by accused persons

1. L. R. 9 Bonp. 121

26. \_\_\_\_\_ Admission of guilty knowledge—*Criminal Procedure Code, 1861, s 150*  
—*Daunt*. To make an admission of guilty

FOURER . . . . . 17 W. R. CR. 50

27. \_\_\_\_\_ Statement of accused overheard by police officer. The evidence of a policeman who overheard a prisoner's statement made in another room, and in ignorance of the policeman's vicinity and uninfluenced by it, is not legally inadmissible. QUEEN v. SAGEENA

7 W. R. Cr. 58.

## 21. STOLEN PROPERTY.

1. Evidence of possession of stolen articles—Non-production of, for recognition by witness. Recognition of things not before the eyes of deposing witness is not evidence against a person accused of having been in possession of those things. *QUEEN v JOOMNEZ*

NEW  
S. W. R. Cr. 16

2. Penal Code (Act XLV of 1860), s. 380—Theft from a railway van—Property found in an adjoining van, in which four railway coolies were travelling. On suspicion of theft of certain articles from a running goods train, a van on the train, in which four railway coolies were travelling, was searched. The property missed was not found, but, hidden under a

EVIDENCE—CRIMINAL CASES—*concl'd.*21. STOLEN PROPERTY—*concl'd.*

travelling in the van where two human beings of stolen cloth were found could be convicted of the theft of the cloth in the absence of evidence to connect one or more of them individually with the possession of the cloth. *KING-EMPEROR v. ALI HUSAIN* (1901) . . . I. L. R. 23 All. 308

## 22. TEXT BOOKS.

1. ——— Text books, reference to — *Work on medical jurisprudence*. A well-known treatise such as Taylor's Medical Jurisprudence may be referred to in the course of a trial. *HATIM v. EMPRESS*, 12 C. L. R. 86, followed. *HURRY CHURN CHUCKERBUTTY v. EMPRESS* . . . I. L. R. 10 Calc. 140

2. ——— Evidence Act, ss. 57 and 58. *Delinquency to . . .*

## 23. THUMB IMPRESSIONS.

1. ——— Comparison of Thumb impressions—*Evidence Act (I of 1872), ss. 9, 11, 12 (a) and 24*. *Queen-Empress v. MAHOMED SREKH* . . . 1 C. W. N. 33

law, it can only be made by the Court: no evidence of the identity of thumb marks can be given by a witness. *QUEEN-EMPRESS v. MAHOMED SREKH* . . . 1 C. W. N. 33

## EVIDENCE—PAROL EVIDENCE.

1. VALUE OF, IN VARIOUS CASES . . . 3888

2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES . . . 3890

3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . . 3895

*See ACCOUNT, ADJUSTMENT OF.*

B. L. R. SUP. VOL. 3

*See CONTRACT—BOUGHT AND SOLD NOTE*  
I. L. R. 20 Calc. 854

EVIDENCE—PAROL EVIDENCE—*concl'd.*

*See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.*

I. L. R. 25 Mad. 220

## 1. VALUE OF, IN VARIOUS CASES.

1. ——— Proof of fact or title. Oral testimony, if worthy of credit, is sufficient, without documentary evidence, to prove a fact or a title. *RAM SOONDUR MUNDUL v. AKIMA BIBER* . . . 8 W. R. 368

*SURUT SOONDURER DEBIA v. RAJENDUR KISHORE ROY CHOWDHRY* . . . 9 W. R. 125

*GOLUCK KISHORE ACHARYEE CHOWDHRY v. NUND MOHUN DEY SINGAR* . . . 12 W. R. 394

*GIRDHAREE LALL SINGH v. MODHOO ROY* . . . 18 W. R. 323

*DINOO SINGH v. DOORJA PERSHAD* . . . 18 W. R. 348

2. ——— Evidence of possession. In a suit brought on an allegation of forcible dispossession, oral evidence, if credible and pertinent, is sufficient to establish the fact of possession. *SHEO SUHAYE ROY v. GOODUR ROY* 8 W. R. 328

*DINOBUNHOO SUHAYE v. FURLONG* . . . 9 W. R. 155

3. ——— Documentary evidence. Mere oral testimony was, under the particular circumstances, held to be insufficient to prove possession of land without any of the documentary evidence (leases, agreements, collection papers, etc.) which is the invariable concomitant of actual possession in this country. *THAKOOR DEEN TEWAREE v. ALI HOSSEIN KHAN* . . . 8 W. R. 341; s.c. on appeal 13 B. L. R. 427; 21 W. R. 340; I. L. R. 11 A. 192

4. ——— Boundary dispute. In a boundary dispute, oral evidence is quite insufficient to establish either the fact of possession or of title. *GOLUCK CHUNDER BOSE v. SREEMURD RAJESHWREE BIDDIADEHUR SOONDEAR NORRENDUR* . . . W. R. 1864, 135

5. ——— Proof of prescriptive title. Oral evidence, if credible, is legally sufficient to prove a prescriptive title. *MEHARRAN KHAN v. MUHDOON KHAN* . . . 7 W. R. 462

6. ——— Suit for purchase-money—Apportionment of money. In a suit for purchase-money, oral evidence is admissible to show how the purchase-money has been apportioned. *DHOKA THAKOOR v. RAM LALL SAHAI* . . . 7 W. R. 408

7. ——— Guarantee. There may be cases in which the Courts would accept and act upon parol evidence of the existence of a guarantee and its amount, but such parol evidence must be beyond suspicion. *LEERAT v. PALKEE RAM* . . . 2 N. W. 210

8. ——— Pedigree, question of—*Proof of native pedigree*. In proving a native pedigree,



**EVIDENCE—PAROL EVIDENCE—contd.****1. VALUE OF, IN VARIOUS CASES—contd.**

the oral statements of deceased relatives will be admitted in the absence of any registers of births and deaths. *MOHEDEEN AHMED KHAN v. MAHOMED*

1 Ind. Jur. O. S. 132  
1 Mad. 92

9. ——— Oral evidence of acknowledgment—*Limitation Act, 1877, s. 19* Under s. 19 of the Limitation Act (XV of 1877), oral evidence of the contents of an acknowledgment cannot be received. *ZULRISIA LADLI BHOAN v. MOTIDEV RATANDEV* . I. L. R. 12 Bom. 268

10. ——— Adjustment of account. An adjustment of accounts may be proved by oral evidence. *KAMPILIKARIBASANAPPA v. SOMA SAM- UDDIRAM* . 1 Mad. 183

11. ——— Evidence of payment of debt on bond. Payment of a debt due on a samaduskut may be proved by oral evidence alone. *GUMAN CALUBRAI v. SONABJI BARJORI* . 1 Bom. 11

12. ——— Evidence of discharge of written obligation. Oral evidence of the discharge of an obligation executed by writing is admissible. *RAMANADHASARAIYAR v. RAMANHATTAR* . 2 Mad. 412

13. ——— Repayment of Mortgage-debt—*Verbal agreement to repay in bond.* Held, that, though there may be a condition for repayment of a mortgage-debt in money, the mortgagee may bind himself to receive the payment in money's worth, and this orally, notwithstanding that the mortgage-debt is created by a written obligation. The mode in which an obligation may be discharged and satisfied by payment is a distinct matter from the obligation itself. *DUNYA v. MONIR SINGH* . 2 Agra 163

14. ——— Proof of payment—*When payments are to be endorsed.* A stipulation in a document that no other payments except payments endorsed on the document itself shall be admitted, does not exclude proofs of payment by other evidence. *SASHACHELLUM CHETTY v. GOBINDAPPA* . 5 Mad. 451

*NUGUR MULL v. AZEEMOULLAH*  
1 N. W. 146 : Ed. 1873, 228

15. ——— Mortgage-bond—*Discharge of—Admissibility of oral evidence—*

16. ——— Evidence Act, s. 92—*Contemporaneous oral agreement—Bond payable by instalments.* In a suit upon a kistbundi bond the defendants pleaded that the debt had been liquidated from the usufruct of certain property,

**EVIDENCE—PAROL EVIDENCE—contd.****1. VALUE OF, IN VARIOUS CASES—contd.**

which, by an oral agreement entered into at the time of the execution of the bond, had been assigned by them to the plaintiffs for that purpose. The assignment having been proved, the Court of first instance, without further enquiry, dismissed the plaintiffs' suit. The District Judge, however, reversed the order of that Court on the ground that under s. 92, Act I of 1872, evidence of the alleged oral agreement was inadmissible, it being a contemporaneous agreement, varying, and to some extent contradicting, the terms of the kistbundi bond. On appeal: Held, that the allegation of the defendants amounted merely to a plea of payment, and that a 92 of the Evidence Act was not a bar to an enquiry as to the foundation of such a plea, and the case was accordingly remanded for an enquiry to be made as to whether the whole or any portion of the kistbundi money had been liquidated from the profits of the land assigned. *GOVINDO PRASAD ROY CHOWDHURY v. ASHUT CHUNDER CHOWDHURY* . 4 C. L. R. 274

**2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES**

1. ——— Proof of existence of mortgage. Where a question arises (not between mortgagor and mortgagee) as to the previous existence or non-existence of a particular mortgage, the oral evidence of the mortgagee that it did exist will be sufficient to prove the fact, without the production of the mortgage-deed. *AMJAD ALI v. MONIRAM KOLITA* . I. L. R. 12 Cal. 62

2. ——— Evidence that bond was executed in different capacity from what

*RUFTON TEWARER* . Marsh. 3 : 1 Hay 24

3. ——— Benami purchase—*Hindus.* to and was was 26

4. ——— Explaining use of benami name. Parol evidence is admissible to show that the name of the party used in a deed was only benami for another person. *TARA MOONEY DERIA v. SHIBNATH TULAPATTUR* . 6 W. R. 191

5. ——— Explaining terms of document. Oral evidence may be submitted to explain a document, but not to vary the terms thereof when such terms are in themselves clear and undoubted. *RAMRUDDUN SINGH v. SAEK KOONWAR* . W. R. 1864, Act X, 22

*CHUNDER NATN DEB v. GANGA GOBIND SINGH ROY* . 1 W. R. 94

**EVIDENCE—PAROL EVIDENCE—*contd.*****2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—*contd.***

MOUN LALL ROY v UNNOPOORNA DOSSEE

9 W. R. 566

6. ——— Petent ambiguity—*Intention of parties.* Extrinsic evidence may be received to identify the instrument when the instrument is ambiguous.

parol evidence is admissible when certain limitations to show what kind of grain the contracting parties had in their contemplation at the time the contract was made. VALLA BIN HATAJI v. SIDOJI BIN KONDARI. 5 Bom. A. C. 67

7. ——— Latent ambiguity—*Altering written contract.* Extrinsic evidence is not admissible to alter a written contract or to show that its meaning is different from what its words import; where there is a latent ambiguity in the wording, parol evidence is admissible to explain it. RAM LOCHUN SHARA v UNNOPOORNA DASSEE. 7 W. R. 144

8. ——— Evidence to explain deed—*Intention of parties.* Parol evidence was held admissible to explain a deed, e.g., to prove that a village not included in a *patti* lease was intended by the parties to be included in it. DUNNET SINGH DOOBA v. JOWAHUR ALI. 8 W. R. 162

9. ——— Admissibility of Evidence to identify land as that mentioned in document. In a suit for redemption of land mortgaged to the defendant, the plaintiffs relied upon a document as containing an acknowledgment of the title of the plaintiff under s. 15 of the Act of Limitation (XIV of 1839). The document contained an admission by the defendant that he held land upon mortgage in a specified district from the temple of which plaintiffs were the trustees. *Held*, that oral evidence was admissible to apply the document to the land to which it was intended to refer. VALANTPUDDUCHERPI PADMANASHAN v. CHOWAKAREN PUDIAFURAYIL KUNHI KOLENDAN. 5 Mad. 320

10. ——— Evidence to identify land mortgaged—*Evidence Act, s. 92, cl. 6, and s. 95.*

commercial security for such payment their one hiswa five biswansi share." *Held*, in a suit on the bond to enforce a charge on the one hiswa five biswansi share of the obligors in *mouzah S*, that, under prov. 6, s. 92, and s. 95 of Act I of 1872, evidence might be given to show that the obligors hypothecated by the bond their share in *mouzah S*. RAM LAL v. HARRISON. I. L. R. 2 All. 832

11. ——— Evidence to explain *clausae* in document—*Evidence Act, s. 92—Specific Relief Act, ss. 17, 22, and 26.* The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter alia*, that the defendants had

**EVIDENCE—PAROL EVIDENCE—*contd.*****2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—*contd.***

agreed to sell, etc., under "certain conditions as agreed upon." The defendants alleged that the

parol evidence meant upon."

—The s. 92 as to the of s. 9

CUTTS v BROWN

I. L. R. 8 Calc. 326; 7 C. L. R. 171

12

tity

prom

missory note by which the defendant promised to pay to the plaintiff Rs. 1,000 with interest. The

num. Both these sums of Rs. 1,000 and Rs. 900 I engage to pay you." *Held*, that parol evidence was admissible to show that, though the letter was addressed to W, the plaintiff S was the person referred to as W, and that the letter was given to her. Parol evidence was also admissible to show what debt was referred to in the acknowledgment, and that it related to the promissory note. UMESH CHANDRA MOOKERJEE v. SAOEMAN

5 B. L. R. 632 note

e.g. UMESH CHANDRA MOOKERJEE v. SAOEMAN

12 W. R. O. C. 2

13. ——— Evidence to supply words in deed partially destroyed by insects. The lower Court received parol evidence to supply words in an old deed, lost in consequence of the parts on which they were written having been eaten by insects. *Held*, that the parol evidence was properly admitted. BENODHEE LALL ROY v. DULLOO SIECAR. Marsh. 620

14. ——— Ambiguity in document

—Ancient document—*Evidence of acts of author.* Where a document is an ancient one and its mean-

ing cause courts in the presidency towns; the words "debt levied by execution" used therein being ambiguous with respect to the sheriff's right to poundage. VINAYAK VASUDEV v. RITCHIE, STEWART & CO. 4 Bom. O. C. 139

15. ——— Evidence to explain circumstances connected with transaction—*Conduct of parties—Value of property.* Parol evi-

**EVIDENCE—PAROL EVIDENCE—contd.****2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—contd.**

dence is admissible to prove the conduct of the parties, the value of the property, and other circumstances connected with the transaction between the parties to the written contract. **PHILOO MOSEZ DOSSIA v. GREESH CHUNDER BRUTTACHARJEE**

**S W. R. 515**

**18. ——— Intention of parties—Construction of document.** The Courts, in order to ascertain the intention of the parties, must look to the writing alone, and not to the statement of the parties themselves or their witnesses. **ODIT NARAIN v. MAHESHW BUX SINGH**

**Agra F. B. 52; Ed. 1874, 39**

**17. ——— Contract not containing whole agreement.** The rule that verbal evidence is not admissible to vary the written agreement is not applicable to a contract which is not a whole agreement.

appear either by direct evidence or by informality in the writing. **BENAREE LALL DEY v. KANIKSE SOONDUREE**

**14 W. R. 310**

**18. ——— Explanation of written agreement by parol evidence.** In resisting specific performance of an agreement it is competent to the defendant to show by oral evidence that the real intention of the parties to the agreement has not been correctly expressed in the written document. **VISHWANATH ATMARAM v. BAPU NARAYAN**

**1 Bom. 262**

**19. ——— Execution of deed.** **PER PEACOCK, C.J.,** **BAYLEY and CAMPBELL, JJ.**—Verbal evidence is not admissible to vary or alter the terms of a written contract where there is no fraud or mistake, and in which the parties intend to express in writing what their words import. The parties cannot show by mere verbal evidence that at the time of the agreement what they expressed by their words to be an actual sale was intended by them to be a mortgage only. It is, however, material to enquire whether, having regard to the acts and conduct of the parties and having reference to the amount of the alleged purchase-money and the real value of the interest to be sold, the parties intended the writing to operate as an absolute sale and treated the transaction as such, or as a mortgage only. **PER NORMAN and PUNDIT, JJ.**—Parol evidence is admissible to show that a bill of sale, though absolute in its terms, was a mortgage. **KASHI NATH CHATTERJEE v. CHANDI CHARAN BANERJEE**

**B. L. R. Sup. Vol. 383: 5 W. R. 58**

**RANDER KOONWARRE v. SHIH DYAL SINGH**

**7 W. R. 334**

**20. ——— Mortgage—Absolute sale, deed of A, by a deed purporting to be a deed of absolute sale, conveyed certain property to B. The deed was registered C claimed a right of pre-emption.** **Held per PEACOCK, C.J.,**

**EVIDENCE—PAROL EVIDENCE—contd.****2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—contd.**

**BAYLEY and CAMPBELL, JJ. (NORMAN and PUNDIT, JJ., dissenting),** that the acts of the original parties or their statements could be admitted as against a third party to prove that their intention was different from that which their written deed expressed and was intended by them to express. **MILAK CHAND SURMA v. KARLU CHANDRA SURMA**

**B. L. R. Sup. Vol. 389: 5 W. R. 76**

**21. ——— Evidence Act (I of 1872), s. 92—Oral evidence to show intention of parties.** A deed of sale of land for value was accompanied by a deed of agreement between the parties for purchase back by the vendor of the land on payment by him of money to the vendee on a future date fixed. The deeds were followed by a deed of agreement between the parties to the effect that the vendee should not be bound to pay the money until the land was sold to a third party.

his right of redemption as upon a mortgage by conditional sale. **Held,** that oral evidence for the purpose of ascertaining the intention of the parties to the deeds was not admissible, being excluded by the enactment in s. 92 of the Indian Evidence Act, 1872. This case had to be decided on a consideration of the documents themselves, with only such extrinsic evidence of circumstances as might be required to show the relation of the written language to existing facts. **BAKRISHEV DAS v. LEGOE**

**I. L. R. 23 All 149**

**L. R. 27 I. A. 53**

**4 C. W. N. 153**

**Affirming decision of High Court**

**I. L. R. 19 All. 434**

**22. ——— Evidence Act (I of 1872), s. 92—Oral evidence to show intention of parties.**

**DEPINNER v. ESCROW—Deed, delivery of.**

**23. ———** Where a deed is delivered to the party in whose favour it is to operate, it is not valid until it is shown that it only. **MOHS**

**24. ——— Purchase under joint deed—Agreement as to division.** Where the plaintiff and defendants purchased property by a joint deed: **Held,** that parol evidence was admissible to show the terms on which they agreed amongst themselves to purchase it, and also as to the mode in

**EVIDENCE—PAROL EVIDENCE—contd.****2. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES—contd.**

which the land so purchased was to be divided.  
**RAM GUTTEE v. IBRAHIM ISMAILJEE SEEDAT**  
 7 W. R. 353

**25. — Waiver—Evidence Act (I of 1872), s. 92—Evidence to contradict statement in a *kabuliyat*—Rate of rent, evidence to contradict.** Oral evidence is not admissible for the purpose of contradicting a statement made in a registered *kabuliyat* as to the amount of rent; but evidence is admissible to show that, as between the landlord and the tenant, the *kabuliyat* was never intended to be acted upon or enforced, or that there was a waiver of some of its terms. The evidence that since the execution of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat*, is admissible to show that the intention of the parties was that the *kabuliyat* from the very first was not intended to be acted upon, or that there had been a waiver by the parties. **BENI MADHUB GORANT v. LALMOITI DASSI (1893)**  
 6 C. W. N. 242

**3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.**

**1. — Evidence to vary deed—Evidence of conduct of parties—Oral stipulation at variance with a written document—Evidence Act (I of 1872), s. 92.** Evidence cannot be admitted to prove a contemporaneous oral stipulation varying adding to, or subtracting from, the terms of a written contract. Evidence of the acts and conduct of the parties to a written contract is not admissible if tendered solely in support of an oral stipulation varying its terms. **DADIMODDE PAIK v. RAJIV TARIDAR**

**1 L. R. 5 Cal. 300 : 4 C. L. R. 419**

**2. — Parol evidence is inadmissible to vary the terms of written document except under special circumstances** **RAM DEVE KOWER v. BISHEN DYAL SING** 8 W. R. 339

**3. — Conduct of parties—Inadequacy of consideration—Parol evidence is not admissible to alter or vary a written document, even if the inadequacy of the consideration and the conduct of the parties show that the transaction was different from what appears in the instrument or writing** **MADHAB CHANDRA ROY v. GANGADHAR SAMANT**

**3 B. L. R. A. C. 83 : 11 W. R. 450**

**4. — Contemporaneous**

the Court to believe that the terms expressed are not the real ones. Evidence of a contemporaneous oral agreement to suspend the operation of a written

**EVIDENCE—PAROL EVIDENCE—contd.****3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—contd.**

**5. — Evidence Act,**

to the plaintiffs,—the lower Court was of opinion that prov. 4 of s. 92 of the Evidence Act (I of 1872) was a bar any to inquiry into the merits of this defence. *Held*, that the lower Court was wrong. The object of the oral agreement was not to rescind the original transaction, but to transfer any rights acquired by the plaintiffs to the defendant, and was an entirely new transaction. **RAKHMABAI v. TUKARAM** 1 L. R. 11 Bom. 47

**6. — Suit in Small Cause Court—Agreement not correctly stated in**

between the parties, and thereby justify the Court in its character of a Court of equity in amending the agreement in a suit for that express purpose. **BREWSTER v. PAUL** 12 W. R. 532

**7. — Suit on bond—**

*Intention of parties as to penal clause.* In a suit on a bond the defendant sought to adduce evidence to show that after the execution of the bond the plaintiff stated that a certain clause as to a high rate of interest in default was intended to operate as a penal clause, and that the conditions therein would not be enforced. *Held*, that the evidence tendered was not admissible. **Balshu Lakshman v. Govinda Kanji**, 1 L. R. 4 Bom. 594; and **Hem Chunder Soor v. Kally Churn Dass**, 1 L. R. 9 Cal. 538, approved and distinguished. **BEHARY LALL DASS v. TEJ NARAYAN** 1 L. R. 10 Cal. 764

**8. — Proof of con-**

*consideration different from that expressed in contract.* Parol evidence is admissible to show that in an agreement to pay an annuity there was a consideration for the granting of the annuity different from that expressed in the agreement. **JAFAR ALI NIZAM ALI v. AHMED ALI ISMAH HANIDAR DAKSH** 5 Bom. A. C. 37

**9. — Evidence Act**

*(I of 1872), s. 92, prov. 4—"Oral agreement"* Variation of terms of registered instrument—Oral agreement to reduce rent. The lessor of certain land held by the lessee under a registered deed of lease agreed to a reduction in the rent. The agreement was not reduced to writing, but rent was thereafter paid and accepted at the reduced rate. On a suit being brought to recover arrears of rent at the rate

**EVIDENCE—PAROL EVIDENCE—contd.****3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—contd.**

reserved in the registered deed: *Held*, that, under s. 92, prov. 4 of the Evidence Act, an agreement to accept reduced rent cannot be implied or inferred from the acts and conduct of the parties; and an unwritten agreement, if so implied, amounts to an oral agreement, within the meaning of the proviso. The word "oral" is used in s. 92, prov. 4, of the Evidence Act in the sense of being not committed to writing, and the words "oral agreement" in that section include all unwritten agreements whether arrived at by word of mouth or otherwise. **MAYANDI CHETTI v OLIVER**

**I. L. R. 22 Mad. 261**

**10. — Evidence to contradict deed**  
—*Contract contained in written instrument—Custom, evidence of.* Where a written instrument provided for a joint tenancy and joint contract by all the parties executing to pay the whole rent of a village without any reference to the quantity of land in the holding of each: *Held*, that oral evidence was not admissible to show that separate specific contracts were entered into by each of the parties, and it made no difference that the evidence was put forward as evidence of a custom. **MORRIS v. PANCHANADA PILLAY** . 5 Mad. 135

**11. — Fraud or mistake, allegation of.** Parol evidence cannot be admitted to contradict a deed except when fraud, mistake, surprise, or the like is alleged. **ERSKINE & Co. v. GEORGE CHUNDER DOTT**

**W. R. 1864, 58**

**KASSIM MONDLE v. NOOR BIBE** . 1 W. R. 76

**12. — Subsequent written agreement to alter rent—Variation of lease—Evidence Act (I of 1872), s. 92—Form of decree.** In the year 1879 the plaintiff granted a lease of certain lands to the father of the defendants. In May 1889, he agreed in writing to allow the defendants an abatement of rent to the extent of Rs 100 per annum. This agreement was not registered, but was stated in by the plaintiff against the

**HATYESH CHUNDER SIRCAR v DHUNPUT SINGH**  
**I. L. R. 24 Cal. 20**

**13. — Evidence of verbal agreement not to enforce document.** When a plaintiff attempts to enforce, as a contract of loan binding upon the defendant, immediately upon its execution, an instrument which he verbally agreed at the time should not so operate, and for which the defendant received no consideration, the latter may

**EVIDENCE—PAROL EVIDENCE—contd.****3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—contd.**

give evidence of the verbal agreement. **ANNAAGURU BALA CHETTI v KRISTNASWAMI NAYAKAN**

**1 Mad. 457**

**14. — Contemporaneous oral agreement—Evidence Act, s. 92.** Plaintiff sued to recover Rs 21,650-5-1, balance of principal and interest due. He alleged in his plaint that between the 16th February and 23rd July 1867 he paid at the request of defendant's father, the late G. F. Fischer, Rs 25,000 on account of the Shrivengam zamindari; that the defendant, having assumed the management of the zamindari under an assignment from his father, gave plaintiff a receipt for the said sum of Rs 25,000 under date the 7th August 1867; that in October and December 1867 defendant paid the sum of Rs 5,000 and Rs 3,000, respectively, in part liquidation of the debt, but since 20th December 1867 refused any further payment. Defendant answered that this debt due by the late G. F. Fischer had been validly released by the terms of an assignment dated 29th July 1871; that the receipt given by defendant was a mere acknowledgment of the payment of Rs 25,000 by the plaintiff to the late G. F. Fischer, and imposed no obligation on defendant to pay the said amount; that there was no consideration for defendant's promise to pay Rs 25,000; that when defendant executed the receipt he was not aware of the effect of the release; and that the part-payments were made under a mistaken idea of liability. At the hearing it was not disputed that a release was executed, and that this claim was embodied and intended to be embodied in that written release, but it was attempted to set up a contemporaneous oral agreement, leaving this claim as a subsisting demand. The Civil Judge dismissed the suit, holding that this oral evidence could not be adduced to contradict the written release. *Held*, on regular appeal, that the Civil Judge was right. The principle is,—Is the matter of the contemporaneous oral agreement so outside

what they were intended to mean. The subsequent receipt for the money did not create a debt, for the release had already extinguished it. **FISCHER v. FISCHER** . 6 Mad. 393

**15. — Evidence Act, s. 92—Agreement for renewal inconsistent with terms of lease.** In a suit by a lessor for possession and for occupation after the expiry of a lease for three years, the defendant pleaded that it had been verbally agreed between himself and his lessors that he should be entitled to renewal of the lease for a further period of three years, if he so desired. *Held*,

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that evidence of this oral agreement was inadmissible under s. 92 of the Indian Evidence Act (I of 1872), being inconsistent with the terms of the second clause of the lease, which was as follows:—"If you mean me to vacate at the completion of the term, you must give one month's notice. In accordance therewith I will vacate and give up possession to you." *ERRAHIM PIR MAHOMED v. CURSETJI SORABJI DE VITRE*.

I. L. R. 11 Bom. 644

16. ———— *Mortgage of, and advances to, indigo concern—Evidence Act, s. 92.* *M*, the manager of an indigo concern, under s. 243, Act VIII of 1859, by a deed dated the 1st February 1873, in which the owners of the concern joined, which was duly registered, and which was made with the Court's sanction, mortgaged the concern, and pledged and assigned the season's crop to *A* and *B*, who were pardanashins, to secure repayment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A* and *B* and partly of a new loan to the extent of what was described in the deed as the estimated outlay of the season. The deed provided that *A* and *B* should have a first charge upon the indigo to be manu-

the understanding that the same course was to be followed in the present instance that the mortgage-deed to *A* and *B* was executed. In a suit against *A*, *B*, and *M*, to establish a first

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charge in respect of their advances to *M* upon 350 maunds of the indigo: *Held per GARTH, C.J.* *PHEAR* and *MACPHERSON, JJ.*, that the alleged oral agreement between *C* and *M*, as to obtaining loans, if necessary, from the plaintiffs and giving them a first charge on the season's indigo in respect of such loans, was in direct contravention and defeasance of the mortgage-deed to *A* and *B*, and was therefore inadmissible in evidence under s. 92 of the Evidence Act. *MORAN v. MITTU DINI*. I. L. R. 2 Calc. 58.

17. ———— *Evidence Act, s. 92—Admissibility of parol evidence inconsistent with kabuliat.* Plaintiff having sued for arrears of rent payable under a kabuliat in respect of a share of four villages, the defendant pleaded that he had been put in possession of one only of the four leased to him, and that therefore he was not liable for the whole claim. Parol evidence was admitted to show that at that time the defendant was not in possession of the other three villages.

only pay rent on being put completely into possession and that, although payment of rent is not ordinarily enforced, unless the lessor puts the lessee into possession, it was quite competent to the parties to waive such privilege. *RAM KISHORE LALL v. NAND RAM*. 4 C. L. R. 100.

18. ———— *Evidence Act, s. 92—Verbal assignment of rent of land in lieu of interest—Jamog.* Subsequently to the execution and registration of a bond, a jamog was made orally between the creditor and debtor, by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest, the latter agreed to release the tenants from payment of rent to himself, and the tenants (who were parties to the arrangement) agreed to pay their rents to the creditor. No mutation of names was effected in the revenue registers. The creditor brought a suit against the debtor to recover the principal and interest agreed to be paid under the bond, alleging that he had never received any rents under the jamog. *Held*, that the jamog was not a substantive assignment of interest.

19. ———— *Evidence Act (I of 1872), s. 92, prov. 4—Endorsement on grant—Transaction distinct from original grant.* The plaintiff sought to attach a certain bak as belonging to his judgment debtor *K*. The defendant, who was the original grantor of the bak, pleaded a re-grant

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SHENO. Therefore over the said salary a sum to right or title." The defendant offered to put in

this transaction. HERAMDEV DHARNIDHARDEV v. KASHINATH BHASKAR . I. L. R. 14 Bom. 472

20. — Evidence to add terms to deed—*Evidence Act, s. 92—Suit for specific performance of written contract subsequently varied*

in fact did pay the rent during the term in proportion to the interest of the lessors. On the expiration of the term, he sued for specific performance of the contract, as modified, for a renewal of the lease of the 6 annas. *Held*, that evidence of the parol variation of the contract was not admissible under s. 92 (4) of the Evidence Act, and that the plaintiff was not entitled to the relief sought. DWARKA NATH CHATTERJEE v. BROODHAN PANDA

7 C. L. R. 577

21. — Evidence to add terms to Contract—*Evidence Act, s. 92, prov. (3)—Parol evidence in addition to condition in kistbundi—Part performance of portion of obligation in kistbundi* Per GARTH, C.J.—Where, at the time of the execution of a written contract, it is orally agreed between the parties that the written agreement shall not be of any force until some condition precedent has been performed, the rule that parol evidence of such oral agreement is admissible to show that the condition has not been performed, and consequently that the contract has not become binding, cannot apply to a case where the written

contract may contain. JUGRANUND MISSEER v. NERORAN SINGH

I. L. R. 6 Calc. 433; 7 C. L. R. 347

22. — Evidence Act, s. 92—Bond—Contemporaneous oral agreement providing for mode of repayment In defence to a

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amount due on the bond should have been deducted from the rents; that in accordance with this agreement, the plaintiff obtained possession of the land, and that he thus realized the whole of the

BAKHSH v. DUNJAN . I. L. R. 8 All. 500

23. — Evidence Act, s. 92, prov. (1)—Fraud—Unlawful consideration—Act IX of 1872, s. 23. Plaintiff sued to recover rent under a kabulat. The defendant admitted execution of the kabulat, but asserted that he executed it in order to enable the plaintiff to sell the land at a high price, the plaintiff agreeing to make over to him Rs 242 out of the purchase-money.

KASHI NATH CHUCKERBUTTY v. BRINDABAN CHUCKERBUTTY . I. L. R. 10 Calc. 649

24. — Wagering contract—*Evidence Act, 1872, s. 93—Time bargain—Sale of Government securities* The question whether an unambiguous written contract for the sale and purchase of Government paper is a contract or

I. L. R. 9 Calc. 791

25. — Evidence Act, s. 92, prov. 1—Contract—Wagering contract Bombay Act III of 1865—Oral evidence admissible to prove a contract to be a gaming transaction. In an action on a contract for the purchase and sale of goods on a certain day the defendant pleaded that the contract was a wagering contract; that the parties never intended to give or take delivery of the cotton, and that the contract was therefore void. *Held*, that oral evidence was admissible to prove the defence set up by the defendant. ANURCHAND HEMCHAND v. CHAMSI UGRCHAND

I. L. R. 12 Bom. 585

26. — Evidence Act (I of 1872), s. 92—Oral evidence to show that an agreement in writing to sell is only a wager. Oral evidence is admissible to show that an agreement in writing to sell is really only an agreement by way

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of wager. (See Evidence Act, s. 92.) *Anupchand Hemchand v. Champri Ugerchand*, I. L. R. 12 Bom. 585, followed. *Juggernath Sew Bux v. Ram Dyal*, I. L. R. 9 Cal. 791, discussed from. *Eshoo Doss v. Venkatasubba Rao*

I. L. R. 17 Mad. 480

27. ——— Bill of exchange—Evidence Act, s. 92—Exclusion of evidence of oral agreement. It was agreed between the Bank of Bengal at Calcutta and C & Co., who carried on business there, that the branch of the Bank at

C & Co., and that the railway receipts for such consignments should be forwarded to C & Co., there, by the

I. L. R. 2 All. 598

28. ——— Registered contract—Evidence Act, s. 92, prov. (4)—Oral agreement to rescind registered contract. D sold a house to P and executed a deed of conveyance which was duly registered. P did not pay the purchase-money, and therefore

v. DAVU BIN DHONDIA . I. L. R. 2 Bom. 547

29. ——— Evidence to vary nature of deed—Parol evidence to vary contents of documents—Mortgage by Hindu pardanashin lady—Execution, proof of. In a suit to enforce a mort-

her ignorance was taken advantage of, or that undue influence was exerted to induce her to execute

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the deed, the Court will refuse to enforce the mortgage. The onus is upon the party interested in upholding the transaction to show the absence of undue influence, and that its terms were fair and equitable. He should show that the party he wishes to bind had good advice in the matter, and acted therein independently of himself. This is especially so when there was any fiduciary relationship between the contracting parties. *KANAI LALL JOWHARI v. KAMINI DEBI*

I B. L. R. G. C. 31 note

30. ——— Deed of sale. Oral evidence is not admissible to set aside a deed of sale which by its terms is clearly absolute. *JUOO-BUNDHOO MOOKERJEE v. LUCKHESUREE DEBIA*

W. R. 1864, 388

RAM DOOLAL SEN v. RADHA NATH SEN

23 W. R. 187

31. ——— Parol evidence qualifying an engagement in a written document—Admissibility of such evidence. The proper meaning of prov. 3 to s. 92 of the Evidence Act (I of 1872) is that a contemporaneous oral agreement, to the effect that a written contract was to be of no force or effect, and that it was to impose no obligation at all until the happening of a certain event, may be proved. An oral agreement purporting to provide that the promise to pay on demand in a promissory note, though absolute in its terms, was not to be enforceable by suit until the happening of a particular event, i.e., that the legal obligation to perform the promise was to be postponed, is not such an agreement as falls within the prov. 3 to s. 92 of the Evidence Act. *Jugatanund Misser v. Nergan Singh*, I. L. R. 6 Cal. 433, and *Cohen v. Bank of Bengal*, I. L. R. 2 All. 593, followed. *RAM-JEHAN SENOWAY v. OGHORE NATH CHATTERJEE*

I. L. R. 25 Cal. 101  
2 C. W. N. 188

32. ——— Conveyance by lease and release in fee, under the circumstances, held to be subject to a parol defeasance, and to be in the nature of a mortgage, with a power of repurchase on the footing of redemption; and a reconveyance was decreed. *MUTTY LALL SEAL v. ANKUNDO CHUNDER SANDLE* . 5 Moo. I. A. 72

33. ——— Parol evidence

*SANKAR LAL v. JAGMOHAN MOONDHO* . I. W. R. 2d

*SOOKNA MEHDEE v. GUNDHOO RAM MUNDUL*

12 W. R. 264

*BANESHER DASS v. BANEE MADHUB DOSS*

18 W. R. 256

*NANDOLALL MITTER v. PROSONNO MOYEE DEBIA*

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34. ———— *Allegation of fraud and collusion—Execution of deed.* In a suit by a pardah lady to set aside a bill of sale, execution of which by her had been obtained by collusion and fraud, the Court admitted parol evidence to show that the bill of sale was intended by her to operate only as a mortgage, and to vary the rate of interest therein stipulated for. *MANOHAR DASS v. BHAGABATI DAS* 1 B. L. R. O. C. 28

35. ———— *Mortgage—Bill of sale—Suit for specific performance.* In a suit

that it was intended to be a mortgage and not an absolute bill of sale *BHOLANATH KHATTI v. KALIPRASAD AGURWALLA* 8 B. L. R. 80

36. ———— *Evidence Act, s. 92—Oral agreement contemporaneous with deed of sale.* The defendant admitted the execution of a deed of sale, but alleged that contemporaneously with it he entered into an oral agreement with the vendee that the deed was to be merely a security for the payment of a certain sum of money by the defendant to the vendee, and that a large portion of the sum so secured had already been paid to the vendee. *Held*, in special appeal, that, as the alleged agreement was wholly inconsistent with the terms of the deed of sale, evidence to prove such agreement was excluded by Act I of 1872, s. 92. *Mutty Lal Seal v. Annundo Chander Sandle*, 5 Moo. I. A. 72, distinguished. *BANAFI v. SUBBANDAS JAGJIYANDAS* 1 L. R. 1 Bom. 333

37. ———— *Mortgage—Sale—Oral evidence when admissible to prove that* *Act (I of 1872) of parties—whether plaintiff or defendant—contemporaneous*

for that purpose allow parol evidence to be given of the original oral agreement. *Daimoddee Paik v. Kaim Taridar*, 1 L. R. 5 Cal. 300, dissented from. Although parol evidence will not be admitted to prove directly that simultaneously with the execution of a bill of sale there was an oral agreement

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by way of defence, yet the Court will look to the subsequent conduct of the parties, and if it clearly appears from such conduct that the apparent vendee treated the transaction as one of mortgage, the Court will give effect to it as a mortgage and nothing more. It is a mistake to reject evidence of the conduct of parties to a written contract on the ground that it is only an indication of an unexpressed unwritten contract between them. Conduct is, no doubt, evidence of the agreement out of which it arose; but it may be very much more. In many cases it may amount to an estoppel. In such a case it is clear that evidence of conduct would be strictly admissible under s. 115 of the Evidence Act (I of 1872). And even when conduct falls short of a legal estoppel, there is nothing in the Evidence Act which prevents it from being proved, or, when proved, from being taken into consideration. Courts of Equity in England will always allow a party (whether plaintiff or defendant) to show that an assignment of an estate, which is on the face of it an absolute conveyance, was intended to be nothing more than a security for debt, and they will not only look to the conduct of the parties, but will admit mere parol evidence to show or explain the real intention and purpose of the parties at the time. The exercise of this remedial jurisdiction is justified on two grounds, viz., part performance and fraud. The Courts in India are not precluded by the Evidence Act from exercising a similar jurisdiction. The rule of estoppel, as laid down in s. 115, covers the whole

remain in possession on the understanding and belief

to be the most effectual encouragement to it, and accordingly in England the Courts, for the purpose of preventing fraud, have in some cases set aside the

posed by the Evidence Act. *the rules laid down by ss. 91 and 92 of that Act, the Courts will not be acting in opposition to the intention of the Legislature, which by enacting the provisions of s. 26, cl (c), of the Specific Relief*

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of Chancery. *Quere*: Whether prov (1) to s. 92

grantee from proceeding upon his document. *BALSH LULSHMAN v. GOVINDA KANJI*

**I. L. R. 4 Bom. 594**

38. *Evidence Act, s. 92—Admissibility of evidence to contradict document.* A, by a deed of sale absolute on its face, transferred certain land to B for the sum of Rs 379. A alleged that at the time the transaction was entered into it was understood and orally agreed that the sale was merely by way of security for the payment of Rs 400 due to a third party. C, under a compromise made by A with C for the satisfaction of a decree for Rs 32, which the latter held against A, and that it was at the same time orally agreed between

mission of evidence of the oral agreement to contradict the deed of sale which had admittedly been contemporaneous. *RAM DYAL DASJE v. HEERA LALL PARAY*

**3 C. L. R. 388**

39. *Evidence Act, s. 92—Evidence contradicting document—Mortgage—Conditional sale.* It does not necessarily follow from s. 92 of the Evidence Act that subsequent conduct and surrounding circumstances may not be given in evidence for the purpose of showing that

once of the mortgage, who merely bought from a person who was in possession of title-deeds and was the ostensible owner of the property. *KASI NATH DAS v. HURNIHUR MOOKERJEE*

**I. L. R. 9 Calc. 898; 13 C. L. R. 11**

40. *Evidence Act (I of 1872), s. 92—Mortgage—Sale—Conduct of parties—Oral evidence when admissible to prove*

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which the kotala was executed, and of the conduct of the parties to show that the document had all along been intended to operate as a mortgage.

decided in that case. *BALSH LULSHMAN v. GOVINDA KANJI*, **I. L. R. 4 Bom. 594**, followed. *RAM DYAL DASJE v. HEERA LALL PARAY*, **3 C. L. R. 386**, and *DAMODICE PAIK v. KAIM TARIDOR*, **I. L. R. 5 Calc. 300**, dissented from. *HEM CHUNDER SOOR v. KALLY CHURN DAS*

**I. L. R. 9 Calc. 528; 12 C. L. R. 287**

41. *Evidence Act (I of 1872), s. 92—Oral evidence to show that an apparent sale-deed was a mortgage.* In a suit by an attaching creditor to set aside an order (which allowed an objection made to his attachment by one claiming under a sale-deed from the judgment-debtor), and for the declaration of the judgment-debtor's title, the sole issue framed was whether the sale-deed was *bona fide* and supported by consideration. *Held*, that the plaintiff was entitled to show by collateral evidence that the sale deed was really a usufructuary mortgage, and that the mortgage had expired. *VENKATRAMAM v. REDDIAR*

**I. L. R. 13 Mad. 494**

42. *Evidence Act (I of 1872), s. 92—Sale-deed—Conduct of parties*

render the defendant's title void.

were entitled to prove by oral evidence that the transaction was a mortgage and not a sale, unless the plaintiff was an innocent purchaser for value without notice of the mortgage. *LINCOLN v. WRIGHT*, **4 De G. & J. 16**, followed. *VENKATRAMAM v. REDDIAR*, **I. L. R. 13 Mad. 494**, considered. *RAKESH v. ALAGAPPUDAYAN*

**I. L. R. 18 Mad. 80**

43. *Evidence Act, (I of 1872), s. 92—Oral evidence when admissible to prove that an apparent sale is a mortgage—Admissibility of parol evidence to vary a written contract.* Oral evidence of the acts and conduct of parties, such as oral evidence that possession remained with the vendor notwithstanding the execution of a deed of out-and-out sale, is admissible to prove that the deed was intended to operate only as a mortgage. *PREONATH SHARMA v. MADHU SUDAN BURIYA*

**I. L. R. 25 Calc. 803  
2 C. W. N. 562**

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44. — Evidence Act (I of 1872), s. 92—Evidence of conduct—Return of a lease—Intention of parties. Evidence of con-

45. — Evidence Act (I of 1872), s. 92, *prov. 4*—Mortgage—Power of sale—Suit to set aside sale under power of sale—Promise by Mortgagee to postpone sale—Evidence of such promise admissible. The plaintiff mortgaged certain property to the first defendant on 28th December 1895. By the mortgage-deed the

defendant was the purchaser. The plaintiff now sued to set aside the sale and he allowed to redeem, alleging that on the day before the sale the first de-

any of the terms of the mortgage; it was merely on agreement to forbear, for a period of four days, from the exercise of the power of sale given by the mortgage. It therefore did not fall within *prov. 4* of s. 92 of the Evidence Act (I of 1872). **THEBIAK GANGADHAR RANADE v. BHAGWANTAS MULCHAND**. I. L. R. 23 Bom. 348

46. — Evidence of agreement to pay interest on document—Evidence of contemporaneous agreement—Suit on *hath-chitta*. In a suit upon a *hath-chitta*, the Court, having

47. — Suit on promissory note. Where a promissory note is silent as to interest, a verbal agreement made subsequently to the execution of the note to pay interest may be proved under cl. 2 of s. 92 of the Evidence Act. In the matter of **SOWDAMONEE DEBYA v. SPALDING**. 12 C. L. R. 163

48. — Suit on promissory note. When a note of hand promised repayment of a loan, with interest at five per cent, without stating either *per mensem* or *per annum*; *Held*, that the construction that interest was to be calculated without reference to time was contrary to all practice, and that the ambiguity was one

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which might fairly be explained by previous transactions between the parties and by custom. **MAHOMED SHAMSODDEEN v. ABDOL HEO**

W. R. 1884, 379

Evidence to vary deed—*Evidence to show that a gift*—*Admission of contract*—*Evidence admissible to show that a deed of sale was really meant to be a deed of gift* and not a deed of sale. **Sheenb Singh v. Asgur Ali**, 6 W. R. 267; **Walee Mahomed v. Ku Sahai gushai**

50. — Conduct of parties—Evidence Act (I of 1872), s. 92—Oral evidence when admissible to prove that a conveyance is a mortgage by way of conditional sale—Admissibility of parol evidence to vary a written contract. Under the provisions of s. 92 of the Evidence Act (I of 1872), oral evidence of the acts and conduct of parties, such as evidence of the repayment of the money, the return of the deed and the exercise of the acts of the parties, may be admitted to show that a deed of sale was really meant to be a deed of gift. **The case of Balkishen Das v. Legge**, L. R. 27 I. A. 58, did not in any way affect the rule laid down in the case of **Preonath Shaha v. Madhu Sudan Bhuiya**, I. L. R. 25 Cal. 603. **KHAKHAR ABDUL RAHMAN v. ALI HAFEZ** (1900)

I. L. R. 28 Cal. 256;  
s.c. 5 C. W. N. 351

51. — Evidence Act (I of 1872), s. 92—Acts and conduct of parties—Oral evidence when admissible to prove that a conveyance is really a mortgage by way of conditional sale.

conveyance was really a mortgage by way of conditional sale. **Balkishen Das v. Legge**, L. R. 27 I. A. 58, explained. **Preonath Shaha v. Madhu Sudan Bhuiya**, I. L. R. 25 Cal. 603, referred to. **MAHOMED ALI HOSSEIN v. NAZAR ALI** (1901)  
I. L. R. 28 Cal. 289;  
s.c. 5 C. W. N. 326

52. — Registered habuhyat, proof of—Contemporaneous oral agreement for reduction of rent—Evidence Act (I of 1872), s. 92. A contemporaneous oral agreement cannot be proved under s. 92 of the Evidence Act, to show that the rent is less than what was stated in the registered

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*kaluliyat*. Per GUTTA, J.—The mere acceptance of a reduced rent, though it may amount to a full acquittance, cannot operate as a binding contract without proof of the agreement forming the basis of the reduction granted; and such an acceptance does not amount to such an agreement or release of a portion of the rent as to have a binding effect. RADHA RAMAN CHOWDERY v. BHOWANI PRASAD BHOSHIK (1901) . . . . . 6 C. W. N. 60

53. ———— *Evidence Act (I of 1872), s. 19, paragraph 2—Written acknowledgment—Date—Alteration.* Where a written acknowledgment has been made, and the date is in the Indian Umemram,

I. L. R. 25 Bom. 616, distinguished. GULAMALI DALUMIA v. MIYABHAI MAHOMADRAI (1901)

I. L. R. 28 Bom. 128

54. ———— *Evidence Act (I of 1872), s. 92—Evidence to vary written instrument—Execution of sale-deed—Subsequent redemption suit on footing that the sale was in fact a mortgage—Evidence of subsequent conduct to show collateral agreement—Inadmissibility.* On the 23rd September 1876, defendant wrote to plaintiff, inviting plaintiff to execute a sale-deed of certain land in favour of defendant and promising that, if plaintiff did so, defendant would discharge plaintiff's debts out of the income to be derived from the land, and would, after the debts had been discharged, or before, if so requested, restore the land to plaintiff, upon payment by plaintiff of a sum of money that had been advanced to him by defendant. This document was not registered. On the 29th September 1876, plaintiff executed a deed of sale of the land in defendant's favour, which was unconditional in its terms, and which was duly registered. Plaintiff subsequently brought a redemption suit against defendant on the deed of 29th September, and he contended that, although that deed was, in its terms, an absolute conveyance, he was entitled to adduce evidence of the subsequent conduct of himself and defendant, to show that the transaction was, in fact, not a sale but a mortgage. *Held*, that the evidence was not admissible. *Balkrishen Das v. Legge*, L. R. 27 I. A. 68, followed. *Khankar Abdur Rahman v. Ali Hafez*, I. L. R. 28 Cal. 256, and *Mahomed Ali Hossain v. Nazar Ali*, I. L. R. 28 Cal. 289, dissented from. Plaintiff further contended that the contract was not contained in the deed of sale alone, but must be gathered from both of the documents referred to above. *Held*, that the document of 23rd September, being unregistered, was inadmissible in evidence, as it purported to create or limit an interest in the immovable property conveyed under the deed of sale. *Pranlal Anand v. Lalshmi Anand*, L. R. 26 I. A. 101, followed. *ACHUTARAMARAJU v. SUBBARAJU* (1901)

I. L. R. 25 Mad. 7

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

55. ———— *Evidence Act (I of 1872), s. 92, proviso 4—Registered document—Subsequent oral agreement—Contract Act (IX of 1872), s. 63—Remission of portion of promise—Discharge in full on receipt of portion of amount due—Evidence of oral agreement.* In a suit for two years' rent, due under a registered lease, defendant pleaded a subsequent oral agreement by plaintiff to remit a portion of the rent each year, and filed a receipt by which plaintiff accepted payment at the reduced rate in full discharge in respect of one of the years. *Held*, that, although, under proviso 4 to s. 92 of the Evidence Act, the receipt was not admissible, the discharge had been given in pursuance of the alleged oral agreement, which though not admissible in evidence, was not illegal. *KARAMALLI UNNI KURUP v. THEKKU VITIL MUTHORAIKUTTY* (1902) . . . . . I. L. R. 28 Mad. 195

56. ———— *Evidence to show rate of interest—Evidence Act, s. 92—Suit on promissory note—Suit for balance of principal due for*

offering to give plaintiff a share in such contract; that plaintiff consented to lend the said sum payable with interest at 6 or 7 per cent. per mensem in lieu of

plaintiff endorsed the said note as cancelled. Plaintiff also alleged that he received interest at the rate of 5 per cent. per mensem for two months, and produced a witness who deposed to that effect. This defendant denied. *Held* by the Original Court (following *Abay v. Cruz*, L. R. 5 C. P. 37), that the oral evidence was inadmissible to show the rate of interest *dehors* that of the promissory note, and that the subsequent letters, offering a higher

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

rate of interest, were without consideration, for there was not any evidence of forbearance, and that the note was not to be paid for the money

sible. *Held* by MORGAN, C.J., that the evidence was admissible: that the law is that, notwithstanding

the terms of a joint interest in the venture as proposed by the defendant; and the latter refused to pay the rate demanded; before any final agreement and while the transaction was still incomplete, the note was given, not as a writing which expressed or was meant to express the final contract, but rather as a voucher, or a temporary and provisional security for the money pending the discussion respecting the rate of interest; and that, if the note was thus given and received, it should not be regarded as the contract between the parties or as a written contract excluding other evidence of the true contract. *Held* by KERNAN, J. (concurring with the Chief Justice as to the admissibility of the evidence), that assuming that the promissory note did represent a complete contract between the parties, such contract was

57. ————— Consideration for deed.—*Proof of consideration—Recital in bond.* Oral evidence is admissible to prove that consideration has not been paid at all or in full, notwithstanding the recital in the bond that full consideration has been paid. *WALEE MAHOMED v. KUMER ALI*

7 W. R. 428

58. ————— *Proof of want*

received in full was to be paid at the time, and that the rest was not only to remain in abeyance pending the result of a suit, but to be paid only in case of the successful termination of that suit. *SHEWAB SINGH v. ASOUR ALI*

8 W. R. 267

59. ————— Evidence to show only portion of consideration of bond was

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

received. Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash: *Held*, that it was open to the defendant to show by evidence that only a portion of the principal sum had been received by him. *GAUREVALLABA RAVCHANDRA V. VELLIA BOMAYA NAYIR v. VIRAPPA CHETTI*

2 Mad. 174

60. ————— *Proof of consideration stated in a deed.* S. 92 of the Evidence Act (I of 1872) prevents the admission of oral evidence for the purpose of contradicting or varying the terms of a contract, but does not prevent a party to a contract from showing that there was no consideration, or that the consideration was different from that described in the contract. Where, therefore, a deed of sale described the consideration to be R100 in ready cash received, but the evidence showed that the consideration was an old bond for R63-12-0 and R36-4-0 in cash: *Held*, that there was no real variance between the statement in the deed

HIRALAL . . . . . I. L. R. 8 Bom. 169

VASUDEVA BHATLU v. NARASAMMA

I. L. R. 5 Mad. 6

61. ————— Oral evidence, when admissible to prove that consideration-money stated in contract to have been paid, has not been paid, but has been applied in a way agreed on between the parties—Evidence Act, I of 1872, s. 92. A deed of partition contained a recital of the payment of the sum of R2,000 as bonus to the plaintiff by the defendant, the mode of payment being stated to be in cash in one lump sum. The plaintiff sued to recover the sum of R1,850, alleging that only R150 had been paid, and not R2,000 as recited.

the Evidence Act to prove by oral evidence that the whole of the consideration-money had not been paid, it was equally competent to the defendant, to adduce evidence to prove

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

agreement to the effect that out of that sum the plaintiff was to refund Rs. 11,000 on account of the debt due from his relative, and that on this ground the oral evidence tendered was admissible under prov. (2) of s. 92 of the Act, the stipulation as to the refund of the Rs. 1,000 not being inconsistent with the recital as to the consideration in the contract. *LALA HIMMAT SAHAI SINGH v. LLEWELLEN*. I. L. R. 11 Cal. 486

82. *Evidence Act (I of 1872), s. 92—Evidence to show manner in which consideration was agreed to be paid.* S. 92 of the Indian Evidence Act, 1872, will not debar a party to a contract in writing from showing, notwithstanding the recitals in the deed, that the consideration specified in the deed was not in fact paid as therein recited, but was agreed to be paid in a different manner. *Hukum Chand v. Nira Lal*, I. L. R. 3 Bom. 159, *Lala Himmat Sahai Singh v. Llewellyn*, I. L. R. 11 Cal. 486, and *Ram Baksh v. Durjan*, I. L. R. 9 All. 392, referred to in *INDANJIT v. LAL CHAND*. I. L. R. 18 All. 168

On appeal to the Privy Council, the Judicial Committee, approving the decision of the High Court on the point, regard it as settled law that where there has been a false acknowledgment by recital in a deed of sale of the payment by the

statement of fact in a written instrument is to be contradicted by oral evidence. Where the consideration-money had been acknowledged to have been paid by a recital in the sale-deed to that effect: *Held*, that it was no infringement of the above section for a Court to accept proof that, by a collateral arrangement between vendor and purchaser, the consideration-money remained with purchaser in his hands for the purposes and under the conditions agreed upon between them. *LAL CHAND v. INDANJIT*. I. L. R. 22 All. 370

I. L. R. 27 I. A. 83  
4 C. W. N. 495

83. *Evidence to prove contract—Statute of Frauds—Variance between bought and sold notes.* The defendant, a Hindu, entered into a contract of sale with the plaintiff through the medium of a broker. The broker made no entry of the contract in his book, and there was a material variance in the bought and sold notes delivered by him. The notes were accepted and retained by the plaintiff and defendant respectively. In an action for non-delivery under the contract:—*Held*, that the contract was made before the notes were written; the notes were sent by the broker to his principals merely by way of information; and the Statute of Frauds not applying, the plaintiff was

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

at liberty to give parol evidence of the terms of the contract. *CLARTON v. SHAW*

9 B. L. R. 245; 18 W. R. 414

84. *Evidence to vary written contract—Evidence Act (I of 1872), s. 92—Bought and sold notes—Oral evidence as to matter on which document is silent—Damages.* The defendants agreed to purchase (to arrive) from

plaintiffs and the defendants, corresponded one with the other, and constituted a contract for delivery of 750 maunds conditional on arrival within four months. Fifteen hundred maunds or thereabouts of this copper arrived at Ralli Brothers' godowns within the time mentioned in the contract between the plaintiffs and the defendants. The defendants delivered to the plaintiffs 375 maunds of copper within time, and made no further delivery to the plaintiffs, no other shipment of the copper contracted for arriving within time at Calcutta. In a suit brought by the plaintiffs to recover damages for breach of contract to deliver, the defendants sought to show by oral evidence that the contract was for delivery of 750 maunds, if one-fourth of each of the successive arrivals at Ralli Brothers' godowns should, in the aggregate, amount to 750 maunds. *Held*, that such evidence was inadmissible under s. 92 of the Evidence Act, and that the plaintiffs were entitled to recover. *JADU RAI v. BHUBOTARAN NUNDY*. I. L. R. 17 Cal. 173

85. *Evidence Act (I of 1872), ss. 92 and 94—Evidence to show language of document not meant to apply to existing facts—Evidence contrary to submission to arbitration.*

tion signing a submission paper, which was as fol-

Thambwalla to obtain 'power' (probate) from the High Court for the administration and enjoyment between us two persons of the property of Bai Godawari, widow of Darp (tailor) Bhowan Dera Dave, I Nandubai, the wife of Mulp Mala, having raised an objection, have got a caveat registered in the High Court. In the matter thereof, we the said plaintiff (and) defendant have appointed you an arbitrator to bring about a settlement of the said dispute. As to whatever award you may make and give on arriving at a decision the same is to

**EVIDENCE—PAROL EVIDENCE—*contd.*****3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.***

be agreed to and abided by us two persons. In this matter we each other agree and consent to act according to your award." This submission paper we of our free will and pleasure and in sound mind and consciousness have made and delivered after having read and understood the same. It is agreed to and approved of by us, and our heirs and representatives in Court (and) the Darbar, Bombay. The English date the 30th of October in the year 1893." Before the arbitrator the parties were represented by solicitors, witnesses were called and

tion, and tendered evidence to prove this. *Held*, on appeal (FARRAN, C.J., and STRACHEY, J.), that the evidence was admissible. The language of the submission paper was not so plain in itself, nor did it apply so accurately to existing facts as to prevent the evidence being given—s. 94 of the Evidence Act (I of 1872). **GHELLABHAI ATMARAN v. NANDUBAI** I. L. R. 21 Bom. 335

Reversing same case in Court below (CANDY, J.), where it was decided on other grounds. **GHELLABHAI ATMARAN v. NANDUBAI**

I. L. R. 20 Bom. 238

68. ————— *Contract of indemnity—Evidence Act, s. 92—Mortgage—Contemporaneous oral contract* In a deed of mortgage executed on behalf of a minor by his guardian in favour of T (who did not execute it), it was recited that the mortgage was made to secure the repayment of a certain sum which T had undertaken to expend in liquidating certain debts due by the

agreed at the time of the mortgage that he was

67. ————— *Evidence Act, 1872, s. 92—Evidence—Oral agreement inconsis-*

**EVIDENCE—PAROL EVIDENCE—*contd.*****3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.***

that the parties had requested the eye.

found due, on payment whereof the executors released the defendants from all claims in respect of the share and interest of R, etc. On the 7th April 1887, the executors assigned over to the

by the firm had not been ascertained; and that it had been agreed on by the partners at the time of the release that, in addition to the sum therein mentioned, the executors, as representing the testator's estate, should receive a one-anna share in the partnership. The defendants denied the right of the plaintiff, and contended that the interest of R and his estate in the partnership ceased at his death. They relied on the release and denied any agreement to give the executors a share, and contended that, under s. 92 of the Evidence Act (I of 1872), no evidence could be given of the alleged agreement. For the plaintiff it was contended that the agreement as to the one-anna share was quite independent of the release, and that the agreement that the exe-

s. 92). By the release the executors released the partners from all claims whatever in respect of R's share, and the consideration for that release was stated in the document to be a lump sum, on payment of which, under the writing, all claims arising out of the old partnership ceased and determined. The oral agreement added another

**WALLA v. BURJORJI KUSTOMJI LIRBUDWALLA**  
I. L. R. 12 Bom. 335

68. ————— *Evidence Act, s. 92—Civil Procedure Code, s. 317.* By an agreement in writing, A, after reciting that he bid for certain property sold in execution of a decree benami

property from B. *Held*, on appeal, that B was not debarred from proving that A bought the property for himself, and not benami for B. **KUMARA v. SRINIVASA**  
I. L. R. 11 Mad. 213

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

69.

Exclusion of

*Evidence Act (I of 1872), s. 92.*

do not preclude one of two persons in whose favour a deed of sale purported to be executed from proving by oral evidence in a suit by the one against the other that the defendant was not a real, but a nominal, party only to the purchase, and that the plaintiff was solely entitled to the property in which it related. *It* conveyed certain houses and premises in plaintiff and defendant jointly by a sale-deed. Plaintiff sued defendant for ejectment from the premises, alleging that he alone was the real purchaser, and that defendant was only nominally associated with him in the deed. *Held*, that a 92 of the Evidence Act did not preclude plaintiff from showing by oral evidence that he alone was the real purchaser, notwithstanding that the defendant was described in the sale-deed as one of the two purchasers. *MULCHAND v. MADHO RAM*

I. L. R. 10 All. 421

70.

Custom or usage

qualifying contract—*Evidence Act (I of 1872), s. 92.**prov. 5—Shipment, meaning of.* On the 18th

September 1890, the defendant gave the

plaintiffs an order at an increased limit of price

in the following terms:—Please telegraph your

Manchester friends to purchase on my account

25 bales grey dhoties relating to No 3053 at

an all-round advance of 1d. per pair on original

limits for November, December, January ship-

ments, in three monthly lots, about 8 bales to

be shipped in each month. This order was

accepted and the goods were shipped as follows:

On the 9th December 1890; 6 bales were handed to

the same carriers on the 4th December 1890, and

were shipped on the 13th December 1890; 10 bales

were handed to the same carriers on the 23rd Dec-

ember and one bale on the 24th December, and

these 11 bales were shipped on the 6th January

1891 at intervals of four weeks. He also contended

that the shipment on the 6th December 1890 was

a late shipment, and that he was not therefore bound

to accept the goods under the contract. As to

this last contention, the plaintiffs alleged that by

the custom of Bombay in the case of contracts

made with members of the Native Piece-goods

Association, the date of the carriers' weight note

was to be regarded as the date of shipment, and

that, under such a contract as the one in question,

delivery to the Railway Company or other inland

carrier was equivalent to shipment. This custom, it

was alleged, originated in consequence of the above

Association having agreed that all piece-goods

ordered out by its members should be conveyed

to Bombay by certain lines of steamers only, and

by no others. It was stated that, unless some

such custom existed, it would in many instances

be impossible for Bombay merchants to carry out

their contracts, as no steamers of the selected lines

might be available. The Judge of the Court of

Small Causes at the hearing found that the alleged

custom existed, and was generally accepted and

understood by merchants and dealers in Bombay.

EVIDENCE—PAROL EVIDENCE—*contd.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*contd.*

that the shipment on the 6th December 1890 was a late shipment, and that he was not therefore bound to accept the goods under the contract. As to this last contention, the plaintiffs alleged that by the custom of Bombay in the case of contracts made with members of the Native Piece-goods Association, the date of the carriers' weight note was to be regarded as the date of shipment, and that, under such a contract as the one in question, delivery to the Railway Company or other inland carrier was equivalent to shipment. This custom, it was alleged, originated in consequence of the above Association having agreed that all piece-goods ordered out by its members should be conveyed to Bombay by certain lines of steamers only, and by no others. It was stated that, unless some such custom existed, it would in many instances be impossible for Bombay merchants to carry out their contracts, as no steamers of the selected lines might be available. The Judge of the Court of Small Causes at the hearing found that the alleged custom existed, and was generally accepted and understood by merchants and dealers in Bombay. On reference to the High Court: *Held*, that evidence of the alleged custom or usage of trade was not admissible under s. 92, prov. (5), of the Evidence Act (I of 1872) to explain or vary the natural and ordinary meaning of the words in the contract. The parties contracted for a shipment on board of a ship or steamer, and to allow evidence of a usage that delivery to a Railway Company at an inland town should be regarded as equivalent to shipment on board a vessel at a seaport town, would be to allow evidence of a usage repugnant to, or inconsistent with, the express terms of the contract. *SMITH v. LUDRA GHILLA DANODAR*

I. L. R. 17 Bom. 120

71

Evidence Act

(I of 1872), s. 92, prov. 1—Mutual mistake of fact

—Equitable relief—Rectification of a deed of convey-

ance. Where the plaintiffs brought a suit to re-

cover possession of some land on the allegation

that it was covered by the conveyance executed

in their favour by the defendant, and the defence

was to the effect that what was intended to be sold

and purchased was the revenue-paying estate of

the defendant, but that the land in suit which was

the homestead of the defendant, though found

included in the estate, was not expressly excepted,

because both the parties were under the mistaken

impression that it was not so included, but was

lakhuraj; and it was contended that it was not

open to the defendant to raise such a defence

in this suit. *Held*, that it was open to the Court,

having regard to prov. 1 to s. 92 of the Evidence

Act, to allow oral evidence to be put in to prove

the mutual mistake. *Held*, also, that, where there

is a mutual mistake of fact in a case as here, a

Court administering equity will interfere to have

the deed rectified, so that the real intention of

both parties may be carried into effect, and will



EVIDENCE—PAROL EVIDENCE—*concl.*3. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*concl.*

not drive the defendant to a separate suit to rectify the instrument. *Held* by BANERJEE, J. that prov. 1, s. 92 of the Evidence Act, does not limit the admissibility of oral evidence to a suit to obtain a decree on the ground of mistake. MOHENDRO NATH MUKERJEE v. JOGENDRA NATH ROY . . . 2 C. W. N. 260

72. — Evidence to contradict deed—*Indian Evidence Act (I of 1872), s. 92—Oral evidence to contradict the recital in a deed.* When one of the parties to a deed is, under any of the provisions of s. 92 of the Evidence Act, permitted to go into oral evidence, it is open to the other party also to rebut that evidence by oral evidence. Where a deed recited the payment of a certain consideration, and the plaintiff denied the passing of any consideration, and adduced evidence in support of his contention, under the provisions of s. 92 of the Evidence Act, it is open to the defendants to go into oral evidence to show that there was some consideration, for the deed, though not the same as that recited in the deed. *Lala Himmat Sahai Singh v. Leukhellen, I. L. R. 11 Calc. 456; Hukum Chand v. Hirralal, I. L. R. 3 Bom. 159*, referred to. KAILASH CHANDRA NEOGI v. HARISH CHANDRA BISWAS (1900) . . . 5 C. W. N. 158

73. — Evidence of mere suretyship—*Act I of 1872 (Indian Evidence Act), s. 92—Construction of document—Evidence of oral agreement not excluded.* The plaintiff sued to recover money which he had been compelled to pay in virtue of a mortgage executed by his two half-sisters and himself. His claim was based on the plea that, although appearing in the bond as a co-obligor, he was in reality merely a surety. *Held*, that evidence was admissible to show that the plaintiff executed the mortgage-bond as a surety only. SHAMSHUL-JAHAN BEGUM v. AHMAD WALI KHAN (1903) . . . I. L. R. 25 All. 337

74. — Collateral agreement—*Agreement between lessor and lessee collateral to the lease—Admissibility in evidence—Registration—Evidence Act (I of 1872), s. 92—Registration Act (III of 1877), s. 17—Act IV of 1882, ss. 105, 107.* An agreement by a lessee to pay for a term of years an annual sum of money to his lessor, forming no part of the terms of his holding, and no charge on the property leased, and being a mere personal obligation collateral to the lease, which, moreover, was to take effect at a future date after the said term of years had run out, is not affected by s. 92 of the Evidence Act, and does not require registration under s. 17 of Act III of 1877, read in conjunction with the Transfer of Property Act, 1882, ss. 105, 107. *SURAMANTAN CHATTARJEE v. ARUNACHILAM CHETTIAR* (1902) . . . I. L. R. 25 Mad. 803; s.c. I. L. R. 29 I. A. 136 . . . 6 C. W. N. 865

## EVIDENCE ACT (II OF 1855).

## See EVIDENCE.

## s. 14.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—QUESTIONS OF LAW AND FACT . . . 8 W. R. Cr. 60

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESS—CROSS-EXAMINATION . . . 13 W. R. Cr. 18

## s. 24.

See PRIVILEGED COMMUNICATION.

15 W. R. 340  
1 B. L. R. A. Cr. 6  
10 W. R. Cr. 14

## s. 32.

See CONFESSION—CONFESSIONS SUSSEQUENTLY RETRACTED 8 Bom. Cr. 103

## s. 34.

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 15 W. R. Cr. 23

## s. 57.

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL . . . 8 W. R. 499

## EVIDENCE ACT (I OF 1872).

See BENGAL TENANCY ACT, 1835, ss. 106, 100A . . . I. L. R. 31 Calc. 380

See BHAGDARI AND NARWARI ACT, ss. 3, 5 . . . I. L. R. 28 Bom. 399

See CIVIL PROCEDURE CODE, 1882, s. 373. I. L. R. 31 Calc. 985

See CONTRACT . . . I. L. R. 31 Calc. 314  
I. L. R. 28 Bom. 420

See CRIMINAL PROCEDURE CODE, ss. 162, 172 . . . I. L. R. 33 Calc. 1023

See ESTOPPEL . . . I. L. R. 28 Bom. 440  
I. L. R. 35 Calc. 904

## See EVIDENCE.

See HINDU LAW . . . I. L. R. 27 Mad. 32  
I. L. R. 31 Calc. 262

See OUDH ESTATES ACT, ss. 8, 10 . . . I. L. R. 28 All. 119

See PROBATE . . . I. L. R. 31 Calc. 357

See PUBLIC DOCUMENT . . . I. L. R. 31 Calc. 264

W. R. Cr. 13, 14, 15, 16, 17, 18

EVIDENCE ACT (I OF 1872)—*contd.*

dence Act (I of 1872) does not provide that there must be some evidence to support a presumption.

guide to those who have to administer the criminal law in India. *EMPEROR v. BAI GANGADHAR TILAK* (1904) I. L. R. 28 Bom. 470

s. 2—Oral contemporaneous agreement cannot be set up to add to a written contract—*Easements Act (V of 1852), s. 13, cl. (e), (f)*—Easement of necessity—No easement on the ground of convenience, when there is other means of access. *ILLIUS (a) v. ILLIUS (b)*

The law under s. 13, cl. (e) of the Easements Act, is the same as the law in England *Wutler v. Sharpe*, I. L. R. 15 All. 270, 281, followed. *Esuri v. Damodar Ishwirda*, I. L. R. 16 Bom. 552, 559, not followed. The Municipality of the City of Poona v. Yaman Rajaram Gholap, I. L. R. 19 Bom. 797, not followed. To sustain a claim under s. 13, cl. (f) of the Easements Act, the easement claimed must be apparent and continuous. A contract in writing cannot be added to by a contemporaneous oral agreement. *KRISHNAIAIAZU v. MANNABU* (1905) I. L. R. 28 Mad. 495

1. s. 3—"Court," meaning of the definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purpose of the Act itself, and should not be extended beyond its legitimate scope. *QUEEN-EMRESS v. TULSI* I. L. R. 13 Bom. 36

2. s. 3—"Court"—Registration Act (VIII of 1871), s. 82—Sub-Registrar—Penal Code, s. 228 By s. 82 of the Registration Act a Sub-Registrar is not an officer of the Court.

See CONFESSION—CONFESSIONS TO POLICE OFFICERS I. L. R. 14 Bom. 260

s. 4—See AORA TENANCY ACT, s. 201 I. L. R. 29 All. 148

ss. 4, 32, 80—Practice of Privy Council with respect to decisions as to credibility of witnesses by lower Courts—Mode of dealing with hearsay evidence—Ancient document—Discretion of Court in calling for formal proof of The Judicial Committee will not criticize with any strictness opinions as to the credibility of witnesses, which is eminently a question for the Courts in India Where the Courts below had rejected the evidence of certain witnesses on the ground that it was hearsay only and had not conformed with s. 32

EVIDENCE ACT (I OF 1872)—*contd.*

ss. 4, 32, 80—*conclld.*

of the Evidence Act, and on the face of the evidence it was sometimes uncertain whether the witnesses were speaking from their own personal knowledge or from information from others.

been produced from proper custody, the Courts

Act by not admitting the document in evidence without formal proof, and rejected it, when no such proof was given. The Judicial Committee considered that the discretion of the Court had been rightly exercised and declined to interfere with it. *SHAFIQ-UN-NISSA v. SHABAN ALI KHAN* (1904) I. L. R. 28 All. 581 s. c. I. A. 217

s. 8, Illus. (a)—See HEARSAY EVIDENCE

11 C. W. N. 266

ss. 8, 7—Admissibility of questions as to circumstances under which accused was examined on two days. In recording the examination of the accused, which was taken on two several occasions, the Magistrate made the certificate required by a 304, Criminal Procedure Code, on the first page of the record only, although the record of the examination taken on the first day alone extended over two pages, and that taken on the second day was written entirely on the second page. *Held*, that the defect was cured by the evidence of the Magistrate. In recording this evidence the Sessions Judge disallowed the question put to the Magistrate as to the circumstances which led to the examination of the accused on the second day. *Held*, that the defect was cured by the evidence of the Magistrate. In recording this evidence the Sessions Judge disallowed the question put to the Magistrate as to the circumstances which led to the examination of the accused on the second day. *Held*, that the question was relevant and should not have been disallowed. *EMPEROR v. RAJANI KANTO KOER* (1904) 8 C. W. N. 22

ss. 8, 8—See CRIMINAL PROCEDURE CODE, s. 436. 5 C. W. N. 574

1. s. 8, ill. (k)—Admission—Confession. A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta,

EVIDENCE ACT (I OF 1872)—*contd.*s. 8, ill. (k)—*concld.*

discovered the loss of the property, and stated his loss to a railway police inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not then being present. This statement was tendered in evidence and admitted under s. 8, ill. (k) of the Evidence Act. Evidence was also tendered of a statement made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him, and that he had bought the rest, and this was admitted; the Court remarking that there was a distinction in the Evidence Act between "admission" and "confession." *QUEEN v. MACDONALD* . . . 10 B. L. R. Ap. 2

2. — ill. (g), and s. 8—*Statement made to third person by person injured*. The only evidence against a prisoner charged with having voluntarily caused grievous hurt was a statement made in the presence of the prisoner by the person injured to a third person immediately after the commission of the offence. The prisoner did not, when the statement was made, deny that she had done the act complained of. *Held*, that the evidence was admissible under s. 6 and s. 8, ill. (g), of the Evidence Act. *In the matter of SUNIT DEBANTI* . . . I. L. R. 10 Cal. 302

ss. 6, 24, 25, 28, 27—*Accused induced to point out the hiding place of stolen property—Conduct—Admissibility of evidence—Criminal Procedure Code, s. 163—Confession*. If was charged with the murder of a girl. In the hope of pardon being given to her, she took the police to a certain place and pointed out and produced certain ornaments, which the deceased was wearing at the time of her death. *Held*, that evidence was admissible to show that the accused did go to a certain place and there produced certain ornaments. Such evidence was admissible under s. 8 of the Indian Evidence Act irrespective of whether the conduct of the accused was or was not the result of inducement offered by the police. *EMPEROR v. MISRI* (1909)

I. L. R. 31 All. 592

s. 8—*Copy of proceeding anterior to suit containing mention of the descent of one of the parties to the suit—Document showing parentage of party—Proof of pedigree—Civil Procedure Code, s. 563*. One of the questions in issue in a suit as to the parentage of a person was whether he was the son of a certain person who was described as the son of B. S. *Held*, that the father was admissible in evidence under the provisions of s. 9 of Act I of 1872. *RADHAN SINGH v. KUNJI DEHMT* . . . I. L. R. 16 All. 98

## s. 10

See ABATEMENT

4 C. W. N. 528

EVIDENCE ACT (I OF 1872)—*contd.*s. 10—*concld.*

See CONSPIRACY . I. L. R. 28 Cal. 797  
I. L. R. 30 Cal. 983

## s. 11.

See CRIMINAL PROCEDURE CODE, s. 436.  
5 C. W. N. 574

See LEASE—CONSTRUCTION.

I. L. R. 30 Cal. 883

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . . I. L. R. 8 Cal. 171

I. L. R. 3 Bom. 3

I. L. R. 25 Cal. 523

2 C. W. N. 501

1. — *Fact making probable a fact in issue—Admission by one defendant relevant against other defendants*. In a suit brought by the plaintiff against several defendants to prevent encroachments by the defendants in a lane which was the common property of himself and the defendants;—*Held*, that the admission of one of the defendants in a previous suit to which the other defendants were not parties as to the common character of the portion of the lane between his house and the plaintiff's, and also a similar statement in a deed put in by another of the defendants to prove his title to his own house, were admissible in evidence to establish the common character of the entire lane as alleged by the plaintiff. The fact of common ownership of other parts of the lane should be treated as relevant to the issue as to the common character of the entire lane on the principle laid down in s. 11 of the Evidence Act. *NARO VIVAYEK v. NARHARI* . . . I. L. R. 18 Bom. 125

2. — ss. 11, 21, cl. (3)—*Admissibility of petition and written statement filed in a previous proceeding*. Where the plaintiff and some of the defendants were co-owners of certain properties, the question at issue being whether there was a partition between them and whether under that partition the defendants came to be in possession of a specific property in lieu of their shares in all the properties, a petition and a written statement filed by the defendants in certain previous suits admitting the partition and exclusus acquisition of the specific property were put in, but objected to as inadmissible in evidence. *Held*, that the documents were admissible against those defendants under ss. 11, cl. (2), and 21, cl. (3), of the Evidence Act. *NARO VIVAYEK v. NARHARI*, I. L. R. 16 Bom. 125, relied upon. *GYANNESSA v. MORARAKANNESSA* . . . I. L. R. 25 Cal. 210  
2 C. W. N. 81

3. — ss. 5, 11 and 153—*Statement that another witness was at a particular place at a particular time*. The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time and consequently could not then have been at another place where the latter states he was and saw the accused persons, is properly admissible in evidence, even

EVIDENCE ACT (I OF 1872)—*contd.*

ss. 5, 11 and 153—*concl.*

though the witness for the prosecution may not himself have been cross-examined on the point: *as*. 5, 11, and 153, *ill.* (c), of Act I of 1872. *REG. v. SAKHARAN MUKUNDJI* . . . 11 Bom. 168

4. ss. 11, 43, 54, and 153—*Admissibility of evidence of one crime to prove existence of another—Possession of forged documents.* S. 11 of the Evidence Act should not be construed in its widest signification, but considered as limited in its effect by s. 54 of the Act. So construed, s. 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it be cognate. Accordingly, the possession by an accused person of a number of forged documents . . .

with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was in fact executed by that person, is not admissible nor even would a judgment founded upon such note be so: ss. 43 and 153 of the Evidence Act. *REG. v. PARNUDASS AMBARAM* . . . 11 Bom. 90

5. ss. 11, 54—*Bombay Prevention of Gambling Act (IV of 1887), ss. 4, 5, 6, 7—Keeping a common gaming-house—Applicability of presumption under s. 7 to cases under s. 4—Previous conviction—Criminal Procedure Code (Act V of 1898), s. 342.* Held, that the evidence that the accused had been previously convicted of the same offence was admissible to show guilty knowledge or intention. *EMPEROR v. ALLOOHIA HUSAN* (1904) . . . I L. R. 28 Bom. 129

s. 13.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 13 . . . 13 C. W. N. 739

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN I L. R. 29 Calc. 187

See RES JUDICATA—ETOPPEL BY JUDGMENTS . . . I L. R. 3 Bom. 3  
I L. R. 6 Calc. 171  
I L. R. 25 Calc. 523  
3 C. W. N. 501

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

I L. R. 23 Calc. 179

I L. R. 21 Bom. 110

I L. R. 22 Bom. 430

Right—Public right.

The right mentioned in the Evidence Act, s. 13,

EVIDENCE ACT (I OF 1872)—*contd.*

s. 13—*concl.*

is not a public right only. *SOORJO NARAIN PANDA v. BISSUNDER SINOH* . . . 23 W. R. 311

ss. 13 (a), 32 (7).

See CUSTOM . . . 11 C. W. N. 703

ss. 13 (b), 32 (3), & (5), 6, 40, 90.

See HINDU LAW . . . I L. R. 32 Calc. 6

ss. 13, 40, 43—

*Principles applicable to purchase—Hindus—Mahomedans—Judgment not inter partes—Admissibility in subsequent suit—Transaction—"Particular instances in which the right is claimed"—Res judicata.* The principles applicable to a purchase by one member of a joint Hindu family from another are not applicable to Mahomedans. Plaintiff, a Mahomedan, brought

mortgages of the father brought a suit on the mortgage against the plaintiff, his father and mother. In the said suit the sale to plaintiff was held to be a sham transaction and the plaintiff had to pay off the mortgage. In the suit brought by the plaintiff for the recovery of the house on the strength of the sale-deed, the defendants relied on the judgment in the suit on the mortgage to show that the sale was a sham.

It was held that the father was not proved to be *bond fide*. On second appeal by the plaintiff, a question having arisen as to the admissibility in evidence of the judgment in the suit on the mortgage . . .

judgment in the suit on the mortgage was admissible to prove that the genuineness of the plaintiff's sale-deed was then questioned, but it cannot be used for any ulterior purpose. *MAHAMAD v. HASAN* (1906) . . . I L. R. 31 Bom. 143

s. 14.

See CRIMINAL PROCEDURE CODE, s. 436.  
5 C. W. N. 574

s. 14 (a).

See "CRIMINAL PROCEDURE CODE, ss. 196, 4(b), 537, 287, 290"

I L. R. 32 Mad. 3

EVIDENCE ACT (I OF 1872)—*contd.*

ss. 14, Expl. (1), illus (c): 15, illus.

(a).

See CHEATING . I L. R. 38 Calc. 573

ss. 14 and 15—Admissibility of evidence—Penal Code, s. 206—Fraudulent transfers of property to different persons Where the accused was charged under s. 206 of the Penal Code with fraudulently transferring three properties to three different persons on a certain day in order to prevent their being seized in execution of a decree, and the prosecution tendered evidence of five other fraudulent transfers of property effected by the accused on the same day and apparently with

transfers which were specified in the charge were made with a fraudulent intent. *Reg. v. Parbhudas*, 11 Bom 90, distinguished *QUEEN-EMPRESS v. VAJIRAM* . I. L. R. 10 Bom. 414

s. 16.

See COMPANY—WINDING UP—GENERAL CASES . I. L. R. 8 All 388

ss. 17 and 18—Horoscope—Admission. A horoscope, which had been a public record from a period only lately past, was relied

distinguished. *GOUNDAN v. GOUNDAN*. I. L. R. 17 Mad. 184

s. 18.

See ADMISSION—ADMISSIONS IN STATEMENTS AND FINDINGS

22 W. R. 303, 304 note

23 W. R. 27

I. L. R. 11 Calc. 588

ss. 18 and 21

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . I. L. R. 19 All. 78

I. L. R. 23 I. A. 106

ss. 19 and 80—Evidence—Proof of divorce and subsequent marriage—Deposition in former suit in on her former to another man (Ghulam Ali), in whose service she had been for some years and to whose property the appellant claimed to succeed as his daughter and heir, the respondents produced a deposition made after the birth of the appellant by her mother in a criminal case. The heading of the document was "Chafooran, wife of Eda, caste Shaikh,

EVIDENCE ACT (I OF 1872)—*contd.*ss. 18 and 80—*concl.*

aged 40 years, from Dewa, on solemn affirmation," and in it the witness stated, "I have lived with Ghulam Ali these 12 or 14 years. I lived with him before his wife died, two years before that event." Held, reversing the decision of the Judicial Commissioner's Court, that the heading was only descriptive of the witness and formed no part of the evidence given by her on solemn affirmation. The heading was a wrong

second marriage of the appellant's mother was a valid one, and that the appellant was legitimate and entitled to the property she claimed. *MAQ-BULAN v. AHMAD HUSAIN* (1904)

I. L. R. 28 All. 108

s.c. 8 C. W. N. 241

I. L. R. 31 I. A. 38

s. 21.

See BENAMI . 9 C. W. N. 89

"Representative in interest"—Purchaser at sale in execution of decree. The purchaser at a sale in execution of a decree was held to be a "representative in interest" of the judgment-debtor within the meaning of the Evidence Act, 1 of 1872, s. 21. *UNNOPOORNA DASSEE v. NUFUR PODDAR* . 21 W. R. 148

ss. 21, 32 cl. (5).

See HINDU LAW . I. L. R. 38 Calc. 590

s. 24.

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R. 2 All 260

I. L. R. 3 All 338

I. L. R. 22 Calc. 50

2 C. W. N. 702

I. L. R. 25 Bom. 198, 543

I. L. R. 29 Mad. 38

11 C. W. N. 904

See CONFESSION—CONFESSIONS UNDER THREAT OR PRESSURE.

ss. 24, 28.

See CIRCUMSTANTIAL EVIDENCE. 9 C. W. N. 474

ss. 24, 187—Criminal Procedure Code (Act V of 1893), s. 162—Bombay City Police (Act IV of 1902), s. 63—Amended Letters Patent, 1365, cl. 26—Statement made by a witness to and taken down in writing by a Police Officer—Admissibility in evidence—Confession of accused, admissibility of Ono P, an entry clerk in the General Post Office, Bombay, was charged with having committed theft in respect of a registered letter S, a friend of the accused, had made a statement to a Police Officer, which the latter

EVIDENCE ACT (I OF 1872)—*contd.*a. 24—*concl.*

had taken down in writing. At the trial *S.* denied having made the statement, whereupon the presiding Judge admitted the statement in evidence both to discredit *S.* and also as evidence against *P.* in that it contained statements made to the Police corroborating confessions made by *P.* These confessions were also used in evidence against *P.* On the application by *P.*'s counsel, the Advocate-General certified under cl. 26 of the amended Letters Patent that the said document was wrongly admitted. On a review of the Full Bench: *Held*, that having regard to s. 162 of the Criminal Procedure Code (Act V of 1893), the said document ought not to have been admitted or used in evidence against the accused. The further question was raised by Counsel for the accused whether the confessions of the accused were irrelevant under s. 24 of the Indian Evidence Act (I of 1872). *Held*, that the confessions were rightly admitted in evidence. *Per BATTY, J.*—It is not sufficient to render a confession irrelevant under s. 24 that there may have been added to it a statement, which has been improperly induced by threat or promise. In order to make a confession irrelevant it must be shown that the confession itself was improperly induced. *Per DAYAR, J.*—In the absence of the point being reserved or certified by the Advocate-General the Full Bench has no right to sit in appeal on the decision that the confession was legally admissible in evidence. *EMPEROR v. NARAYAN RAGHUNATH PATIL (1907)* I. L. R. 32 Bom. 111

## ss. 25 and 26.

See CONFESSION—CONFESSIONS TO POLICE OFFICERS.

## a. 26 (Criminal Procedure Code, 1861, s. 149).

See CONFESSION—CONFESSIONS TO POLICE OFFICERS. I. L. R. 20 Bom. 165

1. Village Munsif.—*Magistrate.* A Village Munsif in the Madras Presidency is a "Magistrate" within the meaning of s. 26 of the Evidence Act, 1872. *EMPEROR v. RAMANJITIA* I. L. R. 2 Mad. 5

2. Police officer or Magistrate of a Native State. The words "police officer" and "Magistrate" in s. 26 of the Indian Evidence Act (I of 1872) include the police officers and Magistrates of Native States as well as those of British India. *QUEEN-EMPERESS v. NAOLA KALA* I. L. R. 22 Bom. 235

## a. 27 (Criminal Procedure Code, 1861-69, s. 160).

See CONFESSION—CONFESSIONS TO POLICE OFFICERS.

EVIDENCE ACT (I OF 1872)—*contd.*s. 27—*concl.*

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

## s. 29.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

20 W. R. Cr. 33

## s. 30.

See CONFESSION—CONFESSION OF PRISONERS TRIED JOINTLY.

1. Retracted confession—*Evidence.*—Use of retracted confession as against person making it and as against co-accused. A retracted confession may be taken into consideration, that is, used as evidence, not only as against the person making it, but as against person taking

I. L. R. 29 All. 434

2. Joint trial—*Confession.*—Plea of guilty by one of the accused—Use of his confession against the rest—*Criminal Procedure Code (Act V of 1893), ss 271, 342.* Where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person, who has pleaded guilty, may technically be said to be tried jointly for the same offence with other co-accused and any statement in the nature of a confession that he may make used against them. *QUEEN-EMPERESS v. PALTUA, I. L. R. 23 All. 53*, followed. *EMPEROR v. KHEORAJ (1908)*

I. L. R. 30 All. 540

3. Confession of co-accused, who pleads guilty at joint trial—*Value as against the other accused.* When one of co-accused

for sufficient reasons refuse to accept the plea of guilty and continue to try him jointly with the other accused and then in the trial take his confession into consideration against the other accused. *QUEEN-EMPERESS v. PALTUA, I. L. R. 19 Bom. 195*, *QUEEN-EMPERESS v. PALTUA, I. L. R. 23 All. 53*, *EMPEROR v. KHEORAJ, I. L. R. 30 All. 540*, referred

EVIDENCE ACT (I OF 1872)—*contd.*s. 30—*contd.*

to and explained. **SURDEV TEWARI v. THE KING-EMPEROR (1909)** . . . 13 C. W. N. 552

s. 31.

*See ESTOPPEL—ESTOPPEL BY CONDUCT.*  
I. L. R. 14 Bom. 312

s. 32.

1. — **Statement by person since dead—Admissibility in evidence of statement in writing by person who could have been called as a witness, but was not—Statement of deceased person.** Where a person, although alive at the time the plaintiff closed his case, was not called as a witness, statements in writing by such person, filed before his death, in support of the plaintiff's case were held by the Judicial Committee to be inadmissible in evidence as statements of a deceased person. A genealogical table purporting to have been made by a person since dead, but which was shown to be merely an exhibit binding on him for the purposes of a former suit, was held to be inadmissible in evidence, having been made without the personal knowledge and belief which must be found or presumed in any admissible statement by a deceased person. **JAGATPAL SINGH v. JAGESHAR BAKSHI SINGH (1902)** . . . I. L. R. 25 All. 143;  
s.c. I. R. 30 I. A. 37;  
7 C. W. N. 209

2. — **Proof of legitimacy—Admissibility of evidence—Statements as to heirs, made in accordance with practice of public office—Proof of legitimacy of heirs named in such statements.** A series of statements, extending from 1860 to 1890, by a *wasiqdar*, made in accordance with the practice of the *wasiq* office, a department under Government, as to who were her heirs, and made at a time when no controversy on the subject was in contemplation, and letters written by her, in reply to inquiries by the *wasiq* officers, explaining and confirming such statements, were held to be admissible in evidence in support of the legitimacy of such heirs, and, under the circumstances, to be conclusive in their favour. **BAGAN ALI KHAN v. ANJUMAN ARA BEGAM (1903)**

I. L. R. 25 All. 236  
s.c. I. R. 30 I. A. 94; 7 C. W. N. 405

3. — **Proof of birth of heir—Admissibility of evidence—Document—Contemporaneous proof—New trial—Concurrent decisions on fact—Mithila law—Sister's son—Agnate—Preferable heir.** Documents which, it was contended, were inadmissible against the appellant on the ground that they were *res inter alios acta* and did not come within any of the classes of evidence enumerated in s. 32 of the Evidence Act (I of 1872) were held to be admissible against him as being clearly evidence against persons, through whom he claimed. On an issue as to whether a posthumous son had been born, to whom the respondent would, if the affirmative were

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

proved, succeed in preference to the appellant, a document in Persian characters was produced written on two pieces of paper of very different textures fastened together, of which the lower portion (which the appellant contended was a forgery) was in a different hand-writing from that of the upper portion and was written with a different pen. It was also objected that the word in the upper portion translated "son" really meant only "child" or "offspring" without distinction of sex. *Held*, that, even if the appellant's contentions were correct, other expressions in the upper portion of the

ancient proof by reference, and therefore the grave suspicion attaching to the document did not under the circumstances form sufficient ground for overruling the concurrent decisions of the Courts below. A new trial asked for on the grounds that a mass of evidence had been improperly received, and that the earlier document above referred to was so clearly a forgery that injustice would be done, if the decisions appealed from were allowed to stand, and consequently there had been a gross miscarriage of justice, was refused on the above findings, the Judicial Committee being of opinion that there was no reason for departing from their usual practice of declining to interfere with concurrent decisions on fact. *Semble*: Under the Mithila law an agnate in the seventh degree is a preferable heir to a sister's son. **RAM SAKSHI v. KHACENDRA NARAYAN SINGH (1904)**

I. L. R. 31 Calo. 871  
s.c. I. R. 31 I. A. 127

4. — **Proof of relationship—Fictitious Relationships.** On a question of relationship

under s. 32 of the Evidence Act, it was held that however state the persons from whom they derived that information nor at what period of time they derived it. *Held*, that the Courts in India had properly applied the provisions of s. 32 of the Evidence Act, in rejecting this evidence. **SHAFIQUSSA v. SHABAN ALI KHAN (1905)** . . . 9 C. W. N. 105

5. — **Admission by Statement**

A and B were brothers; A died, and B made that effect made by one of the plaintiffs in a deposition given long before the controversy in suit arose was admissible in evidence. **JAPU NATH SARKAR v. MAHENDRA NATH RAI (1907)**  
12 C. W. N. 268

s. 32 (1).

*See EVIDENCE—CRIMINAL CASES—DYING DECLARATION* . . . 6 C. W. N. 73

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MONT OF DEALING WITH EVIDENCE . 8 C. W. N. 621

## s. 32 (3): account sales—

See EVIDENCE—CIVIL CASES—ACCOUNT SALES . I. L. R. 28 Cal. 209

1. — s. 32, cl. (2)—Letter of advice. On the trial of a person charged with forging a

intimated a doubt whether it fell within the instances specified in the section. *QUEEN v. TARRANT-CHARAN DEY* . 9 B. L. R. Ap. 42

2. — Marriage register—Entry in Mahomedan marriage register to prove amount of dower fixed. A register of marriages kept by the Istahd, since deceased, who celebrated this marriage, in which register was entered the amount of the dower, was held to be admissible and relevant.

L. R. 18 I. A. 167

3. — Chowkidari register—Evidence Act (I of 1872), ss. 32 (3), 35—Admissibility in evidence—Chowkidari register, entry of chakran land in, if made in discharge of official duty—Made "in the ordinary course of business." Reg. XX of 1817 does not impose on the Daroga any duty of keeping a register of chowkidari chakran lands. From the precise and uniform character of the entries as to such lands appearing in a register kept under the Regulations: *Held*, that there could be no doubt that they were made under proper direction in the ordinary course of business though outside the statutory duty of the person who made them. That s. 35 of the Evidence Act did not cover such entries but s. 32 (2) of the Act applied and they are admissible in evidence. *Ab Nasir v. Manik Chand*, 1 L. R. 25 All. 90, referred to. The phrase "in the course of business" does not apply to any particular transaction of an exceptional kind, such as the execution of a deed of mortgage, but to business or professional employment in which the declarant was ordinarily or habitually engaged. The "business" referred to may be of a temporary character. *Ningawa v. Bharmappa*, 1 L. R. 23 Bom. 63, referred to. *SEONANDAN SINGH v. JONANDAN DESAIH* (1908) . 13 C. W. N. 71

4. — s. 32, cl. (2) and (3)—Rectals in mortgage deed—Description of boundary—Statement against pecuniary or pro-

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

prietary interest. The plaintiff sued in 1893 to recover possession of certain land. The defendants denied the plaintiff's title. The plaintiff tendered in evidence a registered mortgage-deed of adjacent land executed in 1877, which set forth the boundaries of the land comprised in the mortgage, and as one of such boundaries referred to the land in question as then belonging to the plaintiff. At the date of the deed there was no

Act (I of 1872) as a statement against the pecuniary or proprietary interest of the mortgagor. *NINGAWA v. BHARMAPPA* . I. L. R. 23 Bom. 63

ss. 32 (2), 34—Entries in accounts—Corroboration. The plaintiff relied on entries in the hand-writing of her deceased husband kept in the ordinary course of his business. *Held*, that entries in accounts relevant only under s. 34 of the Indian Evidence Act (I of 1872) are not alone sufficient to charge any person with liability: corroboration is required; but where accounts are relevant also under s. 32 (2), they are in law sufficient evidence in themselves, and the law does not, as in the case of accounts admissible only under s. 34, require corroboration. Entries in accounts may in the same suit be relevant under both sections, and where that is so it is clear that, inasmuch as they are relevant under s. 32 (2), the necessity of corroboration prescribed by s. 34 does not arise. Though accounts, which are relevant under s. 32 (2), do not as a matter of law require corroboration, the Judge is not bound to believe them without corroboration; that is a matter on which he must exercise his own judicial discretion as a Judge of fact. *RAMPYARABAI v. BALAJI SHRIDHAR* (1904) . I. L. R. 28 Bom. 294

1. — s. 32, cl. (3)—Deed of heirship—Declaration of party against proprietary interest—Presumption of party being dead. In 1847, A, a Hindu widow, executed in favour of B a varaspatha (a deed of heirship) in the following terms:—"My husband has died. We have no issue, and you are a son of my husband's cousin. Taking this into consideration, my husband expressed his wish, when he was on the point of death, that all the houses and shops situate in Pooná, except the house at Benares, should be given to you, and that you should be made owner of all money-dealings connected with Pooná. I therefore, in obeying his command, pass this deed of heirship to you, and make you owner of all the property mentioned above like our son. You therefore enjoy the property in your name joyfully." Under this varaspatha, D took possession of this property mentioned therein and enjoyed it during his lifetime. After his death, his gomasta (agent) managed it for and on behalf



EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

of B's minor son C. In 1881, C filed a suit to redeem a house and a garden, part of the property covered by the varaspatra, and which had been mortgaged by A's husband in 1831. One of the defences to this suit was that neither C nor his father was the heir of the original mortgagor, and that the house and garden were the property of B.

found it among the papers of the old gomasta of his father, who used to look after his affairs.

and there being no evidence of her existence after 1847, she must be presumed to have been dead in 1881, when the suit was filed. **HARI CHINTAMAN DIKSHIT v. MORE LAKSHMAN**

I. L. R. 11 Bom. 89

2. ——— Road-cess returns—Statements made by deceased tenants—Bengal Cess Act (Bengal Act IX of 1880), s. 95. *Semle*: The statements made by deceased tenants in road-cess returns filed by them regarding assets of the tenancy are not admissible in evidence under s. 32 of the Evidence Act. **HEM CHANDRA CHOWBURY v. KALI PRASANNA BRADURI**. I. L. R. 20 Cal. 832

s. 32, cls. (2), (5)—Pedigrees—Evidence—Proof of pedigree—Knowledge of names of ancestors from hearing them recited on ceremonial occasions—Pedigree made *post litem motam*—Controversy in a different matter from that which if after suit would render statement inadmissible—Document made, on particular occasion for specific purpose treated as declaration—Proof of heirship. The plaintiffs sued to recover immovable property as next heirs, through their father, of one Gur Sahai. The principal defendant was the sister's son of Gur Sahai. On the plaintiffs' oral evidence and on certain pedigrees produced by them, the Subordinate Judge was of opinion that Gur Sahai and the plaintiffs' father were descended from the same ancestor.

another ancestor than that stated in the plaintiffs' pedigree and was in the 15th degree from a common ancestor, and the plaintiff's father in the 16th degree, and he contended that under Hindu law heirship did not extend beyond the 14th degree, and that therefore he, though only a sister's son,

the plaintiffs' evidence, concluded as follows: "The oral evidence to prove the pedigree in the plaint is thus, in my opinion, of as little value as the documentary evidence on which the

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

plaintiffs relied, and at the hearing of the appeal practically no attempt was made to support the finding of the Subordinate Judge. The only contention was that, accepting the pedigree filed by the appellant (defendant), the plaintiffs are heirs of Gur Sahai, as according to it they are *samanodakas* and therefore in the absence of other nearer heirs excluded the defendant, who is the son of Gur Sahai's sister." *Held*, that the above paragraph did not under the circumstances and for the reasons stated by their Lordships of the Judicial Committee, preclude the plaintiffs from endeavouring to sustain, on this appeal, the finding of the Subordinate Judge in their favour. *Held*, also, that the pedigree put in by the plaintiffs were not ancient family records handed down from generation to generation and added to as a member of the family died or was born; but documents drawn up on particular occasions for a specific purpose by members of the family and were accordingly to be treated as mere declarations made by the persons, who respectively drew them up or adopted them. One of the pedigrees dated in 1847 was held to be the property of the Judicial Committee.

different matter. *Held*, it was wrongly rejected as evidence. To make a statement inadmissible as evidence.

and  
C.  
'32,  
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laration made by a deceased member of a family touching the family reputation on the subject of its descent. A pedigree, also rejected by the

from his father as a statement of the family descent for the purpose of being given in evidence in certain criminal proceedings. *Held*, that it had been adopted by such deceased member of the family, and not being shown to be *post litem motam*, it was admissible in evidence. **KALKA PRASAD v. MATHURA PRASAD** (1908). I. L. R. 30 All. 610

## s. 32 (4).

See TRADE MARK.

I. L. R. 25 Bom. 433

Proof of custom—Statement as to

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

that s. 32, cl. 4, of the Evidence Act was not applicable to the case, as the evidence was required to prove a fact in issue, and not merely a relevant fact. The statement was therefore inadmissible to prove the alleged custom. **PATEL VANDRAVAN JERISHAN v. PATEL MANILAL CHUNILAL**

I. L. R. 15 Bom. 565

## s. 32, cl. (5).

See EVIDENCE, ADMISSIBILITY OF.

I. L. R. 34 Calc. 1959

1. ——— Relationship—Statement by deceased person as to relationship. S. 32 (5) of the Evidence Act (I of 1872) does not apply to statements made by interested parties in denial, in the course of litigation, of pedigrees set up by their opponents. **NARAINI KUAR v. CHANDI DIN**

I. L. R. 9 All. 487

2. ——— Statements of family priest as to relationship—Special means of knowledge. Evidence of statements made by a deceased family priest as to the relationship of the members of the family may be given under s. 32, cl. 5, of the Evidence Act. **SHAM LALL SINGH v. RADHA BIBE**

4 C. L. R. 173

3. ——— Statement as to the existence of relationship—Special means of know-

ings as made by a person, since deceased, who was employed therein as muktear by certain members of the family. This judgment was reversed on a second appeal by the Court above, on the ground that the statement was inadmissible, not coming within the meaning of Act I of 1872, s. 32, sub-s. 5, as that of a person having special means of

other means of knowledge. **SANGRAM SINGH v. RAJAN BAH**

I. L. R. 12 Calc. 219 ; I. L. R. 12 I. A. 183

4. ——— and ill. (1)—Hearsay evidence—Pedigree, question of—Proof of birth—Statement of deceased father. In a suit on a promissory note, to which the only defence was minority, a statement made by the defendant's father (who died before proceedings by way of suit had been contemplated) to a witness as to the age of his son, held to be inadmissible as evidence of the age of the defendant in support of his defence. **BIPIN BEHARY DAW v. SREEDAM CHUNDER DEY**

I. L. R. 13 Calc. 42

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

5. ——— Pedigrees—Evidence proving title by inheritance to raj estates—Proof of pedigree—Estate held as separate under the Hindu law. A raj estate was claimed by the appellant as the nearest agnatic kinsman of the last Raja in possession, who had died without male issue, but leaving a widow and a daughter by her, both of whom died before this suit. The claimant, to prove his title, relied upon a pedigree not stated in any document

raj estate and the Raja called upon to answer in proceedings at settlement had not given a direct denial to the alleged relationship. On the contention that there were steps in the pedigree as to which the evidence adduced did not include proof of statements made by a deceased person who had means of knowledge, or proofs of other statements, within

to be, and that the appellant was, as heir to him, entitled to inherit the raj estates on the widow's death, this opinion being founded on the documentary evidence. **BEJAI BAHADUR SINGH v. BHUPINDAR BAHADUR SINGH, BEJAI BAHADUR SINGH v. KOUNSAL KISHORE PRASAD**

I. L. R. 17 All. 456

I. A. 139

6. ——— Statements in pedigree—Statements of persons who cannot be produced as witnesses. S. 32 of the Evidence Act, which makes statements in a pedigree reliable made by witnesses in the case of **SINGH**

A. 183

7. ——— Family custom—Evidence of existence of family custom (of primogeniture)—Statements derived from deceased persons. A witness may state his opinion as to the existence of a family custom and (in this case a custom of primogeniture) give as the grounds thereof information derived from deceased persons. But it must be independent opinion based on hearsay, and not on mere repetition of hearsay: see Evidence Act, 1872, s. 32, sub-s. 5, ss. 49 and 60. Its weight depends on the character of the witness and of the deceased persons. **GARURUDHWAJA PARSHAD SINGH v. SARABAUDHWAJA PARSHAD SINGH**

I. L. R. 23 All. 37

I. A. 238

Reversing decision of High Court in **SUFURAU-DHWAJA PRASAD v. GURURADDHWAJA PRASAD**

I. L. R. 15 All. 147

8. ——— Date of birth, proof of—Statement of deceased relatives—Hearsay evidence. For

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

the purpose of the decision of a question of limitation, it was necessary to prove the date of the plaintiff's birth. The plaintiff and one of his witnesses each spoke, to statements made to them by relatives of the plaintiffs, who were since deceased, relating to the date of the plaintiff's birth. *Held*, that such statements were admissible in evidence under s. 32, cl. 5, of the Evidence Act. *Haines v. Guthrie*, L. R. 13 Q. B. D. 818, not followed. *RAM CHANDRA DUTT v. JAGESWAR NARAIN DEO*, I. L. R. 20 Cal. 758

9. — Statements as to existence of relationship—Proof of age and order of birth of children. Case in which the plaintiff in a former suit verified by a deceased member of the family, and as such having special means of knowledge, was held admissible under s. 32, sub-s. 5, of the Evidence Act (I of 1872), to prove the order in which certain persons were born and their ages. *DRANNULL v. RAM CHUNDER GHOSH*, I. L. R. 24 Cal. 265  
1 C. W. N. 270

10. — Relationship, proof of—Statement relating to the existence of any relationship contained in a document signed by several persons, some only of whom are dead. A statement relating to the existence of any relationship contained in a document signed by several persons, some only of whom are dead, is admissible in evidence under cl. 5 of s. 32 of the Evidence Act. *CHANDRA NATH ROY v. NILMADHAN BHUTTACHARJEE*, I. L. R. 26 Cal. 236  
3 C. W. N. 66

11. — Age, proof of—Statement as to age of a member of a family by another member

758, followed. The defendant company's pro-

onus of proving the correctness of the age as warranted by the assured. *ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY v. NARASIMHA CHARI* (1901) I. L. R. 25 Mad. 183

## s. 32 (5), (6).

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALITY. I. L. R. 28 I. A. 1

EVIDENCE ACT (I OF 1872)—*contd.*s. 32—*contd.*

1. — s. 32, cl. (6)—Statement in will—Words not purporting or operating to extinguish an interest in the present or in future—Registration Act (III of 1877), s. 17, cl. (b). S. 17, cl. (b), of the Registration Act (III of 1877) does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future, but state only past facts. Such a statement would, if proved, be admissible also under s. 32, cl. 6, of the Indian Evidence Act (I of 1872). *CHAMANBHU JAYE MAHOMED ALI BOHORI v. MULTANCHAND SHIVRAM*, I. L. R. 20 Bom. 562

2. — Horoscope. In a suit to recover possession of immovable property, the plaintiff tendered in evidence a horoscope which he said had been given to him by his mother, and had been seen by members of his family and used

Act *RAMNARAIN KALLIA v. MONTE BIBEE. RAMNARAIN KALLIA v. GOTAL DASS SINGH*, I. L. R. 9 Cal. 613

3. — Horoscope—Age, proof of. In a suit to set aside a decree on the ground of minority, the plaintiff relied upon a horoscope to prove his age. *Held*, following *Ram Narain Kallia v. Monte Bibee*, I. L. R. 9 Cal. 613, that the horoscope was not admissible under s. 32, cl. 6, of the Evidence Act. *SATIS CHANDER MUKHOPADHYA v. MOHENDRO LAL PARIHUK*, I. L. R. 17 Cal. 849

See *GOUNDAN v. GOUNDAN*

I. L. R. 17 Mad. 134

s. 32, cl. (7)—Evidence of family custom. In a suit to establish the existence of a family custom, the plaintiffs offered in evidence a deed containing a recital that the custom of the

defendant was not a party to it. *Held*, that the deed was admissible as evidence on behalf of the plaintiffs, though they could themselves be called as witnesses; but that, though admissible, the custom as against the defendant must be proved *alunde*. *HURRONATH MULLICK v. NITTANEND MULLICK*, 10 B. L. R. 263

s. 32, cl. (8)—Statement of police officer—Common statement by a number of persons. The statement of a police officer who goes about from place to place and collects information from different persons, which he afterwards puts in second hand before the Court, cannot be received

EVIDENCE ACT (I OF 1872)—*contd.*

**s. 32—concl'd.**

as evidence under the Evidence Act, I of 1872, s. 32, cl. 8. The meaning of that clause is that, when a number of persons assemble together to give vent to one common statement, which statement expresses the feelings or impressions made in their mind at the time of making it, that statement may be repeated by the witnesses, and is evidence.

QUEEN v. RAM DUTT CHOWDHURY

23 W. R. Cr. 35

ss. 32, 91.

See DYING DECLARATION.

I. L. R. 36 Cal. 659

**B. 33.**

See COMMISSION—CRIMINAL CASES.

I. L. R. 19 Cal. 113

I. L. R. 19 Bom. 749

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

See RECOGNIZANCE TO KEEP PEACE—  
SECOND APPLICATION FOR SECURITY.

22 W. R. Cr. 8, 36, 79

1. \_\_\_\_\_ Representatives in interest.

In order to satisfy the requirements of a 33 of the Evidence Act, the two suits must be brought  
 essent-  
 a are  
 NATH

4. 11. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 8

2. \_\_\_\_\_ Incompetency to give evi.

dence. The incapacity to give evidence mentioned in s. 33 of the Evidence Act need not be a permanent incapacity. *In the matter of the petition of ASOUR HOSSEIN, ENTRESS v. ASOUR HOSSEIN* 11 L. R. 6 Calc. 774; 6 C. L. R. 124

3. \_\_\_\_\_ "Incapable of

giving evidence." *Discretion of Court—Casual incapacity.* The words "incapable of giving evidence" in s 53 of the Evidence Act, I of 1872, denote an incapacity of a permanent, not of a temporary, kind; and when a witness is proved to be incapable of giving evidence, the Court has no discretion as to admitting his deposition. But where the absence of a witness is casual or due to a temporary cause, the Court has such a discretion, if his presence cannot be obtained without an amount of delay or expense which, under the circumstances, the Court considers unreasonable. *In the matter of PYARI LALL*. 4 C. L. R. 504

4. \_\_\_\_\_ Deposition in former suit—

**Admission.** A deposition of a person in a suit to which he was not a party is, in a subsequent suit in which he is a defendant, evidence against him and against those who claim under or purchase from him, although he is alive and has not been called as a witness. S. 33 of the Evidence Act (1 of 1872) does not apply to such a deposition.

EVIDENCE ACT (I OF 1872)—*contd.*

## p. 33—contd.

but it is admissible under the sections relating to admissions, although it might be shown that the facts were different from what they were stated to be in the former case. A statement in a bill of sale is evidence against those who are parties to it. SOOJAN BIREE v. ACHMUT ALI

14 B. L. R. Ap. 3:21 W. R. 414

## B. \_\_\_\_\_ Deposition in

*former suit.* *H N* died on 16th May 1854 without issue, leaving a widow, *B. B.*, on 19th May 1856, purported to adopt *S* in accordance with an alleged anumati-patra, executed by *H N.* *R N*, the uncle of *H N*, died on 6th July 1855, leaving a widow, *M*, in whose favour he had executed an anumati-patra, by the terms of which she was to have the management of his property during the minority of the adopted son, in whom it was to vest on his adoption. *M* adopted *D* subsequently to the adoption of *S.* After the death of *R N, B.*, as widow of *H N* and adoptive mother of *S*, brought a suit against *M* as the widow of *R N* and ignoring the existence of *D.* *D* died, and on his death *M* adopted *N* on 4th April 1864. In a suit brought by *M* as the mother and guardian of *N* to have the adoption of *S* declared invalid:—*Hidd.*, that the depositions of certain witnesses who had been examined in the previous suit to establish the fact of the adoption of *S* by *B* were not, under a 33, Act I of 1872, admissible in evidence against the plaintiff *M.*  
MUNIMYEE DABEA 1. BHOGUNMYEE DABEA

15 B, L, R, 1; 28 W. R, 42

6. \_\_\_\_\_ Previous depositions—Eni.

dence given in proceeding *coram non iudice*. The evidence of a witness given in a proceeding pronounced to be *coram non iudice* cannot be used under s. 33 of the Evidence Act, if the witness is dead, on a re-trial before a competent Court. *R* charged *A* with breach of trust, and *S* gave evidence in support of the charge. *A*

the issues common to both trials was properly admitted at the second trial against R. *In re Ram Reddy* . . . I. L. R. 3 Mad. 48

7. \_\_\_\_\_ Deceased witness—

*Criminal trial, deposition in, admissibility of, in civil suit.* A prosecution was instituted by S against N at the instance and on behalf of F for criminal trespass in respect of a certain house, and on his own behalf for assault and insult. S gave evidence at the trial in support of these charges. F subsequently brought a civil suit against N for possession of the same house under s. 9 of the Specific Relief Act. S died before the institution of the civil suit. At the trial of the civil suit the deposi-

EVIDENCE ACT (I OF 1872)—*contd.*s. 33—*contd.*

the same, the deposition of A was inadmissible.  
**FOOLKISSORY DASVEE v. NODIN CHUNDER BRUNJO**  
 I. L. R. 23 Cal. 441

8. ——— and s. 32, cl. 1—“*Questions in issue*”—*Charges added at sessions*—*Depositions before Magistrate*—*Witness dying or absconding*—*Qualification of Jurymen*. In the proceedings before a Magistrate on a charge of causing grievous hurt, two (among other) witnesses, one of whom was the person assaulted, were examined on behalf of the prosecution. The prisoners were committed for trial. Subsequently the person assaulted died in consequence of the injuries inflicted on him. At the trial before the Sessions Judge, charges of murder and of culpable homicide not amounting to murder were added to the charge of grievous hurt. The deposition of the deceased witness was put in and read at the Sessions trial. Held, that the evidence was admissible either under s. 32, cl. 1, or s. 33 of the Evidence Act, notwithstanding.

depends upon whether the same evidence is applicable, although different consequences may follow from the same act. At the trial it was proved that the other witness who had been examined before the Magistrate had died, and that it had

*the petition of* **ROCHIA MONATO**. **EMPERESS v. ROCHIA MONATO**  
 I. L. R. 7 Cal. 42  
 8 C. L. R. 273

9. ——— *Depositions of witnesses taken by Consul at Zanzibar*. A prisoner accused of having committed murder at Zanzibar was sent by the British Consul there for trial before the High Court at Bombay. The Consul could not enforce the attendance of witnesses at Bombay, but he transmitted to the High Court the depositions which he had taken in the course of the enquiry he had held with regard to the commission of the alleged offence. In the absence of the witnesses,

**EMPERESS v. DOSSANI GULAM HUSKIN**  
 I. L. R. 3 Bom. 334

10. ——— *Deposition of person denying he presented petition in Court*. A deposition made by a person wherein he denied on oath that he had presented a certain petition in Court which purported to be from him, was held to

EVIDENCE ACT (I OF 1872)—*contd.*s. 33—*contd.*

be inadmissible as evidence under Act I of 1872, s. 33, because the person might have been brought into Court, but was not brought by those who pleaded the said deposition. **BUONBUN MOYEE DOSSER v. AMBICA CHURN SERT**  
 23 W. R. 343

11. ——— *Deposition of absent witness*. Under s. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. **QUEEN v. ETWARREE DHAARE**  
 21 W. R. Cr. 12

12. ——— *Deposition of absent witness*. When the evidence of an absent witness is admitted under s. 33 of the Evidence Act,

because there was nothing to show that by ordinary care and the use of ordinary means the witness could not have been produced. In order to make a deposition admissible under s. 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining. **QUEEN v. MOHJAN alias NANE KHAN**  
 20 W. R. Cr. 69

13. ——— *Depositions of absent witnesses—Ground for absence*. Before a Sessions Judge can, under s. 33, Act I of 1872, admit the depositions of witnesses given in a former judicial proceeding, he must be satisfied that the witnesses were absent from the trial without an opportunity of cross-examination.

**SANTHAL**  
 21 W. R. Cr. 69

14. ——— *Inconvenience to witnesses—Question of identification—Expense*. At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the property in respect of which the accused was charged, and of his wife taken by commission during the enquiry, and the evidence of the servant of those persons taken at the enquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the enquiry were that the attendance of the witnesses could not be procured at an amount which he

only to the identification of the property.

EVIDENCE ACT (I OF 1872)—*contd.*s. 33—*concl.*

of which the accused was charged. *Held*, that the Sessions Judge had improperly admitted such evidence.

of the utmost moment, the whole case resting on it; and as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. *QUEEN-EMRESS v. BURKE* I. L. R. 9 All. 224

## s. 34.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

I. L. R. 29 Calc. 334

Account books.—*Amlahs*—*Furds*—*Accounts*. A person used to enter all his receipts and all the advances he made to his *amlahs* first in a *khata* book. The *amlahs* used to submit *furds* embodying the expenses incurred by them and these used to be regularly checked by him. He used to prepare his monthly and other accounts from the *khata* book and the *furds*. *Held*, that

*Barabanki v. Ram*, I. L. R. 27 Calc. 118 4 C. W. N. 137, referred to. *PEARY MONON MOOKERJEE v. NARENDRA NATH MOOKERJEE* (1905)

I. L. R. 32 Calc. 582  
s. c. 9 C. W. N. 421

## s. 35.

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, ETC. I. L. R. 29 Calc. 348

See ante s. 32 (2) . 13 C. W. N. 71

See WAJB-UL-AZ . 10 C. W. N. 730

1. Public record. S. 35 of the Evidence Act, which provides "that any entry in an official public book which is duly made by a public servant in the execution of his duty, is of itself a relevant fact" does not make the public book evidence to show that a particular entry has not been made in it. *In the matter of JUGGUN LALL* . 7 C. L. R. 356

2. Measurement papers—*Measurement papers prepared by ameen in partition proceedings*. The measurement papers prepared by a *batwara ameen* deputed by the Collector to make a partition do not come within s. 35 of the Evidence Act. *MOHI CHOWDHURY v. DHIRO MISHRAIN* . 6 C. L. R. 139

EVIDENCE ACT (I OF 1872)—*contd.*s. 35—*cont.*

3. "*Batwara khawra*"  
—*Estates Partition Act (Bengal Act VIII of 1876)*, s. 54—*Measurement papers, entry made in*—"Re-

L. R. 139, referred to. *PERMA ROY v. KISHEN ROY* . I. L. R. 25 Calc. 90

4. Entries by Survey-officer—*Evidence of other mortgage than one sued on*—*Statement of a survey officer as to entry as occupant how far admissible*. Under s. 35 of the Evidence Act I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such entry as facts in another case. *GOVINDRAY DESHMUKH v. RAGHO DESHMUKH* . I. L. R. 8 Bom. 543

5. Entries by Collector—*Land Registration Act (Bengal Act VII of 1876)*, s. 55—*Entry in register, effect of*—*Question of possession*. Entries made under Bengal Act VII of 1876 by the Collector, recording the names of proprietors of revenue-paying estates, are not evidence, under s. 35 of the Evidence Act, of the fact of proprietorship. That section relates to the class of cases where a public officer has to enter in a register or other book some actual fact which is known to him, e.g., the fact of a death or a marriage. The entry by the Collector in the register under Bengal Act VII of 1876 is not, properly speaking, the entry of a fact. It is a statement that the person is entitled to the property; it is the record of a right, not of a fact. *PER GARTH, C.J.*—*Semle*. That s. 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession and proprietorship.

SINGH . I. L. R. 9 Calc. 431; 12 C. L. R. 12

9. Admission—*Statement in decree*—*Practice of Mofussil Courts*. In a suit for possession of a fishery, the plaintiff sought to put in evidence an admission alleged to have been made in the year 1918 by the defendant's predecessor in title in a written statement in

EVIDENCE ACT (I OF 1872)—*contd.*s. 33—*contd.*

tion of *S* in the Criminal Court was tendered by *F* as evidence on the issue of possession. *Held*, that *S* being dead, and the proceedings being between the same parties, and the issues being substantially the same, the deposition of *S* was admissible. *FOOLEISSORY DASSEE v. NONIN CHUNDER BHUNJO*

I. L. R. 23 Cal. 441

8. \_\_\_\_\_ and s. 32, cl. 1.—“Questions in issue”—Charges added at sessions—Depositions before Magistrate—Witness dying or absconding—Qualification of Jurymen. In the proceedings before a Magistrate on a charge of causing grievous hurt, two (among other) witnesses, one of whom was the person assaulted, were examined on behalf of the prosecution. The prisoners were committed for trial. Subsequently the person assaulted died in consequence of the injuries inflicted on him. At the trial before the Sessions Judge, charges of murder and of culpable homicide not amounting to murder were added to the charge of grievous hurt. The deposition of the deceased

of the Evidence Act is applicable—that is, whether the questions at issue are substantially the same—depends upon whether the same evidence is applicable, although different consequences may follow from the same act. At the trial it was proved that

was properly admitted under s. 33. *In the matter of the petition of ROCHIA MOHATO. EMPRESS v. ROCHIA MOHATO*

I. L. R. 7 Cal. 42

8 C. L. R. 273

9. \_\_\_\_\_ Depositions of witnesses taken by Consul at Zanzibar. A prisoner

had held with regard to the commission of the alleged offence. In the absence of the witnesses, these depositions were tendered in evidence at the trial in Bombay. *Held*, that the British Consul at Zanzibar was authorized to take the depositions, and that they were admissible in evidence at the trial under s. 33 of the Evidence Act (I of 1872).

EMPRESS v. DOSSAJI GULAM HUSFIN

I. L. R. 3 Bom. 334

10. \_\_\_\_\_ Deposition of person denying he presented petition in Court. A deposition made by a person wherein he denied on oath that he had presented a certain petition in Court which purported to be from him, was held to

EVIDENCE ACT (I OF 1872)—*contd.*s. 33—*contd.*

be inadmissible as evidence under Act I of 1872, s.

11. \_\_\_\_\_ Deposition of absent witness Under s. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. *QUEEN v. ETWARRE DHAREE*

21 W. R. Cr. 12

12. \_\_\_\_\_ Deposition of ab-

could not have been produced. In order to make a deposition admissible under s. 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining. *QUEEN v. MOWJAN alias NANE KHAN*

20 W. R. Cr. 60

13. \_\_\_\_\_ Depositions of absent witnesses—Ground for absence. Before a Session Judge, under s. 33 Act I of 1872, admit judi-

ad of nesses themselves, it ought to appear that the presence of the witnesses could not be obtained without an

SANTHAL

21 W. R. Cr. 60

14. \_\_\_\_\_ Inconvenience to witnesses—Question of identification—Expense. At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of

the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds

EVIDENCE ACT (I OF 1872)—*contd.*s. 33—*contd.*

of which the accused was charged. *Held*, that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act, and the

## s. 34.

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES  
I. L. R. 29 Calc. 334

**Account books—Amlahs—Furds—Accounts.** A person used to enter all his receipts and all the advances he made to his amlahs first in a *khata* book. The amlahs used to submit furds embodying the expenses incurred by them and these used to be regularly checked by him. He used to prepare his monthly and other accounts from the *khata* book and the furds. *Held*, that

I. L. R. 30 Cal. 602  
s. 9 C. W. N. 421

## s. 35.

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, ETC. I. L. R. 28 Calc. 348

See ante s. 32 (2) . 13 C. W. N. 71

See WAJB-UL-AZ . 10 C. W. N. 730

**1. Public record.** S. 35 of the Evidence Act, which provides "that any entry in an official public book which is duly made by a public servant in the execution of his duty, is of itself a relevant fact" does not make the public book evidence to show that a particular entry has not been made in it. *In the matter of JAGANNATH LALL* . 7 C. L. R. 358

**2. Measurement papers—Measurement papers prepared by ameen in partition proceedings.** The measurement papers prepared by a batwara ameen deputed by the Collector to make a partition do not come within s. 35 of the Evidence Act. *MOH CHOWDHURY v. DHIRO MISHRAIN* . 8 C. L. R. 139

EVIDENCE ACT (I OF 1872)—*contd.*s. 35—*contd.*

**3. "Batwara khara"**  
—*Estates Partition Act (Bengal Act VIII of 1876), s. 54—Measurement papers, entry made in—"Record."* A batwara khara or measurement paper

L. R. 139, referred to. PERMA ROY v. KISHEN ROY . I. L. R. 25 Calc. 90

**4. Entries by Survey-officer—Evidence of other mortgage than one sued on—Statement of a survey officer as to entry as occupant how far admissible.** Under s. 35 of the Evidence Act I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such entry as facts in another case. *GOVINDRAY DESHMUKH v. RAGHO DESHMUKH* . I. L. R. 8 Bom. 543

**5. Entries by Collector—Land Registration Act (Bengal Act VII of 1876), s. 55—Entry in register, effect of—Question of possession.** Entries made under Bengal Act VII of 1876 by the Collector, recording the names of proprietors of revenue-paying estates, are not evidence, under s. 35 of the Evidence Act, of the fact of proprietorship. That section relates to the class of cases where a public officer has to enter in a register or other book some actual fact which is known to him, e.g., the fact of a death or a marriage. The entry by the Collector in the register under Bengal Act VII of 1876 is not, properly speaking, the entry of a fact. It is a statement that the person is entitled to the property; it is the record of a right, not of a fact. *PER GARTH, C.J.—Semble*. That s. 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession, and his recorded decision upon that question in the register might be evidence of the fact of possession as between those two parties. *Ram Bishan Mahto v. Jebls Mahto, I. L. R. 6 Calc. 553*, explained *SARASWATI DAS v. DHANPAT SINGH* . I. L. R. 9 Calc. 431; 12 C. L. R. 12

**6. Admission—Statement in decree—Practice of Mofussil Courts.** In a suit for possession of a fishery, the plaintiff sought to put in evidence an admission alleged to have been made in the year 1818 by the defendant's predecessor in title in a written statement in a former suit.

enter in the decree an abstract of the pleadings in



EVIDENCE ACT (I OF 1872)—*contd.*s. 35—*contd.*

each case. *Held*, that the statement in the decree was evidence of the admission under s. 35 of the Evidence Act (Act I of 1872). *Lekraj Kuar v. Mahpal Singh*, I. L. R. 5 Cal. 741, referred to. *PARBUTTY DASSI v. PURNO CHUNDER SINGH*

I. L. R. 8 Cal. 588

7. ———— *Admission—Abstract of pleadings given in a decree. Quote:* Whether an abstract of the pleadings given in a decree is legally secondary evidence of an admission alleged to have been made in such pleadings. *Parbutty Dassi v. Purno Chunder Singh*, I. L. R. 9 Cal. 586, doubted. *SUNDER DAS v. FATIMUL-KISSA*, 1 C. W. N. 613

8. ———— *Certificate of guardianship under Act XI of 1856—Minority, evidence of.* A certificate of guardianship under Act XI of 1856 is no evidence of minority under s. 35 of the Evidence Act (I of 1872), being neither a book nor a register nor a record kept by any officer in accordance with any law. *SATIS CHUNDER MUKHOPADHYA v. MOHENDRO LAL PATHAK*

I. L. R. 17 Cal. 840

8. ———— *Draft plaint, and order on petition.* The plaintiff sued as the karnavan of a Mapula tarwad to recover lands in the possession of the defendants, who were a donee from and the descendants of a previous karnavan and their tenants. An issue was raised as to whether the

tarwad. The rough draft of a plaint which had been filed by the alleged previous karnavan was put in evidence to show that he admitted having alienated property in a manner which would be adverse to the claim of his tarwad. *Held*, that the

10. ———— *Judgment—Recital in a judgment—Admission of jenmi's title.* In a suit, by a melkanomdar to redeem a kanom, the kanom document was proved to have been lost; it appeared that a previous suit had been brought by the jenmi to redeem the same kanom, and the judgment in that suit, in which it was stated that the defendants admitted their position as kanomdars, was tendered in evidence to prove the jenmi's title. *Held*, that the judgment was admissible in evidence. *THAMA v. KONDAN*

I. L. R. 15 Mad. 378

11. ———— *Entries in Collector's register—Land Registration Act (Bengal Act VII of 1876)—Register of Collector as to land registration.* Entries in a register made under Bengal Act

EVIDENCE ACT (I OF 1872)—*contd.*s. 35—*contd.*

VII of 1876 by the Collector are entries made in an official register kept by a public servant under the provisions of a statute, and certified copies of such entries are admissible in evidence for what they are worth. *Dictum of CARTER, C.J., in Saraswati Dasi v. Dhanpat Singh*, I. L. R. 9 Cal. 431, dissented from. *SHOSHI BHOSHUN ROSE v. GIRISH CHUNDER MITTER*

I. L. R. 20 Cal. 840

12. ———— *Teiskhana paper—Public record—Admissibility of evidence—Beng. Reg. XII of 1817, s. 16.* The teiskhana paper kept by patwaris under a 16 of Bengal Regulation XII of 1817 is not

the

not

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referred

to. *SAMAR DASADH v. JUGOTL KISHORE SINGH*

I. L. R. 23 Cal. 366

13. ———— *Certificate of guardianship—Evidence of minority.* A certificate of guardianship is not evidence of minority when the question of minority is in issue. *Satis Chunder Mukhopadhyaya v. Mahendro Lal Pathak*, I. L. R. 17 Cal. 519, followed. *GENJRA KUAR v. ABLEKH PANDE*, I. L. R. 18 All. 478

14. ———— *Entries by Settlement Officers—Statements of fact by Settlement Officer in record of case—Public record, entries in.* Statements of facts made by a settlement officer in the column of remarks in the dharepatrak, but not his remarks for the same, even though they may consist of statements of collateral facts which it was no part of his duty to inquire into, are admissible in evidence as being entries in a public record stating facts and made by a public servant in the discharge of his official duty within the meaning of s. 35 of the Evidence Act (I of 1872). *MADHATRAO APPAJI SATHE v. DEONAK*

I. L. R. 21 Bom. 695

15. ———— *Even if the word* for, and no longer excess of officers in the district in question to make, and therefore no evidential value whatever could be attached to it. *In the matter of Juggun Lall*, 7 C. L. R. 356, and *Queen-Empress v. Grees Ghunder Banerjee*, I. L. R. 10 Cal. 1024, referred to. *ALI NASTIR KRAN v. BLANK CHAND (1902)*, I. L. R. 25 All. 90

16. ———— *Regulation No. VII of 1822, s. 9—Duties of Collectors and Settlement Officers—Entries in Khewat and Khatauni.* Entries in a Khewat or Khatauni of Regulation No. VII of 1822,

subject-matter of different kinds or degrees." *Held*,

EVIDENCE ACT (I OF 1872)—*contd.*s. 35—*contd.*

that this included the case of mortgagors and mortgagees. *Held*, also, that the entries in *Mauzats* and *Khotawis* made at settlements under Regulation No. VII of 1822 are admissible in evidence under s. 35, Indian Evidence Act, 1872. ROBERT SKINNER v. CHANDAN SINGH (1908)

I. L. R. 31 All. 247

17. — *Usage—Management of Hindu temple—Turns of Management—Family arrangement—Scheme proved by unbroken usage for nineteen years.* The office of manager of a Hindu temple was vested by inheritance in eight male descendants of the last holder by his two wives, four by each. One member of each branch held office for one year in alternate succession until 1831-82, when the four members of the junior branch including the appellant, relinquished their claim in favour of the respondent, a member of the senior branch. In a suit by the respondent against the appellant in effect to assert his term of office under this family arrangement: *Held*, that an unbroken usage for nineteen years was, as against the appellant, conclusive evidence thereof. The parties were competent to make it, for it involved no breach of trust, and it must hold good until altered by the Court or superseded by a new arrangement. RAMANATHAN CHETTI v. MURUGAPPA CHETTI (1900) . I. L. R. 29 Mad 283  
s.c. I. L. R. 33 I. A. 139

18. — *Former admissions—Onus probandi—Plaintiff to prove that his former admissions were untrue.* Where the defendant in an action of ejectment denied the plaintiff's title by inheritance and pleaded that although the natural son of the last holder, the plaintiff had been adopted by a third party: *Held*, that on proof of admissions contained in a deed of gift and a power-of-attorney, to which the plaintiff, but not the defendant, was a party, that the plaintiff had described himself as such adopted son, the adoption must be taken to be established in the absence of satisfactory proof by the plaintiff that the admissions were untrue in fact. CHANDRA KUNWAR v. CHAUDHRI NARPAT SINGH (1906)

I. L. R. 29 All. 184  
s.c. I. L. R. 34 I. A. 27

19. — ss. 35 and 48—*Wajib-ul-urz—Proof of custom—Admissibility of village wajib-ul-urz.* *Held*, on the question whether there did or did not exist a custom in the Bahruha clan in Guddh excluding daughters from inheritance, that the *wajib-ul-urz* of a *mouza* in the talukh, stating the custom of the Bahruha clan as to inheritance, had been properly received in evidence under s. 35 of the Evidence Act, 1872.

EVIDENCE ACT (I OF 1872)—*contd.*s. 35—*concl.*

LEKHAJ KUAR v. MAHPAL SINGH, RAOHURAN  
KUAR v. MAHPAL SINGH . I. L. R. 5 Calc. 744  
I. R. 7 I. A. 63  
8 C. L. R. 593

20. — *Entry in record kept outside British India. Query: Whether s. 35 of the Evidence Act applies to an entry in a public register or record kept outside British India.* PONSAMMAL v. SUNDARAM PILLAI  
I. L. R. 23 Mad. 490

## s. 36.

See EVIDENCE—CIVIL CASES—MAPS.

7. W. N. 849

See TOPOGRAPHICAL SURVEY MAP.

11 C. W. N. 230

s. 38—*French law—Statement as to French Law—Unauthorized Translation of Code Napolcon.* A statement contained in an unauthorized what the Fr not relevat  
CHRISTIAN v . . . . .

## s. 40.

See KHOTI SETTLEMENT ACT, s. 17.

I. L. R. 20 Bom. 475

## ss. 40-43.

See RES JUDICATA—ESTOPPEL BY JUDG-

MENT . I. L. R. 8 Calc. 171

I. L. R. 3 Bom. 3

I. L. R. 18 Mad. 490

I. L. R. 20 Calc. 888

s. 41—*Probate—Executor, power of, before Hindu Wills Act—Probate Act (V of 1881), ss. 2, 149.* S. 41 of the Evidence Act is applicable to probates granted prior to the passing of the Hindu Wills Act. GRISH CHUNDER ROY v. BROUGHTON . . . . . I. L. R. 14 Calc. 861

## ss. 41, 44.

See DIVORCE ACT, s. 17.

I. L. R. 22 A. 270

## s. 42.

See TRADE MARK.

I. L. R. 25 Bom. 433

Judgments—*Judgment as to transferability of tenures in adjoining villages—Evidence of custom or usage.* In a suit by the landlords to avoid the sale of an occupancy holding in their *mouza* and eject the purchaser thereof, one of the questions was as to the existence of a custom or usage under which the raiyat was entitled to sell such a holding. *Held*, that a judgment of the High Court as to the transferability of similar tenures in

EVIDENCE ACT (I OF 1872)—*contd.*s. 42—*concl'd.*

an adjoining village of the same pergunnah is admissible as evidence of such usage under s. 42 of the Evidence Act. *DALGLISH v. GURUFFER HASSAIN*  
I. L. R. 23 Calc. 427

s. 43—*Judgments inter alios—Admissibility—Approbating and reprobating by*

had been acquired for the purposes of the partnership business, in proof whereof he relied on a decree passed on an arbitration award made in a suit for dissolution of partnership between the

in a suit by the lessee to recover some of the outstanding dues, the third party, relying on the award, had claimed and recovered a share of the money sued for. *Per GHOSE, J.*—The judgment passed upon the award was relevant in this case upon the question whether the lease was acquired by the lessee for his own benefit or as partnership property and the plaintiff was entitled to recover rent from both the partners. *Bhillo Kunwar v. Keshe Pershad Misser*, 1 C. W. N. 265; s.c. I. L. R. 19 All. 277; *Gujju Lall v. Fatteh Lall*, I. L. R. 6 Calc. 171; *Surender Nath Pal Choudhuri v. Broyo Nath Pal Choudhuri*, I. L. R. 13 Calc. 352; *Tepu Khan v. Rajon Mohun Das*, 2 C. W. N. 501; s.c. I. L. R. 25 Calc. 522; *Ram Ranjan Chakrabati v. Ram Narain Singh*, I. L. R. 22 Calc. 533, referred to *Per GEIDT, J.*—Neither the award nor the conduct of the third party in the subsequent suit was admissible as evidence in this case to prove that the third party was liable to the plaintiff for rent. *Whately v. Menheim*, 2 Esp. 608 (*Mitch*, T. 38 Geo. III), and *Gujju Lall v. Fatteh Lall*, I. L. R. 6 Calc. 171, referred to. *Tepu Khan v. Rajon Mohun Das*, 2 C. W. N. 501; s.c. I. L. R. 25 Calc. 522, and *Ram Ranjan Chakrabati v. Ram Narain Singh*, I. L. R. 22 Calc. 533, considered. *Per GEIDT, J.*—The mere existence of a judgment, its date and legal consequences are conclusively proved as against all the world by the production

been proved. *Per GEIDT, J.*—Judgments in personam are conclusive against third persons (but not in their favour) of the relationship between the parties and of the extent of the relation. In the

EVIDENCE ACT (I OF 1872)—*contd.*

## s. 44.

*See FRAUD—ALLEGING OR PLEADING FRAUD* . . . I. L. R. 12 Calc. 158  
I. L. R. 27 Calc. 11

*See FRAUD—EFFECT OF FRAUD.*  
I. L. R. 6 Bom. 703

*See INSOLVENT ACT, s. 9.*  
I. L. R. 21 Bom. 205

*See RES JUDICATA—COMPETENT COURT—GENERAL CASES.*  
I. L. R. 15 Mad. 498

*See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.*  
I. L. R. 6 Bom. 703

*See RIGHT OF SUIT—*

DECREES; . . . 5 C. W. N. 559

FRAUD . . . 7 C. W. N. 353

1. ———— *Competent Court. Per Curiam.*  
The words "not competent" in s. 44 of the Evidence Act refer to a Court acting without jurisdiction. *KETTLAVMA v. KELLAPPAN*  
I. L. R. 12 Mad. 228

2. ———— *Fraudulent decree—Res judicata—Evidence—Competence of party, against whom a former judgment is set up as constituting res judicata, to show that such judgment was obtained by fraud or collusion.* When a subsisting judgment, order or decree, which is relevant under s. 40, 41 or 42 of the Indian Evidence Act, 1872, is set up by one party to a suit as a bar to the claim of the other party, it is not necessary for the party against whom such

I. L. R. 20 All. 310, referred to. *DANAJI MAH v. DEPAO* (1902) . . . I. L. R. 24 All. 242

3. ———— *Fraud—Power of Court to treat as a nullity the decree of another Court obtained by fraud—Heir of a party to a fraud not bound by the act of his ancestor.* Where by means of a fraud practised on the Court the owner of

to recover possession of their share by nullity of the property so dealt with, (i) that a Court which was otherwise competent to entertain the

EVIDENCE ACT (I OF 1872)—*contd.*s. 44—*concl'd.*

fact that the person, who practised such fraud, was their predecessor in title. *Nistarini Dassi v. Nundo Lal Bose*, I. L. R. 26 Cal. 891; *Bandon v. Becker*, 3 Cl. & Fin. 479; *Rajib Panda v. Lalkhan Senth Mahapatra*, I. L. R. 27 Cal. 11; *Ahmedbhoy Hubibhoy v. Fulebhoy Cassumbhoy*, I. L. R. 6 Bom. 703; *Prudham v. Philips*, 2 Ambler 763, and *Williams v. Lloyd*, 5 Bing. N. C. 741, referred to. *BARKATUNNISSA v. FAZL HAQ* (1901)

I. L. R. 26 All. 272

4. Letters of administration—*Suit for rent by administrator—Tenants' plea that letters of administration were obtained by misrepresentation, if entertainable—Fraud—Civil Procedure Code (Act XIV of 1852), ss. 562, 566—Remand* Plaintiff having obtained letters of administration to the estate of a deceased landlord sued a tenant for rent. The latter in his written statement objected that the letters of administration had been obtained upon a misrepresentation by the plaintiff as to his relationship with the intestate: *Held*,

go into evidence for the purpose of proving that the letters of administration were invalid in law. That such a defence could not be successfully raised so long as the letters of administration were not

s. 45,

See THUMB-IMPRESSIONS.

9 C. W. N. 520

s. 47—Handwriting, proof of—*Document—Witness proving handwriting.* In proof of a document a witness stated that he was acquainted with the handwriting of the writer, but he was not

collectively drawn in regard to the evidence to be as follows:—"A witness need not state in the first

EVIDENCE ACT (I OF 1872)—*contd.*s. 47—*concl'd.*

may at that stage be in a position to come to a definite conclusion on adequate materials as to the proof of the handwriting. *SHANKARRAO v. RAMJI* (1904)

I. L. R. 26 Bom. 58

s. 48,

See BHALE SULTAN CHATTRI TRIBE.

I. L. R. 30 All. 1

See RIGHT OF OCCUPANCY—TRANSFER OF

RIGHT, I. L. R. 23 Cal. 427

I. L. R. 26 Cal. 184

s. 50.

See ADULTERY, I. L. R. 5 Cal. 588

I. L. R. 5 All. 233

s. 54,

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.

See PENAL CODE, s. 400.

I. L. R. 32 Mad. 179

s. 57,

See RELIGION, OFFENCES RELATING TO.

I. L. R. 7 All. 461

Registering officer—"Court"—*Re-*

KOONDOO v. BROWN, I. L. R. 14 Cal. 178

1. ss. 60 and 67—Proof of execution of deed. To prove the execution of a bill of sale executed in their favour by the plaintiff's father, the defendants called a kazi, who deposed that the vendor came before him,

PUNDIRI v. JUGGOSUNDGO GHOSE

12 B. L. R. Ap. 16

2. Writer of document and sub. scribing witness. The Evidence Act does not require to be

21 W. R. 429

ss. 61, 65, 66—Secondary evid. ence, admissibility of—Objection to reception of

EVIDENCE ACT (I OF 1872)—*contd.*s. 61—*concl.**evidence—Evidence Act (I of 1872), ss. 61, 65 and*

*Kameshwar Pershad v. Amanuttulla, I. L. R. 26 Cal. 53, dissented from. KISHORI LAL GOSWAMI v. RAKHAL DASS BANERJEE (1901)*

I. L. R. 31 Cal. 155

s. 63.

See REMAND—GROUND FOR REMAND.

24 W. R. 232

ss. 63, 64.

See *post*, ss. 90 AND 114.

s. 65.

See CONFESSION—CONFESSIONS TO MAGISTRATE, I. L. R. 9 Mad. 224

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS

I. L. R. 15 Mad. 491

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE

I. L. R. 16 Cal. 201

I. L. R. 17 I. A. 159

ss. 65 *cls.* (e) and (g), 74.

See EVIDENCE. I. L. R. 34 Cal. 293

s. 68.

See BOND, EXECUTION OF.

I. L. R. 30 Mad. 251

See DEED—EXECUTION.

I. L. R. 20 All. 532

2 C. W. N. 603

5 C. W. N. 454

See "TRANSFER OF PROPERTY ACT, s. 59"

I. L. R. 32 Mad. 410

1. ——— Unattested document—*Mortgage—Transfer of Property Act (IV of 1882), s. 59—Inadmissibility of the unattested document in evidence to prove the debt. A mortgage for more than Rs 100 which has been prepared and accepted, but which is not attested, is invalid, and it cannot be used in proof of a personal covenant to pay, being excluded by s. 68 of the Evidence Act. MADRAS DEPOSIT AND BENEFIT SOCIETY v. OONNAMALAI AMMAL. I. L. R. 18 Mad. 29*

2. ——— *Surety bond purporting to hypothecate immovable property—Bond not properly attested—Transfer of Property Act (IV of 1882), s. 59 Where a surety bond purported to hypothecate immovable property, though it was not registered and attested by two witnesses, a personal decree could be passed on it against the surety inasmuch as the document was evidence of a*

EVIDENCE ACT (I OF 1872)—*contd.*s. 66—*concl.*

money-debt. *Madras Deposit and Benefit Society v. Oonnamalai Ammal, I. L. R. 18 Mad. 29, dissented from. SONATUN SHAHA v. IDINONATH SHAHA. I. L. R. 28 Cal. 223*  
3 C. W. N. 239

3. ——— Mortgage bond, proof of. Where a mortgage bond, which was on the face of it attested by more than two witnesses, but was proved by only one of them, and its execution was

s. 70.

See DEED—ATTESTATION.

7 C. W. N. 384

See DEED—EXECUTION.

I. L. R. 27 Cal. 190

s. 73—Signature, proof of. Where certain raiyats swore that they got their pottahs,

s. 74.

See CONFESSION—CONFESSIONS TO MAGISTRATE. I. L. R. 12 All. 595

See STAMP ACT, SEC. I, ART. 22.

I. L. R. 19 All. 293

1. ——— Letters between District Authorities. Letters between District Authorities are public documents forming a record of the acts of public authorities, and as such admissible as evidence under Act I of 1872, s. 74. *PAITREE SINGH v. COURT OF WARDS. 23 W. R. 272*

2. ——— Compromise, record of—*Public record—Proof by office copy* Where a suit is compromised, and a petition is presented in the usual way, and the Court makes an order confirming the agreement, which, with the order, as well as the agreement and power-of-attorney, are all entered upon the record, these papers become as much a part of the record in the suit as if the case had been tried and judgment given between the parties in the ordinary way; and that record is a public document, and may be proved by an office copy. *BHAGAIN MEKH RANE KOER v. GOOROO PERSHAD SINGH. 25 W. R. 68*

EVIDENCE ACT (I OF 1872)—*contd.*s. 74—*contd.*

to show that, at the time when such document was prepared, a raiyat affected by its provisions was a consenting party to the terms therein specified. **TARU PATUR v. ABINASH CHUNDER DUTT**

**I. L. R. 4 Calc. 78**

4. ————— *Jummabandi*—

*Public document* *Quære*: Whether a jummabandi is a public document? **AKSHAYA COOMAR DUTT v. SHAMA CHARAN PATITANDA**

**I. L. R. 18 Calc. 588**

5. ————— *Board of Trade certificate*—

*Public document*. A certificate granted by the Board of Trade is not a "Public document" within the meaning of s. 74 of the Evidence Act. *In the matter of a collision between "AVA" and "BRENNILDA"*

**I. L. R. 5 Calc. 588 ; 5 C. L. R. 331**

6. ————— *Record of Measurement*—

*Public documents*. In a suit to obtain possession, under a title acquired by purchase at an auction, of certain lands, together with mesne profits, upon setting aside an alleged talukh-ctmami right claimed by the defendants, the defendants, in support of their claim, produced certain documents purporting to be abstracted from, or copies of, Government measurement chittas, dated Mughi 1126-27 (1764). These documents were produced from the Collectorate, but there was nothing to show that they were the record of measurements

7. ————— s. 74 and s. 78—*Anumati-patra*—*Public document*. An anumati-patra is not a public document within the meaning of s. 74, nor, if it were, would its being on the record constitute a copy certified as required by s. 76 **KRISHNA KISHORI CHAUDHARANI v. KISHORI LAL ROY**

**I. L. R. 14 Calc. 486  
I. R. 14 I. A. 71**

8. ————— s. 74 and s. 35—*Teishkhana register*—*Public document*—*Beng. Reg. XII of 1817, s. 16*. A teishkhana register prepared by a patwari under rules framed by the Board of Revenue under s. 16 of Beng. Reg. XII of 1817 is not a public document, nor is the patwari preparing the same a public servant **BAJI NATH SINOH v. SURESH MANTON**, **I. L. R. 18 Calc. 534**

9. ————— *Police reports*—*Public documents*—*Evidence Act, s. 76*—*Right of accused person*

and consequently an accused person is not entitled before trial to have copies of such reports. *Held*

EVIDENCE ACT (I OF 1872)—*contd.*s. 74—*contd.*

by **COLLINS, C.J.**, and **BENSON, J.**—The same rule applies to reports made by a police-officer in compliance with s. 173 of the Criminal Procedure Code. *Held* by **SHEPARD and SURRAMANIA AYYAR, JJ.**—Reports made by a police-officer in compliance with s. 173 of the Criminal Procedure Code are public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled, by virtue of s. 76 of the Indian Evidence Act, to have copies of such reports before trial. **QUEEN-EMPRESS v. ARUMUGAM**

**I. L. R. 20 Mad. 189**

10. ————— *Will, certified copy of*—*Document purporting to be a certified copy of a will taken from the Protocol of record in Ceylon*—*No proof that it had been made from, or compared with, the original*—*Inadmissibility of document*. In support of a claim instituted in a Court in British India for a share in her deceased father's estate, plaintiff tendered in evidence a document which purported to be a certified copy of a will executed by her late father at Colombo, where he was said to have been at the date of the execution of the alleged will. The document was filed as an exhibit in the suit, but the Subordinate Judge, in evidence to be signed Ceylon,

last will and testament made from the Protocol of record filed in his office. No evidence was tendered before the Subordinate Judge that the copy had

that, in the absence of evidence that it had been made from and compared with the original, the provisions of that Act relating to secondary evidence of public documents were inapplicable. **PONNAM MAL v. SUNDARAM PILLAI**

**I. L. R. 23 Mad. 499**

11. ————— ss 74, 78—*Loan Register of*

the meaning of s. 74 of the Evidence Act; and under s. 76 of the Act, any person having an interest in the document is entitled to inspect the same and obtain certified copies thereof. **Queen-Empress v. Arumugam, I. L. R. 20 Mad. 189, followed. Mutter v. Midlands Railway Co., I. R. 38 Ch. D. 92; Rex v. Justices of Staffordshire, 6 Ad. & E. 34, referred to. CHANDI CHARAN DHAR v. BOISTAN CHARAN DHAR (1904)**

**I. L. R. 31 Calc. 284  
s.c. 8 C. W. N. 125**

EVIDENCE ACT (I of 1872)—*contd.*

12. — ss. 74, 77—*Plaint and written statement, copies of—Proceedings between the same parties in another suit—Public documents.* *B* instituted a suit in the Court of the Munsif of the 24-Pergunnahs against *A*, on account of an alleged trespass to a drain which *B* then alleged to be his property; that suit was dismissed on the ground that *B* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A* against *B*, in which *A* stated it was his property, certified copies of the plaint, the defendant's written statement, and the decree in the former suit were produced; and it was contended they were public documents and admissible in evidence under ss. 74 and 77 of the Evidence Act. The Court admitted the plaint and rejected the written statement. *MAHOMED SHAHABUDDIN v. WEDGE-BERRY* . . . . . 10 B. L. R. Ap. 31

— s. 78.

*See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.*

I. L. R. 23 Calc. 950  
L. R. 23 I. A. 92

*See STAMP ACT, SEC. 1, ART. 22.*

I. L. R. 19 All. 293

— s. 77.

*See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR.*

I. L. R. 23 Calc. 950  
L. R. 23 I. A. 92

— s. 80.

*See CRIMINAL PROCEDURE CODE, s. 298.*  
21 W. R. Cr. 5

1. — s. 83—*Measurement chittas.* Chittas made by Government for its own private . . . . .

*CHUNDER SAO v. BUNSEEDHUR NAIK*

I. L. R. 9 Calc. 741

*MISSER v. TARITA MOYI DABLA*

I. L. R. 14 Calc. 120

*GIRINDRA CHANDRA GANOUJI v. RAJENDRA NATH CHATTERJEE* . . . . . 1 C. W. N. 530

EVIDENCE ACT (I OF 1872)—*contd.*

— s. 83—*concl'd.*

3. — *Maps—Evidence Act, s. 13—Presumption as to accuracy.* A map prepared by an officer of Government while in charge of a khas mehal, Government being at the time in possession of the mehal merely as a private proprietor, is not a map purporting to have been made under the . . . . .

*JUNMAJOY MULLICK v. DWARKANATH MYTEE*

I. L. R. 5 Calc. 287; 4 C. L. R. 574

4. — *Survey maps—Presumption as to accuracy of Government survey map—Subsequent Government survey map.* The presumption under the Evidence Act in regard to the accuracy of a map made under the authority of Government is in no way affected by the fact that such map has been superseded by a later survey map made under the same authority and by an order of the Board of Revenue. *JOSGESSUR SINGH v. BYCUNT NATH DUTT* . . . . . I. L. R. 5 Calc. 822; 6 C. L. R. 519

5. — *Thakbust maps.* A thakbust map must be presumed to be accurate under this section. *NIAMUTULLAH KHADUN v. HIBMET ALI KHADUN* . . . . . 22 W. R. 519

6. — *Thakbust map, accuracy of—Evidence of making of map in presence of parties.* The accuracy of a thakbust ameen's map, which is assumed in the Evidence Act, means accuracy of drawing and correctness of measurement, but certainly does not refer to the laying . . . . .

— s. 85.

*See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION.*

I. L. R. 16 Calc. 776  
I. L. R. 21 Mad. 492

— ss. 85, 114.

*See POWER OF ATTORNEY.*

I. L. R. 33 Calc. 625

— ss. 85, 114—*Power of attorney—Power of attorney executed before and authenticated* . . . . .

power of attorney being the person named therein is unnecessary. If the Court, however, is not satisfied as to its execution and authentication, it may . . . . .

EVIDENCE ACT (I OF 1872)—*contd.*s. 85—*contd.*

under Rule 748 of this Court's Rules and Orders call for further evidence. *In the goods of W. H. MYLNE* (1905) . . . . . 9 C. W. N. 886

1. — s. 88—Foreign judicial records—Execution in British India of decrees passed by Courts of Cooch Behar—Civil Procedure Code, 1852, s. 434. *Per* NORRIS, J.—*Quære*: Whether the notification published in the *Calcutta Gazette* of 8th April 1879, signed by the then Deputy

India in Council under the provisions of s. 434 of the Civil Procedure Code, to the effect that the decrees of the Civil and Revenue Courts of Cooch Behar may be executed in British India, as if they had been made by the Courts of British India, was a compliance with the provision of s. 86 of the Indian Evidence Act at a time when there was a representative of the Government of India resident in Cooch Behar. *Per* NORRIS, J.—The notification

TARINI CHARAN CHUCKERBARTI

I. L. R. 14 Calc. 548

2. — ss. 88, 85, 86 and 74—Foreign State, judicial proceedings in—Record not

may be proved by an official of the Court speaking to what takes place in his presence and also to an uncertified record thereof. The latter thereby becomes secondary evidence under ss. 65 and 66 of the certified record (being a public document under s. 74) admissible without notice to the adverse party when the person in possession thereof is out of the jurisdiction. *HARANUND CHETLARGIA v. RAM GOPAL CHETLARGIA* I. L. R. 27 Calc. 639  
I. L. R. 27 I. A. 1  
4 C. W. N. 429

s. 80.

See HINDU LAW ENDOWMENT.

I. L. R. 38 Calc. 1003

1. — Ancient document—Proof of proper custody. When a document is so old that the parties to it and the witnesses are in all probability dead, and evidence cannot be produced to prove the factum of its execution, the rule in England, as well as in this country, is to compel the party who relies upon the document to show that it comes from the custody in which it would

EVIDENCE ACT OF 1872)—*contd.*s. 90—*contd.*

naturally be expected to reside, were it a real and authentic document. *SREEKANT BRUTTA-CHARJEE v. RAJNARAIN CHATTERJEE* 10 W. R. 1

2. — Document of ancient date—Proof of custody. Where a party

SOONDUREE DEBIA

FAREEDUNNISSA v. RAM ONOGRA SINGH.

21 W. R. 19

And, if possible, acts done according to their terms. *GRANT v. BYRNATH TEWARIE* 21 W. R. 278

3. — Ancient document—Evidence of proper custody. Although ancient documents are admissible in evidence on proof that they have been produced from proper custody, their value as evidence when admitted must depend in each case upon the corroboration derivable from external circumstances, e.g., from the documents having been produced on previous occasions upon which they would naturally have been produced if in existence at the time or from acts having been done under them. *BOIKUNT NATH KUNDU v. LUKHUN MAJHI* 9 O. L. R. 425

4. — Document of ancient date. Where a document is found on independent evidence to have been in existence long prior to the institution of the suit, and also to be genuine, it is not necessary to insist on the testimony of subscribing witnesses. *MAHOMED FEYZ SIRDAR v. OZEOODERN* 10 W. R. 346

MONESH ROY v. BOODHUN MAHTOON

18 W. R. 315

5. — Ancient documents, rule as to. The English rule that a document more than 30 years old, if free from suspicion of dishonesty, may be admitted as evidence without proof of the execution or writing, was held to be founded on a reason which had less weight in this country, where less credit should be given to

DOSS. LUTEFOONNISSA v. GOUR SURUN DOSS

18 W. R. 485

8. — Ancient document—Evidence of proper custody. To establish the authenticity of a document so old that the witnesses to its execution cannot reasonably be expected to be in existence, it is not necessary to go behind the possession of the present owner. If the custody



EVIDENCE ACT (I OF 1872)—*contd.*s. 90—*contd.*

from which the document comes into Court has been and is the custody in which, judging from the purport of the document itself and the other circumstances of the case, it would naturally be expected to reside, then the document ought to be treated as authentic to such extent as to be admissible in evidence between the parties. **CHUNDER KANT MISTREE v BROJONATH BYSACK**

13 W. R. 109

RAMDHUN GHOSE v. ESHAN CHUNDER GHOSE

17 W. R. 34

See **DEVAJI GOYAJI v GODABHAI GODBHAI** . . . 11 W. R. P. C. 35

VENCATASWAR YELLAPPAH NAIKA v ALAGOO MOOTTOO SERVACAREN

4 W. R. P. C. 73; 8 Moo. I. A. 327

7. ———— *Old document—*  
*Teste, proof of authenticity of—Possession.* Where a document which is not proved because of its great age, and of there being therefore no witnesses to prove it, is put forward as a document intended to operate as a mautani tenure, it is necessary, in order to establish its authenticity, to show that it was accompanied by possession. **RIKSHESH BHATTACHARJEE v. LAMB** . . . 21 W. R. 22

8. ———— *Ancient document, custody of.* Where a document purported to be 45 years old, and a mohurir swore to its having been in his custody as keeper of the plaintiff's records for the time of his service, the evidence was held to show (if credible) that the document had come from proper custody, within the meaning of Act I of 1872, s. 90, and to require no direct evidence of its genuineness. **ERCOORE SINGH Roy v KYLAH CHUNDER MOOKERJEE** . . . 21 W. R. 45

9. ———— *Presumption as to ancient documents—Destruction of original—Pre-*

PRASAD SINGH v. LALLI JAS KUNWAR

I. L. R. 22 Al. 294

10. ———— *Ancient document—Weight of ancient documents as evidence—Proper custody—Custody of agent.* Under a varaspatra executed in 1847 by A, a Hindu widow in favour of B, B took possession of the property mentioned therein, and enjoyed it during his lifetime. After his death, his gomasta (agent) managed it for and on behalf of B's minor son C. In 1881 C filed a suit to redeem a house and a garden, part of the property covered by the varaspatra, and which had been mortgaged by A's husband in 1831. One of the defences to

EVIDENCE ACT (I OF 1873)—*contd.*s. 90—*contd.*

this suit was that neither C nor his father was the heir of the original mortgagor, and that therefore C could not redeem the property in dispute. At the trial C produced the varaspatra of 1847 in support of his title, alleging that he had found it among the papers of the old gomasta of his father, who used to look after his affairs during his minority. **Heli**, that the varaspatra was admissible in evidence under s. 90 of the Evidence Act (I of 1872) as a document purporting to be more than thirty years old, and produced from a custody which, under the circumstances of the case, was a proper custody, the possession of the gomasta being legally the possession of his master. The degree of credit to be given to an ancient document depends chiefly on the proof of transactions or state of affairs necessarily or at least properly or naturally referable to it. **HARI CHINTAMAN DIKSHIT v. MORO-LAKSHMAN** . . . I. L. R. 11 Bom. 89

As to the weight and admissibility of ancient documents.

See also **TIVANGAIDYA v. RANGANGAIDYA**.

I. L. R. 11 Bom. 94 note

11. ———— *Ancient documents, Proof of—Landlord and tenant—Suit for ejectment.* In a suit for ejectment brought in 1894 the defendant contended that he held the land on permanent fazandari tenure and produced a document, dated 1848, by which his predecessor was given permission to build upon the land. The plaintiff (landlord), however, produced the counterparts of a subsequent lease to the same tenant (defendant's predecessor), dated 1851, which created a monthly

entitled to recover possession of the land. **HUSAIN v GOVARDHANDAS PARNANANDAS**

I. L. R. 20 Bom. 1

12. ———— *Ancient document, presumption as to—Genuineness of signature in issue—Presumption not excluded, but has to be rebutted.* It is in the discretion of a Court whether it will raise the presumption in favour of a document for which s. 90 of the Evidence Act provides, but this discretion is not to be exercised arbitrarily: it must be governed by principles which are consonant with law and justice. And while, on the one hand, great care is requisite in applying the presumption, on the other hand, it is clear that very great injustice may be perpetrated if an ancient document coming from proper custody

EVIDENCE ACT (I OF 1872)—*contd.*s. 90—*contd.*

is refuted by a Court capriciously or for inadequate reasons. When the genuineness of a document purporting to be an ancient document is put in issue, it appears to have been sometimes thought that any presumption in its favour is thereby excluded, but this would deprive the party producing it of the benefit of the presumption precisely in the circumstances in which he most stands in need of it and. The presumption merely takes the place of the evidence which would, where a modern document is concerned, be necessary for the purpose of proving due execution, and it must be met and rebutted in the same way as direct evidence of execution in the case of a modern document. *Phool Bibee v. Goor Suran Dore*, 18 W. R. 455. *Bokant Nath Kanda v. Lukhun Majhi*, 9 C. L. R. 425. *Hari Chintaman Dilshit v. Mora Lalshman*, 1 L. R. 11 Bom. 89. *Tradolia Nath Nundi v. Shurno Chungoni*, 1 L. R. 11 Calc. 539, referred to. *Govinda Hazra v. Protap Narain Mukhopadhyaya* (1902)

I. L. R. 29 Calc. 740

13. — Document 30 years old—*Proper custody* A document 30 years old does not prove itself, in the absence of evidence, that it has come from the proper custody. *Guru Das Dey v. Subendu Nath Chuckerbutty*

3 B. L. R. A. C. 258

14. — Document 30 years old—*Presumption* In applying the presumption allowed by s. 90 of the Evidence Act, the period of 30 years is to be reckoned, not from the date upon which the document is filed in Court, but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof. *Minnu Sirkar v. Rheyday Nath Roy*

6 C. L. R. 135

15. — Document 30 years old. A document more than 30 years old, although not requiring to be formally attested by the witnesses who attended at its execution, must be shown to have come from the custody of the person who would have been the proper person to keep it. *Thakoor Pershar v. Basimetty Kohn*

24 W. R. 428

16. — Document 30 years old The rule regarding the proof of documents more than 30 years old is that they need not be proved, provided they have been so acted upon or brought from such a place as to offer a reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. *Hari Dhanwar v. Binn Darsa*

5 Bom. A. C. 135

17. — Document 30 years old—*Proof of custody* With regard to the proof

EVIDENCE ACT (I OF 1872)—*contd.*—*contd.*

obtained and preserved for use, and are free from suspicion of dishonesty. Application of this rule considered. *Virtual Mahomed v. Daud Valad Muhammed Hussein*

6 Bom. A. C. 90

18. — Documents more than 30 years old Where the Judge is satisfied that a document is more than 30 years old and that it has come from proper custody, he may, as a rule, dispense with proof of its execution. *Laldas Ramnar v. Kashiram*

4 Bom. A. C. 60

19. — Document 30 years old—*Proof of signature of.* A Court is not bound to accept as genuine the signature on a document upwards of 30 years old, even though it be produced from proper custody. Before accept-

*Shickdar* . . . I. L. R. 8 Calc. 209

20. — Documents more than 30 years old—*Proof of execution*—*Evidence of authority to sign on behalf of others* The plaintiffs sued the defendants for enhancement of rent. The defendants resisted the claim, relying, *inter alia*, on a mukarni pottah executed on 9th October 1832. This pottah purported to bear the seal of one of the then maliks of the lands, and also purported to be signed on behalf of all the maliks

to it or a general authority to sign on their behalf documents of the same description as the pottah; and that, until such proof was given, the document was not admissible in evidence. *Held*, further, that the fact that the pottah was more than 30 years old gave rise to the presumption that the signature at the foot of it was in the handwriting of A, and that the pottah was executed by him; but that to make it evidence against the representatives of the maliks who had not executed it, the defendants should show that A had authority to sign their names. *Ubilack Rai v. Dailal Rai*

I. L. R. 3 Calc. 557

21. — Legal presumption—*Previous production of such document* No legal presumption can arise as to the genuineness of a document more than 30 years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court. *Guadabur Paul Chowdhry v. Byrkes Chunder Bhattacharji*

I. L. R. 5 Calc. 818

EVIDENCE ACT (I OF 1872)—*contd.*s. 90—*contd.*

22. — Documents 30 years old, their natural and proper custody. Where a daughter professed to hold under a pottah more than 30 years old in favour of her father, and was found to have been in possession of the land ever since her father's death for a period of 40 years without interruption on the part of the father's heirs: *Held*, that the daughter's custody of the pottah was a natural and proper custody within Act. The of execution applied in and caution

I. L. R. 11 Calc. 539

23. — Secondary evidence — Document more than 30 years old—Proof of execution—Evidence Act, s. 63. Secondary evidence of the contents of a document requiring execution, which can be shown to have been last in proper custody, and to have been lost, and which is more than 30 years old, may be admitted under s. 63, cl. (c), and s. 90 of the Evidence Act, without proof of the execution of the original. *KHETTER CHUNDER MOOKERJEE v. KHETTER PAUL SREESTERUTNO*

I. L. R. 5 Calc. 888; 6 C. L. R. 199

24. — Documents thirty years old—Proper custody—Presumption *Per BATTY, J.*—S. 90 of the Evidence Act (I of 1872) admits a presumption of the genuineness of documents purporting to be thirty years old, if produced from proper custody proved to have had a legitimate origin 'or' an origin the legitimacy of which the circumstances of the case render probable. It is not necessary that the documents shall be found in the best and most proper

ment must be produced from the proper custody. *SHARFUDIN VALAD TAJUDIN v. GOVIND BHIKAJI BADE* (1902) I. L. R. 27 Bom. 452

25. — Evidence Admissibility—Hearsay evidence—Relationship, statement as to, made upon information received from others, when admissible—Document more than 30 years old—Discretion of Court to refuse to admit without formal proof—Interference by higher Court. The Courts in India refused to admit without formal proof a document, which was more than 30 years old and which purported to come from proper

*KISSA v. SHABAN ALI KHAN* (1905) 9 C. W. N. 105

26. — Document 30 years old—Proper custody—Hindu Law—Endow-

EVIDENCE ACT (I OF 1872)—*contd.*s. 90—*contd.*

ment—Debutter—Alienation of endowed property—Sebat—Power to grant permanent lease of endowed property—Possession—Landlord and tenant—Possession of lessee under void lease entering into possession and continuing to pay rent—*Limitation Act (XV of 1877), Sch. II, Art. 131*—Purchaser for value bond file—Notice—Minerals, right to. Where a person, who had obtained possession of a document, which would naturally come into his possession, failed to restore it after his right to possess it had ceased, and the document was produced from his custody. *Held*, that his failure to do so did not

continued to pay the rent reserved. *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*, 20 M. L. J. 201; 10 M. L. J. 201; 10 M. L. J. 201.

in *President and Governors of Magdalen Hospital v. Knott*, 1 App. Cas 324, referred to. Where the predecessor in title of the defendants obtained from the sebat a permanent lease of the debutter property and not merely of any interest, which the sebat might have therein. *Held*, that the lessee

be brought within twelve years from the endow- lease. *Ram Kanai Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur*, C. L. J. 516; *Radha Nath Doss v. Gidborne & Co*, 15 W. R. P. C. 24; 15 W. R. P. C. 24 referred to. *Ram Charan Tewary v.*

S.C. 10 C. W. N. 114

s. 90 and ss. 63, 64 and 114—Copy of document—No evidence that original could not be produced—Secondary evidence—Presumption. In a suit to recover possession of land, the defendant asked principally on a document support of a document of document of



EVIDENCE ACT (I OF 1872)—*contd.*s. 92—*contd.*

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R. 16 Mad. 238

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . I. L. R. 5 Calc. 71

See REGISTRATION ACT, s. 17. I. L. R. 24 Bom. 609

See SPECIFIC PERFORMANCE. 13 C. W. N. 328

See TRANSFER OF PROPERTY ACT, ss. 4 AND 107 . I. L. R. 32 Mad. 532

1. — s. 92—Oral evidence to vary written agreement—"Contradicting, varying, adding to or subtracting from"—Admissibility of oral evidence when question not as between parties to the instrument or their privies. Plaintiff sued defendant for recovery of land, alleging that it had been

tended that the document had been executed in plaintiff's name *benami* for him. Held, that oral evidence was admissible in support of the contention that there had been a sale of the land to the

nor would oral evidence be evidence to vary the terms of any written agreement between them. *Bahman v. Elahi Balsh*, I. L. R. 23 Calc. 70, commented upon. *PATHANMAL v. SYED KALAI RAVUTHAR* (1904) . I. L. R. 27 Mad. 328

2. — Oral evidence to show that an executant of a note of hand was only a surety, if admissible. Oral evidence is not admissible to show that one of the executants of a note of hand signed it only as surety and that his liability was only to the extent of standing as a surety for one month.

other of the provisions of s. 92 of the Evidence Act, *Ballissen v. Legge*, 4 C. W. N. 153; s. 27 I. A. 58, followed. *HAREK CHAND BABU v. BISHUN CHANDRA BANERJEE* (1904) . 6 C. W. N. 101

3. — Redemption suit—Sale out and out—Construction—Evidence of intention. Admissibility. Plaintiffs, who were agriculturists, brought a suit to redeem and the defendant contended that the transaction in suit was a sale out-and-out and not a mortgage. The lower Courts held that the transac-

EVIDENCE ACT (I OF 1872)—*contd.*s. 92—*contd.*

tion was a mortgage and allowed redemption. Held, on second appeal by the defendant, that evidence of intention cannot be given for the purpose merely of construing a document, which purported to be a sale out-and-out and not a mortgage; s. 92 of the Evidence Act (I of 1872), subject to the proviso therein contained, forbids evidence to be given of any oral agreement or statement for the purpose of contradicting, varying, adding to or subtracting from the terms of any contract grant or other disposition of property the terms of which have been reduced to writing as mentioned in that section. While there are restrictions on the admissibility of oral evidence, s. 92, in its first proviso recognizes that facts may be proved by oral evidence which would invalidate a document or entitle any person to any decree or order relating thereto. And where one party induces the other to contract on the faith of repre-

LAKSHY (1906) . I. L. R. 30 BOM. 240

4. — Written document—Absolute conveyance—Mortgage—Contemporaneous oral agreement or statement of intention—Inference from circumstances. The plaintiff sued to recover possession of land contending that the document under which the defendants held the land, though in form an absolute conveyance, was intended to operate merely as a mortgage. The plaintiff's contention was based on the grounds that the consideration was a pre-  
paid and not money paid at the  
ending  
session  
aidow  
there  
of the

that the meaning of the contention of the plaintiff was that the document was accompanied by a contemporaneous oral agreement or statement of intention, which must be inferred from the said

93, or *Lincoln v. Wright*, 4 D. C. 111, which examples. This, however, would not have precluded the plaintiff from relying on the provisos to the section, had any of them been applicable. *DAITOO v. RAMCHANDRA* (1905)

I. L. R. 30 Bom. 119

s. 92, proviso (1).

See EVIDENCE . I. L. R. 32 Calc. 467

EVIDENCE ACT (I OF 1872)—*cont'd.*s. 92—*cont'd.*

**Wagoring contract—Oral evidence—**  
**Written agreement—Agreement, validity of—**  
**Contract, real nature of.** Upon the true construction of s. 92 of the Evidence Act (I of 1872), and specially having regard to proviso (1) of that section, the decision in the case of *Suggernauth Sew Bux v. Ram Dyal*, I. L. R. 9 Calc. 791, cannot be regarded as law. In order to enable a Court to arrive at a decision, whether or not an

29 Calc. 461; I. L. R. 28 I. A. 239, referred to. *Per* WOODROFFE, J.—If the validity of a written agreement is impeached, it is no defence to point to the apparent rectitude of the document and to claim protection from enquiry under the rule embodied in s. 92 of the Evidence Act, which exists against the contradiction and variance of the terms only of those instruments, the validity of which is not in question. The instances mentioned in proviso (1) of that section are illustrative and not exhaustive. *BENI MADHAN DASS v. SADASOOK KOTARY* (1905)

I. L. R. 32 Calc. 437  
 s.c. 9 C. W. N. 305

## s. 92, proviso (2).

See CONTRACT . I. L. R. 32 Calc. 99

s. 92, provisos (2), (4)—*Express Trust—Limitation Act (XV) of 1877, s. 10—*  
*Effect of Limitation in cases where the person liable for payment of a legacy and the person entitled to receive the legacy are the same* L. K. was a partner in the firm of R. L. As such partner he was entitled to his proportion of certain shares of the Hongkong Mill and of the commission

and that he from the date of the entries ceased to have any interest in the firm of R. L. *Held*, that under provisos (2) and (4) of s. 92 of the Evidence

that in fact  
 sub continue  
 commission.

I. L. R. 31 Bom. 418

## s. 92, proviso 4—

**Subsequent oral agreement**  
**—To discharge prior registered agreement not**  
**receivable, but actual discharge may be proved.** A agreed by registered deed to give B for her life an annual amount by way of maintenance, and subsequently it was agreed orally that B should enjoy certain lands in lieu of such maintenance and B was put in possession. In a suit by B to recover arrears of maintenance from A: *Held*, that the subsequent oral agreement was

EVIDENCE ACT (I OF 1872)—*cont'd.*s. 92—*concl'd.*

an agreement to rescind or modify the original registered agreement and was not receivable in evidence under proviso (4) to s. 92 of the Evidence Act. *Held*, further, that it was open to the defendant to prove that the arrears claimed were actually dis-

2. **Agreement in writing registered—Oral evidence of discharge—**

taken wrongful possession of the property. The first defendant was the heir of the mortgagor. His defence was that the equity of redemption had become vested in himself and another as the heirs of

part her moiety of the mortgage amount, and redeemed the lands in question as falling to his share. *Held*, that he was not precluded by a 92, proviso (4) of the Evidence Act from proving his oral agreement. *GOSWAMI SUBBAROW v. VARIGONDA NARASIMHAM* (1904)

I. L. R. 27 Mad. 389

3. **Evidence of oral agreement to rescind or of subsequent conduct inadmissible—Mortgage, right of usufructuary, to sue for part of mortgaged property.** S. 92 (4) of the Evidence Act precludes evidence of an oral agreement to rescind a registered contract or of subsequent conduct of parties to show that such contract was treated as non-existent. An usufructuary mortgages may sue for position of only a part of the properties mortgaged. *SRI. NIVASISWAMI AYYANGAR v. ATHAKRAM AIDAN* (1908)

I. L. R. 32 Mad. 291

ss. 92, 99—**Suit for recovery of kachharum—Sale alleged to be disguised as a usufructuary mortgage—Admissibility of evidence.**

not being a party to the transaction, was entitled to give evidence to show that what purported to

PANCHO (1906) . I. L. R. 28 All. 473

EVIDENCE ACT (I) OF 1872)—*contd.*

s. 105.

See PRIVATE DEFENCE, RIGHT OF.

11 C. L. R. 232

1. \_\_\_\_\_ Onus of proof—Proof of circumstances, bringing offence under exception in Penal

charged within the general or special exceptions or provisos contained in any part of the Penal Code or in any law defining such offence. *Quere* as to the state of the law in this respect in the Presidency towns. In the matter of petition of SMRO PROSAD PANDAH

I. L. R. 4 Calc. 124 : 3 C. L. R. 122

2. \_\_\_\_\_ Penal Code (Act XLV of 1860), s. 525—Grievous hurt—Homicide—Justification—Right of private defence—Onus—Evidence Act (I of 1872), s. 105 When one man takes away the life of another man, the onus is on him to show circumstances which justify his doing so. If the act was done in the exercise of the right of private defence, it still lies on him to show that he did not exceed that right. *ASSIRUDDIN AHMAD v KING EMPEROR* (1904) . . . . . 8 C. W. N. 714

ss. 105, 132.

See DEFAMATION . I. L. R. 29 All. 685

s. 106.

See ONUS OF PROOF—BAILMENTS.

I. L. R. 9 All. 398

See ONUS OF PROOF—PRE-EMPTION.

I. L. R. 5 All. 184

See ONUS OF PROOF—PROFITS, SUITS FOR.

I. L. R. 12 All. 301

See ONUS OF PROOF—SALE FOR ARREARS OF RENT . . . . . 21 W. R. 397

See PENAL CODE, s. 373.

I. L. R. 22 Calc. 164

ss. 107, 108.

See HINDU LAW—PRESUMPTION OF DEATH . . . . . I. L. R. 8 All. 614

I. L. R. 23 Bom. 296

See PRESUMPTION OF DEATH.

I. L. R. 33 Calc. 173

Missing person—Presumption of death. ss. 107 and 108 of the Evidence Act, taken together, do not lay down any rule as to the exact time of the death of a missing person. Whenever the question as to the exact time of death arises it must be dealt with according to the evidence and circumstances of each case, when the death is alleged to have occurred at any time not affected by the presumption of law as to the seven years. *DEARUP NATH v. GOBIND SARAN. GOBIND SARAN v. DEARUP NATH* . . . . . I. L. R. 6 All. 614

EVIDENCE ACT (I OF 1872)—*contd.*

s. 108.

See DEATH, PRESUMPTION OF.

11 C. W. N. 833

See HINDU LAW—PRESUMPTION OF

DEATH . . . . . I. L. R. 1 All. 53

I. L. R. 8 All. 614

I. L. R. 23 Bom. 296

See MAHOMEDAN LAW—PRESUMPTION OF

DEATH . . . . . I. L. R. 2 All. 625

I. L. R. 7 All. 287

1. \_\_\_\_\_ Missing person—Hindu law—Inheritance—Presumption of death—Claim after seven years—Co-owners—Absent co-owner—Claim to his share of property a question of evidence, not of succession. *D G and B* were co-owners of certain khoti villages. *B* disappeared and was unheard of for more than seven years. In his absence, *D* received his (*B*'s) share of the rents and profits, *G* claimed to be entitled to a moiety of *B*'s share therein, and brought this suit against *D. Held*, that *G* was entitled to such moiety. *B*, having been absent and unheard of for more than seven years, might be presumed to be dead under s. 108 of the Evidence Act (I of 1872); and *G*, as one of his two survivors, was entitled to a moiety of his property. Where the right of a party claiming to

BRIJAJI v. GANESH BRIJAJI

I. L. R. 11 Bom. 433

2. \_\_\_\_\_ Mahomedan Law—Missing heir—Proof of existence—Arbitrator's award—Burden of proof. A Mahomedan died on the 27th January 1881, leaving a will which was disputed amongst his heirs. The dispute being ultimately referred to an arbitrator, the latter by his award, dated 21st February 1888, divided the estate amongst the "heirs and legatees" of the testator amongst whom he included his son *A*, who according to the concurrent findings of the Courts in Burma, had not been heard of since 1870. In the present suit the only son of *A* claimed a share in the estate in right of his father under the arbitrator's award. The Courts in Burma dismissed the suit holding that the plaintiff had failed to discharge the burden,

to the terms of his award. The agreement of reference was not produced and there was nothing to show that *A* was a party to it. Moreover, the arbitrator was not examined as a witness: *Held*, that the proceedings in arbitration were of no value in proving the plaintiff's case, the reserving of a

EVIDENCE ACT (I OF 1872)—*contd.*s. 108—*contd.*

share for A, by the arbitrator, being explicable on the ground that according to Mahomedan law a share ought to be reserved for a missing heir. *MOOLLA CASSEM BIN MOOLLA AHMED v. MOOLLA ABDUL RAHIM* (1905) . I. L. R. 33 Calc. 173  
s.c. 10 C. W. N. 33

## s. 110.

See *BENAMI* . . . 9 C. W. N. 89

See *ONUS OF PROOF—MORTGAGE.*

I. L. R. 9 Bom. 137

I. L. R. 1 All. 194

See *ONUS OF PROOF—POSSESSION AND PROOF OF TITLE* . . . 6 N. W. 36

I. L. R. 8 Calc. 760

I. L. R. 12 All. 46

I. L. R. 25 Bom. 267

See *TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY* . 5 C. L. R. 278

## s. 111.

See *ATTORNEY AND CLIENT.*

I. L. R. 36 Calc. 49

See *ONUS OF PROOF—DECREES AND DEEDS, SCITS TO ENFORCE AND SET ASIDE* . . . I. L. R. 13 All. 523

See *ONUS OF PROOF—PRINCIPAL AND AGENT* . . . I. L. R. 25 All. 358

*Position of active confi-*

*dence—Mortgagor and mortgagee—Burden of proof—Proof of consideration for mortgage bond. On the*

## s. 112

See *EVIDENCE—CIVIL CASES—LEGITIMACY* . . . I. L. R. 24 All. 445

See *ONUS OF PROOF—LEGITIMACY.*

I. L. R. 25 All. 403

See *WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES*

I. L. R. 18 Bom. 466

1. ——— *Paternity—Child—Presumption as to paternity of child born after death of husband—Non-access, proof of—Burden of proof—Illness of husband rendering act of begetting a child improbable. To rebut the legal presumption under s. 112 of the Evidence Act (I of 1872), it is for those who dispute the paternity of the child to prove non-access of the husband to his wife during the period when, with respect to the*

EVIDENCE ACT (I OF 1872)—*contd.*s. 112—*contd.*

*fact that it was in the ordinary course of*

*At the instance of the High Court, 1914 LIL*

*S.C. 10 C. W. N. 110  
I. L. R. 20 I. A. 17*

2. ——— *Illegitimate son's right to maintenance—Presumption as to paternity applicable only to offspring of married couple—Hindu Law. In a suit by an illegitimate son of a deceased Chetti against the adopted son and brother of his late father for a share in his father's estate, or, in the alternative, for maintenance; Held, that the claim for a share must fail, as it was not shown that the deceased had left any separate or self-acquired property. The family of the deceased (consisting of his father and two sons, of whom one was the deceased) was not shown to have had any ancestral property, but it had acquired property by trade in which the father and the two sons were jointly engaged. There being no indication of an intention*

*father and uncle; and, as he was illegitimate, he could not "represent" his father in the undivided family. Ramalinga Muppan v. Pavadas Goundan, I. L. R. 25 Mad 519, referred to. The fact that in the present case there was a son in existence, besides the illegitimate son, made no difference, in principle, between this case and the cases already decided. Held, also, that plaintiff was entitled to maintenance. An illegitimate member of a family, who is not entitled to inherit, can be allowed only a compassionate rate of maintenance and cannot claim maintenance on the same principles and on the same scale as disqualified heirs and females, who have become members of the family by marriage. But regard should be had to the interest which the deceased father of the illegitimate son had in the joint family property and the position of his mother's family. Arrears of maintenance awarded*



EVIDENCE ACT (I OF 1872)—*contd.*s. 112—*cont'd.*

for a period of nine years prior to the suit. The presumption as to paternity in s. 112 of the Indian Evidence Act only arises in connection with the offspring of a married couple. A person claiming as an illegitimate son must establish his alleged paternity in the same manner as any other disputed question of relationship is established. *GOPALA-SAMI CHETTI v. ARUNACHELLAM CHETTI* (1904)

I. L. R. 27 Mad. 32

## s. 113.

See *CESSION OF BRITISH TERRITORY IN INDIA* . . . 10 Bom. 37

I. L. R. 1 Bom. 367  
I. L. R. 3 I. A. 102

## s. 114.

See *ante*, s. 40 AND §§ 63, 64 AND 114.

See *ante*, s. 83 . . . 9 C. W. N. 988

See *ACCOMPLICE*. I. L. R. 28 Calc. 339  
I. L. R. 26 Bom. 19  
I. L. R. 25 Mad. 143

See *ACT XL OF 1878*, s. 3.

1 C. W. N. 453

See *BENGAL CESS ACT, 1871*, s. 52

I. L. R. 13 Calc. 197

See *BOMBAY DISTRICT MUNICIPAL ACT, 1873*, s. 11 I. L. R. 20 Bom. 732

See *CHARGE TO JURY—MISDIRECTION*  
I. L. R. 17 Calc. 642

See *COMPANY—WINDING UP—GENERAL CASES* . . . I. L. R. 9 All. 366

See *DEED—ATTESTATION*.

7 C. W. N. 384

See *ESTOPPEL—ESTOPPEL BY CONDUCT*.

I. L. R. 9 All. 690

See *ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR*

I. L. R. 20 Bom. 367

See *ONUS OF PROOF—NOTICE*.

I. L. R. 13 Calc. 197

See *RIGHT OF WAY*.

I. L. R. 15 All. 270

See *SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY*.

I. L. R. 30 Calc. 1

## III. (c).

See *REVENUE SALE LAW*, s. 33.

10 C. W. N. 137

See *WARRANT OF ARREST—CIVIL CASES*

6 C. W. N. 845

## III. (g).

See *EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS* I. L. R. 30 Calc. 1030

EVIDENCE ACT (I OF 1872)—*contd.*s. 114—*cont'd.*

1. ——— *Presumption of guilt—Possession of stolen property.* *Held*, that the finding in the 'possession of a person, six months after the commission of a dacoity, of articles stolen in that dacoity, such articles consisting of jewelry of a very ordinary type and by no means of distinctive appearance, is not sufficient to form the basis of a conviction for participation in the dacoity. *Queen-Empress v. Burke*, I. L. R. 6 All. 224, and *Ina Shesh v. Queen-Empress*, I. L. R. 11 Calc. 160, referred to. *EMPEROR v. SODHAR SINGH* (1906) . . . I. L. R. 29 All. 138

2. ——— s. 114 (b)—*Evidence of accomplice—Necessity for corroboration.* The case against an accused, who was tried on a charge of murder, depended entirely upon the evidence of the first witness, who deposed that he had worked for accused prior to and at the date of the murder; that the woman, whom accused was charged with murdering, had also worked for accused, and had become *enceinte* by him; that she had frequently demanded money of accused and at last threatened to disgrace him, if he did not pay her; that on the evening of the murder accused obtained a crow-bar from the witness, and later on went to where the deceased was sleeping, when the witness heard a cry, and, on secretly approaching the spot, saw accused strike the deceased on the head with a crow-bar; that witness then ran away; that accused called him; that he went to the spot, and accused asked him to put the body in an empty pit some distance off; that witness refused to help, whereupon accused dragged the body to the pit and threw it in; that next morning accused threatened to murder the witness, if he mentioned what had happened; that some fifteen days later, after a quarrel with accused, witness ran away and gave information to the brother of the deceased woman and then to the police, who with some villagers were taken by witness to the pit where the body was found and, subsequently, identified. The witness stated that he had not given information earlier because he was afraid. The only evidence adduced in corroboration of any part of this witness's evidence was that the brother and sister of the deceased had heard of the relations between accused and the deceased, that the body was found in the pit, and that death was shown to have been caused at about the time and place stated by the first witness, by fracture of the skull, which might have been caused by a blow from a crow-bar. On its being contended on behalf of the accused, that the first witness was an accomplice, or, if not an accomplice in the strict sense of the term, that he was no better than an accomplice and that his evidence should therefore be corroborated in material particulars, and that in the absence of such corroboration the accused should

EVIDENCE ACT (I OF 1872)—*contd.*s. 114—*concl'd.*

much as he had not been concerned in the perpetration of the murder itself. Even assuming that, after the murder had been committed, the witness had assisted in removing the body to the pit, and that he could have been charged with concealment of the body under s. 201 of the Penal Code, that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associate with the accused in the crime of murder, or liable to be indicted with him jointly. The witness was therefore not an accomplice and the rule of practice as to corroboration had no application to the case. *Per Boddam, J.*—Even if the witness was not an accomplice, having regard to the fact that he was cognizant of the crime for fifteen days without disclosing it and that he had a cause of quarrel with the accused at the time when he did disclose it, it would be most unsafe to act upon his evidence, unless it was corroborated in some material particulars connecting the accused with the crime. The rule of practice as to the necessity for corroboration of the evidence of an accomplice discussed. *Queen v. Chando Chandalingee*, 21 W. R. Cr 55; *Ishan Chandra Chandra v. Queen-Empress*, 1 L. R. 21 Cal. 323, and *Alimuddin v. Queen-Empress*, 1 L. R. 23 Cal. 361, 365, discussed. *RANASWAMI GOUNDEN v. EMPEROR* (1904). I. L. R. 27 Mad. 271.

## s. 114 (c).

See CHAUKIDARI CHAKRAN LAND, SETTLEMENT OF. I. L. R. 32 Cal. 1107

## ss. 114, 115, (g), 157.

See CHARGE. I. L. R. 38 Cal. 261

## s. 115.

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.

I. L. R. 2 All. 808

I. L. R. 8 All. 323; I. R. 11 I. A. 20

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES

I. L. R. 28 Mad. 79

See CONTRACT ACT, 1872, s. 11

I. L. R. 31 All. 21

See EJECTMENT, SUIT FOR

I. L. R. 29 Cal. 871

See ESTOPPEL—ESTOPPEL BY CONDUCT

I. L. R. 35 Cal. 904

See ESTOPPEL BY JUDGMENT

I. L. R. 32 Cal. 357

See FORFEITURE. 8 C. W. N. 553

See LANDLORD AND TENANT—NATURE OF TENANCY. I. L. R. 27 Bom. 515

See LAND-REVENUE.

I. L. R. 25 Bom. 714, 752

See PARTNERSHIP. 10 C. W. N. 313

See TRANSFER OF PROPERTY ACT

I. L. R. 33 Bom. 53

EVIDENCE ACT (I OF 1872)—*contd.*s. 115—*contd.*

1. Representative—*Auction-purchaser—Estoppel* A purchaser at an execution sale is not as such the representative of the judgment-debtor within the meaning of s. 115 of the Evidence Act. *LALA PARSHU LAL v. MYLNE*. I. L. R. 14 Cal. 401

part of zamindari and acquiescence by officers of Government. Prior to 1799 the zamindari of Parlakmedhi included certain tracts of forest land called "Mahahs," which were held by Bissoyees or local Chiefs on service tenures in respect of which they paid to the zamindar a sum as *kattubadi* or quit rent; their duties being (*inter alia*) to keep up an establishment of guards at certain thanas for police purposes. Besides the Mahahs they held other lands which they occupied and cultivated for their own support. In consequence of a rebellion in 1799, in which the then zamindar took part, the Government by a proclamation issued in 1800 declared that the zamindari was confiscated; and that the Bissoyees "were henceforward to pay their revenue directly to the Collector and to be for ever under the Company's immediate authority"; but that they would in due course restore the son of the zamindar "to the lands of his ancestors with the exception of those now held by the Bissoyees, which are hereby declared separated from the zamindari for ever." This restoration was made in 1803, after the death of the rebellious zamindar, to his son. What was excepted from that re-grant and from the assessment that formed the condition of the re-grant was variously described as "the lands held by the Bissoyees," the "possessions of the Bissoyees," and "all lands or *russums* or fees heretofore appropriated to the support of police

included the Mahahs, and not only the lands occupied and cultivated by the Bissoyees; the Mahah therefore did not pass under the re-grant, but remained the property of Government as they had done since the forfeiture. In 1823 the Government transferred the Bissoyees, who had been placed in 1800 under the Collector, to the zamindar, and directed that they should be required to pay their quit-rents to him. *Held*, that that arrangement conferred no proprietary right in the Mahahs

soyees. *Acres*, that such an express grant excluded the inference that the zamindar obtained any proprietary right in the Mahahs. The Courts below



EVIDENCE ACT (I OF 1872)—*contd.*s. 114—*concl.*

much as he had not been concerned in the perpetration of the murder itself. Even assuming that, after the murder had been committed, the witness had assisted in removing the body to the pit, and that he could have been charged with concealment of the body under a 201 of the Penal Code, that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associate with the accused in the crime of murder, or liable to be indicted with him jointly. The witness was therefore not an accomplice and the rule of practice as to corroboration had no application to the case. *Per Boddam, J.*—Even if

a cause of quarrel with the accused at the time when he did disclose it, it would be most unsafe to act upon his evidence, unless it was corroborated in some material particulars connecting the accused with the crime. The rule of practice as to the necessity for corroboration of the evidence of an accomplice discussed. *Queen v. Chandu Chandaline, 24 W. R. Cr. 55; Ishan Chandra Chandra v. Queen-Empress, 1 L. R. 21 Calc. 328, and Alimuddin v. Queen-Empress, 1 L. R. 23 Calc. 361, 365, discussed. RAMASWAMI GOUDEN v. EMPEROR (1904) . . . I. L. R. 27 Mad. 271*

## s. 114 (c).

*See CHAUDHARI CHAKRAN LAL, SETTLEMENT OF . . . I. L. R. 32 Calc. 1107*

## ss. 114, 115 (g), 157.

*See CHARGE . . . I. L. R. 36 Calc. 281*

## s. 115.

*See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF*

*I. L. R. 2 All. 809  
I. L. R. 8 All. 322; L. R. 11 I. A. 20*

*See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES*

*I. L. R. 26 Mad. 79*

*See CONTRACT ACT, 1872, s. 11*

*I. L. R. 31 All. 21*

*See EJECTMENT, SUIT FOR*

*I. L. R. 28 Calc. 871*

*See ESTOPPEL—ESTOPPEL BY CONDUCT.  
I. L. R. 35 Calc. 904*

*See ESTOPPEL BY JUDGMENT*

*I. L. R. 32 Calc. 357*

*See FORFEITURE . . . 8 C. W. N. 553*

*See LANDLORD AND TENANT—NATURE OF TENANCY . . . I. L. R. 27 Bom. 515*

*See LAND REVENUE.*

*I. L. R. 25 Bom. 714, 752*

*See PARTNERSHIP . . . 10 C. W. N. 313*

*See TRANSFER OF PROPERTY ACT.*

*I. L. R. 33 Bom. 53*

EVIDENCE ACT (I OF 1872)—*contd.*s. 115—*contd.*

1. *Representative—Auction-purchase—Estoppel.* A purchaser at an execution sale is not as such the representative of the judgment-debtor within the meaning of s. 115 of the Evidence Act. *LALA PARSHU LAL v. MYLNE . . . I. L. R. 14 Calc. 401*

2. *Re-grant after confiscation—Exception of Mahals in re-grant—Construction of exception—Title by adverse possession—Estoppel—Mahals treated erroneously by Court of Wards as part of zamindari and acquiescence by officers of Government.* Prior to 1799 the zamindari of Parlakimedi, included certain tracts of forest land called "Mahals," which were held by Bissoyers or local Chiefs on service tenures in respect of which they paid to the zamindar a sum as kattu-

clared that the zamindari was confiscated; and that the Bissoyers "were henceforward to pay their revenue directly to the Collector and to be for ever under the Company's immediate authority"; but that they would in due course restore the son of the zamindar "to the lands of his ancestors with the exception of those now held by the Bissoyers, which are hereby declared separated from the zamindari for ever." This restoration was made in 1803, after the death of the rebellious zamindar, to his son. What was excepted from that re-grant and from the assessment that formed the condition of the re-grant was variously described as "the lands held by the Bissoyers," the "possession of the Bissoyers," and "all lands or *rumsms* or fees heretofore appropriated to the support of police establishments." In a suit against the Government by the zamindar of Parlakimedi in 1894, claiming

directed that they should be required to pay their quit-rents to him. *Held*, that that arrangement conferred no proprietary right in the Mahals

soyes. *also*, that such an express grant excluded the inference that the zamindar obtained any proprietary right in the Mahals. The Courts

EVIDENCE ACT (I OF 1872)—*contd.*s. 115—*contd.*

1861 to 1893, in consequence of the disability or incapacity of successive zamindars, the zamindari was in possession of the Court of Wards represented by the Collector of the district, and the Court of Wards erroneously treated the Mahabs, as if they belonged to the zamindari, worked the forests on the Mahabs and constructed roads through them at the expense of the zamindar; and the officers of Government under the same mistake acquiesced in that possession and encouraged such an expenditure of zamindari funds upon the Mahabs as seemed good in the public interest; *Held*, affirming the decision of the High Court, that there was in that conduct no such representation as could give rise to an estoppel, which would prevent the defendant from denying the plaintiff's title. **GOURA CHANDRA GAJAPATI NARAYANA DEO v. SECRETARY OF STATE FOR INDIA (1905)** 1 L. R. 28 Mad. 130

3. Adoption—*Estoppel—Suit by adoptive mother to set aside an adoption made by her.* In a suit to set aside an adoption brought by the adoptive mother against her adopted son, it was found that the plaintiff had represented that she had authority to adopt and this representation was acted on by the defendant; that the ceremony of adoption was carried out on the faith of this representation; that the marriage of the defendant was likewise on the strength of it celebrated, and the defendant performed the *sradh* ceremony of his adoptive father. *It was held* that the plaintiff was not entitled to set aside the adoption.

plaintiff was estopped from maintaining a suit for a declaration that the adoption was without authority and void. **Thakoor Oomrao Singh v. Thakoor-ano Mehtab Koonwer, 1868, N. W. P. H. C. 103 A.** distinguished. **Sarat Chunder Dey v. Gopal Chunder Laha, 1 L. R. 20 Cal. 298; Sukhbasi Lal v. Guman Singh, 1 L. R. 2 All. 366; Durga v. Khushalo, All. Weekly Notes (1882) 97; Kannammal v. Virasami, 1 L. R. 15 Mad. 486; Ravi Vinayakrav Jaggannath Shankarset v. Lakshmiaga, 1 L. R. 11 Bom. 381, and Santappa v. Rangappaya, 1 L. R. 18 Mad. 397, referred to.** **DHARAM KUNWAR v. BALWANT SINGH (1905)** 1 L. R. 30 All. 549

ss. 115, 116, 117.

See EJECTMENT, SUIT FOR

1 L. R. 33 Cal. 847

s. 116.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

1 L. R. 7 All. 511, 878

1 L. R. 5 Cal. 669

7 C. W. N. 575

EVIDENCE ACT (I OF 1872)—*contd.*s. 116—*contd.*See ESTOPPEL—ESTOPPEL BY JUDGMENT.  
1 C. L. R. 528

I. L. R. 24 Bom. 77

See ESTOPPEL—LANDLORD AND TENANT,  
DENIAL OF TITLE.See LANDLORD AND TENANT—NATURE OF  
TENANCY . 1 L. R. 27 Bom. 516

Estoppel of tenant—Where deed executed in the name of the benamidar, the real owner is the landlord within the meaning of the section—Action on deed not maintainable by benamidar. Where a deed is executed by a tenant in favour of a person benami for another, the real owner and not the benamidar is the landlord, whose title the tenant is estopped from denying under s. 116 of the Evidence Act. In a suit by such benamidar for rent, the tenant can deny his right to sue on the ground that he is not the person entitled. A benamidar as such has no right to sue, unless he can show a legal right to sue under the general law. **Kuthaperumal Rajali v. Secretary of State for India, 1 L. R. 30 Mad. 243, followed, KUPPU KONAN v. THEGUNANA SAMMAN-DAI PILLAI (1908)** 1 L. R. 31 Mad. 491

s. 118.

See WITNESS—CIVIL CASES—PERSONS  
COMPETENT OR NOT TO BE WITNESSES.

1 L. R. 16 Bom. 468

11 C. W. N. 51

See WITNESS—CRIMINAL CASES—PERSONS  
COMPETENT OR NOT TO BE WITNESSES.

1 L. R. 11 All. 183

1 L. R. 16 Bom. 661

1 L. R. 23 All. 90

11 C. W. N. 51

s. 120.

See MAINTENANCE, ORDER OF CRIMINAL  
COURT AS TO . 1 L. R. 16 Cal. 781See WITNESS—CIVIL CASES—PERSONS  
COMPETENT OR NOT TO BE WITNESSES.

1 L. R. 16 Cal. 781

1 L. R. 16 All. 107

ss. 123, 124, 162—Income-tax Act, 11 of 1886, s. 38 and rule 15—Statements made before income-tax officer not privileged under s. 123 or 124 of the Evidence Act—And not exempt from disclosure by s. 38 of the Income-tax Act and rule 15 of the rules. Statements made and documents produced by assesses before income-tax officers for the purpose of showing the income of such assesses, do not refer to matters of State and are not privileged under s. 123 of the Indian Evidence Act. The Collector, when summoned to produce such documents by the Court, is bound to produce them and the Court is empowered under s. 162 of the Evidence Act to inspect them to decide on the validity of any objection to their admissibility in evidence. S. 38 of the Income-tax Act and

EVIDENCE ACT (I OF 1872)—*contd.*s. 123—*concl'd.*

rule 15 of the rules framed thereunder only forbid public servants to make public or disclose any information contained in such documents. The prohibition, however, does not extend to evidence given in Courts of Justice. Under the Income-tax Act the Collector can compel the production of documents and attendance of witnesses. Documents produced and statements made under process of law cannot be said to be made in "official confidence" within the meaning of s. 124 of the Evidence Act and they are not privileged under that section. *Lee v. Birrell*, 3 Camp 337, referred to. *Jadobram Dey v. Bullegram Dey*, I. L. R. 26 Calc. 281, referred to. *In re Joseph Hargreaves*, [1900] 1 Ch. 347, distinguished. *VENKATACHELLA CHETTIAR v. SAMPATHU CHETTIAR* (1908)

I. L. R. 32 Mad. 82

## s. 121.

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.

I. L. R. 3 All. 573

## s. 122.

See PRIVILEGED COMMUNICATION

I. L. R. 22 Mad. 1

## s. 124.

See PRIVILEGED COMMUNICATION.

7 C. W. N. 249

## ss. 126, 127.

See PRIVILEGED COMMUNICATION.

I. L. R. 3 Bom. 81

I. L. R. 19 Bom. 293

I. L. R. 25 Calc. 739

I. L. R. 29 Calc. 53

2 C. W. N. 484, 649

## s. 132.

See DEFAMATION I. L. R. 32 Calc. 759

See PENAL CODE, s. 500

8 C. W. N. 911

1 ———— Answers criminating witness—Voluntary statement—Privilege of witness answering criminating question In a Small Cause suit under Ch. XXXIX of the Code of Civil Procedure on a promissory note, which was alleged

ted. By KEENAN and MUTHUSAMI ATTAR, J.J., that the affidavit was properly admitted, but not the deposition. *Per* TURNER, C.J., INNES and KINDERSLEY, J.J.—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the

EVIDENCE ACT (I OF 1872)—*contd.*s. 132—*cont'd.*

statement is made, such a statement, if relevant, may be used against him on his trial on a criminal charge. If a witness does not desire to have his answers used against him on a subsequent criminal charge, he must object to answer, although he may know beforehand that such objection, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned, and must be overruled. *QUEEN v. GOPAL DASS* . I. L. R. 3 Mad. 271

## 2.

Protection given to answers which a witness is compelled to give —"Compelled to give." Meaning of the words—*Indian Oaths Act* (X of 1873), s. 14. S. 132 of the Evidence Act (I of 1872) makes a distinction between those cases in which a witness voluntarily

give or which he has asked to be excused from giving, and which then he has been

Court

Mad.

ing)—

with

compels a witness to answer criminating questions, and he is protected by the proviso to s. 132 from a criminal prosecution from any offence of which he criminales himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a crimina-

## 3.

"Compelled" — Compelling witness to answer questions The word "compelled" in the proviso to s. 132 of the Evidence Act (I of 1872) applies only where the Court has compelled a witness to answer a question,

## 4.

ss. 132, 129, 130, 131— Compelling witness to answer questions The mere subpoenaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "shall be compelled to give" in s. 132, Evidence Act, apply to pressure put upon a witness after he is in the box, and when he asks to be excused from answering a question. The wording of ss. 129, 130, 131, 132, and 148, Evidence Act, compared and discussed. *MOHAMMAD SHEIKH v. QUEEN* EMPRESS I. L. R. 21 Calc. 392

## 5.

Document put in without objection. If a document is inadmissible in

EVIDENCE ACT (I OF 1872)—*contd.*s. 132—*concl.*

evidence, objection can be taken to its admissibility at any stage of the case, even if it has been duly proved. But an objection as to the mode of proof of a document is one which should be taken at the time when the document is attempted to be put in. *Kanto Prasad Hazari v. Jagat Chandra Dutta*, I. L. R. 23 Cal. 335, distinguished. *MADHABI SUNDARI DASYA v. GAGANENDRA NATH TAGORE* (1905) . . . 8 C. W. N. 111

## s. 133.

See *ACCOMPLICE* . I. L. R. 28 Cal. 339  
I. L. R. 26 Bom. 193  
I. L. R. 25 Mad. 143

## s. 137..

See *CHARGE TO JURY—MISDIRECTION*.  
I. L. R. 17 Cal. 642

See *WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION* . I. L. R. 21 Cal. 401

## s. 138.

See *WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—EXAMINATION BY COURT* . I. L. R. 8 Cal. 279

## ss. 145, 181.

See *CRIMINAL PROCEDURE CODE (ACT V OF 1898)*, ss. 162, 172.  
I. L. R. 33 Cal. 1023

## s. 154.

See *WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION* . . . 8 C. W. N. 513

See *WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION* . . . I. L. R. 13 Cal. 53  
I. L. R. 26, Cal. 594

## ss. 154, 155, cl. (3), 157.

See *ADVOCATE* . I. L. R. 34 Cal. 129

## s. 155.

See *WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION* . . . 11 Bom. 166

1. cl. (3)—Evidence impeaching the credit of witness. In a suit by one K claim.

EVIDENCE ACT (I OF 1872)—*contd.*s. 155—*concl.*

tent with his evidence, both as to the Koran and the letter. *Held*, that evidence might be given in reply as regards the Koran, but not as regards the letter; no substantive evidence having been given as to the latter before the close of the plaintiff's case. *Semle*. The expression "which is liable to be contradicted" in s. 155 (3) of the Evidence Act is equivalent to "which is relevant to the issue." *KHADIJAH KHANUM v. ARBOOL KURREEM SHERAJI* . . . I. L. R. 17 Cal. 344

2. Statements previously made by witnesses—Inadmissibility as substantive evidence. Two persons made statements to the effect that C and another robbed them and caused hurt while doing so. One statement was made to their employer, and the other to the head constable. C was subsequently charged, and these two persons were called as witnesses for the prosecution, but they then denied that C was one of the men who had assaulted them. Their previous

referred to and which implicated the accused, could be used only under s. 155 (3) of the Evidence Act, for discrediting their evidence, and not as substantive evidence against the accused. *EMPEROR v. CHERATH CHOYI KUTTI* (1902)  
I. L. R. 28 Mad. 191

3. First information—*Criminal Procedure Code (Act V of 1898)*, s. 154—Informant reproducing statements made by another—Admissibility—Evidence to contradict witness. Where certain statements relating to the commission of an offence were made by one person

4. . . . . the evidence given in the case by

s. 159—Bonds destroyed by fire—*Refreshing memory of witness*. The plaintiffs and records in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted, and duplicate copies of the plants were filed. The only evidence of the contents of the bonds, from which the plants were prepared, consisted of a register kept by the plaintiff's gomastas of the names of the executors of the bonds, the matter in respect of which the bonds had been given, the

EVIDENCE ACT (I OF 1872)—*contd.*s. 156—*concl.*

amounts due thereunder, and the names of the attesting witnesses. From this register the duplicate entries had been removed. *11/13 Cal. 286*

NOSYA . . . I. L. R. 5 Cal. 353

ss. 159 and 160.

See PENAL CODE, s. 124-A.

I. L. R. 32 Mad. 384

s. 165.

See PENAL CODE, s. 179

I. L. R. 10 Bom. 165

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . I. L. R. 5 Cal. 614

I. L. R. 24 Cal. 286

s. 167.

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . . . I. L. R. 1 Cal. 207

I. L. R. 2 Bom. 61

See CRIMINAL PROCEEDINGS.

I. L. R. 6 Cal. 739

I. L. R. 9 All. 809

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—GENERALLY.

6 Moo. I. N. 232

1. ——— Civil and criminal cases.

S. 167 of the Evidence Act applies as well to criminal as to civil cases. *QUEEN v. HURRI-BOLZ CHUNDER OHOSE*

I. L. R. 1 Cal. 207 : 25 W. R. Cr. 36

2. ——— It applies to criminal trials by jury in the High Court. *REG. v. NAORAJI DADABHAI*

9 Bom. 356

3. ——— Cases under cl. 26 of the Letters Patent, High Court. The provisions of s. 167 of the Evidence Act apply to cases heard by the High Court when exercising its powers under cl. 26 of the Letters Patent. *QUEEN-EMPRESS v. MCGUIRE*

4 C. W. N. 433

4. ——— Evidence improperly admitted—Document improperly admitted in evidence. Where a copy of a deposition is improperly admitted, such admission is not ground of itself for a new trial, if, independently of the evidence so admitted, there is sufficient evidence to justify the decision. *WOMAN KANT BUKSHEE*

1. GUNGA NARAIN CHOWDHRY . . . 20 W. R. 385

5. ——— Evidence improperly admitted—Power of High Court on appeal—Power to deal with verdict of jury—New trial. The provisions of s. 167 of the Evidence Act (I of 1872) apply to criminal trials by jury. When part of the evidence which has been allowed to go to the jury

EVIDENCE ACT (I OF 1872)—*concl.*s. 167—*concl.*

granting of new trials where evidence has been improperly admitted, does not apply to India. *Wajadar Khan v. Queen-Empress, I. L. R. 21 Cal. 955*, not followed. *QUEEN-EMPRESS v. RAM-CHANDRA GOVIND HARSHE* I. L. R. 19 Bom. 749

## EXAMINATION DE BENE ESSE.

See COMMISSION—CIVIL CASES . . . Cor. 7

5 B. L. R. 252

6 B. L. R. Ap. 101

## EXAMINATION FOR PLEADERSHIP OR MOOKHTEARSHIP.

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I. L. R. 28 Cal. 479

I. L. R. 9 All. 611

## EXAMINATION OF ACCUSED PERSON.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R. 9 Mad. 224

I. L. R. 17 Cal. 682

I. L. R. 18 Cal. 549

I. L. R. 21 Cal. 842

I. L. R. 21 Bom. 485

2 C. W. N. 702

See CRIMINAL PROCEDURE CODE, s. 342.

I. L. R. 10 Cal. 140

I. L. R. 13 All. 345

I. L. R. 14 All. 242

I. L. R. 16 Bom. 661

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS

I. L. R. 26 Cal. 689

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER

5 C. W. N. 664

1. ——— Discretion of Magistrate in examining accused—Evidence insufficient to found charge. It is a matter of discretion for the Magistrate whether, during the enquiry before him, it is right and proper that the accused should be examined or not. But it is undesirable that the accused should be examined by the Magistrate when he is satisfied that the evidence adduced by the prosecution does not disclose any proper subject of criminal charge against him. In the matter of *SHAMA SANKAR BISWAS*

1 B. L. R. 6, N. 16



# EXAMINATION OF ACCUSED PERSON—*contd.*

2. ————— *Criminal Procedure Code, 1861, s. 202.* The discretion of a Magistrate under s. 202, Code of Criminal Procedure, to ask questions of an accused is entirely unfettered, though an examination under that section should not be of an inquisitorial nature, and a Magistrate should inform the accused that he is not bound to answer. Answers to questions under that section are admissible in evidence, even if the Magistrate has omitted to warn the accused he need not answer. *QUEEN v. DINOO ROY*

16 W. R. Cr. 21

3. ————— *Criminal Procedure Code, 1895, s. 209—Examination of accused before committal—Discretion of Magistrate.* It is the duty of a Magistrate, before committing accused persons for trial, to examine them for the purpose of enabling them to explain any circumstances appearing in the evidence against them. The effect of s. 209 of the Code of Criminal Procedure is that it is not left to the discretion of the

*PANDARA TEVAN* . I. L. R. 23 Mad. 636

4. ————— *Refusal to hear statement or examine accused—Power of Court.* It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement or an offer to be examined. *In the matter of ABDUL GUTTOOR*

10 Q. L. R. 54

5. ————— *Committal without examining accused—Power of Court.* It is not illegal for a Magistrate to commit an accused person to the Sessions without examining him or his witnesses. *QUEEN v. HURNATH ROY*

2 W. R. Cr. 50

6. ————— *Tender of written defence—*

*ing him. DILA MONDUL v KALLY SAHEB*

16 W. R. Cr 63

7. ————— *Obligation of accused to give account of his movements at alleged time of offence. An accused person is not*

*BEFIN BISWAS* . I. L. R 10 Cal. 970

8. ————— *Object of examination of prisoner.* The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-incriminating statements. *Ex parte VINABUN-DRU GAUN*

1 Mad. 189

# EXAMINATION OF ACCUSED PERSON—*contd.*

8. ————— *Examination of the accused under s. 342, Criminal Procedure Code—Impropriety of cross-examining him as a hostile witness and of eliciting matters or information not related to the charge.* S. 342, Criminal Procedure Code, permits an examination to be made solely for the purpose of enabling the accused to explain facts appearing against him. It is objectionable to direct examination towards obtaining from the accused some explanation in regard to matter which he had previously mentioned in his confession and has already repudiated as untrue, or to endeavour to elicit information in regard to statements made by a witness. *KING-EMPEROR v. BHUT NATH GHOSE (1902)*

7 C. W. N. 345

10. ————— *Examination at preliminary investigation of murder—Criminal Procedure Code, ss 164, 364.* It is improper to attempt to make an accused person, before any evidence is required, confess his guilt and admit facts

made. And if they are statements other than confessions under s. 364, they are equally inadmissible as having been made before the case reached the stage at which the examination of the accused is authorized. *QUEEN-EMPEROR v. BHAIKAB CHUNDER CHUCKERBUTTY*

2 C. W. N. 703

11. ————— *Examination by Sessions Judge—Criminal Procedure Code, 1872, s. 260.* Under s. 230 of the Code of Criminal Procedure, the Court may from time to time, at any stage of the case, examine the accused personally; but the Court is not competent to subject the accused to cross-examination. That section is not intended to

*CHINIBASH GHOSE* . I C. L. R. 438

12. ————— *Cross-examination by Court—Criminal Procedure Code, 1872, s. 250.* The authority given to a Sessions Court to examine an accused does not contemplate the cross-examination of such accused, nor can the Judge endeavour, by a series of searching questions, to force the accused to incriminate himself. The real object in-

nation as he may desire to give regarding any statement made by the witness, or, at the close of the

**EXAMINATION OF ACCUSED PERSON—*concl.***

case for the prosecution, to elicit from the accused how he proposes to meet such portions of the evidence as, in the opinion of the Court, implicate the accused in the commission of the offence with which he stands charged. *HOSSEIN BUKSH v. EXPRESS*

I. L. R. 8 Cal. 98 : 6 C. L. R. 521

13. — *Cross examination by Court—Criminal Procedure Code, 1872, s. 250.* It is improper for the Court to cross-examine a prisoner with the apparent object of convicting him out of his own mouth of false statements and so making him prejudice himself in respect of the matter with which he is charged. *EXPRESS v. BEHARI LAL BOSE*

6 C. L. R. 431

14. — *Mode of recording examination—Certificate of Magistrate—Criminal Procedure Code, 1872, s. 346.* In recording the examinations of accused persons under a. 346 of the Code of Criminal Procedure in the language in which they are given, a Magistrate need not take down the examination in his own hand; it is enough that he append a certificate that the examination was conducted in his presence and contains accurately all that was stated by the accused person. *QUEEN v. LUCKY NARAIN DUTT*

20 W. R. Cr. 50

15. — *Act XXV of 1861, s. 205—Art X of 1872, s. 346—Attestation of Magistrate.* Under s. 205 of the Criminal Procedure Code, it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused and every answer given by him, and that he had had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted to prove the regularity of the proceedings. *QUEEN v. GOSHTO LAL DUTT*

7 B. L. R. Ap. 62, 15 W. R. Cr. 66

16. — *Certificate under Criminal Procedure Code, 1861, s. 205—Attestation of Magistrate.* The certificate required under a. 205, Code of Criminal Procedure, need not be in the handwriting of the presiding officer, but may be under his hand only, i. e., signed by him. *QUEEN v. REZZA HUSSEIN*

8 W. R. Cr. 55

See *QUEEN v. NIKUNI* 7 W. R. Cr. 49

*QUEEN v. BUCHEEKEER* 4 N. W. 18

17. — *Attestation of Magistrate—Proof of signature.* Where a jury is satisfied as to the genuineness of an attestation by a Magistrate, it is unnecessary to call the Magistrate to swear to his signature. *QUEEN v. REZZA HUSSEIN*

8 W. R. Cr. 55

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5 C. W. N. 724

8 C. W. N. 005

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I. L. R. 30 Mad. 316

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I. L. R. 30 Cal. 921

rate of—

See *EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.*

I. L. R. 23 Cal. 357

I. L. R. 25 Cal. 283

2 C. W. N. 89

*Transfer of Property Act (IV of 1882), s. 118—Aposhnama selling off one decree against another—Registration—Admissibility in evidence—Registration Act (III of 1877), ss. 17, 49.* The plaintiff and the defendant having obtained decrees against each other settled their difference by an aposhnama by which the former gave up certain poles to the latter, the decrees obtained by the plaintiff were set off against the decrees obtained by the defendant, and the parties gave up their claims under their respective decrees: *Held*, that the transaction embodied in the aposhnama did not amount to an exchange within the meaning of s. 118 of the Transfer of Property Act, the essence of such a transaction, viz., the mutual transfer of two things being wanting in this case. It was therefore not necessary to register the document. That s. 40 of the Registration Act was no

**EXCISE ACT, 1856.**

See *ACT XXI of 1856.*

See *BENGAL EXCISE ACT, 1878.*

**EXCISE ACT (X OF 1871).**

ss. 19, 63—*Illicit possession of liquor—Guilty knowledge—Presumption—Act XI of 1870, s. 2—“Ser.”* *Held*, in a prosecution under ss. 19 and 63 of Act X of 1871, that the definition of “ser” given in s. 2 of Act XI of 1870 was not so intelligible and clear as to be capable of general application, and that it did not supersede the local customary weight of a ser. *Held*, therefore, the local customary weight of a ser being 95 tolahs (the Government ser weighing 80 tolahs), and the accused having been found in possession of 96 tolahs only, that the excess of one tolah over the local weight was not such as to warrant the presumption of the guilt of the accused. *EXPRESS v. HAIT RAM, EXPRESS v. CHEDA KHAN*

I. L. R. 3 All. 404

1. — ss. 32, 62—*License—Illicit sale of liquor—Conviction, validity of.* On the 30th Oc-

6 L



**EXCOMMUNICATION—*concl'd.***

See JURISDICTION OF CIVIL COURT—CASTE.  
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**EXECUTION OF DECREE.**

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 6 C. W. N. 91

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## \_\_\_\_\_ step in aid of—

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179—STEP IN AID OF EXECUTION.

## 1. EFFECT OF CHANGE OF LAW PENDING EXECUTION.

1. \_\_\_\_\_ Execution proceedings in suit commenced before Act VIII of 1859—*Act VII of 1855*. Proceedings in execution of a decree in a suit begun under the old procedure were regulated by Act VII of 1855. *In re SONBHOOCHUNDER HALDER*. Bourke O. C. 59

2. \_\_\_\_\_ Alteration in procedure—*Retrospective effect of Act—Construction of statutes*. Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings. *HAJRAT AKRAMISSA BEGAN v. VALIOLNISSA BEGAN*. I. L. R. 18 Bom. 429

*BALKRISHNA PANDHARINATH v. BABU YESAJI*. I. L. R. 19 Bom. 204

3. \_\_\_\_\_ Effect of repeal of Act VIII of 1859. *Imprisonment for Debt Act, 1859*

*Per WESTON, C.J.*—The judgment-creditor had, under Act VIII of 1859, the right (subject to be divested only under the circumstances stated) to have such judgment-debtor as the above detained in custody for two years, unless he in the meantime fully satisfied the decree. Ch. XIX of Act X of 1877, sub-division I, is essentially prospective throughout. S. 342 must therefore be construed as relating only to future imprisonment, consequent on arrests to be made under Act X of 1877. There is not in Ch. XIX of that Act any trace of an intention on the part of the Legislature to deal with imprisonment commenced before the coming into force of the Act. Notwithstanding the repeal of Act VIII of 1859 by Act X of 1877, Act I of 1868, s. 6, saves the committal under Act VIII of 1859, while that Act was in force, of a judgment-debtor, and also his consequent detention, commenced before the coming into force of Act X of 1877, if such detention is to be regarded as "procedure." The effect of Act X of 1877 is to make such last-mentioned proceedings may be taken, were commenced and made before Act X of 1877, came into force. Therefore, assuming the rule as

EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

to the retrospective force of enactments relating to

questions of mere procedure, whereby a retro-active

and 3 of Act X of 1877, taken in connection with Act I of 1868, s. 6, show that, whilst saving all acts already done in execution of a decree in a suit instituted before Act X of 1877 came into force, all matters of procedure in execution subsequent to that date should be determined by the Act itself. The question raised by the present application is one of procedure, for the conditions and period under and for which the writ of imprisonment remains in force are as much matters relating to procedure as the issuing of the writ. Neither the wording of s. 342 or the heading to Ch. XIX of Act X of 1877 necessarily confine the "imprisonment" therein referred to to imprisonment commenced since that Act came into force. Though the judg-

defeat an existing right, is only a rule of construction and must yield to the intention of the Legislature.

legislation, could have intended that two laws should continue for the next two years to operate concurrently, and that debtors imprisoned on the day before the latter Act came into force should be liable to be detained under the severer enactment. *Per BAYLEY, J.*—Cases on the construction of statutes relating to procedure reviewed. History

creditor pointed out. *Coombe v. Case*, 13 B. L. R. 268, is inconsistent with the inviolable right claimed by the judgment-creditor to detain the judgment-debtor for two years. The sections of Act VIII of 1859, relating to imprisonment for debt and its duration, are concerned with procedure alone. The definitions of "decree" and "judgment-debtor" in Act X of 1877 are wide enough to include decrees passed, and judgment-debtors who have become such, before the coming into force of the Act. Ss.



EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

241 and 242 of Act X of 1877—*contd.*

they might, upon the ordinary principles of the interpretation of statutes, be clearly applicable. S 3 of Act X of 1877 implies that the procedure after decree shall be according to the provisions of that Act. *In re Sumbhoochunder Haldar, 1 Bourke 69, and Williams v. Smith, 4 H. & N. 559*, distinguished. S. 6 of Act I of 1868 does not apply in the present case. When of two possible constructions one is in strict harmony with the improvements introduced by the Act, and with the spirit of modern legislation, while the other treats the point under consideration as not having been considered by the Legislature at all, the former is to be preferred. *Per GREEN, J.*—Apert from s. 1 and the proviso to s. 3, there is not in Act X of 1877 any provision as to its operation with regard to pending or past proceedings. S. 1 does not alter or abridge the legal effect, after 1st October 1877, of proceedings had and completed before that date; and in construing s. 3 regard must be had to Act I of 1868, s. 6, though the general rule of construction contained in the last-mentioned section must yield to the intention of the Legislature expressed in any subsequent Act. The proviso to s. 3, coupled with s. 1 of Act X of 1877, shows that the intention of the Legislature was that the repeal of the old Procedure Act was to affect, to some extent, the procedure, other than that prior to decree, in suits instituted before Act X of 1877 came into force. Ample effect would be given to this intention, while

visions of the new Code are to be operative. Cases giving a retro-active force to enactments relating only to procedure reviewed and distinguished. The right of an execution-creditor to detain his debtor till satisfaction of the decree for a period not exceeding two years, under a warrant issued before 1st October 1877 by virtue of Act VIII of 1859, is in nowise affected by the new Code coming into operation. *Per WEST, J.*—Cases on the retro-activity of enactments reviewed. Act VIII of 1859 must have clothed the Court's orders with an abiding validity, and the judgment creditors with an abiding right, or else with none at all. The ministerial officer is to act on the order of the Court according to its original purport. The order, in the absence of an express provision to the contrary, retains its validity until it is withdrawn or varied. The new procedure, therefore, does not apply, whether as touching person or property, except perhaps in matters of mere administration or provisional arrangement. It cannot, at any rate,

EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

apply so as to deprive the creditor of his right once acquired by the arrest of his judgment-debtor in execution. Any change in the relations of the parties can be made only in accordance with the later and existing law, but their previously subsisting relations continue to subsist as before. It is unlikely that the Legislature intended s. 312 of Act X of 1877 to apply to cases of imprisonment other than those arising under that Act. S. 312 is simply a negative provision, and the affirmative provisions, with which it is to be read, are to be found in the same chapter of the Act, and these can only be applied to cases arising after the Act has come into force. The close of the litigious transaction, like that of a contractual one, fixes the rights of the parties according to the then existing law, and in principle there is no distinction between a construction prejudicial to the debtor and a construction prejudicial to the creditor. The imprisonment under Act VIII of 1859, as a "proceeding commenced" comes within the scope of s. 6 of Act I of

the other hand, it is integral with them, so as to form a proceeding commenced before the new Act came into force. In neither case can it bring within the new Act orders deriving their validity from another law. *In the matter of the petition of RATANSI KALIANJI*. I. L. R. 2 Bom. 148

4. — Change of the law pending execution—Civil Procedure Code, Act VIII of 1859 and Act X of 1877—Order setting aside sale in execution of decree for irregularity—Appeal Proceedings to execute a decree commenced when the former Code of Civil Procedure (Act VIII of 1859) was in force; but property belonging to the judgment-debtor was sold in pursuance of those proceedings on the 14th of November 1877 after the new Code (Act X of 1877) came into operation. Subsequently, at the instance of the applicant, the Court made an order

I. L. R. 3 Bom. 222

5. — Civil Procedure Code, 1877, s. 295—Change of the law pending execution of decree—Prior and subsequent attaching

**EXECUTION OF DECREE—*contd.*****1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.***

1870, that is, after the new Code of Civil Procedure

perly by a rateable distribution of the proceeds which might be realized. *Held*, that the prior at-

NARANDAS v. BAI MANCHHA

I. L. R. 3 Bom. 217

8. ———— *Change of law—Effect on proceedings already commenced—Civil Procedure Code, Act VIII of 1859, s. 216, and Act X of 1877, s. 266, cl. (9)—Attachment—Political pension.* On the 28th of September 1877, i.e., three days before the new Code of Civil Procedure (Act X of 1877) came into operation, an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under s. 216 of the former Code (Act VIII of 1859), a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed, at which date the new Code had come into force, and contended that under s. 266, cl. (9), of the new Code, the pension was no longer attachable. *Held*, that all proceedings commenced and pending when Act X of 1877 became law were, under the General Clauses Act (Act I of 1868), s. 6, to be governed by the Code theretofore in force, the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877, and that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment. *VIDYAKAM v. CHANDRA SNEKHARAM*. I. L. R. 4 Bom. 163

7. ———— *Civil Procedure Code Amendment Act (XII of 1879), s. 102—Effect of an application for execution pending at date of its enactment.* Where an application to execute a decree was made under s. 234 of the Code of Civil Procedure, 1877, before Act XII of 1879 (to amend it) was passed, but the application was not disposed of until after s. 220 was altered by that Act:—*Held*, that the rule in *Wright v. Hale* 6, II. & N. 227, applied, and that the Act as amended was the law to be applied. *BAPASASTRIAL v. ANUNTARANA SASTRIAL*.

I. L. R. 3 Mad. 98

8. ———— *Security bond, enforcement of, by execution—Security for Costs—Civil Procedure Code (Act XIV of 1852), s. 549—Act VII of 1859, s. 46—General Clauses Act (I of 1868), s. 6.*

**EXECUTION OF DECREE—*contd.*****1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.***

On the 9th June 1888, a decree-holder applied for leave to execute his decree (which was one for costs) against a person who had become security for the costs of an appeal which had been dismissed with costs; this application was refused on the ground that the law, as it then stood, did not authorize such an application, the remedy of the decree-holder being by regular suit against the surety. Subsequently to the passing of Act VII of 1888, the decree-holder made a fresh application for such execution under s. 46 of that Act. The Court, after

ABDUL WAHAB v. FAREEDDOONNIS

I. L. R. 16 Cal. 323

9. ———— *Execution under Bengal Act VIII of 1869 and Act VIII of 1885—Right of procedure.* Upon the death of the full owner, the mother took out probate of a will, in which she was appointed executrix. The will was afterwards disputed by the minor son of the testator, and probate was revoked; but, while the mother was in posses-

decree was executed under the old Rent Act, Bengal Act VIII of 1869, was, in so far as it was a

BJRONATH BRUTTACHARJEE

I. L. R. 15 Cal. 347

10. ———— *Decree transferred to Collector for execution—Talukhdars' Act (Bombay Act VI of 1888), s. 31, cl. 2—Construction of statute—Retrospective operation—Sanction to sale made necessary by new law.* A decree upon a mortgage-bond passed against part of a talukdar's estate on the 15th August 1887 was transferred, under s. 320 of the Civil Procedure Code (Act XIV of 1882), to the Collector for execution. The property was sold on the 5th August 1889, but the Collector refused to confirm the sale, as the sanction of the Governor in Council under cl. 2, s. 31 of the Talukhdars' Act (Bombay Act VI of 1888), which came into force on the 25th March 1889, had not been obtained. *Held*, that the action was not retrospective in its operation, and that the sale should be confirmed, although no sanction had been obtained. When the Act passed, the plaintiff had already acquired a vested right by the decree to have the property sold, and the presumption was that the Legislature did not intend to interfere with that vested right. That presumption was not rebutted by any intention to interfere appearing in

**EXECUTION OF DECREE—contd.****1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—contd.**

the Act itself. *KALIAN MOTT v PATHURHAI FALJIBHAI*. I. L. R. 17 Bom. 289

11. — Act creating new rights, effect of—*Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894), s. 2—Construction of statute—Sale in execution of decree held after Act V of 1894 came into operation, the execution proceedings being commenced before—Retrospective enactment when applicable to pending proceedings—General Clauses Consolidation Act (I of 1868), s. 6* On the 30th January 1894 an application was made for execution of a decree passed on the 5th of the same month, and certain property was thereafter duly attached. On the 8th February 1894, the sale proclamation was published, and on the 26th March the sale was held. On the 17th April 1894 it was held that the sale set aside on payment to the auction-purchaser of Rs. 5000—

the sale set aside on payment to the auction-purchaser of Rs. 5000—

(PETHERAM, C.J., and O'KINEALY, J., dissenting), that the section conferred a new and substantive right on the judgment-debtor, and was not merely a matter of procedure; and that, as Act V of 1894 does not clearly indicate the intention of the Legislature that the section should have a retrospective effect in the cases that came under it—

*Held per PETHERAM, C.J., and O'KINEALY, J., that the section conferred a new and substantive right on the judgment-debtor, and was not merely a matter of procedure; and that, as Act V of 1894 does not clearly indicate the intention of the Legislature that the section should have a retrospective effect in the cases that came under it—*

of 1894 must be taken to have been used with the express intention that the section should have a retrospective effect in the cases that came under it—effect on action, the sale was

**EXECUTION OF DECREE—contd.****1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—contd.**

delivery of property, and the section, both in form and substance—

certificate, he could not insist on the sale being confirmed and a certificate being given him if the amount due by the judgment-debtor be paid in before that date *Lal Mohun Mukerjee v. Jogendra Chunder Roy, I. L. R. 14 Calc. 636, Tupsee Singh v. Ram Sarun Korri, I. L. R. 15 Calc. 376, Uzir Ali v. Ram Komal Shaha, I. L. R. 15 Calc. 383, and Debnarain Dutt v. Norendra Krishna, I. L. R. 16 Calc. 257, referred to* *GRISH CHUNDRA BASU v. APURBA KRISHNA DASS*

I. L. R. 21 Calc. 940

12. — *Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Construction of statute—Sale in execution of decree held after Act V of 1894 came into operation, the execution-proceedings being commenced before—General Clauses Consolidation Act (I of 1868), s. 6—Bengal Tenancy Act (VIII of 1885), s. 174—Civil Procedure Code, 1882, s. 622—Superintendence of High Court.* On the 8th February 1894, a decree was obtained against A and others in the Small Cause Court of Calcutta, and was subsequently transferred to one J, who was substituted in the place of the original decree-holder. On the 26th July, J applied in the Small Cause Court for execution of the decree, and on the same date the decree was transferred for execution to the District Court of Bankura. On the 3rd August, a writ of attachment issued, and on the 5th it was served. Sale proclamation issued on the 11th, and was served on the 14th August, and on the 20th September the sale took place. On the 27th September 1894, the judgment-debtor applied under s. 310A of the Code of Civil Procedure, which section became part of the Code under the provisions of Act V of 1894, passed on the 2nd March 1894, to have the sale set aside. The District Judge, relying upon the case of *Grish Chundra Basu v. Apurba Krishna Dass, I. L. R. 21 Calc. 940*, together with the principle enunciated in the cases of *Lal Mohun Mukerjee v. Jogendra Chunder Roy, I. L. R. 14 Calc. 636*, and *Uzir Ali v. Ram Komal Shaha, I. L. R. 15 Calc. 383*, refused to set it aside on the ground that s. 310A was not a mere matter of procedure, and Act V of 1894 had no retrospective effect, and therefore s. 310A was not applicable to proceedings in execution of a decree which had been passed before that section came into operation—



EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

the Act itself. *KALIAN MOTI v. PATRUBHAI PALJIBHAI* . . . I. L. R. 17 Bom. 289

11. — Act creating new rights, effect of—*Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894), s. 2—Construction of statute—Sale in execution of decree held after Act V of 1894 came into operation, the execution proceedings being commenced before—Retrospective enactment when applicable to pending proceedings—General Clauses Consolidation Act (I of 1868), s. 6.* On the 30th January 1894 an application was made for execution of a decree passed on the 5th of the same month, and certain property was thereafter duly attached. On the 8th February 1894, the sale proclamation was published, and on the 26th March the sale was held. On the 17th April 1894, the judgment-debtor applied to the Court under the provisions of s. 310A of the Code of Civil Procedure (which section was added to the Code by Act V of 1894, and which came into operation on the 2nd March 1894) to have the sale set aside on payment to the auction-purchaser of 5 per cent. on the purchase money and to the decree-holder of the amount mentioned in the sale proclamation. The auction-purchaser resisted the application on the ground that the section could not affect the sale in question. *Held* (*PETTERAM, C.J.*, and *O'KINEALY, J.*, dissenting), that the section conferred a new and substantive right on the judgment-debtor, and was not merely a matter of procedure; and that, as Act V of 1894 does not clearly indicate the intention of the

*Held per PETTERAM, C.J.*, and *O'KINEALY, J.*, that the section merely dealt with a matter of procedure and applied to the sale, which the judgment-debtor was entitled to have set aside. *Per PETTERAM, C.J.*—All that s. 310A does, so far as the

which the successful litigant may obtain the fruits of his decree; and even if it be considered as creat-

Act came into operation. *Per O'KINEALY, J.*—Act XIV of 1892 is on the face of it an Act of procedure and nothing more, and what the Legislature intended to do by Act V of 1894 was to amend the rules of that Code with regard to the sale and

EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

delivery of property, and the section, both in form and substance, is merely a rule of procedure under which no party has a vested interest. In addition,

decree that date *Lal Mohun Mukerjee v. Jogendra Chunder Roy, I. L. R. 14 Calc. 636*, *Tupree Singh v. Ram Sarun Korri, I. L. R. 15 Calc. 376*, *Uzir Ali v. Ram Komal Shaha, I. L. R. 15 Calc. 383*, and *Debnarain Dutt v. Narendra Krishna, I. L. R. 16 Calc. 257*, referred to *GIRISH CHANDRA BASU v. APURBA KRISHNA DASS*

I. L. R. 21 Calc. 940

12. — *Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Construction of statute—Sale in execution of decree held after Act V of 1894 came into operation, the execution proceedings being commenced before—General Clauses Consolidation Act (I of 1868), s. 6—Bengal Tenancy Act (VIII of 1885), s. 174—Civil Procedure Code, 1882, s. 622—Superintendence of High Court.* On the 8th February 1894, a decree was obtained against A and others in the Small Cause Court of Calcutta, and was subsequently transferred to one J, who was substituted in the place of the original decree-holder. On the 26th July, J applied in the Small Cause Court for execution of the decree, and on the same date the decree was transferred for execution to the District Court of Bankura. On the 3rd August, a writ of attachment issued, and on the 5th it was served. Sale proclamation issued on the 11th, and was served on the 14th August, and on the 20th September the sale took place. On the 27th September 1894, the judgment-debtor applied under s. 310A of the Code of Civil Procedure

21 Calc 940, together with the principle enunciated in the cases of *Lal Mohun Mukerjee v. Jogendra Chandra Roy, I. L. R. 14 Calc. 636*, and *Uzir Ali v. Ram Komal Shaha, I. L. R. 15 Calc. 383*, refused to set it aside on the ground that s. 310A was

came into operation. In an application under s. 622 of the Civil Procedure Code to set aside this decision as wrong—*Held*, by the full Court, that the decision in *Lal Mohun Mukerjee v. Jogendra Chandra Roy, I. L. R. 14 Calc. 636*, so far as it holds that s. 174 of the Bengal Tenancy Act creates a new right in a judgment-debtor, and is therefore

EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

inapplicable to a case in which the decree was passed before that Act became law, is wrong. The cases of *Uzir Ali v. Ram Komal Shaha*, 1. L. R. 15 Calc. 353, and *Grish Chundra Basu v. Apurba Krishna Das*, 1. L. R. 21 Calc. 940, which are based upon the same principle, are also wrongly decided. *Quere*: Whether the decision in *Lal Mohun Mukerjee v. Jogendra Chunder Roy*, 1. L. R. 14 Calc. 636, was correct under s. 6 of the General Clauses Act by reason of the execution-proceedings having been commenced under Bengal Act VIII of 1869, an Act repealed by the Bengal Tenancy Act. That question did not arise in the present case, for though the execution-proceedings were instituted under the old law, the case is unaffected by s. 6 of the General Clauses Act, as the change in the law was brought about not by the repeal of the old Act, but by the addition to it of a new section (310A). *Held*, therefore, that s. 310A was applicable to the proceedings in execution in the present case, and in that view the Court below was bound, upon the application of the judgment-debtor, to set aside the sale, and, not having done so, it had failed to exercise jurisdiction within the meaning of s. 622 of the Code. The Court had power, therefore, to interfere under that section. *JOGENDRANATH SINGH v. AMRITA LAL SINGH*. 1. L. R. 22 Calc. 767

13. ——— Sale in execution of decree, Code, Amendment of 1894, not binding on the Court below.

of 1894. The judgment-debtor now applied under the Civil Procedure Code, s. 310A, that the sale be set aside. *Held*, that the provisions of Act V of 1894, whereby the abovementioned section was added to the Civil Procedure Code, were applicable to the case. *RANGASAMI NAIDU v. VIPASAMI CHETTI*. 1. L. R. 18 Mad. 477

14. ——— Sale in execution of a decree upon a mortgage before the Act—*Gujarat Talukdars Act (Bombay Act VI of 1888)*, s. 31—Necessity of sanction of the Governor in Council to the sale. Certain talukdari estate was mortgaged under a *malikani* executed before the Gujarat Talukdars Act (Bombay Act VI of 1888) came into force. On the 22nd August 1889 (i.e., subsequent

previous sanction of Government, as required by s. 31 of the Talukdars Act. *Held*, that s. 31 of the Act had no application to the present case. The *san mortgage* having been executed before the Act came into force, and left with its validity untouched

EXECUTION OF DECREE—*contd.*1. EFFECT OF CHANGE OF LAW PENDING EXECUTION—*contd.*

by cl. (1) of a 31, the ordinary remedy of the mortgagee to bring the property to sale was not taken away by that section. The sanction of the Governor in Council was therefore not necessary to the sale in execution of the decree on the mortgage. *NAGAR PRAGJI M. JIVABHAI BAVAJI*

1. L. R. 19 Bom. 60

*See DOSHI FULCHAND v. MALEK DAJIRAJ*

1. L. R. 20 Bom. 565

in which the correctness of the above decision was doubted.

## 2. PROCEEDINGS IN EXECUTION.

*See TRANSFER OF PROPERTY ACT (IV OF 1882)*, s. 82. 1. L. R. 34 Calc. 13

1. ——— Proceeding in execution—*Civil Procedure Code, 1877*, s. 244—*Suit, Semble*: A proceeding in execution is a proceeding which terminates in a decree as defined by s. 244 of the Civil Procedure Code (Act X of 1877), and is therefore a suit within the meaning of the Code. *MANJUNATH BADRABHAT v. VENKATESH GOVIND*

1. L. R. 6 Bom. 54

2. ——— *Semble*: A proceeding under s. 244 of the Civil Procedure Code is not a suit within the meaning of s. 12. *VENKATA CHANDRAPPA NAYANIVARU v. VENKATARAMA REDDI*. 1. L. R. 22 Mad. 256

3. ——— Conduct of proceedings in execution. Observations by STRAIGHT, J., as to the necessity of conducting the proceedings in execution of decree with the same care, and, as far as practicable, in accordance with the same procedure as that adopted in regular suits. *SETH CHAND MAL v. DURGA DEVI*

1. L. R. 12 All. 313

*FAKIRULLAH v. THAKUR PRASAD*

1. L. R. 12 All. 179

4. ——— Grounds for setting aside execution-proceedings. In execution-proceedings the Courts will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds, when they find that substantial justice has been done. *Lall Sahoo*  
5 C. L. R. 1  
*v. SAHEB L.*

**EXECUTION OF DECREE—contd.****2. PROCEEDINGS IN EXECUTION—contd.**

application for an order absolute for sale under s. 89 of the Transfer of Property Act is a proceeding in execution and subject to the rules of procedure governing such matters. **ODDH BEHARI LAL v. NAQESHAR LAL** . I. L. R. 13 All. 278

See **CHUNI LAL v. HARNAM DAS**

I. L. R. 20 All. 302

and **VENKATA KRISHNA AYYAR v. THIA GARAYA CHETTI** . I. L. R. 23 Mad. 621

**6. ———— Objection to application for execution of decree by person not party to decree—Practice.** A person, not a party to a suit, is not entitled to object to the issue of an order for execution of the decree. **NATHUBHAI MULCHAND v. NANA BABU**

I. L. R. 19 Bom. 644

**7. ———— Civil Procedure Code**

**J.J. SADIQ SARAN v. HAWAL PANDE**

I. L. R. 19 All. 96

**8. ———— Mortgage—Decree for sale—Civil Procedure Code (Act XIV of 1882), s. 244, cl. (c)—Jurisdiction.** A judgment-debtor against whom a decree for sale has been

I. L. R. 32 Cal. 265

**9. ———— Civil Procedure Code (Act XIV of 1882), ss. 244 and 583—Reversal of decree on appeal, effect of—Separate suit, maintainability of.** S. 244 of the Civil Procedure Code does not apply in its entirety to proceedings had under s. 583 of the Code for restitution of property taken in execution of a decree, which is reversed in appeal. **Shama Purshad Roy Choudhury v. Hurro Purshad Roy Choudhury**, 10 Moo. I. A. 203; **Hurro Chunder Roy Choudhury v. Shooradhomee Debis**, 9 W. R. 402; **Shurnomoye v. Pathari Sarkar**, I. L. R. 4 Cal. 625; **Jamins Nath Roy v. Dharma Das Sur**, I. L. R. 33 Cal. 857, referred to **MATIRAM MARWARI v. RANKUMAR MARWARI** (1907)

I. L. R. 35 Cal. 265

**3. APPLICATION FOR EXECUTION, AND POWERS OF COURT.**

**1. ———— Proceedings in the suit—Civil Procedure Code Amendment Act (VI of 1882), s. 4**

**EXECUTION OF DECREE—contd.****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—contd.**

Applications for execution of the decree are proceedings in the suit. **SADASHIV GANPATRO v. VITHALDAS NANCHAND** . I. L. R. 20 Bom. 198

**2. ———— Decrees, priority of.** A decree takes priority over other decrees in respect of the date on which it was passed, and not in respect of the priority of the debt which it enforces. **GHERAN v. KUNJ BEHARI** . I. L. R. 9 All. 413

**3. ———— Decree-holder, meaning of.** A decree-holder within the meaning of the Civil Procedure Code is the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has by order recognized as the decree-holder from the original plaintiff or his representatives. **PAU-PAYYA v. NARASANNAN** . I. L. R. 2 Mad. 318

**4. ———— Right to execute decree—Assignment of decree—Civil Procedure Code (Act XIV of 1882), s. 232.** The person appearing on the face of the decree as the decree-holder is entitled to execution, unless it be shown by some other person, under s. 232 of the Civil Procedure Code, that he has taken the decree-holder's place. **Khetur Mohun Chattopadhyaya v. Issur Chunder Surma**, 11 W. R. 271, relied on **JASODA DEYE v. KRISHNASH DAS**

I. L. R. 18 Cal. 639

**5. ———— Necessity for application for execution—Civil Procedure Code, 1882, ss. 230, 235, 295, 490.** Under s. 230 of the Civil Procedure Code, all decree-holders, if desirous of enforcing their decrees, are required to apply for execution. There is no exception of cases arising under s. 490. A decree-holder who has attached

**FALLONJI SHAPURJI v. JORDAN**

I. L. R. 12 Bom. 400

**6. ———— Application for execution irregularity in—Procedure—Notice of execution.**

**SINGH** . 22 M. A. D. 10. 11

**7. ———— Application for execution, contents of—Practice.** An application for exe-

2 M. A. D. 10. 11

**8. ———— Application for execution, bar to—Judgment of foreign Court—Mergers—Civil Procedure Code, 1877, s. 12.** The judgment of a foreign Court, obtained on a decree of a Court in

**EXECUTION OF DECREE—*contd.*****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.***

British India, is no bar to the execution of the original decree. **FAKURUDDIN MAHOMED ASSAN v. OFFICIAL TRUSTEE OF BENGAL**

**I. L. R. 7 Calc. 82**

**9. Court to which application should be made—*Contd.***

passed the decree," does not exclude the Court which originally passed the decree as being a Court in which an application for execution should be made, but merely includes another Court. When therefore a Court which had passed a decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. **PER FIELD, J.**—A Court does not cease to be "the Court which passed the decree" merely by reason that the head-quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered. **LACHMAN PUNDEE v. MADDAN MOHUN SHYE**

**I. L. R. 6 Calc. 513; 7 C. L. R. 521**

**10. Transfer of Property Act (IV of 1882), s. 83—Application for sale of mortgaged property on default of mortgagor to redeem. In a suit for the redemption of mort-**

referred to. **VENKATA KRISHNA AYYAR v. THIRAKARAYA CHETTI**

**I. L. R. 23 Mad. 521**

**11. Civil Procedure Code, s. 619, para 2—Decree against a sirdar—Political Agent's Court—Death of the sirdar—Application for execution against the heirs—Change of status of parties—Jurisdiction. A sirdar against whom a decree was passed in the Court of the**

suit in the deceased defendant had not been a sirdar, but that Court also rejected the application on the ground that s. 619, para. 2, of the Civil Pro-

**EXECUTION OF DECREE—*contd.*****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.***

cedure Code (Act XIV of 1882) applies in cases where the territorial jurisdiction of the Court is changed, and where the status of the parties is changed, and that the decree-holder should obtain a declaration that the decree was binding against the heirs, who were not sirdars. **Held**, reversing the order, that the terms of this section are general, and draw no distinction as to the nature of the cause which puts an end to the jurisdiction. **GAUSEHA v. ABDUL ROFKA**

**I. L. R. 17 Bom. 162**

**12. Application to execute decree for sale of immoveable property in possession of a third party under valid title—Civil Procedure Code, 1882, ss. 273, 287—Rules of Bombay High Court under s. 287—Practice. Under s. 237 of the Civil Procedure Code (Act XIV of 1882) and the Rules of the High Court made thereunder, a Court cannot refuse to execute its**

Nor can a claim set up in an investigation held under s. 287 be treated as a claim under s. 278, the latter section having reference to claims to, and objections to attachment of, property under attachment. **BHIEU BAL PATIL v. KHENCHAND KUBESMET**

**I. L. R. 14 Bom. 389**

**13. Amendment of application—Civil Procedure Code, 1877, s. 245—Time fixed by Court—Jurisdiction—Ultra vires. On the 9th of April 1880, A applied for execution of a decree, which he had obtained against B. On the 20th of April 1880, the Judge of the Court, under the provisions of s. 245 of the Code of Civil Procedure, ordered the application to be amended within seven days. This order was disobeyed, but no order**

1880, granting leave to amend, was not *ultra vires* of the Judge under the provisions of s. 245 of the Code of Civil Procedure. **KAMINY MOHUN SOMODAR v. GOPAL**

**I. L. R. 8 Calc. 479; 10 C. L. R. 519**

**14. Practice in execution by High Court of decree of another Court.**

than a year old had been duly sent to the High Court for execution, an application for a rule to show cause why execution should not issue was refused; such application should be made to the Court which passed the decree. **JADU ROR v. FARRELL**

**6 B. L. R. Ap. 63**



**EXECUTION OF DECREE—*contd.*****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*****15. ——— Functions of Court execut-**

in  
a  
G  
MULLA . . . . .

**16. ——— Power of Court executing decree—Objection to validity of amendment—Civil Procedure Code, s. 206** The Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence

judgment-debtor, the Court which passed the decree, purporting to act under s. 206 of the Civil Procedure Code, altered the decree and made it for a sum of Rs. 1,400. The decree-holder took out execution, and the judgment-debtor objected that the decree was for Rs. 1,282 and had been improperly altered. The Court executing the decree disallowed the objection on the ground that it was not such as could be entertained in the execution department. *Held*, that, when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore not capable of execution; and that the judgment-debtor in this case could raise the question whether the decree, which was altered behind his back, was a valid decree and fit to be executed. **ABDUL HAYAT KHAN v. CHUNIA KHAN** I. L. R. 8 All. 377

**17. ——— Questioning validity of decrees.** In executing a decree of a Court of competent jurisdiction, the Court executing it cannot question the validity of any portion of it. Its duties are only of a ministerial character. **AMBARAM HARIVALLABHDAS v. HIMAT SING KALIANJI** 2 Bom. 109; 2nd Ed. 103

**DABEE PERSHAD SING v. DELAWAR ALI**

13 W. R. 312

**18. ——— Authority to hear objections.** When the execution of a decree is made over to a Munsif's Court other than that which passed the decree, the Court executing the decree has authority to hear all objections and to pass such orders as it may deem fit.

**19. ——— Adjustment of decrees.** A Court executing a decree is bound to have regard only to the decree and to any adjustment of such decree which the parties may agree to bring to its notice. **JHUNDOO v. HIMMAT**

3 N. W. 81

**20. ——— Civil Procedure Code, 1877, ss. 211 and 212; (1859), ss. 196 and 197.**

**EXECUTION OF DECREE—*contd.*****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.***

The Court executing a decree is bound by the terms of the decree, and it is only in cases provided for by ss. 211 and 212 of Act X of 1877, corresponding with ss. 196 and 197 of Act VIII of 1859, that it is at liberty to determine the rights of the litigants in proceedings taken after decree. **RAN LAPIT RAM v. CHODARAM. CHODARAM v. RAM LAPIT RAM**

4 C. L. R. 97

**21. ——— Uncertain decree—Power of Court of execution to take evidence to explain it.** When the terms of a decree are uncertain, it is not competent to the Court of execution to make any enquiries by taking oral or documentary evidence to ascertain the meaning of such terms. **NUDDYAR CHAND SHAHA v. GORIND CHUNDER GUHA** I. L. R. 10 Cal. 1092

**22. ——— Uncertain decree—Evidence to explain decree.** When a decree is so uncertain that it is impossible to ascertain what is decreed, a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes. Evidence cannot be given in the

3 D. L. R. 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

**23. ——— Evidence in execution—Evidence to ascertain subject of decrees.** In the execution of a decree for possession of land, it was held the evidence of witnesses could be taken to ascertain the boundaries. **KALEE DABEE v. MGDHON SOODEN CHOWDHRY** 16 W. R. 171 and to ascertain the subject on which the decree operates. **BUHOOBAT SINGH v. RAMADHIN SINGH** 22 W. R. 330

**MED ALI KHAN**

I. L. R. 8 Cal. 200

**25. ——— Refusal to execute decree on equitable grounds—The Court executing a decree not competent to go behind it.** The holders of a decree, made in 1866, against X and certain other persons jointly applied to recover mesne profits in execution thereof. X paid the decree-holders the mesne profits claimed, and then

decided that mesne profits were not recoverable.

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

under the decree. After this, A's representatives applied for execution of the decree of 1878. The lower Courts refused to execute the decree on the ground that, as under the decree of 1866, on which the decree of 1878 was based, *mesne profits* were not recoverable, it would not be equitable to allow a decree for contribution passed on a contrary supposition to be executed. *Held*, that the lower Courts were not competent to go behind the decrees of 1878, but must deal with it as it stood. **RAMNATH RAI v. RAM BARAN RAI** . I. L. R. 5 All. 53

26. ——— *Omission to specify mesne profits*—Reference to plaintiff to see against whom relief can be given in execution. Where in a suit for possession and *mesne profits* no specific mention as to *mesne profits* is made in the decree (the decree merely declaring that the plaintiff's suit be decreed), the Court executing the decree must look to the plaintiff to see from whom the relief granted is to be obtained, and ought not to allow execution to issue against a *pro forma* defendant against whom no relief was claimed. **MONAJAN v. KASHI NATH PANDAY** . 5 C. L. R. 306

27. ——— *Compromise*—Application for execution for sum larger than amount of claim—Consent of parties—Compromise. The parties to a suit agreed upon a compromise, the result of which was that the plaintiff obtained by the decree a greater quantity of land than he had originally claimed, and a decree was drawn up in accordance with the compromise. In the execution proceedings, the defendant raised an objection that the plaintiff could not have execution for a greater

executing the decree was erroneous in law, and might properly be reconsidered upon an application for review; but that the present suit came within s. 244 of the Civil Procedure Code, and therefore could not be maintained. **MOHIBULLAH v. ISMAIL** . I. L. R. 9 All. 226

28. ——— *Improvements*—Civil Procedure Code, s. 244—Execution proceedings—Revaluation of improvements allowed for in decree. A mortgagor obtained a decree for redemption on

tended on behalf of the mortgagee that the improvements ought to be re-valued, as they were at the time of execution of more value than at the date of the decree. *Held*, that the mortgagee was entitled to re-valuation in the execution proceedings. **RAMUNNI v. SHANKU**

I. L. R. 10 Mad. 367

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

29. ——— *Objections to sale of property*. The holder of a money decree, which

mon. The Judge accordingly passed an order to that effect, to which H was not a party. Subsequently H petitioned the lower Court that B might not be sold. *Held*, that it was open to that Court, as far as H was concerned, to investigate his objections in the execution department and pass such orders as it might think fit. **LALLA HEERA LALL v. MONEY ROY** . 11 W. R. 202

30. ——— *Refusal of execution*—Irregularity in instituting suit. It is not competent to a Court executing a decree to refuse execution in a case where no fraud is suggested, on the ground that the plaintiffs were allowed improperly to institute the suit. **SUBRAMANIAN PATTABAI v. PANJAMMA KUNJAMMA** . I. L. R. 4 Mad. 324

31. ——— *Decree against minor*—Question of minority—Review. In the execution of a decree passed against a minor the Court cannot enquire whether the minor was or was not properly represented in the suit in which the decree was given. It is bound to presume that the decree

**MAHOMED NOOR-ULLAH KHAN v. HARCHARAN RAI** . 8 N. W. 98

32. ——— *Costs*. A Court executing a decree has no jurisdiction to order a judgment-debtor to pay as costs any sum not mentioned in the decree which is in course of execution or in any decree in force. **NABU KRISTO MOOKERJEE v. PARBUTTY CHURAN BHUTTACHARJEE**

13 W. R. 23

**NIL KOMUL ROY v. ROBINEE DOWRIA** . 13 W. R. 330

33. ——— *Objection to decree for costs*. Where the lower Court has impro-

It is too late to raise the objection when this latter decree is being executed. **RAM CHUNDER SEN v. KOOMAR DOORBA NATH ROY** . 2 C. L. R. 152

34. ——— *Question of jurisdiction*. It is competent to the Court charged with the execution of a decree to consider the question as to whether the Court which passed the decree had jurisdiction to pass it, unless the decree itself

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

precludes that question. *Muhammad Sulaiman Khan v. Fatima, I. L. R. 11 All. 314*, and *Musa Haji Ahmed v. Purmanand Nursey, I. L. R. 15 Bom. 219*, referred to. *IMDAD ALI v. JAGAN LAL, I. L. R. 17 All. 478*

35. ———— *Limitation—Procedure applicable to execution of decrees—Appel, right of—Review—Civil Procedure Code, s. 623*—It is the duty of a Court to which an application to execute a decree is presented to satisfy itself

view of the Court's order, and thus whether notice of the application for execution had been issued to him or not. A Court, in executing a decree, should look to the substance rather than to the form of applications presented to it. Where an application was made by a judgment-debtor objecting to the execution of a decree against him on the ground that it was barred by limitation, previous objections to execution having been disallowed: *Held*, that, the relief prayed for being one which could only be granted by way of review, the application should be treated as one for that purpose. *RAMU RAI v. DAYAL SINGH, I. L. R. 16 All. 390*

36. ———— *Jurisdiction of the Court to which a decree is sent for execution—Code of Civil Procedure, 1882, ss. 223, 228 and 239—Question of limitation.* The Court to which a decree is sent for execution under a 223 of the Civil Procedure Code has jurisdiction to decide whether or not the execution was barred by limitation. *Leake v. Daniel, B. L. R. Sup Vol. 970: 10 W. R. 10 (F. B.)*; *Nursing Dayal v. Hurryhur Saha, I. L. R. 5 Calc. 897*; *Jassoda Koe v. Land Mortgage Bank of India, I. L. R. 8 Calc. 916*; *Sridhary Mundal v. Murari Choudhry, I. L. R. 13 Calc. 257*, referred to. *Soomat Dass v. Bhobun Lal, 21 W. R. 292*; *Lutfullah v. Keerut Chand, 21 W. R. 339*; *13 B. L. R. Ap. 30*, and *Ramu Rai v. Dayal Singh, I. L. R. 16 All. 390*, dissented from. *CHHOTAY LALL v. PURAN MULL, I. L. R. 23 Calc. 39*

37. ———— *Civil Procedure Code, 1882, s. 373—Dismissal of application to execute without obtaining leave to make a fresh application—Limitation.* S. 373 of the Civil Procedure Code does not apply to applications for execution of decrees. *Tarachand Mayraj v. Kashi Nath Trimbak, I. L. R. 10 Bom. 62*, followed, *Radha Charan v. Man Singh, I. L. R. 12 All. 392*, dissented from. *WAJIRAN alias ALIJAN v. BISHWANATH PERSHAD, I. L. R. 18 Calc. 482*

38. ———— *Civil Procedure Code (Act XIV of 1882), ss. 43, 373, 374—Separate applications to execute reliefs of a different*

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

*character—Limitation.* The Code of Civil Procedure does not prevent a person from making separate and successive applications for execution of a decree, giving relief of different characters in respect to each such relief. *Ss. 43, 373, and 374* do not apply to proceedings for execution of decree. *Radha Charan v. Man Singh, I. L. R. 12 All. 392*, dissented from. *Wajiran v. Bishwanath Pershad, I. L. R. 18 Calc. 482*, followed. *RADHA KISHEN LALL v. RADHA PERSHAD SIKHOI, I. L. R. 18 Calc. 515*

39. ———— *Civil Procedure Code, 1882, s. 43—Successive applications for execution in respect of different reliefs granted by the same decree.* S. 43 of the Code of Civil Procedure is not applicable to proceedings in execution of decrees. *So held* by *EDOR, C.J.*, and *TYRELL, KNOX, BLAIR, and BURKITT, JJ.* Where a decree grants different reliefs, as, for example, possession of land and mesne profits, it is competent to the decree-holder to execute such decree by means of separate and each relief. *KNOX, BLAIR Singh v. Mad Lal v. Radha, cited* *SADHO SARAN v. HAWAL PANDR, I. L. R. 19 All. 98*

40. ———— *Dismissal for default—Application for execution dismissed for default—Power of the Court to restore such application to the file—Civil Procedure Code, 1882, ss. 103 and 647—Civil Procedure Code Amendment Act (VI of 1892), s. 4—Construction of statute.* There is nothing in the Code of Civil Procedure (XIV of 1882) as amended by Act VI of 1892, which authorizes a Court to apply to execution-proceedings any of the procedure enacted in Ch. VII of the Code. Accordingly a Court cannot, under s. 103, restore to the file an application for execution which has been dismissed for default. Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings. *HAJRAT AKRAMNISSA BEGAN v. VALJULNISSA BEGAN, I. L. R. 18 Bom. 429*

Where an application for execution has been dismissed for default, a fresh application can be made. *HAJRAT AKRAMNISSA BEGAN v. VALJULNISSA BEGAN, I. L. R. 18 Bom. 429*

*TIRTHASAMI v. ANNAPAYYA, I. L. R. 18 Mad. 131*

41. ———— *Civil Procedure*

on its presentation a notice is issued to the judgment-debtor under s. 348 of the Civil Procedure

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

Code (Act XIV of 1882), and neither party appears on the day on which it is made returnable. *TUKA RAM v. KHANDU*, I. L. R. 20 Bom. 541

42. Civil Procedure Code, 1882, ss. 373, 347—"Sud," S. 647 of the Code of Civil Procedure does not operate to extend the rule laid down in respect of a suit in s. 373 to an application for execution of a decree. *Radha Charan v. Man Singh*, I. L. R. 12 All. 392, not followed. *BUNEO BEHARY GANGOPADHYA v. NIL MADHUB CHETTOPADHYA*, I. L. R. 18 Cal. 835

43. Civil Procedure Code, ss. 373, 347—Application for execution struck off for non-payment of process-fees—Subsequent application. A decree-holder having applied for execution of his decree, notice was issued to the judgment-debtors, and their property was attached, but the applicant failed to pay the process-fees and the application was struck off, and no leave to make a fresh application was obtained. *Man Singh v. Man Singh*, I. L. R. 12 All. 392, disented from. *Wajihan v. Bishwanath Pershad*, I. L. R. 18 Cal. 462, and *Shakkar Bisto Nadgir v. Narsingrao Ramchandra*, I. L. R. 11 Bom. 467, approved. *LAKSHMI NARASIMHA v. ATCHANNA*, I. L. R. 15 Mad. 240

44. Application for execution withdrawn by decree-holder—Civil Procedure Code, ss. 373, 347. The ruling in *Surya Prasad v. Sita Ram*, I. L. R. 10 All. 71, only decided that, where the circumstances in regard to an application for execution of decree show that it was withdrawn at the instance of the pleader of the decree-holder, and that no sanction was given to its withdrawal with liberty to present a fresh application, any subsequent application made by that decree-holder for execution is prohibited by s. 373 read with s. 647 of the Civil Procedure Code. But where a Court of its own motion, and without being moved either by the decree-holder or by his pleader, takes upon itself to strike off an application

making a fresh application for execution. A first application for execution of a decree was struck off for non-payment of process-fees. The decree-holder applied for execution of the decree. The Court of its own motion, and without being moved either by the decree-holder or by his pleader, took upon itself to strike off the application. The Court held that the application was not barred by s. 373 of the Civil Procedure Code, and that the decree-holder was entitled to make a fresh application for execution. *Surya Prasad v. Sita Ram*, I. L. R. 10 All. 71, explained.

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EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

plained and followed. *Ram Rup v. Lalji*, All. 1211

cutions-proceedings, so far as they may be fairly and properly applicable thereto. *FAKIR-ULLAH v. THAKUR PRASAD*, I. L. R. 12 All. 179

45. Civil Procedure Code (Act XIV of 1882), s. 373—Redemption of mortgage on payment within six months—Non-payment, effect of—Foreclosure for decree—Final decree—Time allowed for redemption, computation of—Withdrawal of appeal, effect of—Limitation—Review. The plaintiffs obtained a decree on 12th November 1880, allowing them to redeem on payment of Rs168-8-0 within six months. In default of payment within the prescribed time, they were to stand for ever foreclosed. Against this decree the defendant appealed to the High Court. On the 10th September 1888, the High Court passed an order allowing the defendant to withdraw the appeal. On the 17th December 1888, plaintiffs applied for execution of the decree of the 12th November 1880. The lower Court, regarding the withdrawal of the second appeal as practically a

application was time-barred, and that the plaintiff was foreclosed. The time allowed for redemption was not a decree. The only decree which could be executed was that of the 12th November 1880.

withdrawal was not a decree. The only decree which could be executed was that of the 12th November 1880.

J.—It was open to the plaintiffs to apply, if so advised, to the High Court for a review of the order of withdrawal of the 10th September 1888, with a

46. Application for execution withdrawn by decree-holder—Civil

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

be struck off upon the statement of the decree-holder's pleader that the judgment-debtor was in hiding, and that the decree-holder did not desire to prosecute the application further. At that time an order for a warrant of arrest had been issued subject to the payment of fees, but those fees had not been paid, nor had the diet-money been deposited.

that a subsequent application for execution of the decree was barred by s 373 read with s 617 of the Civil Procedure Code. *Sarju Prasad v. Sita Ram*, I. L. R. 10 All. 71, and *Fakirullah v. Thakur Prasad*, I. L. R. 12 All. 179, approved and followed. *Bijai Singh v. Hayat Begum*, All Weekly Notes (1889) 163, distinguished. *RADHA CHARAN v. MAN SINGH* . . . I. L. R. 12 All. 392

47. ————— Effect as regards limitation of striking off petition for execution of decree—Second application, without express leave

without leave to apply again having been expressly granted by the Court, the petitioner's right to renew his petition within due time remained. The provisions of s. 373 which could only have applied through the effect of s 647, had not been rendered applicable thereby to petitions for execution. The judgment in *Sarju Prasad v. Sita Ram*, I. L. R. 10 All. 71, overruled; that in *Bunka Behary Gangopadhyay v. Nall Madhub Chellapadhyay*, I. L. R. 18 Calc. 635, approved. *THAKUR PRASAD v.*

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

FAKIR ULLAH . . . I. L. R. 17 All. 106  
I. L. R. 22 I. A. 44

Reversing on appeal *FAKIR-ULLAH v. THAKUR PRASAD* . . . I. L. R. 12 All. 179

48. ————— Laches of applicant—Power of Court to dismiss application for laches of applicant—Civil Procedure Code, 1882, Ch. VII (ss. 96-109), and Ch. XIII (ss. 156-158)—Civil Procedure Code Amendment Act (VI of 1892), s. 4—Striking off execution-proceedings Chs. VII (ss. 96-109, relating to appearance of parties and consequence of

application. Similarly, a Court has inherent power, if such power is not conferred upon it by statute, to proceed forthwith to decide an application for execution of a decree on the materials before it, when time has been granted to a party to perform any act necessary for the further progress of the application, and that act has not been done. When an order striking an execution-case off the file of pending cases, or dismissing it on grounds other than a distinct finding that the decree is incapable of execution, that the decree-holder's right to get the decree executed is barred by limitation, as he

words have been used in the order the decree-

49. ————— Civil Procedure Code (Act XIV of 1882), ss 230, 235, 237, 245—Specification of property, omission of—Application defective in form A decree was passed on the 6th September 1876, and on the 6th July 1883 an application for execution was made in the terms of

was defective as not complying with the provisions of s. 237, and as it was not amended within due time or under the provisions of s 245, the decree-holder was barred. *PER PRYSEY and PROOT, JJ.*—

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

*Macgregor v. Tarini Churn Sircar, I. L. R. 11 Cal. 124*, should be overruled. *Per PETHERAM, C.J.*—The application could not be carried out without amendment, and no amendment could be made after the application had been admitted and registered under s. 245. So much of the decision in *Macgregor v. Tarini Churn Sircar* as decides that an application may be amended after admission

under s. 245 should be dealt with on its merits and decided accordingly. *ASGAR ALI v. THOROKYA NATH GHOSE, I. L. R. 17 Cal. 631*

50. ——— Order absolute for sale—*Civil Procedure Code, 1882, s. 235*—Verification of application—Limitation—Transfer of Property Act (IV of 1882), s. 89. An application for an order absolute for sale of mortgaged property under the provisions of s. 89 of the Transfer of Property Act, 1882, is not an application for execution of a decree, and need not therefore be in the form prescribed by s. 235 of the Code of Civil Procedure. A decree was passed in a mortgage suit on the 13th July 1887 by consent, which directed that the amount due was to be paid in ten annual instalments during the years 1295-1304 (1888-1897) in the month of Falgun (February) each year, and that, on default of three successive instalments, the whole amount was to become at once payable. The mortgagee applied for an order absolute for sale of the mortgaged property under s. 89 of the Transfer of Property Act, 1882, and the court granted the application. The defendant appealed. Held, that the application was not verified by the mortgagee and the court was not empowered to grant an order absolute for sale. That application was not verified by the mortgagee and the court was not empowered to grant an order absolute for sale.

safe. That application was not verified by the mortgagee and the court was not empowered to grant an order absolute for sale.

51. ——— Amendment of execution petition—Defective application for execution of decree—*Civil Procedure Code, 1882, ss. 245 and 647*—Amendment of execution petition—Limitation. One, being entitled under a decree of 1809 to a share in the income of a zamindari, ob-

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

tained a decree in a suit of 1887 against certain recent purchasers of the zamindari, declared.

limitation. This application was refused by the Court of first instance. *Held*, that, under the circumstances of the case, the amendment should have been allowed to be made. *SATTAPPA CHETTI v. JOGI SOORAPPA, I. L. R. 17 Mad. 67*

52. ——— Step in aid of Execution—Defect in application for execution—*Civil Procedure Code, s. 235* Where there has been in fact an application for execution made by the

*V. CHOCKALINGA CHETTIAR*

*I. L. R. 17 Mad. 76*

53. ——— Application defective in form—Decree for performance of particular Acts—*Civil Procedure Code, 1882, ss. 235, 260, and 539*. In a suit brought under s. 539 of the Code of Civil Procedure (Act XIV of 1882), a decree was passed appointing the defendants managing trustees of a Hindu temple and laying down certain rules for their guidance in future. The plaintiffs applied for execution of the decree, and filed a darghast, praying that the defendants be ordered to act as directed by the decree, and that, if they failed to do so, steps be taken according to law.

54. ——— Claim for mesne profits—*Civil Procedure Code, s. 553*—Claim for mesne profits on reversal of executed decree for possession of land. A decree for possession of immoveable property, having been executed, was reversed on appeal. The defendant applied under s. 58 of the Code of Civil Procedure for restitution of the mesne profits taken by the plaintiff. The lower Courts dismissed the application on the ground that the proper remedy was by suit. *Held*, that the defendant was entitled to the relief claimed. *KALIANASUNDRAM v. EGNAVE-DESWARA, I. L. R. 11 Mad. 261*

55. ——— *Civil Procedure Code, 1882, s. 553*—Execution, power of Court to

**EXECUTION OF DECREE—contd.****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—contd.**

passed on appeal is not confined to cases where the restitution desired is provided for by the decree itself. The plaintiff brought a suit for the recovery of certain timber or damages for its removal, and got a decree. The defendant appealed, and was ultimately successful in getting the plaintiff's suit dismissed, but meanwhile the timber had been taken in execution of the decree and sold. The defendant applied to the original Subordinate Judge's Court in execution of the High Court decree for restitution of the timber or Rs 13,323 damages. The plaintiff objected that the defendant must

that the value of the property in dispute exceeded the pecuniary limits of the Court's jurisdiction, nor was such Court limited in its award to the sum of Rs 5,000. **BALVANTRAY OZE v. SADRUDIN**

**I. L. R. 13 Bom. 485**

**56. ——— Decree for enforcement of hypothecation—Objection by judgment-debtor that property ordered to be sold is not transferable under N. W. P. Rent Act, s. 9—Such objection not entertained in execution. In execution of a decree for enforcement of hypothecation by sale of specific property, an objection by the judgment-debtor that the property is not transferable with reference to s. 9 of the N. W. P. Rent Act cannot be entertained. **MADHO LAL v. KATWARI****

**I. L. R. 10 All 130**

**BISHNESHER RAI v. SURENDRO RAI**

**I. L. R. 10 All 132 note**

**57. ——— Decree for redemption within a specified time—Appeal against decree—Power of Court in execution to extend time for redemption allowed by decree—Ground for enlarging time. The plaintiffs sued for the redemption of certain mortgaged property. On the 1st March 1886, a decree was passed declaring the plaintiffs entitled to redeem on payment by them to the defendants of Rs 49-11-0 within three months from the date of the decree. Against this decree the defendants (the mortgagees) appealed on the ground that a much larger sum than Rs 49-11-0 was due to them on the mortgage. The plaintiffs also filed objections to this decree under s. 561 of the Civil Procedure Code (XIV of 1882) on the ground that the mortgage debt had been long ago paid off, and that now a large sum was due to them from the**

**EXECUTION OF DECREE—contd.****3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—contd.**

mortgagees who had been in receipt of the profits of the property. Under these circumstances, the plaintiffs did not pay the Rs 49-11-0 within three months as ordered by the decree. On the 12th October 1886, they presented an application for execution, and paid into Court the Rs 49-11-0. The lower Court granted their application, and ordered possession of the property to be given to them. The defendants appealed to the High Court. *Held*, reversing the order of the Court below, that the Court below was not empowered to order the

if the Court had power to enlarge the time in the course of execution, the mere fact that the plaintiff had lodged an appeal would afford no special ground for enlarging the time. **ISHWAROAR v. CHUDASANA MANABHAI**

**I. L. R. 13 Bom. 106**

**58. ——— Execution in terms of decree—No modification of decree allowed in execution—Husband and wife—Maintenance—Practice—Procedure. Where a decree in unconditional terms ordered maintenance to be paid by a husband to a**

**59. ——— Limitation—Civil Procedure Code, s. 230—Transfer of Property Act (IV of 1882), s. 58 and 90. *Held*, that a decree, which is a combination of a decree for sale on a mortgage under s. 83 of the Transfer of Property Act, 1882, with the decree provided for by s. 90 of the same Act, cannot be treated as a decree for money to which the provisions of s. 230 of the Code of Civil Procedure are applicable. **Jogal Kishore v. Cheda Lal, All. Weekly Notes (1893) 164, followed. Ram Charan Bhagat v. Sheobai Rai, I. L. R. 16 All 413, and Kartick Nath Pandey v. Juggernath Ram Marwari, I. L. R. 27 Calc. 285, referred to in the judgment of Aikman, J. **JADU NATH PRASAD v. JAOMOHAN DAS (1903)******

**I. L. R. 25 All 541**

**60. ——— Refund—Civil Procedure Code (Act XIV of 1882), s. 583—Jurisdiction—Refund, application for. A mortgagee, in execution of a money decree, purchased 2 annas out of 8 annas of certain property mortgaged to him. He subse-**

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

... and in execution.

sold. On second appeal, the High Court held that execution should have been issued after deducting an amount proportionate to the value of the 2 annas share previously purchased by the mortgagee. In the meantime, the 4 annas share had been sold as directed by the District Judge. The judgment...

should have been made not before the Subordinate Judge, but before the District Judge who had "passed the order against which the appeal was preferred" **KHEM NARAIN CHOWDHURY v. GANESHO KUAR** (1899) 5 C. W. N. 287

61. ——— "Application in accordance with law"—*Limitation Act (XV of 1877), Sch. II, Art. 179—Application by guardian on behalf of one found to be a major at the time—Jurisdiction of Court to review its own order, when an appeal lay* An application for execution made by A as guardian on behalf of B, who was a major at the time the application was made, is not an "application in accordance with law" within the mean-

ing distinguished. Neither can such an application be considered an application by B under a 235 of the Code of Civil Procedure. A Court can review its own order in execution, although an appeal might have been, but was not preferred. **SARAVNA v. SESRAYYA** (1905) I. L. R. 28. Mad. 396

62. ——— *Set-off—Civil Procedure Code (Act XIV of 1882), s. 244—Execution of decree passed on usufructuary mortgage—Continuation of possession by mortgagees subsequently to decree—Claim to set off profits thus accrued from decree amount—Application for order absolute—Transfer of Property Act (II of 1882), s. 89* By a decree passed on a compromise in a suit for the amount due under a mortgage, defendants were ordered to pay Rs 770 to plaintiffs within a year, and in default of payment the amount was to be recovered by sale of the mortgaged and other property. By the terms of the

gaged property ever since the date of the decree, it would be necessary to take an account to ascertain whether the decree had been satisfied, and dismissed the petition. *Held*, that such an order was

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

wrong, inasmuch as it went behind the decree, instead of executing it. *Held*, also, that the application, in which the decree-holder stated that there

63. ——— *Limitation—Limitation Act (XV of 1877), Sch. II, Art. 178—Obstruction to execution—Removal by decision in favour of decree-holder—Decree-holder's right to move the Court—Application to be regarded as a continuation of previous application.* A mortgage decree was obtained against the counter-petitioner on 28th February 1891. On 16th May 1895, the decree-holder assigned the decree to petitioner, who applied for execution on 6th December 1897. That application was struck off, and so was one which followed it. On 15th June 1898, petitioner again applied for execution, but counter-petitioner contended that the assignment was for his benefit and that, in consequence, petitioner was not entitled to execute the decree. The District Munsif held an enquiry under s. 232 of the Civil Procedure Code and dismissed the application, being of opinion that counter-petitioner's contention was true. Petitioner thereupon brought a suit to establish her claim that the assignment was for her own benefit. On 20th February 1901, the Appellate Court declared that petitioner had obtained a valid assignment of the decree and was entitled to execute it. On 24th November 1902, petitioner filed the present execution petition. On the question of limitation being raised:—*Held*, that the petitioner's

**REDDIAR v. AVUDAI ANNAL** (1905)

I. L. R. 28. Mad. 50

64. ——— *Limitation Act (XV of 1877), Sch. II, Art. 179—Mortgage—Decree for redemption—Extension of time for payment of the mortgage amount—Execution.* In a suit for redemption of the mortgage property the decree directed that upon payment of the mortgage amount within six months from its date the decree-holder should take possession of the mortgage property. The decree was affirmed on appeal on the 6th November 1896. The decree-holder failed to



EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

ed for three months. The decree-holder's last application to execute the decree was made on the 21st April 1897. *Held*, that the application was barred by limitation. Notwithstanding that time

65. ——— *Res judicata*—*Effect of non-appearance, when notice silent as to relief claimed*—*Final decision*. A applied in execution for restitution of money with interest thereon paid to B under a decree, which was subsequently reversed. The notice to B did not specify the nature of the claim and an *ex parte* order allowing the claim was made. The application, however, was dismissed for default in payment of process fees and A subsequently put in a similar application. B appeared and objected to the interest claimed which was 12 per cent. The Subordinate Judge allowed the interest, which, however on appeal to

did not contemplate a further order, and that the appeal to the District Judge was not premature. Venkatagiri Ayyar v. Sadagopachariar (Appeal No. 69 of 1900, and Civil Miscellaneous Appeals Nos. 105 and 109 of 1902, unreported), distinguished. *Held*, also, that, as the notice to B was silent as to the nature of the claim, the first order granting A's application *ex parte* had not the force of *res judicata* so as to estop B from disputing the claim in subsequent proceedings. Knowledge of the nature of the claim can be presumed only when the application is for execution of a decree or order directing a thing to be done. *Sheik Budan v. Ramchandra Bhunjiyaya*, I. L. R. 11 Bom. 537, and *Vappalanthu Maracayan v. Hamid Bevi Ammal*, Civil Miscellaneous Appeal No. 25 of 1903, unreported, referred to. NARAYANA PATTAR v. GOPALAKRISHNA PATTAR (1905)

I. L. R. 28 Mad. 355

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

67. ——— Decrees for separate sums—*Civil Procedure Code (Act XIV of 1882) s. 232, cl. (b)*—*Decree directing separate amounts with separate sets of proportionate costs to be recovered against defendants*—*Transfer of the decree in writing to one of the defendants*—*Application by the transferee to recover the amount due by the other defendant*. A decree directed that a certain sum with proportionate costs be recovered against N and a certain other sum with proportionate costs be recovered against A. Subsequently A took a transfer of the decree in writing and applied for execution of the decree against N to the extent of the sum decreed against him. The application being refused, A applied for execution of the decree against N and the separate direction against A were contained on one and the same piece of paper and were passed in the same suit, still for all that they were decrees for separate sums of money and might equally well have been passed in separate suits. The fact of their being on one piece of paper cannot control the matter. ASANT VINAYAK v. NAAGAPPA SUBBAYA (1907) I. L. R. 32 Bom. 195

68. ——— Refund of money realized in execution of a decree afterwards reversed in appeal—*Limitation*—*Execution of decree stayed by injunction*—*Procedure*. On the 7th October 1901 an *ex parte* decree on a mortgage was passed in favour of the appellants. Before, however, the decree was made the appellants had obtained an injunction restraining the respondents from realizing certain money deposited in Court to their credit. After this decree was passed, the appellants withdrew out of this amount Rs. 19,041. The decree was set aside on the 9th July 1904. The suit was retried; and on the 17th September 1904 the Court of first instance made a decree in favour of plaintiffs for Rs. 17,711-7-0. This decree was affirmed by the High Court on the 18th December 1906. On the 17th September 1907, the respondents applied for a refund of the difference (Rs. 1,804) between the sum realised by the plaintiffs and the sum finally decreed. *Held*, (i) that the plaintiffs were at liberty to proceed either by application or by suit; *Shaman Purshad Roy Chowdhry v. Hurro Purshad Roy Chowdhry*, 10 Moo. I. A. 203; *Collector of Meerut v. Kalla Prasad*, I. L. R. 239 All. 665, and *Shiam Sundar Lal v.*

69. ——— *Shobaita*—*Claims to attached property by shobaita*—*Civil Procedure Code (Act*

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

XIV of 1882), ss. 244, 278. Judgment-debtors, in their capacity as *shroffs*, can maintain an application under s. 244 of the Code of Civil Procedure and get an adjudication of the question

70. ———— Redemption or foreclosure —Decree—Civil Procedure Code Act (XIV of 1882), s. 244—Transfer of Property Act (IV of 1882), s. 93. An application for redemption or foreclosure of a decree nisi is not an application in execution under the Civil Procedure Code, but must be made in Court under the Transfer of Property Act; and until a decree nisi is made absolute there is no decree capable of execution. Where a decree nisi contemplated an account being taken, but was silent as to how that account was to be taken, and the Court has declined to modify the decree by inserting such a direction, it would be out of the question to compel a party in execution-proceedings to do that which he is not directed to do by the decree. *Ayudhia Pershad v. Baldeo Singh*, 21 Cal. 818, and *Nandram v. Babaji*, I. L. R. 22 Bom. 771, followed. *SIR JEHANGIR COWASI v. THE HOPE MILLS, LIMITED* (1908). I. L. R. 33 Bom. 273

71. ———— Fraud—Execution, application for—Limitation—Execution sale set aside for fraud of decree-holder—Fresh application for execution of a continuation of previous proceeding

YAR ABDUL HUQ CHOWDHURY v. REAJUDDIN AHMED CHOWDHURY (1909) 13 C. W. N. 521

72. ———— Civil Procedure Code (Act XIV of 1882), s. 230—Money decree—Application to execute after expiry of 12 years—Fraudulent conduct of judgment-debtor delaying execution—Frivolous application under s. 108, Civil Procedure Code—Discretion of Court. Where pending execution of a money-decree, the judgment-debtor made a frivolous application to set it aside under s. 108, Civil Procedure Code, with a view to delay the execution proceedings: *Held*, that the conduct of the judgment-debtor was fraudulent within the meaning of the final clause of s. 230, Civil Procedure Code. The Court to which an application to execute a money-decree is made more than 12 years after the date of the decree should exercise a sound discretion in deciding whether the

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

execution should proceed or not. If the Court should find on evidence that the decree-holder had been diligent in proceeding with the execution from the date that the decree was passed, and that the

73. ———— Jurisdiction—Limitation Act (XV of 1877), Sch. II, Arts. 173A, 179—Application in accordance with law—Civil Procedure Code (Act XIV of 1882), ss. 2, 223, 258, 649—Where a Court passes a decree for sale of property and the place where such property is situate, is transferred to the jurisdiction of another Court, former Court may still execute decree—Application made to such Court to transfer decree to the latter will save limitation-bar—Representative of judgment-debtor as judgment-debtor within the meaning of s. 258 and must certify adjustment within time fixed by Art. 173A of Sch. II of the Limitation Act. The Court at C passed a decree for the sale of certain immovable property. Subsequently the territory where such property was situate was transferred to the jurisdiction of Court D. The decree-holder applied to the Court at C to transfer his decree for execution to the Court at D. The decree was transferred and in execution, the purchaser of the equity of redemp-

fied to the Court. The question arose whether the application to the Court at C for transfer was an

the uncertified adjustment—*Held*, that the Court at C did not, within the meaning of s. 649 of the Code of Civil Procedure, cease to exist or to have jurisdiction to execute the decree on the transfer of territory from its jurisdiction, as such transfer did not take away the jurisdiction which it had to execute its own decree under s. 223 of the Code of Civil Procedure, and the Court at D consequently acquired no jurisdiction to execute the decree under s. 649, which could only arise, if the Court at C either ceased to exist or to have jurisdiction to execute the decree. The Court at C was, therefore, the Court to which the decree-holder was bound to apply under s. 223 of the Code of Civil Procedure, and his application saved the bar of limitation under Art. 179 of Sch. II of the Limitation Act. *Held*, also, that the provision of s. 258 of the Code of Civil Procedure applied not only to judgment-debtors, but to those claiming through them or in their right and that an adjust-

EXECUTION OF DECREE—*contd.*3. APPLICATION FOR EXECUTION, AND POWERS OF COURT—*contd.*

ment between the decree-holder and the judgment-debtor not certified within 90 days was barred under Art. 173 (A) of Sch. II of the Limitation Act, and cannot be set up as a bar to execution by one claiming through the judgment-debtor or in his right. *PANDURANGA MUDALIAR v. VYTHILINGA REDDI* (1907) . . . I. L. R. 30 Mad. 537

74. ———— Against karnavan—*Civil Procedure Code* (Act XIV of 1882), ss 244, 278—*Application in execution of decree against karnavan by a member of the tarwad*. Where a decree is passed against the karnavan of a tarwad in his representa-

75. ———— Against company in liquidation—*Companies Act* (VI of 1882), s 136—*Execution of decree against company in liquidation not to be prevented without making due provision for the right*

creditors under s. 136 of the Companies Act from

tion of a decree against B attaches under s 273 of the Code of Civil Procedure a decree which B holds against a company in liquidation, the Court will direct the liquidator to recognise A as the representative of B and allow him to execute the decree.

*V. THE TINNEVELLY SARANGAPANY SUGAR MILL COMPANY (LIMITED)* (1907)

I. L. R. 30 Mad. 533

76. ———— Decree for sale and personal decree—*Transfer of Property Act* (IV of 1882), ss 88 and 90—*Decree to be executed a combination of a decree for sale and a personal decree*. Where a decree in a suit for sale of hypothecated property is both a decree for sale of the property under s. 88 and a personal decree under s. 90 of the Transfer of Property Act, 1882, there is no need for the decree-holder to apply for a separate decree under s. 90, and if he does so and his application is rejected, this will not operate as a bar into his executing the decree against the judgment-debtor personally. *SABHO SINGH v. THE MAHARAJA OF BENARES* (1906) I. L. R. 29 All. 12

EXECUTION OF DECREE—*contd.*

## 4 ORDERS AND DECREES OF PRIVY COUNCIL.

1. ———— Powers of legislature—*Limitation affecting Privy Council decrees*. The Legislature of this country has no power to pass any law limiting the period during which decrees of Her Majesty in Council may be executed. *ANANDAMAYI DAS v. PURNA CHANDRA RAI*

B. L. R. Sup. Vol. 508; 6 W. R. Mis. 69

2. ———— Order or declaration of Privy Council—*Mode of application for execution—Act II of 1863, s. 14*. A party in a suit, desirous of

Council; and it is the duty of such Court to give directions for executing the decree to the Court of first instance by which the suit was originally tried. A declaration of Her Majesty in Council must not be considered as not being equivalent to an order. When Her Majesty in Council does make a declaration, the form in which the declaration is conceived and the words in which that order is framed amount to a direction to the Court below to clothe that declaration in the proper form of a mandatory order, and to give effect to the mandatory order so expressed. If any difficulty should arise in that form, or be sought to be produced from having

3. ———— Decree affirmed by Privy Council—*Decrees affirmed by an order of the Privy Council must be executed with the execution of that order, and not as separate decrees*. *LEITH BRIDGES v. PROHLER SEN* . . . 10 W. R. 301

4. ———— Order of Privy Council—*Civil Procedure Code, Act X of 1877, s. 610—Procedure*. Before a decree-holder in the District Court can obtain execution of a decree which has been affirmed by the Privy Council, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council. *Joy Narain Giree v. Goluck Chunder Mytee*, 20 W. R. 414, followed. *JUGOERNATH SARKO v. JUDOO ROY SINGH*

I. L. R. 5 Calc. 329; 4 C. L. R. 387

the only

EXECUTION OF DECREE—*contd.*4. ORDERS AND DECREES OF PRIVY COUNCIL—*contd.*

the Courts in India. Where the original order

HURRISH CHUNDER CHOWDHURY v. KALISUNDARI DEBI . I. L. R. 9 Calc 482; 12 C. L. R. 511

8. ——— Application to Zillah Courts. Zillah Courts ought to refer to the High Court parties applying for execution of decrees which have been appealed to England. HURRISH CHUNDER CHOWDHURY v. KALISUNDARI DEBI . I. L. R. 9 Calc 482; 12 C. L. R. 511

7 W. R. 225

7. ——— Act VI of 1874,

8. ——— Order of Privy Council disturbing possession—Decree of High Court—Final decree, possession under. On appeal by U,

U had obtained against these persons and the sons of K for possession of two-thirds of the same pro-

meantime U was put into possession of the whole property in execution of the decree of the High Court which he had obtained in the suit brought by him. When the sons of K, in execution of the de-

I. L. R. 1 All 450

EXECUTION OF DECREE—*contd.*4. ORDERS AND DECREES OF PRIVY COUNCIL—*contd.*

8. ——— Privy Council decree reversing decrees of Courts below where property has been made over—*Restitution—Mesne profits—Interest*. A plaintiff, having sued for possession and obtained a decree which was affirmed in appeal, entered into possession. The

Court to frame the final decree. The Judge made an order for the restitution of the property, but not an order for repayment of the rents and profits derived therefrom by the plaintiff during his possession. *Held*, that the Judge should have made this order also, and that interest should be paid on the mesne profits according to the rule that parties should be restored, as far as possible, to the same position as they were in when the Court by its erroneous action displaced them from it. HANIDA alias KAJOO t. BHEDHAN . 20 W. R. 238

10. ——— Execution of order giving effect to judgment of Privy Council—*Civil Procedure Code, ss 211, 253, 318—Mesne profits—Cost of receiver and management—Interest on mesne profits—Sureties for execution of decree*. Land was put up for sale and purchased in execution of a decree. The sale was confirmed and the purchaser was put into possession. On appeal against the order confirming the sale, the High Court held that the sale had been vitiated by certain irregularities and set it aside. The purchaser preferred an ap-

its re-delivery to him and for the payment of mesne

Court of first instance dismissed the application as against the sureties, and limited the applicant's

that by which possession was awarded, and the order in Council did not direct payment of mesne profits, yet such payment was within its purview as

EXECUTION OF DECREE—*contd.*4. ORDERS AND DECREES OF PRIVY COUNCIL—*contd.*

being a benefit by way of restitution fairly and reasonably consequential upon it—*Rodger v. Comploir D'Escompte de Paris*, L. R. 3 P. O. 465, followed: *On the execution of the decree*

profits for each year from the end of the year to the date of payment. *ARUNACHELLAM v. ARUNACHELLAM* . . . I. L. R. 15 Mad 203

## 11. ——— Decree of Privy Council for

estimated at the rate of exchange "for the time being fixed by the Secretary of State for India in Council," and the words "for the time being" mean the year in which the amount is realized or paid or execution taken out, and not the year in which the decree was passed. The decree-holders under a decree passed by Her Majesty in Council having taken out execution for a sum of £110. 11 under s. 10 of the Civil Procedure Code—*Held*, that, the rate of exchange being fixed yearly by the Secretary of State for India in Council, the rate of ex-

I. L. R. 8 All. 600

12. ——— Rate of exchange—*Civil Procedure Code*, 1882, s. 610—Meaning of "for the time being." Under s. 610 of the Code of Civil Procedure, the amount payable must be calculated at the rate of exchange

order of the Privy Council was passed, and not to the time at which execution was taken out. *Paran-sukh v. Ram Dayal*, I. L. R. 8 All. 650, dissented from. Where interest on costs is not allowed in the order of Her Majesty in Council, such interest cannot be given by any Court in this country. *Forester v. Secretary of State for India*, I. L. R. 3 Cal. 161; L. R. 4 I. A. 137, referred to. *DAKHINA MOHAN ROY CHOWDHURY v. SARODA MOHAN ROY CHOWDHURY* . . . I. L. R. 23 Cal. 357

13. ——— Decree for costs—*Rate of Exchange*. In converting into Indian currency the amount of costs expressed in sterling in an order of Her Majesty in Council, the rate of exchange is the rate which prevailed at the time when the order was made. *Dakhina Mohan Roy Chowdhury v. Saroda Mohan Roy Chowdhury*, I. L. R. 23 Cal. 357, followed. *MAHOMAD ABUL HYE v. CAJRAJ SAHAJ* . . . I. L. R. 25 Cal. 283  
2 C. W. N. 89

EXECUTION OF DECREE—*contd.*4. ORDERS AND DECREES OF PRIVY COUNCIL—*contd.*

14. ——— Reversal of decree by High Court and confirmation of original decree by Privy Council—*Appeal by some only of de-*

appealed to Her Majesty in Council, all the defendants except B being respondents. On the 17th March 1860, Her Majesty in Council reversed the

AS B. VEDIA  
KISHEN

I. L. R. 4 All. 137

15. ——— Transfer of decree for execution—*Territorial jurisdiction—Civil Procedure Code (Act XIV of 1882)*, ss. 223, 610, 649. The effect of ss. 610 and 649 of the Civil Procedure Code is that the Court which formerly had, but now no longer has territorial jurisdiction, ought when the

16. ——— Erroneous order, effect of—*Application to receive and file order for purpose of execution—Civil Procedure Code*, s. 610, *function of Court under—Receiver, lien of, on estate—Alteration or amendment of decree*. On receiving and

for the party concerned by the order, is make the ch order.

Cal. 960

## 5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

1. ——— Decree on appeal or review confirming former decree. Where in a review

EXECUTION OF DECREE—*contd.*5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*contd.*

or appeal proceeding a decree is passed in affirmance of the decree appealed against, the decree of the appellate or reviewing Court is the final decree between the parties, and therefore the decree to be executed. *Dipro Dass Gossain v. Chunder Sakur*

PERSHAD CHUCKREBUTTY v. ISHAN CHUNDER ROY  
23 W. R. 57

2. ——— Decree appealed from affirmed without mentioning costs—*Error in*

BRIDGMAN . . . I. L. R. 5 All. 569

3. ——— Decree appealed from affirmed without stating amount of costs—*Appeal only as to costs.* The defendant in a suit appealed from so much of the decree of the Court of

on that point, made them the substantive portion of its decree. *Shohrat Singh v. Bridgman*, I. L. R. 4 All. 376, distinguished. *HIMAYAT HUSSAIN v. JAI DEVI* . . . I. L. R. 5 All. 569

4. ——— Decree appealed from affirmed without stating amount of costs of lower Court. The original decree in a suit dismissed the suit with costs, which were specified. On appeal the Appellate Court directed that the

5. ——— Decree affirming and adopting decrees of lower Court—*Decree to be executed where there has been an appeal.* The effect of the decision of the Full Bench in *Shohrat Singh v. Bridgman*, I. L. R. 4 All. 376, is nothing more than

EXECUTION OF DECREE—*contd.*5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*contd.*

that the last decree is to be regarded as the decree to be executed, whether it reverses, modifies, or confirms; but when it affirms and adopts the mandatory part of the first Court's decree, that decree may be and should be referred to, and the mandatory part of the affirmed decree should be executed as though

decree of the Appellate Court, by carrying out the mandatory part of the decree of the Court of first instance: *Held*, that the objection that the decree-holder did not in his application expressly ask the Court to execute the decree of last instance was under the circumstances a mere technical objection, and there was no reason why the execution asked for should not be allowed. *GOBARDHAN DAS v. GOPAL RAM* . . . I. L. R. 7 All. 386

6. ——— Decree affirmed on appeal—*Jurisdiction—Civil Procedure Code, ss. 206, 579.* The effect of s. 579 of the Civil Procedure Code is to cause the decree of the Appellate Court to supersede the decree of the first Court even where the appellate decree merely affirms the original decree, and does not reverse or modify it. Where a decree has been affirmed on appeal, the only decree which can be amended under s. 206 of the Code is the decree to be executed, and the decree to be executed is that of the Appellate Court and not the superseded decree of the first Court, though the latter may, if necessary, be referred to for the purpose of executing the appellate decree. The only Court which has jurisdiction to amend the appellate decree is the Court of Appeal. So *held* by the Full Bench, *MAHMOOD, J.*, dissenting *Shohrat Singh v. Bridgman*, I. L. R. 4 All. 376, explained and

7. ——— Amendment of decrees by first Court after affirmance—*Objection by judgment-debtor to execution of amended decree.* The decree of a Court of first instance having on appeal been affirmed by the High Court, the first Court altered the decree which had been

that the objection must prevail on the grounds that the decree sought to be executed was not that of the Appellate Court, and that the decree had been

EXECUTION OF DECREE—*contd.*5. DECREE TO BE EXECUTED AFTER  
APPEAL OR REVIEW—*contd.*

altered by the first Court, which had no power to alter it. *Abdul Hayat Khan v. Churna Kuar*, I. L. R. 8 All 377, referred to. *MUHAMMAD SULAIMAN KHAN v. FATIMA* I. L. R. 11 All 314

8. ——— Confirmation by High Court of Decree of Lower Court—*Former dismissal of application for execution of original decree—Effect of an application for execution of appellate decree—Res judicata—Limitation.* Where the High Court confirms on appeal the decree of a subordinate Court, such confirmation has the same effect as an order of reversal would have had in so far as it leaves the decree of the High Court as the only decree which exists for the purpose of execution, and the decree of the lower Court becomes incorporated with it. On 23rd July 1888, plaintiff obtained a decree for the redemption of certain lands on payment within three months of the amount due to the mortgagee, which was to be ascertained in execution proceedings. Against this decree the defendant appealed to the High Court. Pending the appeal, the plaintiff presented a darkhast for execution on the 4th October 1888. This darkhast was dismissed, as the plaintiff failed to produce a copy of the mortgage bond within the time allowed by the Court. The three months allowed by the decree for payment expired on the 23rd October 1888. On 11th February 1890, the High Court confirmed the decree, and on 11th April 1890 plaintiff presented a fresh darkhast for execution. Both the lower Courts dismissed this darkhast on the ground that the dismissal of the first darkhast operated as *res judicata*. *Held*, that the plaintiff was entitled to execute the decree, and that his second darkhast was not barred either by limitation or on the principle of *res judicata*. *NANCHAND v. VITHU* . . . I. L. R. 19 Bom. 258

9. ——— Decree to be executed where there has been an appeal. Where the Appellate Court has modified the decree of the Court below, the decree of the Appellate Court supercedes entirely that of the lower Court, and is the only decree which can be executed. *Shohrat Singh v. Erdgman*, I. L. R. 4 All 376, *Gobardhan Das v. Gopal Ram*, I. L. R. 7 All 366, and *Muhammad Sulaiman Khan v. Muhammad Yar Khan*, I. L. R. 11 All 267, referred to. *NOURANG RAI v. LATIF CHAUDHRI* . . . I. L. R. 13 All 394

10. ——— Appeal against part of decree—Decree affirmed in appeal—*Period from which limitation runs after an appeal.* In a suit for the value of goods and for damages, the Court allowed the claim with respect only to a portion of the plaintiff's claim, and rejected the rest. The plaintiffs appealed against the latter part of the decree. The decree was confirmed in appeal. The plaintiffs applied for execution of the decree after the expiration of three years from the date of the original decree, but within three years from the date of the appellate decree. The lower Court

EXECUTION OF DECREE—*contd.*5. DECREE TO BE EXECUTED AFTER  
APPEAL OR REVIEW—*contd.*

rejected the application as time-barred, being of opinion that the original decree still existed though

becomes incorporated in the decree of the Appellate Court, which is thenceforth the only decree to be executed. *SAKHALCHAND RIKHAWDAS v. VELCHAND GUJAR* . . . I. L. R. 18 Bom. 203

*SHIVLAL KALIDAS v. JUMARLAL NATHIZI DESAI* . . . I. L. R. 18 Bom. 542  
*HARKANT SEN v. BIRAJ MOHAN ROY* . . . I. L. R. 23 Calc. 876

11. ——— Appeal against a decree for redemption—*Transfer of Property Act, ss. 92, 93—Time fixed for redemption.* A mortgagor obtained a decree for redemption of his mortgage "within six months from the date of this decree"

tion, yet, unless the time for payment of the redemption money has been postponed under s. 93

under Transfer of Property Act, s. 92. *MANS-VIKRAMAN v. UNNIAPPAN* . . . I. L. R. 15 Mad. 170

12. ——— Decree for redemption of mortgage—*Payment of the mortgage amount within three months—Absence of foreclosure clause—Appeal by mortgagee—Payment by mortgagor of the decretal amount after the expiration of three months—Withdrawal of the appeal by mortgagee—Computation of time for execution.* In a redemption suit filed by the plaintiffs (the mortgagors), they obtained a decree on the 1st March 1886, whereby they were directed to pay the defendant (the mortgagee) the sum of Rs 49-11-0 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause of foreclosure in the event of non-payment. On the 1st October 1886, the mortgagee appealed to the High Court, and on the 1st October 1887, the mortgagee withdrew the appeal. On the 1st October 1887, the plaintiffs applied for execution of the decree. The Court made an order for Rs 49-11-0 into the lower Court, and applied for execution of the decree. The Court made an order

**EXECUTION OF DECREE—contd.****5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—contd.**

allowing the payment and granted execution, hold-  
 ing that it had power to extend the time for pay-

**MADARSANG v. ISHWARGAR DUDHAGAR**  
**I. L. R. 16 Bom. 243**

**13. ——— Conditional decree—Civl Procedure Code, s. 214—Pre-emption—Deposit of purchase money—Computation of time allowed for payment.** In a suit for pre-emption, the decree of the Court of first instance was conditional upon payment of the purchase money within one month from its date. After this period had expired without payment, the defendants appealed from the decree. The appeal was dismissed and the decree

**I. L. R. 11 All. 346**

**14. ——— Decree of Appellate Court—Execution of decree for rent and cancellation of lease—Computation of time for payment from "date of decree" under Chota Nagpur Landlord and Tenant Act (Bengal Act I of 1679), s. 88. A**

**EXECUTION OF DECREE—contd.****5. DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—contd.**

fifteen days, his lesse should be cancelled. An

**ROGHUNATH SAHAI** . **I. L. R. 23 Calc. 467**

**15. ——— Execution where appeal is brought—Copy of decree.** The application to execute the decree of an Appellate Court should be made to the Court which passed the first decree,

**NARAIN SINGH** . **14 W. R. 205**

**16. ——— Agreement that evidence taken in one of analogous cases should be evidence in all—Appeal—Effect of reversal on those cases which were unappealable.** When the first of twelve suits against the same defendants was filed in the Recorder's Court at Rangoon, it was agreed between the parties, by their advocates in

suits were good decrees, on which execution could



EXECUTION OF DECREE—*contd.*5. DECREE TO BE EXECUTED AFTER  
APPEAL OR REVIEW—*contd.*

be issued in the usual form, provided they were not altered on review. *NOA BIKE v. SNADDEN*

9 W. R. 276

17. ——— Execution pending appeal—Landlord and tenant—Enhancement of rent—Decree for enhanced rent, and in default possession to be given—Possession taken pending appeal—Decree confirmed on appeal—Time for complying with decree—Application by defendants to be restored to possession on payment of amount ordered by appellate decree. On the 13th February 1889, the plaintiffs obtained in the District Court of Satara a decree, on appeal against the defendants, who were their tenants, ordering them to pay Rs 4 as the rent of certain land for the year 1882-83; and from the 5th March 1889 on

EXECUTION OF DECREE—*contd.*5. DECREE TO BE EXECUTED AFTER  
APPEAL OR REVIEW—*concl.*

to the District Court, which reversed that decision, and ordered that possession should be given to the defendants on the ground that the time for payment of the amount due under the decree should be reckoned from the date of the confirmation of the

entitled to be put back into possession. The plaintiffs' appeal to the High Court could not prevent the decree of the District Court from being executed or enlarge the time for payment of the rent as decreed by that Court. No stay of execution was asked for, and all that the Subordinate Judge had to see in February 1890 was whether payment of the rent had been made in accordance with the terms

of the decree. The High Court's decision was reversed, and the plaintiffs were ordered to pay the rent as decreed by the District Court. The Subordinate Judge had to see in February 1890 whether payment of the rent had been made in accordance with the terms

of the decree. The High Court's decision was reversed, and the plaintiffs were ordered to pay the rent as decreed by the District Court.

course, and claim in the may have never attend. *AMINABI v. SIDU*. 1. L. R. 14 Bom. 514

18. ——— Execution of High Court's order for costs—Procedure applicable to High Court's order in revisional jurisdiction—Civil Procedure Code, 1882, s. 647. The same procedure that applies to High Court decrees in appellate jurisdiction

passed the decree against which the application was preferred; and that Court must proceed to execute the decree or order passed on revision, according to the rules prescribed for the execution of its own decrees. *GOLD v. GOLDENBERG*. 1. L. R. 16 Bom. 550

## 6 DECREES UNDER RENT LAW.

1. ——— Mode of execution—Sale of property other than that on which arrears are due. A Collector was held to have acted without jurisdiction.

Court's decree. The defendants thereupon appealed.

EXECUTION OF DECREE—*contd.*6. DECREES UNDER RENT LAW—*contd.*

diction in ordering the sale of an estate in execution of a decree before proceeding against the tenure upon which the arrear accrued. *JOKEE LAL v. NURSING NARAIN SINGH* . . . 4 W. R., Act X, 5

2. ——— Powers of Collector—*Decree under Act X of 1859.* A Collector had power, under Act X of 1859, to sell, in execution of a decree for the payment of money under the Act, not being money due as arrears of rent of a saleable

CHANDRA KANT BHATTACHARJEE v. JADUPATI CHATTERJEE

1 B. L. R. A. C. 177: 10 W. R. 224

3. ——— Power of Collector. A obtained a decree against B for arrears

by the attachment of any immovable property,

DEANUTOOLAH v. SIDHEE NAZIR ALI KHAN

10 W. R. 341

4. ——— Collector, power of—*Act X of 1859.* A obtained a decree against B for arrears of rent. C was an under-tenant of B under an *ijara* lease. In executing A's decree

MAHES CHANDRA CHATTAPADHYA v. GURUPRASAD ROY . . . 5 B. L. R. 115: 13 W. R. 401

5. ——— Transferable tenure—*Bengal Rent Act, 1869, s. 59—Landlord and tenant—Suit*

EXECUTION OF DECREE—*contd.*6. DECREES UNDER RENT LAW—*contd.*

of rent against a raiyat who has a transferable jote is not entitled to eject the raiyat, but his only remedy is to sell the holding under a 59 of the Act. *Nund Lal Ghose v. Seedee Nazir Ally Khan, S. D. A. 1860, 382*, followed. *KRISHNENDRA ROY v. AENA BEWA*

1 L. R. 8 Calc. 675: 10 C. L. R. 398

6. ——— Suit for arrears of rent—*Ejectment—Transferable tenure—Beng. Act VIII of 1869, ss. 22, 59.* In a suit for arrears of rent and for ejectment by a landlord against a

TER, J.—*Quære*: whether, having regard to the provisions of s. 22, Act VIII of 1869, which is not controlled or modified by any subsequent section of the Act, all arrears whether then

7. ——— Sale of under-tenure—*Sale of other immovable property of judgment-debtor—Beng. Act VIII of 1859, s. 34 and s. 59-61.* A judgment-creditor, who has obtained a decree for arrears of rent due in respect of an under-tenure transferable by its own title-deeds or by the

564, followed. *KRISTO RAM ROY v. JANKEE NATH ROY* . . . 1 L. R. 7 Calc. 748: 9 C. L. R. 324

8. ——— Sale for arrears of rent—*Under-tenure—Bengal Act VIII of 1859, ss. 34, 59-61, and 65—Sale of property other than under-tenure.* Where a decree had been obtained for arrears of rent of an under-tenure and in execution thereof application was made for the attachment and sale of a certain property of the judgment-debtor, other than the tenure for which the arrears were due, objection was taken that the *kabuliat* stipulated that the tenure itself should be first sold in execution of the decree. *Held*, that, the *kabuliat* not being referred to or incorporated with the terms of the decree, it was

**EXECUTION OF DECREE—contd.****6. DECREES UNDER RENT LAW—contd.**

immovable property should be made available

**I. L. R. 14 Calc 14**

9. ———— Decree for arrears of rent—Under-tenure—Sale of property other than under-tenure—Arrest of judgment-debtor—Charge—Bengal Tenancy Act (VIII of 1885), s. 65—Transfer of Property Act (IV of 1882), ss. 68, 100. A landlord who has obtained a decree for arrears of rent of an under-tenure is not restricted by the provisions of the Bengal Tenancy Act (Act VIII of 1885) to executing such decree in the first instance by sale of the under-tenure but is at liberty to execute in the ordinary manner against the person or other property, whether moveable or immovable, of his judgment-debtor. The provisions of s. 68 of Transfer of Property Act are

*Mohun Roy v. Binodai Dabee*, 1. L. R. 14 Calc. 14, explained. **FORTY CHUNDER DEY SIKARU FOLEY**  
I. L. R. 15 Calc. 492

10. ———— First charge on the tenure—Execution of rent-decree obtained against a paimdar—Property other than the tenure proceeded against—Bengal Tenancy Act (VIII of 1885), s. 65. Where a landlord obtains a decree for rent against his tenant, which is on the face of it a decree for a sum of money without creating a charge upon the tenure, he is at liberty in execution to bring to sale property of his judgment-debtor other than the tenure itself. S. 65 of the Bengal Tenancy Act

remains personally liable for the rent, so that the landlord has a charge upon the tenure for the rent, and he has a remedy against the tenant

See, also, **SURENDRA MOHAN TAGORE v. SURENDRANATH**  
I. L. R. 26 Calc. 103

11. ———— Effect of partial execution. Where a decree under ss. 22 and 78, Act X of 1859, for the payment of a raiyat from three plots of land was executed against two of the plots:—*Held*, that the raiyat was not in force as regards the third plot also. **KALEE CHEN BAKSHER v. MAROUMED HASSEN**  
7 W. R. 8

**EXECUTION OF DECREE—contd.****6. DECREES UNDER RENT LAW—contd.**

12. ———— Subsequent execution against same property in hands of purchaser—Beng. Act VIII of 1869, s. 61. A, a

execution of his money-decree, and afterwards in execution of his decree for rent

to him, and in execution of such last-mentioned decree again attached the tenures. On the intervention of third parties, the tenures were released from attachment. A having applied to levy execution on other immovable properties of B: *Held*, that the tenures having been released from attachment A

further, that upon the facts of the case he had disentitled himself to any equitable relief. **HURRISH CHUNDER ROY v. COLLECTOR OF JESSORE**  
I. L. R. 3 Calc. 713

13. ———— Decree for measurement of land—Beng. Act VIII of 1869, s. 37. A decree under s. 37 of Bengal Act VIII of 1869, declar-

to assist him. **HAZARI KHAN v. RANDHON KHAN**  
7 C. L. R. 345

14. ———— Charge created by payment of arrears of revenue—Personal charge—Government revenue—Payment by lambardar of revenue due by co-sharer—N. W. P. Rent Act XII of 1881, s. 93 (g). In execution of a decree obtained by a lambardar under s. 93 (g) of the North-Western Provinces Rent Act, the decree-holder caused to be attached a certain share upon which the arrears of Government revenue which he had satisfied had accrued. In defence to a suit

one, for arrears of Government revenue against persons against whom it was passed by a Revenue Court not competent to establish or enforce a charge on

EXECUTION OF DECREE—*contd.*6. DECREES UNDER RENT LAW—*concl'd.*

property or to do more than pass a personal decree, and whose powers in execution were confined to realization from personal and immovable property of the judgment-debtors. *Nugender Chunder Ghose v. Kaminee Dosset, 11 Moo. 1. A 253*, referred to *LACHMAN SINGH v. SAIG RAM*  
I. L. R. 8 All. 384

## 7. NOTICE OF EXECUTION.

1. — Decree more than a year old—*Civil Procedure Code, 1859, s. 216.* A Court

2. — Execution of decrees against illegal representative—*Civil Procedure Code, s. 248—Condition precedent.* The issuing of the notice required by s. 248 of the Code of Civil Procedure is a condition precedent to the execution of a decree against the legal representative of a deceased judgment-debtor. *GOPAL CHUNDER CHATTERJEE v. GUNAMONT DASI*  
I. L. R. 20 Cal. 370

3. — Omission to give notice of execution—*Civil Procedure Code, 1877, s. 248—Death of judgment-debtor after decree—Execution against legal representative.* When a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings. A judgment having been obtained by A against B, and B having died before application was made for execution, A applied for execution of his decree upon a tabular statement in which the judgment-debtor was stated to be C, widow of B, and C was also described as the person against whom execution was sought. Upon this application the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution, and purchased by A. No notice under s. 248 of the Civil Procedure Code had been served upon C before issue of execution. *Held*, that the application was improper, that the order for attachment and sale should not have been made; and that the Court which made it should have set the execution aside as soon as it became aware that no notice had been issued in respect to its issue. The fact of there being in the Code of Civil Procedure no section expressly authorizing a Court to set aside its proceedings as irregular, as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of third parties are not affected. *See also:* Under s.

EXECUTION OF DECREE—*contd.*7. NOTICE OF EXECUTION—*contd.*

248, the fact that application to execute the decree had been made in the lifetime of B would make no difference, unless an order had been made and the

the Court has already ordered execution to issue against him on a previous application. *In the matter of the petition of RAMESUREE DASSEE v. DOORADASS CHATTERJI*  
I. L. R. 8 Cal. 103; 7 C. L. R. 85

IMAMUNNISSA BIBI v. LIAKAT HUSSAIN  
I. L. R. 3 All. 424

4. — *Civil Procedure Code (Act XIV of 1859), s. 248—Auction-purchaser.* Where in execution of a decree, for the execution of which a notice to the judgment-debtor was necessary under s. 248 of the Civil Procedure Code, certain moveable property was attached and sold without any such notice having been given: *Held* that the proceedings in execution were void and of no effect, and it made no difference that the auction-purchaser was a third party, and not the decree-holder. *Imamunnissa Bibi v. Liakat Hussain, 1 L. R. 3 All. 424*, followed *Ramesuree Dassee v. Dooradass Chatterjee, 1 L. R. 6 Cal. 103*, referred to *SAHDEO PANDEY v. GHASIRAM GYAWAL*  
I. L. R. 21 Cal. 19

5. — Application for notice of execution—*Power to proceed in execution on application for notice—Civil Procedure Code, 1859, s. 212.* Although a Judge should, when necessary, direct notices to be served on judgment-debtors, he cannot proceed in execution on a mere

8. — Presumption of service of notice of execution—*Civil Procedure Code, 1859, s. 216—Omnia presumuntur rite esse acta.* A notice under s. 216 stands upon a different footing from a summons or other notice which a party is bound to serve, and it must be presumed that a Court, until the contrary is proved, has duly issued such notice where required by law to do so. *BINOLA SOONDUREE DASSEE v. KALEE KISHEN MOJJOONDAR*  
22 W. R. 5

7. — Objection to sufficiency of notice of execution—*Time for taking objection.* An objection to the sufficiency of the notice of execution should be taken at the earliest opportunity. *BEWUT KONWUR v. ONRAO BAHADOOR SINGH*  
21 W. R. 148

8. — "Order passed on previous application for execution"—*Civil Procedure Code, 1859, s. 216—Previous proceedings for execution—Interlocutory suit.* A suit brought by a judgment-creditor against his judgment-debtors and

EXECUTION OF DECREE—*contd.*7. NOTICE OF EXECUTION—*contd.*

a third party may be of such a nature as to count as previous proceedings in execution for the purpose of saving time in regard to the operation of the

8. ——— Service of notice of execution—*Civil Procedure Code, 1859, s. 216—Limitation—Act XIV of 1859, s. 20—Proceeding to enforce decree.* The service of a notice under s. 216 of Act VIII of 1859, if made *bona fide* with a view take further proceedings, is sufficient to keep a decree alive. *DHIRAJ MAHTAR CHAND BAHADOOR v. LAKSHI BIDEE* 6 B. L. R. Ap. 146

Also under the Limitation Act, 1871. See *Koons Beharee Lal v. Giridhari Lal* 22 W. R. 484

10. ——— Service of notice of application for execution. Service of notice of application for execution of decree by affixing a copy of it on the wall of the house where defendant was residing, is sufficient. *CHULICANY BHASARARAYENIN GARU v. PILLAY SETTY RAGAVALLU NAIDU* 5 Mad. 100

See *MAKOONDONATH BHADOORY v. SHIB CHUNDER BHADOORY* 19 W. R. 102

11. ——— Application for execution—*Service of notice on the judgment-debtor after the decree was barred—Limitation Held*, that a mere service of notice on the judgment-debtor after the decree was barred was not a proceeding in execution, merely because the judgment-debtor did not come in and oppose it. *Mungul Pershad Dicheit v. Ginja Kant Lahiri, I L R. 8 Calc 51*, and *Narendra Nath Pahari v. Bhopendra Narain Roy, I L R. 23 Calc 374*, distinguished. *Bisseshur Mallick v. Maharajah Mahatab Chundra Bahadoor, 10 W. R. (P. B.) 8*, referred to. *UMED ALI v. ABDUL KARIM CHAPRASHER (1908)*

I. L. R. 35 Calc. 1060

## 8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

1. ——— Meaning of the words "a copy of any order for the execution of the decree"—*Civil Procedure Code, 1852, s. 223, cl. (c)* The words "a copy of any order for the execution of a decree" in s. 224, cl. (c), of the Code of Civil Procedure (Act XIV of 1852), mean a copy of any subsisting order. *HATHIBHAI NAHANS V. PATEL BHAI RAOJI* I. L. R. 13 Bom. 371

2. ——— British Courts in India, power of, to send their decrees for execution to Courts not in British India—*Practice* The Courts of British India have no authority to send their decrees for execution to Courts not in

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

British India. *KASTURCHAND GUJAR v. PARSHA MAHAR* I. L. R. 12 Bom. 230

3. ——— Transfer of decree for execution, effect of. A decree transmitted to a Court for execution is to be regarded as a decree of that Court for purposes of execution. *MORARUCK ALI v. SOOMEE KUNJA CHAREE*

3 N. W. 168

4. ——— Power of Court to which decree is transferred—*Notice under s. 216, Civil Procedure Code.* The Court to which a decree is sent for execution by another Court has the power to take the same steps, including the issue of a notice under s. 216 of the Code of Civil Procedure, which it could take in execution of its own decree. *CHHAOAN LALL NARBHERAM v. JAMNADAS MANCHARAN* 11 Bom 19

5. ——— Separate applications to execute same decree Separate applications

to whatever extent may be necessary. *SHARODA MOYEE BURNONEE v. WOOMA MOYEE BURNONEE* 8 W. R.

6. ——— Transmission of record, Where a Subordinate Judge's Court in one district executes the decree of a Subordinate Judge's Court of another district, it is bound by s. 292, Act VIII of 1859, to comply with a requisition from the latter Court to transmit to it the record of the case. *INDUR CHUNDER DOOGAR v. GOPAL CHAND SATIA* 11 W. R. 230

7. ——— Procedure—*Order transferring decree for execution—Code of Civil Procedure, 1852, ss. 221 and 226—Whether an order for awarding a decree by a District Judge to a Subordinate Judge for execution requires his signature*

8. ——— Jurisdiction—*Civil Procedure Code, 1852, ss. 223 and 226—Execution of decree passed in another district—Jurisdiction of Munsif.* On the application of the decree-holder, a decree for money passed by a Munsif in one district was sent for execution to the Court of a Munsif in

EXECUTION OF DECREE—*contd.*8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

was sent for execution, had no jurisdiction to execute it without an express order of the District Judge under s. 226. *DEBI DIAL SAHU v. MOHARAJ SINGH* . . . I. L. R. 22 Cal. 764

9. ——— Striking off case for default—*Procedure.* When a case is transferred by the Court which passed the original decree to another Court in order that the decree may be executed, and the proceedings on the application for execution have been struck off the file for default, the proper Court to apply to for a fresh issue of execution is the Court which passed the original decree, and not the Court to which the case was transferred to be executed. *BHOOR SINGH v. SUNKER DUTT JHA* . . . 6 W. R. Mis. 47

10. ——— Application by assignee of decree—*Power of the Court in executing transmitted decree.* Where a decree was sent to a Court for execution, and was subsequently transferred by assignment, and the transferee applied for the execution of the decree to the Court to which the decree was sent for execution:—*Held*, that such application should be made not to such Court, but to the Court which passed the decree. *KADIR BUKSH v. ILAHI BUKSH* . . . I. L. R. 2 All. 263

11. ——— Substitution of name of transferee—*Civil Procedure Code, 1852, ss 232 and 578—Jurisdiction of a Court where a decree has been transferred for execution to substitute the name of the transferee of the decree—Whether an order passed without jurisdiction can be cured by the provisions of s. 578 of the Civil Procedure Code.* An application by the transferee of a decree for execution after substitution of his name can be entertained only by the Court which passed the decree, and the Court to which the decree has been transferred has no jurisdiction to entertain it. *Sheo Narayan Singh v. Harbans Lall*, 5 B. L. R. 49; 14 W. R. 65, *Ismail v. Kasam*, 9 Bom. H. C. 46; and *Kadir Baksh v. Ilahi Baksh*, I. L. R. 2 All. 263, referred to. In a case where a decree has been transferred to another Court for execution, and that Court orders the execution to proceed after substitution of the name of the transferee of the decree, the said order is one passed without jurisdiction, and can be set aside on appeal, notwithstanding the provisions of s. 578 of the Civil Procedure Code. *Sham Lal Pal v. Modhu Sudan Sircar*, I. L. R. 22 Cal. 555, distinguished. *AMAR CHUNDA BANERJEE v. GURU PROSENNO MUKERJEE* I. L. R. 27 Cal. 486

12. ——— Assistant Judge, power of—

Assistant Judge must be considered, equally with the

EXECUTION OF DECREE—*contd.*8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

Court of the District Judge, the principal Civil Court of original jurisdiction, and a decree sent for execution in such part of the district is properly executed by or under the directions of such Assistant Judge. *GOBIND HARI WALEKAR v. SHIDRAM BIN SHIDMURTI* . . . 7 Bom. A. C. 37

13. ——— Striking off case—*Power of Court as to striking off case—Act VIII of 1859, s. 281.* Where a decree of one Court has been transmitted to another for execution under s. 281 of Act VIII of 1859, the latter Court has jurisdiction to entertain an application to cancel its own order for striking off the case, whatever "striking off" amounts to. *BAGRAM v. WISE*

1 B. L. R. F. B. 91; 10 W. R. F. B. 46

14. ——— *Power of Court executing decree to strike off the application for execution—Civil Procedure Code (Act XIV of*

Court to execute the decree, nor render it necessary for the Court to send any certificate to the Court which forwarded the decree for execution. *Bagram v. Wise*, 1 B. L. R. F. B. 91, followed. *ARPA BAGAM v. MOZAFFAR HUSEN KHAN*

I. L. R. 20 All. 120

15. ——— Alteration of decree—*Power of Court to alter decree.* Where a decree is transmitted by one Court to another for the purpose of execution, the latter Court has no jurisdiction to alter the decree or the amount mentioned in the order for execution. *ALLY HOSSAIN v. JOOCUL KISHORE* . . . Marsh. 244; 2 Hay 113

*NETTER CHUNDER PAUL v. NADDOORONISSA BEEBER* . . . 9 W. R. 387

*TEJA SINGH v. POKHAN SINGH* . . . 10 W. R. 95  
1 B. L. R. A. C. 82

16. ——— Notice of execution—*Civil Procedure Code, 1859, s. 255.* Where a decree had been obtained in a Zillah Court and sent to Calcutta

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION,  
AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION  
—*contd.*

KHODA BUKSH v. HURREE RAM . 2 N. W. 399

17. ———— *Practice—Civil Procedure Code, 1859, s. 287.* When a copy of a decree or order for execution is transmitted by the Judge of one district A to the Judge of another B for the purpose specified in Act VIII of 1859, s. 287, the Judge of B has no authority to transfer it to a third district. If complete execution cannot be had in district B, it is the business of the decree-holder to have his decree re-transmitted to the Court whose duty it is to execute it and there to obtain a fresh certificate for transmission to any other district where execution may be practicable. DHUNPUT SINGH v. WOOMA SUNDREE GOPTA

21 W. R. 337

18. ———— *Power of Court to which decree has been transferred—Civil Procedure Code, 1859, ss. 235, 286, certificate under.* The jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under ss. 235, 286 of Act VIII of 1859, transferring the decree already transferred to it to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed. SHIB NARAIN SHAIYA v. BIPIN BEHARY BISWAS

I. L. R. 3 Calc. 612

I O. L. R. 539

19. ———— *Order passed in Court to which proceedings are transferred—Civil Procedure Code, 1877, s. 239.* Under s. 239 of Act X of 1877, a Court to which a decree has been transferred may refer the objector to the Court which passed the decree. JASSODA KOER v. LAND MORTGAGE BANK OF INDIA

I. L. R. 9 Calc. 918; 11 C. L. R. 348

20. ———— *Propriety of the order—Jurisdiction of Court executing such decree—Code of Civil Procedure (Act X of 1877), s. 239.* Where a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution. BEERCHUNDER MANIKYA v. MYNANA BIRRE . . . I. L. R. 5 Calc. 738

RAM CHUNDER v. MOHENDRO NATH BOSE

21 W. R. 141

DHUNESH KOEREE v. OOLPUT HOSSPIN

21 W. R. 218

21. ———— *Civil Procedure Code, 1852, ss. 223 and 239—Power of Court*

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION,  
AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION  
—*contd.*

executing a decree sent for execution to question propriety of order transferring it. Where a decree is passed by one Court and sent to another Court for execution, the Court executing the decree cannot question the propriety of the order transferring the decree to such Court for execution. MULLA ABDUL HUSSEIN v. SAKHINABOO . I. L. R. 21 Bom. 456

22. ———— *Duty of a Court to which a decree is transferred for execution.* A Court to which a decree has been sent for execution cannot refuse execution on the ground that questions are raised between the parties that cannot properly be dealt with in execution. RAJERAV CHANDRARAO v. NANARAV KRISHNA JAGAGIRDAR . I. L. R. 11 Bom. 528

23. ———— *Procedure—Civil Procedure Code, 1877, s. 293.* Where, in the opinion of the Court, sufficient cause has been shown against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by s. 230 of the Code of Civil Procedure. BEERCHUNDER MANIKYA v. MYNANA BIRRE . . . I. L. R. 5 Calc. 738

24. ———— *Jurisdiction of Court transferring decree—Question of jurisdiction.* Where a decree passed by a Court governed

25. ———— *Procedure in execution of decree of High Court on appeal from*

KANT SINGH ROY . . . 10 B. L. R. 101  
17 W. R. 292; 14 Moo. I. A. 465

30 in High Court. KISHEN KINKAR GHOSH v. BHOODAKANT ROY . . . 8 W. R. 470

28. ———— *Limitation—Law governing transferred case.* Execution is a proceeding to enforce a decree of a Court, and comes under the head of purely adjective law. Such being the case, the law of limitation prevails at the time of the application must govern it. PASUPATI LUTCHMIA v. PASUPATI MUTHANBIATILU . I. L. R. 1 Mad. 52

27. ———— *Act VIII of 1859, s. 231—Question of limitation.* When a

**EXECUTION OF DECREE—*contd.*****8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.***

decree has been transmitted by the Court which passed it to another Court for execution, the latter Court has jurisdiction to try whether or not execution of the decree is barred by the law of limitation. *Per* PEACOCK, C.J.—When there are different laws of limitation in force in the two Courts, the law applicable to the proceedings in execution of the decree should be the law of the Court to which the decree is transmitted for execution. *LEAKE v. DANIEL*

B. L. R. Sup. Vol. 970 : 10 W. R. F. B. 10

BUZUR BIBEE v. JACKSON . . . 5 W. R. M. 14

CHOTT LAL v. MANICK CHAND . . . 7 N. W. 115

BYKUNTATH MULLICK v. JOYGOPAL CHATTERJEE  
7 W. R. 10

28. ———— *Power of Court*

—*Question of limitation.* The Court to which a decree has been transferred can take cognizance of a question of limitation, but the question must be one arising from facts which are legitimately before the Court in the course of execution, and not a matter of limitation arising antecedent to transfer. *In the matter of the petition of SHAM DAS*

13 B. L. R. Ap. 27

SOOMUT DAS v. BHOOBUN LALL . . . 21 W. R. 292

29. ———— *Power of Court*

—*Question of limitation—Civil Procedure Code, 1859, s. 284.* The transfer of a decree from one Court to another under s. 284 and the following sections of the Civil Procedure Code, does not give the latter Court a jurisdiction to entertain and determine any question with regard to limitation or otherwise which arose between the parties antecedent to the date of transfer. *LUTFULLAH v. KIRAT CHAND*

13 B. L. R. Ap. 30

21 W. R. 330

30. ———— *Power of Court*

to decide whether execution is barred by limitation—*Question of limitation—Civil Procedure Code (Act XIV of 1859), s. 223 et seq.* Where a Court makes an order for execution of a decree and transmits the decree for execution to another Court, the latter Court has no power to determine whether execution is barred by limitation. The order for execution made by the transmitting Court is binding on the parties until reversed on appeal. It is otherwise, however, where the transmitting Court has made no order for execution, but has merely transmitted the decree and the certificate of non-satisfaction. *HUSEIN AHMED KAKA v. SAJJU MAHAMAD SAHID* . . . I. L. R. 15 Bom. 28

31. ———— *Agreement for*

*satisfaction of judgment-debt by instalments—Civil Procedure Code, ss. 210, 230, 237A—Limitation Act (XV of 1877), Sch. II, Art. 179.* A simple money-decree was passed in 1871, and was transferred to another Court for execution, and in June 1882 an application was made for execution; and

**EXECUTION OF DECREE—*contd.*****8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.***

shortly afterwards the Court to which the decree had been transferred transmitted it to another Court.

*afford it to hold that order transmitted to another Court.*

of June 1885 was not, and could not be, an order

*FOUR, C.J.*—The Court to which a decree has been transferred for execution has no power to sanction an agreement under s. 237A of the Code for satisfaction of the decree by instalments, but such sanction may be given by the Court which transmitted the decree.

in a suit which must be executed is the decree as originally passed or as altered by a proper order for that purpose, as, e.g., by an order under s. 210. *GANDHARAP SINGH v. SHEODARSHAN SINGH*

I. L. R. 12 All. 571

32. ———— *Release of judgment-debtor—Power of Court which passed decree.* A Judge has no jurisdiction to entertain a petition from, and order the release of, a judgment-debtor imprisoned in execution of a decree, while the execution-proceedings are before the Subordinate Judge. *MODHOOSUDEN GHOSH v. ROMANATH GHOSH* 12 W. R. 65

33. ———— *Reasons for transfer.* Every Court is bound to execute its own decree, if it can, by process (when necessary) issued against the property or person of the judgment-debtor; it is only when the decree cannot be executed within the jurisdiction of the Court whose decree it



EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION,  
AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION  
—*contd.*

is that it may be sent to another Court for execution. There is no intermediate procedure between these two executions. MAHARAJAH OF BURDWAN v. SREE NARAIN MITTER 19 W. R. 348

34. ———— *Civil Procedure Code, 1859, s. 334.* Act VIII of 1859, s. 281, does not restrict the granting of a certificate transferring a decree for execution to another Court to cases where such decree cannot be executed within the jurisdiction of the Court whose duty it is to execute the same. A certificate may be granted upon its appearing to the latter Court that the decree could not have been completely executed by the sale of the property in its own district, but that it could be so executed by the sale of the property in the other district KALEE DASS GROSE v. LALL MOHUN GHOSH 19 W. R. 307

35. ———— *Transfer of suit from subordinate Courts—Civil Procedure Code, 1859, s. 6* S. 6 of Act VIII of 1859, authorizing "a District Court to withdraw any suit instituted in any Court subordinate to such District Court and to try such suit itself, or to refer it for trial," etc., does not justify an order by the District Court for the calling up of execution cases from the files of the subordinate Court and for the appointment of a manager. LUCHMEET DOKER v. JAGTINDER BUNWARY LALL Marsh. 185 : 1 Hay 459

36. ———— *Recall of order of transfer.* Where a Judge had made an *ex parte* order for transfer of a case in execution, it was held he had power to recall it SNEO PRASUNO SIKO v. BULDHARE LALL 13 W. R. 232

37. ———— *District Judge, power of—Act XVI of 1868, s. 19—Civil Procedure Code, 1859, s. 362—Bengal Civil Courts Act, VI of 1871, ss. 26 and 27.* A District Judge is not competent to transfer a case of execution of a decree which has been passed by his own Court to the file of the Subordinate Judge for disposal. Such a case is not one of the "civil proceedings" referred to in s. 19, Act XVI of 1868, read with s. 362, Civil Procedure Code, and interpreted by ss. 26 and 27, Act VI of 1871 CHOWDRY HAMEDOOLAH v. MUTEDOONISSA DIBEE 15 W. R. 574

38. ———— *Act XVI of 1868, s. 19* A Zillah Judge has no power to transfer proceedings in execution of a decree to a subordinate Court, unless duly authorized under a 19 of Act XVI of 1868 MAHOMED KEMROODEEN v. UDOOROONISSA 1 N. W. 113 : Ed. 1873, 199

39. ———— *Transfer of case under Act IX of 1861—Act XII of 1865, s. 19.* The Judge had power, under Act XVI of 1868, s. 19, to transfer to the Subordinate Judge a case under Act IX of 1861, an application under the latter Act

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION,  
AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION  
—*contd.*

not being a suit SONAMONEE DOSSEE v. JOY DOORGA DOSSEE 17 W. R. 551

40. ———— *Decree for rent by Collector—Execution of decrees for rent—Act X of 1859, ss. 25, 77, and 160—Civil Procedure Code (Act VIII of 1859) s. 284, 294; (Act X of 1877), ss. 223, 228.* Decrees for rent made by the Collector under s. 23 of Act X of 1859 can be executed by a Civil Court to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed" NIRMONI SINGH DEO v. TARANATH MUKERJEE I. L. R. 9 Calc. 295 : 12 C. L. R. 381 L. R. 9 I. A. 174

41. ———— *Transfer to Collector—Power of Collector—Withdrawal by transferring Court of transferred decree—Civil Procedure Code, 1877, ss. 320, 321.* A Collector, to whom a decree for sale of mortgaged property has been transferred for execution under s. 320 of this Civil Procedure Code, is limited to one of the three

42. ———— *Transfer to Collector—Irregularities in execution—sale—Power of a Civil Court to interfere.* When a decree is sent to the Civil Court ought

HARGOVAN v. HIRA HARIBHAI I. L. R. 8 Bom. 301

43. ———— *Civil Procedure Code, s. 320—Transfer to Collector—Jurisdiction—Rules made by Local Government* A decree

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

passed by a Subordinate Judge upon a bond, in which certain immovable property was mortgaged, was, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure

Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. *Held*, that, with reference to the second paragraph of Rule 19 of the Rules framed by the Local Government under s. 320 of the Civil Procedure Code, regarding the transmission, execution, and retransmission of decrees, and published in the *North-Western Provinces and Oudh Gazette* of the 4th September 1880, the matter of delivery to the purchaser was within the jurisdiction of the Subordinate Judge, notwithstanding the terms of s. 320, and notwithstanding the ruling of the Full Bench in *Madho Prasad v. Hansa Kuar*, I. L. R. 5 All. 314. **SUNDAR DAS v. MANSA RAM**

I. L. R. 7 All. 407

44. — Civil Procedure Code, ss. 320, 325—Decree transferred to the Collector for execution—Collector's duties and powers in execution—Civil Court's jurisdiction to revise Collector's proceedings in execution. A decree was transferred to the Collector for execution. The Mamlatdar, under the orders of the Collector, put up for sale certain immovable property belonging to the judgment-debtors. The sale was confirmed by the Mamlatdar with the sanction of the Collector. Some time afterwards the auction-purchaser applied to the Collector for a certificate of sale, but the Collector refused the certificate, and set aside the

ordinate Judge who had transferred the decree to the Collector for execution, and then to the District Court. But both Courts declined to entertain his application, on the ground of want of jurisdiction.

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

as he could, and was so far *functus officio*. His duty was to make a return to the Court of what he had done. After confirmation of the sale, he could not set it aside. *Per West, J.*—The Collector, like the Nazir in India, is a ministerial officer when he executes a decree. He, like the Nazir, must carry

tions that arise in execution. His proceedings and orders are subject, accordingly, to revision and correction on the application of a party aggrieved, whenever he misconceives the decree or acts illegally in giving effect to it. He is limited strictly to the precise line of activity laid down for him in the Code and the orders under it; and in cases of error or doubt it is the Court that must determine whether he, as its ministerial officer, has or has not transgressed his powers. *Per Bingham, J.*—A sale made by a Collector under Ch. XIX of the Civil Procedure Code is subject to confirmation by the Civil Court under s. 312. As soon as the Collector has exercised or performed the powers or duties conferred or imposed upon him by ss. 321 to 325 of the Code, he is *functus officio*. If he has sold the property or re-sold it under the power given by

cannot be set aside by the Collector. Any application for setting it aside must be made to the Civil Court under s. 311, and dealt with by it under s. 312; and if no application is made to the Court, the sale must be confirmed by it under that section. **LALLU TRIKAM v. BHAVLA MITHIA** I. L. R. 11 Bom. 478

See, however, **KESHABDEO v. RADHA PRASAD**

I. L. R. 11 A. 94

**MADHO PRASAD v. HANSA KUAR**

I. L. R. 5 All. 314

and **NATHU MAL v. LACHMI NARAIN**

I. L. R. 9 All. 43

45. — Decree by Court of Scheduled District—Execution of decree passed by Court of Scheduled District in Court of a Regulation District—Civil Procedure Code (Act VIII of 1859), s. 234—Civil Procedure Code (Act XIV of 1882), ss. 223, 229—Scheduled Districts Act (XIV of 1874), s. 5. On the 15th May 1876, a judgment-

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

After sundry unsuccessful attempts to execute the

and by s. 284 of that Act the judgment-creditor had a right to have his decree sent to any Civil Court for execution, he was entitled now to have it executed, as neither Act X of 1877 or XIV of 1882 by express words or implication deprived him of that right. *Held*, further, that the intention of the Legislature was, with regard to decrees obtained in scheduled districts after the Code of 1877 came into force, that such decrees should not be executed by Courts in British India unless and until, under the provisions of s. 5 of the Scheduled Districts Act (XIV of 1874), the Government had issued the notification therein referred to applying to the scheduled districts such portion of the Code of Civil Procedure as they thought proper to apply. *Quære* Whether a decree passed by a Court in a scheduled district and sent for execution to a Court in a regulation district after Act X of 1877 came into force can be executed by the latter Court.

46. — Jurisdiction of Court executing a decree—*Jurisdiction as between District Judge and Subordinate Judge of a Court making a decree to execute it notwithstanding certain special matters.* The sale of mortgaged property was decreed by a Subordinate Judge. Before the sale another suit, instituted in the same Court for the purpose of having other property

execution of the decrees, in both suits, in the District Court, it was objected that execution could not proceed therein, on the ground that the decree for sale was that of the Subordinate Court. *Held*, that the decree (which affected the whole property mortgaged) was that of the District Court, which accordingly had jurisdiction to execute it. To have enabled the Subordinate Court so to do, an order by the District Court would have been necessary. Matter on this record.

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

47. — Power of transfer—*Civil Procedure Code, 1859, s. 362.* A Zillah Judge must execute his own decrees, and had no power to direct the Principal Sudder Ameen to take up and dispose of an application for execution. *RAJEEB RAM DASS v. MAHOMED HOSSEIN*

6 W. R. Mls. 51

This ruling refers entirely to execution under Act VIII of 1859, but not to proceedings before that year, when Judges were competent to refer cases of execution to the Principal Sudder Ameen. *NIL KOMUL GHOSH v. NOBIN CHUNDER BOSE*

9 W. R. 463

48. — Civil Procedure Code, 1859, s. 6—Act XXIII of 1851, s. 38. A

49. — Power of withdrawal of application—*Power of the District Court to withdraw applications for execution—Mofussil Courts of Small Causes—Jurisdiction—Civil Procedure Code (Act X of 1877), ss. 25 and 647, Sch. II.* Ss. 25 and 647 of the Civil Procedure Code, Act X of 1877, are both applicable to Courts of Small Causes in the mofussil, and the former section is extended by the latter to execution-proceedings in such Courts. Under s. 25 of the Civil Procedure Code, Act X of 1877, the District Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a Mofussil Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. *BALAJI RAO CHODDAS v. MOHANLAL DALSURAN*

I. L. R. 5 Bom. 680

50. — Munsif, jurisdiction of—*Civil Procedure Code, 1852, s. 223—Madras Civil Court Act (III of 1873)—Jurisdiction of Munsif's Court—Execution of decree of superior Court.* Although by the Madras Civil Courts Act, 1871, the ordinary jurisdiction of Munsifs is limited in suits at

which  
Rs. 500  
jurisdiction  
decree in a suit beyond its jurisdiction which has been transferred to it for execution by a District Court. *NARASAYYA v. VENKATKRISHNAYYA*

I. L. R. 7 Mad. 397

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

51. ————— *Code of Civil Procedure (Act XIV of 1882), ss. 223 and 649—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 13—Redistribution of local areas, Effect of—Jurisdiction of Munsif.* A obtained a decree against B in the Court of the First Munsif of Howrah. After the decree, the local area, within

Munsif, which allowed execution: *Held*, that the

I. L. R. 25 Calc 315

52. ————— *District Judge, power of—Power of District Judge to transfer execution-proceedings to another Court—Civil Procedure Code, ss. 25, 647.* A District Judge has no power to transfer execution-proceedings to a subordinate Court. In the matter of Balaji Ranchoddas, 1 L. R. 5 Bom. 680, and Gaya Pershad v. Bhup Singh, 1 L. R. 1 All. 180, dissented from KISHORI MOHUN SETT v. GUL MOHAMMED SHAHA

I. L. R. 15 Calc. 177

53. ————— *Jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 6 and 223.* Having regard to the provisions of s. 6 of the Code of Civil Procedure, a Civil Court has no jurisdiction to execute a decree sent to it for that purpose under s. 223 of the Code, when the decree has been passed in a suit the value of subject-matter of which is in excess of the pecuniary limits of its ordinary jurisdiction. *Narasayya v. Venkata Krishnayya*, 1 L. R. 7 Mad. 397, dissented from *Sidheshwar Pandit v. Hanikar Pandit*, 1 L. R. 12 Bom. 155, *Balaji Ranchoddas v. Mohanlal Dulabram*, 1 L. R. 5 Bom. 680, and *Mungul Pershad Dicit v. Crisja Kant Lahiri*, 1 L. R. 8 Calc. 51, referred to *GOKUL KRISTO CHUNDER v. AUKIL CHUNDER CHATTERJEE* In the matter of the petition of ISHAN CHUNDER DAS. *RASHARAJ BOSE v. GOVINDA BANI CHOWDHURANI MOOLA KUMARI BIBEE v. MOOL CHAND DHAMANT. BEESUN CHAND DOODHURIA v. MOOL CHAND DHAMANT* I. L. R. 16 Calc. 457

54. ————— *Civil Procedure Code, 1882, s. 223—Jurisdiction.* S. 223 of the Code of Civil Procedure, which declares that the

EXECUTION OF DECREE—*contd.*8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

*sayya v. Venkata Krishnayya*, 1 L. R. 7 Mad. 397, dissented from. *DURGA CHARAN MOJUMDAR v. UMATARA GUPTA* I. L. R. 16 Calc. 465

55. ————— *Civil Procedure Code, s. 223—Transfer not through District Court.* Two decrees were passed against the same defendant in the Court of a District Munsif and on the

Munsif *KELU v. VIKRISHA* I. L. R. 15 Mad. 345

56. ————— *Civil Procedure Code, 1882, ss. 25, 223—Madras Civil Courts Act, s. 12—Jurisdiction of Munsif's Court—Execution of decree of superior Court.* As in suits, so in execution-proceedings, the competent forum is ordinarily that indicated by s. 12 of the Civil Courts Act, but in the five cases mentioned in s. 223 of the Civil Procedure Code, special reasons exist for departing from that rule and creating a special or extraordinary jurisdiction, the object whereof is to secure to judgment-creditors in certain cases a special facility or convenience. The condition as to the jurisdiction of the subordinate Court to which a suit can be transferred under s. 23 of the Code of Civil Procedure is not laid down in s. 223 of the Code, which relates to transfers of applications for execution of decrees, and was omitted therefrom for the special reasons mentioned therein. *Narasayya v. Venkatakrishnayya*, 1 L. R. 7 Mad. 397, followed *Gokul Kristo Chunder v. Aukil Chunder Chatterjee*, 1 L. R. 16 Calc. 457, and *Durga Charan Mojumdar v. Umatara Gupta*, 1 L. R. 16 Calc. 465, dissented from. *SHANMUGA PILLAI v. RAMANATHAN CHETTI* I. L. R. 17 Mad. 309

57. ————— *Decree of Small Cause Court—Civil Procedure Code, 1882, s. 223 (d).* Under s. 223 (d) of the Civil Procedure Code, in the case of a Subordinate Judge exercising Small Cause Court powers, the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution, without requiring a certificate under s. 20 of Act XI of 1865. For this purpose the two branches or series of the Subordinate Judge's Court

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION. OUT OF ITS JURISDICTION—*contd.*

may be regarded as different Courts. BHAGVAN DAYALJI v. BALU . I. L. R. 8 Bom. 230

58. ————— *Decree of Small Cause Court—Documents to be transmitted with decree—Civil Procedure Code, 1859, ss. 286, 287.*

Procedure Code have been strictly complied with. The documents required to be transmitted for the

59. ————— *Officer with jurisdiction both of Munsif and Small Cause Court—A certificate of non-satisfaction under Act XI of 1865, s. 20, having been obtained from the Court of Small Causes at Arrah, the decree was transferred to the Munsif's Court there, when the*

(whose jurisdiction was transferred to the Munsif's Court), he had jurisdiction to decide the objection. SOOMUR DOSS v. BHOOBUX LALL . 24 W. R. 151

60. ————— *Decree of Small Cause Court—Civil Procedure Code, 1859, s. 287—Act IX of 1850, s. 78. Although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet if that decree be transmitted to a Court to which the Code of Civil*

61. ————— *Decree of Small Cause Court—Act XI of 1865, s. 20. Under s. 20 of Act XI of 1865, a Court of Small Causes may transfer a decree for execution to another Court not only when there has been a sale of such moveables of the debtor as the judgment-creditor has been able to discover and the proceeds of such sale have not been sufficient to satisfy the decree, but also when no sale has taken place at all and the decree remains unsatisfied by reason of there being no moveable property of the judgment debtor which can be found within the jurisdiction capable of being sold. In the*

3 C. L. R. 559

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

62. ————— *Jurisdiction of Small Cause Court—Act XI of 1865, s. 20. Except in the manner allowed by s. 20, Act XI of 1865, the Judge of a Small Cause Court could not send a decree of his own Court for execution by another Court, nor could he issue an order under s. 268, Act X of 1877, out of his own jurisdiction. HOSSEIN ALLY v. ASHROSH GANGOOLY . 3 C. L. R. 30*

PARBATI CHARAN v. PANCHANAND  
I. L. R. 6 All. 243

63. ————— *Change of jurisdiction in districts. Held, that after the orders of Government of 1867, dividing the whole of the jurisdiction of the Principal Sudder Ameen of Rajshahye into two portions, the Small Cause Court Judge of Puhna alone had jurisdiction to perform in the district of Puhna the duties which, but for those orders, would have been performed by the Principal Sudder Ameen of Rajshahye. SHAMASOONDER DERTIA v. BINODE LALL PAKRASHEE . 14 W. R. 396*

64. ————— *Power of Court executing decree—Procedure—Decree of Small Cause Court sent for execution to Court of Subordinate Judge—Mofussil Small Cause Court Act, XI of 1865, s. 20, Certificate under—Civil Procedure Code (Act XIV of 1859), s. 239—Stay of*

... for payment or against the immovable property

appeared and applied to be allowed to pay the

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

(Act XIV of 1882). *KASTURSHET JAYERSHET v. RAMA KANHOJI*. I. L. R. 10 Bom. 65

65. ———— *Transfer of execution-proceedings by District Judge from one Small Cause Court to subordinate Court—Civil Procedure Code Amendment Act (VI of 1892), s. 4—Rateable distribution—Civil Procedure Code, 1882, ss. 25, 223(d), 295, and 647—District Judge, power of—Subordinate Judge, power of.*

Judge. The ruling in the case of *Dalaji Ranchodas v. Mohunlal Dulsulram*, I. L. R. 5 Bom. 680, that these sections apply to execution-proceedings in Small Cause Courts, is not affected by the explanation to s. 4 of Act VI of 1892. Execution proceedings under a decree against A in a Small Cause Court were transferred by a District Judge to a Subordinate Judge's Court where execution was proceeding against A under another decree, and it was objected that, as by the concluding paragraph of s. 25 of the Civil Procedure Code the attachments under the two decrees would be in different Courts, s. 295 of the Code would not apply, and rateable distribution could not be granted. *Held*, that the last paragraph of s. 25 did not convert the Subordinate Judge's Court into a Small Cause Court, but only provided for the trial of the suit, which had been transferred, being conducted by the Subordinate Judge's Court as a Small Cause suit. *Quære* Whether a Subordinate Judge, under cl. (d) of s. 223 of the Civil Procedure Code (XIV of 1882), can transfer a decree for execution to a Court of Small Causes when the property attached is situate within the local jurisdiction of the Subordinate Judge.

KRISHNA VELJI MARWADI : BHAI MANSARAM  
I. L. R. 18 Bom. 61

68. ———— *Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887), s. 13, cl. 2—Transfer of Property Act (IV of 1882), ss. 88, 89—Sale in execution of mortgage decree. When Subordinate Judges are appointed by the Local Government with jurisdiction over the whole of a district, the District Judge is not competent, under s. 13 (2) of the Bengal, N. W. P. and Assam Civil Courts Act, to assign to them different areas so as to limit or define their respective jurisdictions. The Court of such a Subordinate Judge which passed a mortgage-decree is therefore the only Court competent to entertain an application for the execution of the decree and to make an order in furtherance thereof, even when the execution is sought by the sale of property other than the mortgaged property lying within the dis-*

EXECUTION OF DECREE—*contd.*8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

trict, but outside the area assigned to it by the District Judge. *BACHU KOER v. GOLAN CHAND*

I. L. R. 27 Calc. 272

67. ———— *Court abolished after passing decrees. The Court of the Principal Sudder Ameen at K having been abolished after a*

entertain a subsequent application for execution, though made after the re-establishment of a Principal Sudder Ameen's Court at K. *BIROJA MONEE BARMONEA v. WOOMA MOYEE BARMONEA*

7 W. R. 124

68. ———— *District of North Canara—Decree passed by Principal Sudder Ameen. A decree passed by a Principal Sudder Ameen of the district of North Canara before that district was transferred to the Bombay Presidency, should be executed by the first class Subordinate Judge who has succeeded to the Court and functions of such Principal Sudder Ameen, and cannot by him be delegated for execution by a second class Subordinate Judge, though the amount of such decree be less than Rs. 5,000. The provisions in the Bombay Courts Act (XIV of 1869) that in suits under Rs. 5,000 the second class Subordinate Judges only shall have jurisdiction, does not affect the execution of decrees passed before that Act came into force. *PERJADA NASARUDIN v. VENKAT PRABHU**

9 Bom. 113

69. ———— *Certificate of right to execution—Civil Procedure Code, 1859, s. 286. A certificate under s. 286 was given to a decree-holder by a District Court for possession and mesne profits, under which he got possession, after which the case was struck off on account of his delay. He appealed to the Privy Council and was successful, and applied within three years of the Privy Council decree to complete the execution. *Held*, though 11 years had elapsed since the case was struck off, he was entitled to have the mesne profits ascertained without any fresh certificate. *BURORIA AMUN BAZEE KOER v. JOORAJ SINGH**

23 W. R. 225

70. ———— *Court of Agent for Sirdars—Civil Procedure Code, 1859, s. 284—Decree against Sirdar's son. Under the authority of s. 284 et seq., the Court of the Agent for Sirdars, not having jurisdiction over a Sirdar's son who is not himself a Sirdar, cannot transfer a decree passed against the Sirdar to a Civil Court for execution against the son. To obtain enforcement*

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**EXECUTION OF DECREE—*contd.*****8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.***

71. — *Execution of a decree of the Agent for Sardars—Rights of transferee of a decree—Jurisdiction.* A in 1839 obtained a decree against B & C in the Court

of the Agent did not descend to his sons, and the decree was transferred to the Court of the first class Subordinate Judge at Ahmednagar for execution. Various objections were taken to the execution of the decree by that Court, but none on the ground that the Agent's decree could not be executed by a mere transfer to an ordinary Civil Court. The case went up twice to the High Court, under whose orders the execution was for several years continued in favour of A's representatives against the estate of B's sons. In 1881, one of A's representatives assigned his interest under the decree to C and D. Thereupon the transferees, C and D, applied to the first class Subordinate Judge at Ahmednagar to have their names substituted in the place of the transferor in the execution-proceedings. The Subordinate Judge rejected this application on the ground that execution had been going on for several years contrary to the ruling in *Khusaldas v Sahaharam Ramchandra*, 12 Bom. 212, which laid down that the Agent's decree could not be executed by a mere transfer to an ordinary Court, the remedy in such cases being by a suit on the decree. On this ground also he refused to recognize the transfer of the decree. *Held*, that, though the execution-proceedings in this case had been for many years irregularly conducted by a mere transfer of the Agent's decree to an ordinary Civil Court, still, as the Court which carried on the execution had jurisdiction to grant the same relief if a suit had been brought upon the decree, the irregularity, having been acquiesced in, did not vitiate the former proceedings in execution. *VISHNU SAKHARAM NAGARKAR v. KRISHNARAO MALHAR*

I. L. R. 11 Bom. 153

NAROHARI ANPURNADAI

I. L. R. 11 Bom. 160 note

72. — *Assessment of decree after transfer, and irregular payments made under it to purchaser.* Where a decree-holder, who had obtained a decree in the Civil Court of Loodhiana, which had been transmitted to Saharunpore for execution, assigned his decree before the Saharunpore Court to a third party, without the knowledge or consent of the Loodhiana Court, and moneys were paid to the assignee, the assignee was not entitled to the refund of such moneys, that, although they were paid under an irregular sanction of the Saharunpore Court, yet, as at the time of payment the purchaser was undoubtedly entitled to receive them, and the irregularity of the procedure of the Saharunpore Court had since been cured, and the purchaser was now in a position to execute the decree, that it would be clearly inequitable to order the refund of the money on the score of irregularities. *MEHUN LALL v BAROO MULL* 6 N. W. 69

**EXECUTION OF DECREE—*contd.*****8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.***

73. — *Concurrent orders for execution in different districts—Power of Court.* A Court has power to send its decree for concurrent execution into several places, although in its discretion it may refuse to exercise such power. *SARODA PRASAD MULLICK v. LUCHMIPUT SINGH DOOGUR* 10 B. L. R. 214 : 17 W. R. 288 14 Moo. I. A. 529

74. — *Execution simultaneously in two or more districts.* A decree may be executed simultaneously in two or more districts. *Saroda Prasad Mullick v. Luchmiput Singh Doogur*, 10 B. L. R. 214, followed. *KRISHORE DUTT v ROOPALL DASS* I. L. R. 8 Cal. 687 : 10 C. L. R. 600

75. — *Simultaneous execution—Simultaneous attachments under same decree.* Two executions of the same decree, so far as attachment of different properties of the judgment-debtor is concerned, may proceed simultaneously, though ordinarily the sale in execution should not take place simultaneously. *AHMED CHOWDHRY v KHATRON* 7 C. L. R. 537

76. — *Simultaneous execution of decree by rival decree-holders.* The rights of rival decree-holders taking out execution against the same judgment-debtor considered. *LALU MULJI, THAKAR v KASHIRAI* I. L. R. 10 Bom. 400

77. — *Limitation—Limitation Act (XV of 1877), Sch. II, Art 179—Decree—Transfer—Application for execution by transferee in Court to which decree transferred, if made to "proper Court," and "in accordance with law"—Amended certificate*

for the refund of such moneys, that, although they were paid under an irregular sanction of the Saharunpore Court, yet, as at the time of payment the purchaser was undoubtedly entitled to receive them, and the irregularity of the procedure of the Saharunpore Court had since been cured, and the purchaser was now in a position to execute the decree, that it would be clearly inequitable to order the refund of the money on the score of irregularities.

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

operation of law the rights under the decree had become vested in the applicant, and it became competent to the Court to proceed with the execution at once on the basis of the original application. That the application was, therefore, made to "the proper Court" and "in accordance with law" within the meaning of Art. 179 of Sch. II of Act XV of 1877. *Chatter v. Newol Singh*, I. L. R. 12 All 61, *Munawar Husan v. Jani Biji*, I. L. R. 27 All 619, distinguished. The language of Art 179 ought not to be strained in favour of the judgment-debtor who has not paid his just debt. *Adhar Chandra v. Lal Mohan*, I. C. W. N. 626, followed. Till the Court to which a decree has been sent for execution has made its return to the Court which made the decree, it has jurisdiction to entertain successive applications for execution. *Rajah Bhoop Singh v. Sunkur Dutt*, 5 W. R. Mis 47, has been implicitly overruled by the Full Bench in *Bagram v. Ilase*, I B. L. R. (F B) 91. The mere fact that execution proceedings have been struck off, does not indicate the final determination of the execution proceedings in that Court. *Puddomonee v. Muthooranath*, 20 W. R. 133. 12 B. L. R. 411, *Mukesh Narain v. Kishanund*, 9 Moo. I A 323, relied on. *Quare*: Whether the ruling in *Amar Chandra Banerjee v. Guru Prosunna Mulzerjee*, I L. R. 28 Cal. 433, that an application by the transferee of a decree for execution after substitution of his name can be entertained only by the Court which passed

13 C. W. N. 533

78. ——— Power of Court as to execution out of its jurisdiction.—*Execution of decree of Revenue Court by Civil Court* Where execution was sought of a decree which was passed in 1850, and which could not be executed by the revenue authorities in consequence of the transfer of its jurisdiction in such matters to the Civil Courts:—*Held*, that the Civil Courts had jurisdiction to entertain the application. *LUCMEE KANT GHOSH v. BANUN DAS MOOKERJEE*. 17 W. R. 472

79. ——— Purchase of decree obtained by judgment-debtor—*Act VIII of 1859, s. 258*. A obtained a decree in the Nuddea

Court had jurisdiction to attach and sell his decree

EXECUTION OF DECREE—*contd.*

80. ——— *Ground of transfer for execution*. A decree of the Court of the Subordinate Judge of Moorshedabad was sent to the Court of the Subordinate Judge of Rajshahye for execution, and certain property was attached in that district. A claimant of the attached property

Subordinate Judge of Moorshedabad had acted without jurisdiction, and the record must be sent back to the Court of the Subordinate Judge of Rajshahye for execution. *Held*, also, that the claimant had no locus standi in the Moorshedabad Court to make such application. *INDRA CHAND DEGAR v. GOPAL CHANDRA SHETIA*

3 B. L. R. A. C. 181; 11 W. R. 557

81. ——— *Sale of estate partly within, and partly without the jurisdiction*

82. ——— *Decree on mortgage—Sale in execution of decree—Property in different districts—Civil Procedure Code (Act X of 1877), s. 19*. A suit was instituted on a mortgage



EXECUTION OF DECREE—*contd.*8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

of a single revenue-paying estate in the Court of the Subordinate Judge of the district of Backergunge under the provisions of s. 19, Act X of 1877, and a decree was obtained for the sale of the mortgaged property. On an application for execution of the decree to the Court which passed it:—*Held*, that the Court was competent to order a sale of the whole of the mortgaged property, though only a portion of it was situated in the district of Backergunge. *Kally Prosunno Bose v. Dinonath Mullick*, 11 B. L. R. 56, followed. *SHURBOO CHUNDER GOOKO t. AMFERUNISSA KHATOON*, 1 L. R. 8 Calc. 703

83. ———— *Power of Munsif's Court to execute decree against property out of its local jurisdiction* In execution of a decree, property situate in three Munsifs—viz., Serajgunge, Pubna, and Nattore, all three being at that time portions of the district and subordinate to the Court of Rajshahye—was attached and sold by order of the Court of the Munsif of Serajgunge. *Held*, by analogy to the principle on which the case of *Kally Prosunno Bose v. Dinonath Mullick*, 11 B. L. R. 56 : 19 W. R. 434, was decided, that the sale was

held by a superior Court having jurisdiction over the entire district. *RAM LALL MOITRA v. BAMA SUNDARI DARIA*, 1 L. R. 12 Calc. 307

84. ———— *Power of local Court to sell portion of estate in execution of decree outside its jurisdiction* A Court having local jurisdiction is competent to sell in execution of

85. ———— *Civil Procedure Code, 1859, s. 286—Munsif—Power of execution of decree out of local jurisdiction.* A Munsif is not competent, under Act VIII of 1859, s. 286, to bring to sale property lying without his own jurisdiction, without reference to any other Court. *NAWAB ALI v. UZIR MAHOMED*, 23 W. R. 233

86. ———— *Power of Munsif to attach and sell property, part of which is out of his jurisdiction.* Where a Munsif orders the attachment and sale of a talukh, part of which lies outside the jurisdiction of his Court, the order as regards this latter portion, a nullity, and an attachment and a sale pursuant to the order are void. The order of a Court which is not empowered to make any order at all does not stand on the same footing as an erroneous order by a Court empowered to deal with the subject matter of that order. The failure to object to a sale, if the Court had no power at all

EXECUTION OF DECREE—*contd.*8 TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

to hold it, does not make the confirmation thereof conclusive. The limitation of the remedy by separate suit contained in Act VIII of 1859, s. 257, applies to cases where a Court acts wrongfully within its jurisdiction, and not to cases where a Court has gone wholly out of its jurisdiction. *Kales Prosunno Bose v. Deno Nath Mullick*, 11 B. L. R. 56 : 19 W. R. 434, and *Nawab Ali v. Uzir Mahomed*, 23 W. R. 233, considered. *UNNOCOOL CHUNDER CHOWDHRY v. HURRY NATH KOOSDOO*, 2 C. L. R. 334

87. ———— *Sale by local Court of property, a portion of which is not within its jurisdiction* Where an estate consisting of 18 mouzahs, 3 of which were situate in the district of P and 15 in the district of G, was sold in the Court of the latter district in execution of a decree, it appeared that although no notice had been issued in the district of P, the whole of the land revenue and local rates were paid into the treasury in the district of G. *Held*, that under the circumstances the sale of the estate in the district of G was not without jurisdiction. See *Unnocol Chunder Choudhry v. Hurry Nath Koosdoos*, 2 C. L. R. 334, and *Kally Prosunno Bose v. Denonath Mullick*, 11 B. L. R. 56. 19 W. R. 434. *GURGA NARAIN GUPTA v. ANNADA MOYEE BURBOOANEE*, 12 C. L. R. 404

88. ———— *Mortgage-decree for sale of properties in different districts and jurisdictions—Civil Procedure Code (Act XIV of 1859), ss. 19, 223 (c), Sch. IV, Form 125—Jurisdiction.* A decree obtained in a suit brought under the provision of s. 19 of the Code of Civil Procedure in the Court of the Subordinate Judge of Rajshahye on a mortgage of certain properties situated in the districts and jurisdictions of Raj-

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**EXECUTION OF DECREE—contd.****8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—contd.**

jurisdiction of the Court which passed it," contemplate a case where the whole of the property, and not any portion of it, is situate beyond the local limits of the Court which passes the decree *MASEY v. STEEL & Co.*, I. L. R. 14 Cal. 801

**89.** ——— *Sale of property covered by decree by Court which passed decree when property is situate outside its local jurisdiction at time of application—Civil Procedure Code (Act XIV of 1882), s. 223 (c)—Jurisdiction.* A mortgage-decree was passed directing the sale of certain property wholly situate within the local limits of the jurisdiction of the Court which passed the decree. After the decree, the district within which the property was situate was transferred and placed under the local jurisdiction of

the Court which passed the decree. Held that

*LALL v. LALL*, I. L. R. 10 Cal. 50.

**90.** ——— *Power of Court passing decree to execute it—Portion of property out of jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 223.* The Court that has the power to pass a decree for sale of a property has also power to carry out its decree by selling that property, whether any portion of that property be within the local limits of its jurisdiction or not. *PER GHOSE, J.—S. 223, cl (c), of the Civil Procedure Code leaves it to the discretion of the Court to send the decree for execution to the Court having local jurisdiction Masey v Steel & Co., I. L. R. 14 Cal. 801, commented on Gopi Mohan Roy v. Doybaki Nundun Sen., I. L. R. 19 Cal. 13*

**91.** ——— *Property outside jurisdiction of Court—Mortgage-decree—Civil Procedure Code, 1882, ss. 19 and 223.* A Court that has jurisdiction to pass a decree for the sale of property comprised in a mortgage has also power to carry out its decree by selling the property, even though a portion of the property be situate outside the local limits of its jurisdiction. *Gopi Mohan Roy v. Doybaki Nundun Sen., I. L. R. 19 Cal. 13, followed. Prem Chand Dry v. Mokhodra Debi, I. L. R. 17 Cal. 699, distinguished. TISCOORI DEBYA v. SHIB CHANDRA PAL CHOWDHURY, I. L. R. 21 Cal. 639*

**EXECUTION OF DECREE—contd.****8. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—contd.**

*JAGERNATH SAHAI v. DIP RANI KOER*, I. L. R. 22 Cal. 871

**92.** ——— *Attachment of assets of a judgment-debtor outside the jurisdiction of the attaching Court—Procedure.* The plaintiff, having obtained a decree against the defendant in the Court at Bhusaval, sought to execute it by attaching a moiety of the defendant's pay. The defendant was a sorter in the Railway Mail Service, and travelled between Bhusaval and Nagpur, at which latter place he resided and received his pay.

procedure was to send the decree of the Bhusaval Court for execution to Nagpur, where the disbursing officer resided, and where the defendant's pay was available for satisfaction of the decree. *RANGO JAIRAM v. BALAKRISHNA VITHAL*

I. L. R. 12 Bom. 44

*GOPAL V. LAVET*, I. L. R. 12 Bom. 45 note

**93.** ——— *Foreign Court—Civil Procedure Code (Act XIV of 1882), ss. 223, 224, 229A and 229B—British Courts in India, power of, to send their decrees for execution to Foreign Courts.* The Tributary Mahals of Orissa do not form part of British India; therefore, in the absence of a prior notification in the India Gazette, as specified in ss. 229A and 229B of the Civil Procedure Code, no decree by a Court in British India can be sent for execution into a territory such as Mayoorbhunj, which is a Tributary Mahal. *Kastur Chand Gupar v. Parska Mahar, I. L. R. 12 Bom. 239, referred to. RATAN MAHANTI v. KHATOO SADOO (1902)*

I. L. R. 29 Cal. 400

**94.** ——— *Surety—Civil Procedure Code (Act XIV of 1882), ss. 223, 336—Surety for presentation of insolvency petition by judgment-debtor—Failure to apply—Transfer of decree—Application by transferee for decree to be sent to another Court for execution against judgment-debtor and surety.* A transferee decree-holder is entitled to apply, under s. 223 of the Code of Civil Procedure, to the Court which passed the decree, to send it for execution to another Court; and where a person has become surety for the judgment-debtor, under s. 336, and the judgment-debtor has failed to apply to be declared an insolvent, the transferee-decree-holder is entitled to have his decree sent for execution against the surety as well as against the judgment-

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION,  
AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION  
—*contd.*

debtor, if his transfer has been recognized. *CHATHOTH KUNHI PAKKI v. SAIBINDAVIDE KUNHAMNAD* (1902) I. L. R. 28 Mad. 258

95. ——— Transfer of jurisdiction—*Civil Procedure Code* (Act XIV of 1882), ss. 223, 649—*Bengal, N.-W. P. and Assam Civil Courts Act* (XII of 1887), ss. 13, 17—Execution of decree—*Jurisdiction of Court, transfer of—Limitation Act* (XV of 1877), s. 14. Execution of a decree of the Court of the Munsif of Nawabgunge having been taken out in the Court of the Munsif of Maldah by reason of transfer of the local jurisdiction of the former by the Local Government under Act XII of 1887, a sum of money was paid in part satisfaction. A second application was objected to on the ground that the Maldah Court had no jurisdiction. A fresh

Court. *Lutchman Pandeh v. Maddun Mahun Shye*, I. L. R. 6 Calc 315, referred to. *Kalpado Mukerjee v. Deno Nath Mukerjee*, I. L. R. 25 Calc. 315, distinguished. *Held*, further, that proceedings to enforce a decree taken *bond fide* before a Court which the party *bond fide* believes to have jurisdiction is a proceeding within the meaning of s. 14 of the Limitation Act. *Hira Lal v. Badri Dass*, I. L. R. 2 All 792, referred to. *JAFAR v. KASIALINI DEBI* (1900)

I. L. R. 28 Calc. 238 ;  
s.c. 5 C. W. N. 150

98. ——— Practice—Transfer of decree from one district to another—*Rules of execution different in the two districts—Procedure*. Where in different districts, different modes of execution are prescribed, and where the question is how a decree passed in one, but of which execution is sought in another of such districts, is to be executed, the executing Court must be guided by the rules in force in its own district. *MARTAND v. VINAYAK* (1906) I. L. R. 31 Bom. 5

97. ——— Court of Subordinate Judge, *Kondh*—Transfer of decree for execution—*Decree of Court in British India—Benares, Family Domains of Maharaja of—Foreign Court—Court established by authority of Governor-General—Benares, Family Domains of Maharaja of—1828*  
— 1881)  
— 223,  
2. ——— *Maharaja of Benares* are situated within British India as defined in Act X of 1897, s. 3, cl. 7, and a 4, cl. 1, and the Court of the Native Commissioner or Subordinate Judge of Kondh within those domains, established under Regulation VII of 1828 amended by Act XIV of 1881, is a Court established by the

EXECUTION OF DECREE—*contd.*8. TRANSFER OF DECREE FOR EXECUTION,  
AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION  
—*contd.*

Subordinate Judge of Kondh by virtue of rules made by the Lieutenant-Governor of the North-

*Kashi Mohun Borua v. Bishnon Prta*, I. L. R. 15 Calc. 365, and *Kasturchand Gujar v. Parsha Mahar*, I. L. R. 12 Bom. 230, referred to. *PRABHU NARAIN SINGH v. SALIGRAM SINGH* (1907)

I. L. R. 34 Calc. 578

## 9. EXECUTION BY COLLECTOR.

1. ——— Right of creditor under a simple money-decree obtained after property has been taken over by the Collector to be entered in list of creditors prepared under s. 322B—*Civil Procedure Code, 1882*, ss. 322, 322A, 322B, 325, and 326—*Civil Procedure Code, 1877*, s. 326. *Held*, that the assignees of a decree for money obtained against a person whose property had been taken over by the Collector under s. 326 of Act X of 1877, whilst such property was under the management of the Collector, were not entitled to be placed on the list of creditors prepared by the Collector under s. 322 of Act XIV of 1882; and that, in any case, application to be placed on the said list of creditors should have been made to the Collector, and not to the District Judge. *MURARI DAS v. COLLECTOR OF GHAZIPOUR*

I. L. R. 18 All. 313

2. ——— Decree transferred for execution to Collector—*Civil Procedure Code* (1882), ss. 320 and 322A—Collector not authorized to hear objections to execution of decree so trans-

advertised for sale to the sale of that property, nor is it any part of the Collector's duty to decide whether the property has or has not been properly attached. *ONEKAR SINGH v. MOHAN KVAR*

I. L. R. 20 All. 428

EXECUTION OF DECREE—*contd.*9. EXECUTION BY COLLECTOR—*contd.*

3. ———— *Civil Procedure Code, ss. 310A, 320—S. 310A not applicable to proceedings in execution held by a Collector under s. 320.* *Held*, that the provisions of s. 310A of the Code of Civil Procedure have no application to execution proceedings taken by a Collector under s. 320 of the Code, and the rules framed by the Local Government thereunder, governing such proceedings. *SHEO PRASAD v. MUHAMMAD MOHSIN KHAN* (1902) I. L. R. 25 All 167

4. ———— *Pending execution, revival of—Limitation Act (XV of 1877), Sch. II, Art. 179—Suspension of execution proceedings—Revival of pending execution suspended not by act or default of the decree-holder.* On 24th August 1889 an application was made for execution of a decree, and on 18th December 1889 execution was allowed to proceed. On 29th November 1889 it was ordered that the case should be struck off the file and the record transferred to the Court of the Collector for execution. On 23rd December an order was made that, as the decree-holder had not made a deposit on account of the transfer to the Collector, "therefore in default of prosecution on the part of the decree-holder, the record be not sent to the Collector's Court." On 15th February 1890 an appeal had been preferred to the High Court from the order of 18th December 1889 allowing execution to proceed, and the High Court reversed that order on 7th January 1890, but on appeal to the Privy Council the order allowing execution was restored on 12th December 1894. *Held*, by the Judicial Committee (affirming the decision of the High Court), that an application for execution made on 22nd November 1897 was not barred by the Limitation Act.

the proceedings up to the order of the Privy Council of 12th December 1894 had not intervened there was nothing in its terms to preclude the decree-holder from coming again to the Court and, after satisfying the conditions indicated in the order, obtaining the transmission of the case to the Collector's Court. *KAMAR-UD-DIN AHMAD v. JAWAHIR LAL* (1903) I. L. R. 27 All 334 s.c. I. L. R. 32 I. A. 102

5. ———— *Procedure—Postponement of sale by Assistant Collector—Power of Assistant Collector to cancel his own order of postponement—Clerical error—Irregularity.* An application, purporting to be made by a decree-holder, was presented to an Assistant Collector on the day fixed by the latter for the sale of certain immovable property. The applicant stated that the decretal money had been paid

EXECUTION OF DECREE—*contd.*9. EXECUTION BY COLLECTOR—*contd.*

and asked for the postponement of the sale. The Assistant Collector, however, cancelled his order and held the auction a few hours later. *Held*, that the Assistant Collector could cancel his original order and that the subsequent sale was not thereby rendered illegal. *Syed Tuffazal Hossain Khan v. Raghu Nath Prasad*, 7 B. L. R. 186, referred to. *WAZIR ALI v. JANKI PRASAD* (1906) I. L. R. 28 All 671

several co-owners of ancestral property, which has been sold by the Collector under the Rules framed by the Local Government under s. 320 of the Code of Civil Procedure applied under Rule 17 (XII) to have the sale set aside upon the ground of material irregularity in the conduct of

aside the sale, and was in no way precluded from so doing by the existence of the former application under Rule 17 (XII). *Net Lal Sahoo v. Karsam Buz*, I. L. R. 23 Cal. 686, and *Pareek Nath Singha v. Nabogopal Chattopadhyaya*, I. L. R. 29 Cal. 1, referred to. *TUHI RAM v. IZZAT ALI* (1908) I. L. R. 30 All 192

## 10. DECREES OF COURTS OF NATIVE STATES.

1. ———— *Foreign judgment—Execution—Power of District Judge to enforce judgment.*

**EXECUTION OF DECREE—contd.****10. DECREES OF COURTS OF NATIVE STATES—concl'd.**

misrepresentation and concealment of essential facts. *Held*, also, that the Court was entitled to exercise a judicial discretion as to whether it would put into force the provisions of s. 229B of the Civil Procedure Code. No duty is cast upon the Court to execute a decree which can be shown to have been passed without jurisdiction.

*And* it merely alters the procedure by which such a judgment can have effect given to it in British India. *State of A. v. A.*

execution of such a decree is sought, relief can only be obtained by pointing out the fraud to the executing Court and asking that Court to refrain from executing the decree. The Court will not send British subjects subject to its territorial jurisdiction into a foreign country to seek to be relieved from a fraudulently obtained decree, but will itself refuse to give effect to such a decree. *MUSA HAJI AHMED v. PURVANUND NURSEY* I. L. R. 15 Bom. 216

**11. MODE OF EXECUTION.****(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION.**

**1. ———— Decree how constructed for purposes of execution.** A decree cannot be extended in execution beyond the real meaning of its terms. *BODAN v. RANCHANDRA BHUNJGAYA* I. L. R. 11 Bom. 537

**2. ———— Division of decree—Execution in portions.** A decree cannot be executed, nor can it be seized and sold, in portions. *HARO SANKER SANDYAL v. TARAK CHANDRA BHATTACHARJEE* 3 B. L. R. A. C. 114 : 11 W. R. 488

*See* *NUND COOMAR FUTTEHDAR v. BUNSO GOPAL SAHOY* 23 W. R. 242  
and *GOODUR SAHOY v. DHONISSUR KOER* 7 C. L. R. 117

**3. ———— Severance of right under decree.** The right under a decree cannot be severed so that the remedy against the person can remain in or pass to one, and the alternative remedy against the property pass to another. *PADMA-NABHA v. TRANAKOTI* I. L. R. 2 Mad. 116

**4. ———— Decree for land and for certain papers—Splitting execution.** Where a judgment is made, the p. either

**EXECUTION OF DECREE—contd.****11. MODE OF EXECUTION—contd.****(c) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—contd.**

*Held*, that he had adopted the only course open to him, and there was no splitting up of the decree into different executions. *WOOMA CHURN CHOWDERRY v. KUNOLAY KAMINEE DABEE* 25 W. R. 58

**5. ———— Decree having continuous**

satisfaction, it must be executed each year according to the law of procedure then in force. *VISHNU SAKHARAM NAGARKAR v. KRISHNARAO MALHAR* I. L. R. 11 Bom. 153

**6. ———— Adaptation of mode of execution to nature of case—Civil Procedure Code (Act VIII of 1859), s. 212.** The words "otherwise as the case may be" in s. 212 meant that the mode of execution was to be adapted in each case to the nature of the particular relief sought to be enforced under the decree. *DENONATH RUCKER v. MURTY LALL PAUL* 1 Ind. Jur. O. S. 135 : 1 Hyde 158

**7. ———— Former mode of execution in High Court—Practice of High Court—Civil**

instance, to issue a writ of attachment, and subsequently, on its return by the Sheriff duly executed, to issue a writ directing a sale. The writ of *f. fa* which issued from the Supreme Court was an authority to the Sheriff not only to seize, but also to sell. S. 250 of the Civil Procedure Code applied neither to executions against immoveable property nor to executions against debts due to the defendant; and in order to give to third parties full

but before sale opportunity of us process of even against personal property, and it would not seem to be proper to do so, except under special circumstances. *FINANCIAL ASSOCIATION OF INDIA AND CHINA v. PRANJIVANDAS HARIJIVANDAS*, 3 Bom. O. C. 25

**8. ———— Execution against person or property—Decree for sale of hypothecated property and against judgment-debtor personally.** *Execution against person or person upon a of the of the hypothecated property and also from the judgment-debtor personally and contains no condition that execution shall first be enforced against the property, and where there is no question of fraud being perpetrated on the judgment-debtor, there is no principle of equity which prevents the decree-holder from enforcing*

**EXECUTION OF DECREE—contd.****II. MODE OF EXECUTION—contd.****(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—contd.**

his decree against the judgment-debtor's person or property, whichever he may think best. *Nah Muhammad v. Turab Ali*, I. L. R. 4 All 497, explained. *JOHARI MAL v. SANT LAL*.

I. L. R. 9 All 484

9. ——— Decree of Appellate Court—Decree referring to judgment. Where the judgment of an Appellate Court directed that a certain sum over and above what had been decreed to him in the Court of first instance should be decreed to the appellant, but the decree of the Appellate Court did not specify the sums that would be due to the appellant under that decree, except by reference to the judgment on which it was based and to the decree of the Court of first instance:—*Held*, that the sums due to the appellant under that decree should, as a matter of equity, be granted to the decree-holder. *JAWAHIR MAL v. KISTUR CHAND*.

I. L. R. 13 All 343

10. ——— Against what property decree may be executed.—Property hypothecated to debtor. *Held*, that a decree-holder is entitled to execute his decree against any property devolving on the judgment-debtor before the decree has been fully executed, and this without reference to whether the property was hypothecated to him; and that the denial of the judgment-debtor that he is interested in the property which it is sought to make subject to execution can have no effect. *BULDEO SINGH v. DWARKA DOSS*. 1 Agra 169

11. ——— Execution of decree against party holding another decree.—Collector's Court.—Sale of decree.—Appointment of manager. Where a Deputy Collector executes a

SHEE. 9 W. R. 372

12. ——— Decree declaring lien on property without power to sell.—Civil Procedure Code, 1859, s. 243. Where a decree declares a decree-holder's lien on certain property without distinctly declaring his right to sell the same, it may be executed as against that property specially; but the usual course of attachment and sale on one hand, or of attachment and management under s. 243, Code of Civil Procedure, on the other hand, must still take place. *NUDDYAGASHEE DASS v. REZA CHOWDHRY*. 15 W. R. 337

13. ——— Decree against railway servant for salary.—Consent of debtor to particular mode. The order of a judgment-debtor being a railway servant, upon the paymaster to

**EXECUTION OF DECREE—contd.****II. MODE OF EXECUTION—contd.****(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—contd.**

satisfy the decree out of his salary, does not alter the case as regards the mode in which the Court should execute its decree, which should be as directed by law and not according to the consent of the judgment-debtor. *In re MACFARLANE*. 11 W. R. 69

14. ——— Decree for specific property.—Order for production of property by defendant after decree. There is no provision of the Civil Procedure Code authorizing a Court to call upon a defendant to appear in Court and produce property decreed to plaintiff. The decree must be executed in the ordinary course. *BHOJA RAMESH SINGH v. BHOJA RAJ SINGH*. 3 N. W. 319

15. ——— Informality in mode of execution.—Ground for setting aside execution. In execution proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right. *BISSESSUR LALL SARDU v. LUCHMESSUR SINGH*.

I. L. R. 6 I. A. 233

16. ——— Warrant of arrest, power of Sheriff's officer in executing.—Breaking open door.—Assault and false imprisonment. A Sheriff's officer in execution of a bailable writ peaceably obtained entrance by the outer door, but, before he could make an actual arrest, was forcibly expelled from the house and the outer door fastened against him. The officer obtained assistance, broke open the outer door, and made the arrest. *Held*, that the officer was justified in so doing. *Held*, also, that demand of re-entry under such circumstances was not requisite to justify his breaking open the outer door. *Quere*: If indictment for assault and false imprisonment will under such circumstances lie against the Sheriff's officer. *AGA KHASBOO LIA MAHOMED v. QUEEN*. 3 Moo. I. A. 184

17. ——— Power of officer in executing decree.—Mamlatdar's Court.—Bombay Act V of 1864. A Mamlatdar's Court, authorized under Act V of 1864 (Bombay) to give immediate possession of lands and premises, has the power to direct the breaking open of a door when necessary to give effect to its decree. *BAJI DEV v. SADASHIV BHAT-SHANKAR*. 5 Bom. A. C. 158

18. ——— Right to remove lock.—Breaking open inside door of house. A person ex-

5 Mad. 189

19. ——— Civil Procedure Code, 1859, s. 233.—Execution of warrant against moveable property.—Attachment.—Ermoring

EXECUTION OF DEGREE—*contd.*11. MODE OF EXECUTION—*contd.*(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—*contd.*

*locks.* Under s. 233, Act VIII of 1859, a nazir, authorized to execute a warrant by attachment of moveable property, has power to remove locks put by the judgment-debtor on the doors of godowna or other places where his property is stored, and put his own locks thereon for the purpose of attachment and safe custody of the property. *SODAMINI DASI v. JAGESWAR SUR*

5 B. L. R. Ap. 27 : 13 W. R. 339

20. ——— Breaking open doors. A Civil Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate. *ANDERSON v. McQUEEN* . 7 W. R. Cr 12

21. ——— *Bailiff or Nazir*—*Writ of attachment.* A bailiff or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by s. 271 of the new Code of Civil Procedure (Act X of 1877). *DANODAR PARSOTAM v. ISHWAR JETHA*

I. L. R. 3 Bom. 89

See *SODAMINI DASI v. JAGESWAR SUR*

5 B. L. R. Ap. 27

22. ——— *Process of attachment against person or goods*—*Breaking open doors.* A Nazir or Sheriff cannot, under a writ of attachment, break open a defendant's dwelling-house to execute civil process against his person or goods if the outer door is closed and locked, even when he finds that the defendant has absconded to evade such execution. The privilege extends to a

23. ——— *Madras Reg. IV of 1816, s. 30*—*Personal property only liable to attachment in execution of Village Munsif's decree.* Under Regulation IV of 1816, the decrees

24. ——— *Proceedings of Court of Revenue*—*Restitution due in virtue of the modification in appeal of the decree of a Rent Court*—*Procedure*—*Civil Procedure Code, ss. 583 and 244.* Held, that, although s. 583 of the Code of Civil Procedure might be applied by analogy to proceedings before a Court of Revenue under Act XII of 1881, s. 244, could not be applied to such

EXECUTION OF DEGREE—*contd.*11. MODE OF EXECUTION—*contd.*(a) GENERALLY, AND POWERS OF OFFICERS IN EXECUTION—*contd.*

proceedings. The remedy, therefore, of a person entitled to a refund in consequence of the reversal or modification in appeal of a decree passed under Act XII of 1881 by a Court of Revenue is twofold, both by means of an application in execution and by a separate suit. *Durga Purshad Roy Choudry v. Tara Prosad Roy Choudry*, 8 W. R. P. C. 11, referred to. *MASHI-ULLAH KHAN v. MAJIB-UN-NISSA* (1904) . . . I. L. R. 28 All. 149

25. ——— *Payment of rent to prevent sale*—*Bengal Tenancy Act (VIII of 1885), s. 3, 171.* Where a decree made in a suit for rent was in the main one for rent, although it included other sum which were not strictly rent, within the meaning of the Bengal Tenancy Act, and in execution thereof the tenure in area was ordered to be sold under Chapter XIV of the Act and advertised. Held, that the holder of an under-tenure liable to be avoided would be justified in making a payment to prevent the sale of the superior tenure, and having made the payment, would be entitled to the rights, which are given to a person who makes a payment under s. 171 of the Bengal Tenancy Act. A lease provided that a certain sum was payable by a tenant direct to the landlord as *mahilana* and certain other sums were payable by the tenant for Government

## (b) ALTERNATIVE DECREE.

26. ——— *Decree for delivery of moveable property*—*Specific alternative amount payable in money* Where a decree is for the delivery of moveable property and states the amount to be paid as an alternative if delivery

## (c) ATTACHMENT.

27. ——— *Decree declaring attachment should be removed.* A decree declaring that an attachment should be removed cannot be executed for money. *BOYDO NATH SHAW v. SHUM-BOO RAMNUTEE* . . . 25 W. R. 59

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(c) ATTACHMENT—*contd.*

28. ——— Debts due to judgment-debtor, attachment of—*Civil Procedure Code, s. 244*—Attachment of decree held by the judgment-debtor against a third party—Objection by judgment-debtor under the attached decree—Objection disallowed—*Appeal*. Mewa Lal and another held a money decree against Ram Singh. In execution thereof they attached a mortgage decree held by Ram Singh against one Ishri Dat. They next applied for the sale of the mortgage decree, which they had attached in execution of their own money decree. To this Ishri Dat objected that the decree has been already satisfied. His objection was disallowed, and on appeal by Ishri Dat from the order disallowing the objection: *Held*, that no appeal would lie. *ISHRI DAT v. MEWA LAL* (1901)

I. L. R. 26 All. 136

29. ——— Attachment of debts due to judgment debtors—Improper realization of such debts by third party—Application to compel third party to disgorge—Limitation—Contempt of Court. Certain plaintiffs attached before judgment some debts due to the defendants. The defendants sold the right to collect those debts to third parties, who, in defiance of the attachment, proceeded to collect some of them for their own benefit. The plaintiffs, having obtained a decree in their suit, applied to the Court to compel the third parties to pay into Court the money which they had improperly collected in defiance of the Court's order. *Held*, that this was not an application in execution of their decree, but an application to the Court to exercise its inherent power of punishing for contempt of Court, and that the limitation rules provided for applications to execute decrees did not apply to it. *GODU RAM v. SURAJMAL* (1905)

I. L. R. 27 All. 378

30. ——— Application for attachment of debts said to be due to judgment-debtor—Denial of debts by alleged debtors—*Procedure*. Where a Court is asked to attach the property of a

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(c) ATTACHMENT—*contd.*

distribution under s. 294 of the Civil Procedure Code (Act XIV of 1882). In his first *darkhast* B prayed for attachment and sale of the property belonging to R; and the property was accordingly placed under attachment. Subsequently R made an application to the Court to allow him one month's time to raise money in order to satisfy K's decree and also the first decree of the defendant. The Court granted him one month's time and issued to him a certificate, as required by s. 305 of the Civil Procedure Code (Act XIV of 1882), which expressly directed that the amount realized by sale or mortgage of the property should be paid into Court and not to the judgment-debtor. The property in dispute was sold by R to the plaintiff privately; and the plaintiff made two applications to the Court, in which he stated that he had produced before the Nazir an amount of purchase money sufficient

the attachment, as the sale to the plaintiff was made to defeat his later decree. The Court held the sale to be fictitious and fraudulent. B then got the property attached and sold in execution of his later decree and purchased it himself with the permission of the Court. The plaintiff, shortly after this, filed a suit against B to recover possession of the property. *Held*, that under the circumstances it was clear that a fraud was practised upon the Court, and that therefore the purchase by the plaintiff was vitiated by the fraud. A purchase, which has received the sanction of the

great such misrepresentation or withholding as fraud and act accordingly. *Boswell v. Coaks*, 27 Ch. D. 424, 454, followed. *ATMARAJ GANJOI v. BAL-KRISHNA MAHADEVI* (1905)

I. L. R. 29 Bom. 615

31. ——— Fraud upon the Court—*Fraudulent sale*. B (defendant) obtained two decrees against R, one for Rs 150 and the other for Rs 750, the latter amount being payable by yearly instalments of Rs 250 each. About the same time, K

32. ——— Fresh attachment—*Dismissal of execution case*—*Sale proclamation*. It cannot be laid down as a general proposition of law that, because an execution case has been dismissed by reason of no steps having been taken by the decree-holder to bring, within a certain time limited, the property to sale, the attachment already put upon it necessarily falls through. The question is one of intention. *Held*, having regard



**EXECUTION OF DECREE—contd.****11. MODE OF EXECUTION—contd.****(c) ATTACHMENT—contd.**

to the scope of the order dismissing the previous application, that no fresh attachment is necessary before issuing a sale proclamation **GOBINDA CHANDRA PAL v. DWARKA NATH PAL AND OTHERS** (1906) . . . **I. L. R. 33 Cal. 866**

**(d) BOUNDARIES**

**33. ——— Declaratory decree as to boundaries—Proclamation of decree.** The holder of a decree which declares that the boundary-line laid down in the survey map as the boundary-line of the plaintiff's permanently-settled estate is not the true boundary-line is not entitled either to have the decree proclaimed on the spot or to have the line traced from the survey map **RAJKRISHNA SINGH v. COLLECTOR OF MYDENSINGH**

**19 W. R. 232**

**(e) CANCELMENT OF LEASE.**

**34. ——— Decree for cancelment of lease.** A decree for cancelment of a lease is virtually one for possession in supercession of that lease, and may be so executed by a Court under Act X of 1859, by which it has been passed **MAHOMED FAEZ CHOWDHRY v. SHIB DOOLAREE TEWARIE**

**16 W. R. 103**

**(f) CONDITIONAL DECREE**

**35. ——— Default of defendant—Execution of decrees—Absolute and conditional decrees—Notice—Ex parte orders, inherent power of Court to set aside—Application to set aside ex parte order for execution of conditional decrees—Limitation.** The Court has an inherent power to deal with an application to set aside an order made *ex parte* on a proper case being substantiated. **Bibee Tulsiman v. Harhar Mahato**, 9 C. W. N. 81, followed. When a conditional decree is made, the plaintiff on the default of the defendant should apply to the Court, which passed the decree, on notice to the defendant by motion on notice or by rule for an order absolute.

notice for such order, the Court will determine the question, if necessary, directing the issue to be tried in evidence, whether there has been default of the condition or not. If the Court finds that there has been such default then the plaintiff will be entitled to an order absolute and should thereafter apply to execute that order. The plaintiff obtained a conditional decree on the 21st of June 1903, which provided that she would be entitled to eject the defendant from her premises, unless the latter performed certain conditions. Dis-

**EXECUTION OF DECREE—contd.****11. MODE OF EXECUTION—contd.****(f) CONDITIONAL DECREE—contd.**

putes arose between the plaintiff and the defendant re the performance of the conditions and the plaintiff on the 31st of August 1905, without notice to the defendant, applied for and obtained an order for ejectment of the defendant. The defendant was ejected on the 25th September 1905. The defendant applied and obtained a rule on the 1st of December 1905 for setting aside, modifying or reviewing the order of 31st of August. Held, that the defendant's application was not barred by limitation. **SUDEVI DEVI v. SOVARAM AGARWALLA** (1906) . . . **10 C. W. N. 308**

**36. ——— Conditional decree—Smaller sum payable if payment made within a time fixed by Court—Decree of first court fixing time for deposit of money—Decree affirmed by High Court and by Privy Council—Money not paid within time fixed by first Court—No extension allowed.** A plaintiff claimed the principal sum of money due on a bond with interest at 30 per cent. per annum and the decree of the court of first instance directed that if the defendant deposited the money within three months from the date of its decree, he would be liable to pay interest at the rate of 12 per cent. per annum and would be exempted from further liability. This decree was

allowed to pay the principal with interest at the rate of 12 per cent from the date of the Privy Council decree **GHANSHYAM LAL v. RAM NARAY** (1909) . . . **I. L. R. 31 All. 379**

**(g) COSTS.**

**37. ——— Costs against guardian of minor or manager of lunatic's estate.** The Courts have discretion to allow, if the circumstances of the case require it, execution of a decree for costs to be taken out against a guardian of a minor, or a manager of a lunatic's estate **OMRAO SINGH v. PRENNARAIN SINGH** . . . **24 W. R. 264**

See, however, **TARA SUNDUREE v. RASH MUNDJAREE** . . . **12 W. R. 76**

**BRORO MOHUN MOJOONDAH v. RODRA NATH SUNDIAH MOJOONDAH** . . . **15 W. R. 192**

**KOMUL CHUNDER SEN v. SURBESUR DOSS GOOPTO** . . . **21 W. R. 298**

and **SHERAFUTOOLAH CHOWDHRY v. ABEDOOTISSA BIBEE** . . . **17 W. R. 374**

**BRUNESSUREE DOSS v. KISHORE DOSS** . . . **25 W. R. 316**

**38. ——— Decree for costs in rent-suit—Charge on land—Liability for costs of pur-**

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(7) COSTS—*contd.*

*chaser.* A decree for costs incurred in a rent suit is no charge upon a talukh in respect of which the suit was instituted, and cannot be executed against it. A subsequent purchaser of a share of such talukh does not become liable as such for any portion of the costs due under such decree. *ROMA PROSUNNO SINGH v. BOYKANTO NATH GHOSAL*. 3 C. L. R. 504

39. ——— Order made by a Judge in chambers on client to pay taxed costs of his attorney—*Civil Procedure Code*, s. 267—*Right of attorney to execute such order as a decree*—Rule 183 of rules of High Court, Bombay. An order obtained from a Judge in chambers by an attorney against his client for the payment of costs is a decree or order to the execution of which the provisions of Ch. XIX of the *Civil Procedure Code* (XIV of 1882) apply. S. 267 of the *Civil Procedure Code* is applicable to all the property of the judgment-debtor out of which the decree can be satisfied either by delivery in obedience to the decree or by sale. The words "liable to be seized" contained in s. 267 of the *Civil Procedure Code* are words of description pointing out the kind of property in respect of which an enquiry can be held, viz., any property which is attachable under the

to the mortgage-debt. A person may be examined, under s. 267, in respect of property which is *prima facie* the property of the judgment-debtor, even although such person may allege that he is a mortgagee in possession of the attached property. *In re PREMJI THEKUNDAS*. I. L. R. 17 Bom. 514

See *ASSUR PURSHOTAM v. BUTTUNRAI*

I. L. R. 16 Bom. 152

40. ——— Security for costs—Sale of properties given as security—*Mortgage—Transfer of Property Act* (IV of 1882), ss. 67, 99—*Costs—Interests on costs.* As security for the costs of

Council in dismissing the appeal awarded the respondents their costs, who thereupon in execution applied for the sale of the properties comprised in the bond: *Held*, that the effect of the bond was to create a mortgage, and that having regard to

*Aslam v. Durrani*, 20 M. W. 303, *Aslam v. Durrani* *Mandar v. Padmanand Singh*, I. L. R. 29 Calc. 707, referred to. *Ramji Haribhai v. Bai Parvati*, I. L. R.

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(7) COSTS—*contd.*

27 Bom. 91, *Ganga Dei v. Shyam Sundar*, (1903) All. W. N. 201, and *Janki Kuar v. Sarup Ram*, I. L. R. 17 All. 99, discredited from. *Rana Bahadur Singh v. Mughla Begum*, I. L. R. 2 All. 604, and *Shyam Sundar Lal v. Bajpai Jannarayan*, I. L. R. 30 Calc. 1069, distinguished. When the order of the Privy Council awards costs, but is silent as to interest on the costs so awarded, it is not competent for the Court executing the order to direct payment of the costs with interest. *Forester v. Secretary of State for India*, I. L. R. 3 Calc. 151. I. L. R. 4 I. A. 137, *Dikhina Mohan Roy v. Sarada Mohan Roy*, I. L. R. 23 Calc. 347, followed. *TOKHAN SINGH v. GIRWAR SINGH* (1905). I. L. R. 32 Calc. 494

## (A) DAMAGES.

41. ——— Decree for damages. Pro-  
cedure laid down for working out an incomplete de-  
cree for damages. *MUNZERUN v. MUSEKHUN*  
13 W. R. 139

## (5) DECLARATORY DECREE.

42. ——— Execution—*Declaratory decree.*  
Execution cannot be obtained on a merely declara-  
tory decree. *MUNIYAN v. PERIYA KULANDAI*  
ANMAL 1 Mad. 184

*JEORA KHAN SINGH v. THAKOORBE SINGH*

2 N. W. 303

43. ——— Decree giving  
party a right to a recurring payment of uncertain  
sums. A decree declaring a party entitled to a con-  
stantly recurring right to receive certain payments  
in kind, valued at a certain annual sum, cannot be  
executed according to the provisions of the Code of  
Civil Procedure. *TATA CHARIAR v. SINGARA*  
*CHARIAR*. I. L. R. 4 Mad. 219

44. ——— *Mesne profits—Separate suit*  
—*Mesne profits, meaning of—Decree awarding*  
*mesne profits—Construction.* In 1878 the plaintiff  
obtained a decree declaring that he was entitled to  
receive every year from the defendant 12 per cent.  
of the rents and profits of a certain inam village.  
The decree also awarded mesne profits from the date

way of execution. His remedy was by a suit on  
the right established by the decree. The decree  
bad merely declared the right of the plaintiff to a

as *quo*, and in the absence of a special order the

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(i) DECLARATORY DECREE—*concl.*

terminus was the date of the decree. *VINAYAK AMRIT DESHPANDE v. ABRAJ HAIRATRAV*

I. L. R. 13 Bom. 418

45. ——— Decree directing performance of specific acts—Decree under s. 260, Civil Procedure Code, 1882—*Held*, that a decree under s. 260 of the Civil Procedure Code which directed the judgment-debtor to perform certain

*BUN MORUNT v. PROSOKNO COOMAR ADHIKARI*

I. L. R. 21 Cal. 784

I. R. 21 I. A. 89

## (j) IMMOVEABLE PROPERTY.

46. ——— Execution of decree against

sale of  
by de-  
and good  
money,

which ordered the sale of certain immoveable property in satisfaction of its amount, applied for execution of the decree, praying for the arrest of the judgment-debtor. *W's* brother had previously pur-

circumstances, applying equity, the decree should in the first place be executed against such property, and not against the person of the judgment-debtor. *WALI MUHAMMAD v. TURAB ALI*

I. L. R. 4 All. 497

47. ——— Purchase by decree-holder at sale in execution of his decree—*Suit*

against *R*, on a hypothecation bond, purchased the hypothecated property in execution and assigned

that second appeal was pending, plaintiff had attached other lands belonging to the defendant on

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(j) IMMOVEABLE PROPERTY—*concl.*

account of the mesne profits awarded to him by the

and it was contended for the plaintiff that, though the decree under which the sale in question had taken place had been modified subsequently, yet, inasmuch as the purchase was for an amount less than the three-fourths of the mesne profits, the defendant was bound by the sale. *Held*, that the plaintiff was

sold for a sum equal to, or less than, that eventually found to be due. The object of the rule is to prevent the interests of judgment-debtors from suffering by sales of their property before their liability is finally determined, and to prevent judgment-creditors from profiting at the expense of the debtors by buying up such property in sales pending.

him, where the decree was not altogether reversed, but only modified. *Babu Gourree Boyyanna Pershad v. Jodha Sing*, 19 W. R. 416, referred to. *NATHADU SAHIB v. NALLU MUDALI* (1904)

I. L. R. 27 Mad. 98

## (k) INJUNCTION.

48. ——— Limitation—Limitation Act (XV of 1877), Sch. II, Art. 179—Decree granting an injunction—Civil Procedure Code, s. 260 Article 179 of the second schedule to the Limitation Act, 1877, does not apply to an application asking the Court to enforce a decree granting an injunction to abstain from some particular act. All that the Court has to see is whether the party bound by the

I. L. R. 20 All. 200

## (l) INSTALMENTS.

49. ——— Decree payable by instalments—Waiver of default in payment—Right to execute for whole decree. Where a judgment-debtor, by the terms of a decree, was ordered to pay the amount decreed by instalments, and failed to pay two of such instalments, but subsequently paid them in together with a third—*Held*, that as

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(I) INSTALMENTS—*contd.*

the decree-holder had taken out the amount paid in, he had lost his right to execute the unpaid balance of the decree till a fresh default had been made. *LITEN PERSHAN v. KHOWANEE* . 5 N. W. 18

50. ———— *Ground for making default in payment of instalment under decree—Arrest by another creditor.* It is not a valid reason for the non-payment of an instalment of a judgment-debt when due that the judgment-debtor was prevented from paying it by having been arrested by his judgment-creditors for another debt three days before the date on which the instalment was payable. *KALEE CHURN SINOH v. BOONH RAM* . 5 N. W. 77

51. ———— *Payment by money-order—Decree payable by instalments—Tender—Payment by money-order where creditor had to send to the Post Office for the money—Implied authority to pay in a certain manner.* A judgment-debtor under instalment decree remitted the amount payable on account of one instalment, to one of the decree-holders, by money-order. The decree-holder payee was at the time living in a village where he would have had to go himself or send someone to take the money from the Post Office; but, on the other hand, two previous instalments had been paid in a similar manner without objection on the part of the decree-holder. On this occasion the decree-holder payee temporized, so that the money was not at once returned by the Post Office to the sender, and subsequently applied for execution of the whole decree on the ground that there had been no valid payment of this instalment. *Held*, that the decree-holder, by not refusing the money-order at once, had prevented the payment-debtor from tendering payment to the

acceptance of payments made in the same manner did not amount to an implied authority to the judgment-debtor to pay by money-order. *Polyglass v. Oliver*, 37 R. R. 623, referred to *KISHAN PRASAD v. BENI RAM* (1901) . L L R. 24 All 85

## (m) JOINT PROPERTY.

52. ———— *Decrees in a suit for immoveable property sold in execution for debt of one member of joint family—Declaration of lien in decree.* In a suit by certain members of a joint Hindu family to recover from the

original decree had been made, with interest at 6 per cent. up to date of realization. *Held*, that the

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(m) JOINT PROPERTY—*contd.*

condition in favour of the defendant was not a decree, and could not be treated as such so as to be capable of being put in execution. *RAMANAGRA SINGH v. RAMYAN SINGH* . 5 C. L. R. 176

53. ———— *Decree against joint immoveable property—Sale of undivided share.* Where an execution-debtor is jointly interested with another person in immoveable property which the execution-creditor seeks to sell in execution of his decree, the ordinary procedure for a Court executing the decree to adopt is to put up for sale the right, title, and interest of the judgment-debtor in his undivided share of the property to be sold. *MATHURANAS GOVARDHNDAS v. FATMALKA BEGUM* . 5 Bom. A. C. 63

54. ———— *Decree naming no specific shares.* In execution of a decree which merely declared that the right of a judgment-debtor in certain property extended to two-thirds of it, the lower Court divided the property before selling the debtor's share. *Held*, that, as the decree did not specify that any particular portion of the property belonged to the debtor as his share, his right, title, and interest in the property could only be sold, and that the determination of this right must be left for future adjudication between the purchaser and the co-sharer of the debtor, unless an arrangement could be arrived at. *ATHMARAN KALLANDAS v. FATMA BEGAM* . 5 Bom A. C. 67

55. ———— *Family dwelling-house—Joint property—Act VIII of 1859, s. 224.* A decree-holder purchased, in execution of his decree, the right, title, and interest of the judgment-debtor, a member of a joint Hindu family, in the family dwelling-house and land attached. *Held per NORMAN, TREVOR, LOCH, and BAYLEY, JJ.*, that s. 224 of Act VIII of 1859 did not apply; that s. 224 and s. 225 of Act VIII of 1859 applied to the share

hers of the family. *Per KEMP, J.* An equivalent

*ESHAN CHANDER BANERJEE v. NUNA COOMER BAKERJEE* . 6 W. R. 239

*See RUGHONATH PANJAH v. LUCKHUN CHANDER DULLAL CHOWHERRY* . 18 W. R. 23

56. ———— *Family dwelling-house.* Suit by purchaser of a decree for the debtor's share in a family dwelling-house, with garden and tanks. *Held*, that as the suit was for a share of the house and ground, however worthless the land might appear without the residence, or however inconvenient might be the intrusion of a

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(m) JOINT PROPERTY—*contd.*

stranger, the plaintiff was entitled to an adjudication of his claim to the land. **BUDDEN CHUNDER MADUCK v. CHUNDER COOMAR SHAHA**

5 W. R. 216

57. ——— *Family dwelling-house.* In a suit for possession by the auction-purchaser of a judgment-debtor's share in a family residence, possession was ordered to be given to him so as not to annoy or insult the inmates of the house; and as the plaintiff could not use the family staircase without exposing the ladies of the family to annoyance, and was obliged to build a separate staircase, he was held entitled to compensation to the value of his share in the family staircase. **OODHOY CHUNDER MULLICK v. PITAMBER PLYE**

8 W. R. Mis. 75

58. ——— *Family dwelling-house—Sale in execution of decree—Share in joint family property—Service rents—Right of purchaser.* Where the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service tenure is sold in execution, the purchaser is not bound to pay the interest of the other joint tenants.

Vol. 172, commented on. **RAJANIKANTH BISWAS v. RAM NATH NDOGY** I. L. R. 10 Calc. 244

59. ——— *Decree against an undivided brother—Mortgage of joint property.* A, an undivided member of a Hindu family, mortgaged part of the family property by way of conditional sale to B to secure a loan. B having sued A personally for the amount due, A admitted the mortgage.

execution. *held*, that the decree, not being passed against the joint family or its representative, and not describing the property which it directed to be delivered to the plaintiff by way of absolute sale to be family property, could not be executed against the family property. **CHURUVATTA v. THIRUNA**

I. L. R. 10 Mad. 316

60. ——— *Execution against tarwad property—Decree for maintenance against karnavan.* A member of a Malabar tarwad, having obtained a decree for maintenance against her karnavan, assigned the decree to the plaintiff, who proceeded to execute it against the tarwad property. The then karnavan objected, and his claim was allowed. In a suit by plaintiff to have it declared that he was entitled to execute the decree against tarwad property:—*Held*, that the plaintiff was entitled to execute the decree against the tarwad property. **CHANDU v. RAMAN**

I. L. R. 11 Mad. 876

61. ——— *Money-decree against deceased member—Joint Hindu family—Execution.*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(m) JOINT PROPERTY—*contd.*

after judgment debtor's death against joint family property not allowed. The mere obtaining of a simple money-decree against a member of a joint Hindu family without any steps being taken during his lifetime to obtain attachment under or execution of the decree does not entitle the decree-holder, after the judgment-debtor's death and a

red to. **JAGANNATH PRASAD v. SITA RAM**

I. L. R. 11 All. 303

62. ——— *Money-decree against father—Joint Hindu family—Money-decree against father sought to be executed after his death against joint family property in the hands of the son—Civil Procedure Code, ss. 231 and 241.* A creditor of a

time of the father; the proceeding in execution not being barred by the law of limitation, and the son not being precluded by any estoppel from proving that the property was joint family property at the time of his father's death, and is in his hands ancestral property, and not assets representing what was at the time of his father's death separate property of his father. But in such a case, if the creditor desires to obtain a remedy against the ancestral property or any part of it in the hands of the son, he

R. 185; **Raghubar Dyal v. Hamid Jan**, I. L. 11 12 All. 73; **Sangli Virapandia Chinnathambiar v. Alwar Ayyangar**, I. L. R. 3 Mad. 42; **Karnataka Hanumantha v. Andukuri Hanumayya**, I. L. R. 5 Mad. 232; **Muthia v. Varammal**, I. L. R. 10 Mad. 283; **Ariabudra v. Dorasami**, I. L. R. 11 Mad. 413; **Venkatarama v. Senthivelu**, I. L. R. 13 Mad. 265; **Balbir Singh v. Ajuda Prasad**, I.

EXECUTION OF DECREE—*cont'd.*11. MODE OF EXECUTION—*cont'd.*(m) JOINT PROPERTY—*concl'd.*

*L. R. 9 All. 142.* Jagannath Prasad v. Sita Ram.  
*I. L. R. 11 All. 302.* and *Hari Prasad v. Parbati Koor*, *I. L. R. 20 Cal. 395*, referred to. *LACHMI NARAIN v. KUNJI LAL*. *LACHMI NARAIN v. CHOTE LAL*. . . . *I. L. R. 18 All. 449*

63. ———— Money decree against father—Execution against son after the death of the father—Ancestral property in the hands of the son—Civil Procedure Code, 1852, s. 234. A money-decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property, that has come into their hands even if the debt has been incurred for the sole purposes of the father, provided that it is not tainted with immorality or illegality. If the son against whom the decree is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality, he can do so under s. 244 of the Civil Procedure Code (Act XIV of 1852). *Ariabudra v. Dorasami*, *I. L. R. 11 Mad. 413*, and *Lachmi Narayan v. Kunjalal*, *I. L. R. 16 All. 449*, not followed. *UMED HATHISING v. GOMAN BHAIJI*. . . . *I. L. R. 20 Bom. 385*

64. ———— Hindu law—Joint Hindu family—Money decree against father—Liability of sons who were not parties to decree—Suit for declaration of son's liability. The plaintiff, in a suit upon a bond executed by one Sarju Prasad, obtained a simple money decree against Sarju Prasad. In execution of the decree so obtained, the decree-holder attached certain property as that of his judgment-debtor; but the sons of the judgment-debtor raised objections, and the property was released from attachment. The

was no bar thereto that the plaintiff had omitted to

*Mahum-*  
*R. 22 All.*  
*L. R. 21*  
*amanick v.*  
*Hari Govinda Saha*, *I. L. R. 26 Cal. 677*,  
 followed. *Nuthoo Lall Choudhry v. Shoukee Lall*,  
*10 B. L. R. 200*, referred to. *MATHURA PRASAD*  
*v. RAMCHANDRA RAO* (1902) *I. L. R. 25 All. 57*

## (n) MAINTENANCE.

85. ———— Decree for future maintenance—Arrears of maintenance Arrears of

EXECUTION OF DECREE—*cont'd.*11. MODE OF EXECUTION—*cont'd.*(n) MAINTENANCE—*cont'd.*

66. ———— Future maintenance, right to recover, in execution of decree awarding maintenance. Future maintenance awarded by a decree when falling due can be recovered in execution of that decree without further suit. *ASHTOSH BANNERJEE v. LUKHMONI DEBYA*. . . . *I. L. R. 10 Cal. 130*

67. ———— Decree for monthly maintenance—Civil Procedure Code, 1859, ss. 201, 212.—Act XXIII of 1861, s. 15. A decree for maintenance to be paid at a certain rate per month stands on the same footing as a decree for payment

ss. 201 and 212 of Act VIII of 1859 and a 15 of Act XXIII of 1861. *PEARSENATH BRAHMO v. JUGGESUREE alias RAKHIALEE DONGRE*. . . . *15 W. R. 128*

68. ———— Decree directing payment of a certain sum every month for life—Declaratory decree. Where a decree ordered the defendant to pay to the plaintiff the sum of Rs 15 per mensem by way of maintenance during her lifetime, and directed that such maintenance should be charged on certain zamindari property—*Held*, that the decree-holder could obtain the amount ordered in execution of the decree, which was more than a mere declaration of right, and which, by allowance of a fixed rate per mensem, stood exactly on the footing of a decree ordering payment by instalments. *PEARSENATH BRAHMO v. JUGGESUREE*, *15 W. R. 128*, referred to. *MAKSA DEBI v. JIWAN LAL*. . . . *I. L. R. 9 All. 33*

69. ———— Decree declaring right to maintenance and directing payment of arrears—Order for future payments—Maintenance subsequently falling due and enforced by fresh suit or by execution of decree. Where the Civil Court, upon the suit of a Hindu widow for maintenance, makes a decree containing an order in express terms to the defendant to pay to the plaintiff the amount claimed by her for maintenance during a past period, but as to the future merely declares her right to receive maintenance at an annual rate from the defendant, the proper way of enforcing the right thus declared is not by executing the decree, but by bringing a fresh suit. Decree declaring a right to maintenance and directing payment of arrears should contain an order directing payment of future maintenance. *VISHNU SHANBOG v. MANJANMA*. . . . *I. L. R. 9 Bom. 108*

70. ———— Decree for maintenance of widow—Liability of ancestral estate. Maintenance decreed to a co-parcener's widow by reason of her exclusion from succession in a joint family cannot be regarded as a charge on the family estate, or the decree treated as a decree against the managing

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(n) MAINTENANCE—*contd.*

member of the family for the time being *A*, the widow of an undivided member of a joint Hindu family, obtained a decree for maintenance against *B*, the brother of her deceased husband, not expressed to be a decree against the head or representative of the joint family. *B* died, and *C*, his son, having been brought in as his representative, resisted the execution of the decree by attachment of the family estate. *Held*, that the family estate was not liable. *Per Curiam*.—In a regular suit, *C* might clearly be held liable to pay maintenance to *A*, and a decree might be passed against him; but in execution proceedings the decree must be taken as it stands and executed against the son as his legal representative in the mode prescribed by s 234 of the Code of Civil Procedure, and it is not open to extend the scope of the decree in such proceedings. *Karpakambal v. Subbayan*, *I. L. R. 5 Mad. 234*, approved and followed. *Muttia v. Verandial*.

I. L. R. 10 Mad. 283

71. — Enforcement of decree for maintenance.—*Right of suit*. Where a decree in a suit for maintenance gave the plaintiffs a right to recover maintenance for the year previous to the suit and also declared their right to maintenance in future, but omitted to specify any precise date on which such maintenance should become payable:—*Held*, that such decree was one which could be enforced from time to time by suit. *Vishnu Shambhoj v. Manjamma*, *I. L. R. 9 Bom. 103*, approved. *Ashutosh Bannerjee v. Lakhmoni Debya*, *I. L. R. 19 Calc. 139*, distinguished. *RAM DIAL v. INDAR KOAB*. *I. L. R. 16 All. 179*

72. — Decree for partition awarding allowance until minor member of family come of age.—*Suit by his widow for allowance after his death*. On the 21st February 1904

allowance up to the date of her husband's death. When he died, he was still a minor, and the allowance ceased, and the share went to his heirs by right of inheritance, and was recoverable only by a separate suit, and not in execution. *LAKSHMAN DAREU v. NARAYAN LAKSHMAN*

I. L. R. 24 Bom. 162

73. — Enforcement of money charge created by decree, by application,

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(n) MAINTENANCE—*contd.*

by suit.—*Practice—Transfer of Property Act (IV of 1882), s. 99—Subsequent tender—Costs*. Where a decree creates a charge and contains a direction for its payment and default is made with respect to it, the proper course for its enforcement is not simply to make an application, but either to apply for an order in the nature of a decree for an account and sale or else to institute a suit for the purpose of enforcing the charge. *Abhoyessury Dabee v. Gour Sunler Panday*, *I. L. R. 22 Calc. 859*, and *Matangnee Dasi v. Chooney Monnee Dasi*, *I. L. R. 22 Calc. 903*, referred to. *CHUNDRA MONI DASSEE v. MUTTY LAL MULLICK*. *2 C. W. N. 33*  
See *HEMANGINEE DASSEE v. KUNODE CHANDER DASS*. *I. L. R. 26 Calc. 441*  
*3 C. W. N. 139*

## (o) MARRIED WOMEN.

74. — Liability of married women.—*Arrest—Stridhan*. *R*, as surety for her husband, joined with him in executing a bond for Rs 90. In a suit brought upon the bond, a decree was passed against both. *R* was arrested in execution of the decree, and brought before the Court. She was then asked if she desired to apply to be declared an insolvent under the insolvency sections of the Civil Procedure Code (Act XIV of 1882), but, not doing so, she was committed to jail. Subsequent insolvent then cover being

*Held*, that, although the decree was absolute in its

## (p) MORTGAGE.

75. — Decree on mortgage.—*Collateral security—Money-decree on bond*. The defend-

of attorney to enter up judgment on the bond. Judgment was entered up, and a decree obtained thereon soon after the bond was executed. In accordance with a covenant in the mortgage-deed, the mortgagees entered into possession and receipt of the rents and profits of the estate, which they were authorized to receive for five years from the date of

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

they applied for execution of their decree against the mortgaged property. The property was out of the jurisdiction of the Court. *Held*, that, if the application were granted, the execution of the decree must be limited to property other than that which was the subject of the mortgage. There being evidence to show that the parties had entered into an agreement for a fresh mortgage of the property for twenty-two years, the application for execution was refused. **BRAJANATH KUNDU CHOWDHURY v. GONINDRANT DASI** . . . 4 B. L. R. O. C. 83

76. ——— Decree establishing a mortgage and directing sale—*Attachment*. In order to enforce a decree which establishes a mortgage and directs a sale of the mortgaged premises in satisfaction of the mortgage, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution clauses in the Codes of Civil Procedure. **DATACHAND v. HEMCHAND DHARAMCHAND** . . . I. L. R. 4 Bom. 516

77. ——— Decree for enforcement of mortgage—*Execution limited to mortgaged property—Equity*. K brought to sale in execution of a simple decree for money which he held against . . .

against other property belonging to P. *Held*, that, if K purchased the property knowing that it was mortgaged, or if in consequence of the mortgage he purchased it for a less sum than it would otherwise have fetched, it would be inequitable to allow him to obtain satisfaction of the decree out of the other property of P. **GULAB SINGH v. PEXIAN** . . . I. L. R. 5 All. 342

78. ——— Decree for sale of mortgaged property—*Application for execution before time allowed for payment—Act IV of 1882, ss. 36, 85*. An application for execution of a decree for sale of mortgaged property passed under s. 88 of Act IV of 1882 (Transfer of Property Act), and . . .

79. ——— *Beng. Act VII of 1868—Surplus sale-proceeds—Attachment of*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

*surplus sale-proceeds* The purchaser of property sold subject to the incumbrances thereon at a sale . . .

## MANOALA DEBI

I. L. R. 8 Calc. 711; 8 C. L. R. 189.

80. ——— Decree against mortgaged property—*Liability of judgment-debtor to arrest under such decree—Decree not to be extended in execution beyond its terms*. A decree cannot be extended in execution beyond the real meaning of its terms. A decree obtained on a mortgage directed that the judgment-debtor should pay the sum adjudged out of the property mortgaged. After executing the decree against the mortgaged property, the decree-holder made an application for . . .

process fee. Subsequently a fresh application was made for execution against the person of the judgment-debtor. *Held*, that, as the decree merely . . .

81. ——— Decree for enforcement of hypothecation—*Decree limiting judgment-debtor's liability to the hypothecated property*. A decree upon a hypothecation bond which only provides for its enforcement against the hypothecated property, cannot be executed against the person or other property of the judgment-debtor, though an order for costs contained therein may be so executed. **PRAN KUMAR v. DURGA PRASAD** . . . I. L. R. 10 All. 127

82. ——— Mortgage by one owner of undivided share of estate—*Rights of mortgagee on partition where the undivided share is allotted to a sharer other than the mortgagor—Execution not against mortgaged property, but against property allotted to mortgagor*. Where A mort- . . .



**EXECUTION OF DECREE—contd.****II. MODE OF EXECUTION—contd.****(p) MORTGAGE—contd.**

mortgaged property was allotted to B, other property in substitution being allotted to A:—*Held*, in a suit against B and the representatives of A to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not

GHOSE V. THAKO MONT DEBI

I. L. R. 20 Cal. 533

83. ———— *Mortgage by owner of undivided share of estate—Rights of mortgagee on partition where share is allotted to a sharer other than the mortgagor* Land having been granted to several persons jointly, disputes arose among them with reference to its allotment. The disputes having been settled by arbitration, one of the grantees sold his share to the plaintiff. Before the arbitration, another of the grantees mortgaged seven acres of the land to A, who did not become a party to the arbitration. A subsequently obtained a decree on his mortgage, and proceeded to execute it by attachment. The plaintiff intervened in execution, but in 1884 the Court passed an order stating that the plaintiff's land was not attached, and in fact his possession then remained undisturbed. A subsequently executed his decree, and purchased the land brought to sale by the Court. The plaintiff's possession was disturbed under colour of his purchase, and he now sued in 1889 to recover the land sold to him. *Held*, that A could not execute his decree against the share sold to the plaintiff, but was limited in execution to the share allotted to his mortgagor; the plaintiff's vendor had therefore, after the arbitration, a good title against both A and his mortgagor, and the plaintiff was entitled to recover. *Hem Chunder Ghose v. Thako Mont Debi*, I L R. 20 Cal. 533. and *Bynath Lall v. Ramoodeen Chowdhry*, L R. I L. A 106; 21 W. R. 233, referred to. *PULLANKA v. PRADOSHAN* . . . I. L. R. 18 Mad. 316

84. ———— *Transfer of Property Act (IV of 1882), s. 43—Right to execute decree against subsequently acquired interest of mortgagor—Decree against mortgagor's unascertained share—Subsequent inheritance by the mortgagors of the share of a co-owner* A Mahomedan woman, together with her eldest son, executed a mortgage comprising the whole of an estate in which her younger children were also entitled to certain shares. The mortgagee brought his suit on the mortgage, naming as defendants the mortgagor and

**EXECUTION OF DECREE—contd.****II. MODE OF EXECUTION—contd.****(p) MORTGAGE—contd.**

shares of the co-mortgagors were increased by inheritance from one of the other defendants who died before the decree was executed. *Held*, that the increased shares of the mortgagors were liable to be sold in execution of the decree. *AJJUDDIN SAHIB v. BUDAN SAHIB* . . . I. L. R. 18 Mad. 492

85. ———— *Transfer of Property Act (IV of 1882), ss. 87, 88, 89, and 93—Mortgage—Default in payment on the date fixed in the decree—Power to enlarge the time* In a suit brought by a mortgagee for sale of the mortgaged property, a decree was passed on 27th July 1898

applied for an order absolute for sale. On the 11th October 1898, the mortgagor applied for permission to pay into Court the amount of the decree. *Held*, that the application could not be granted. The case fell within ss. 88 and 89, and not within s. 87 or 93, of the Transfer of Property Act. The money not being paid within the appointed time, the

gushed *TANIRAN v. GAJANAN*

I. L. R. 24 Bom. 300

86. ———— *Money-decree—Transfer of Property Act (IV of 1882), ss. 83, 89, 90* A decree in favour of a mortgagee for sale of the mortgaged property cannot be treated as one for money. According to the Transfer of Property Act, ss. 83, 89, and 90, the mortgagee must first sell the mortgaged property, and if the net proceeds of such sale be insufficient to pay the

GOPAL DAS v. ALI MUHAMMAD

I. L. R. 10 All. 632

87. ———— *Transfer of Property Act (IV of 1882), ss. 88, 90—Decree unsatisfied by sale of mortgaged property—Right to decree for sale of other than mortgaged property* The holder of a decree on mortgage obtained an order under s. 88 of the Transfer of Property Act for sale of the mortgaged property, and the proceeds of this, when sold, being insufficient to satisfy the decree, he applied for a decree under s. 90 for the sale of other properties belonging to the mortgagor. The Subordinate Judge refused

no personal decree was passed. Subsequently the

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

sale of the mortgaged properties under a decree given under s. 88. The decree-holder can then apply to the Court, and if he can show that, after the sale of the mortgaged properties, there is still a balance due to him under the decree obtained under s. 88, and that amount is legally recoverable from the judgment-debtor, he can ask for and obtain a decree under s. 90 for realization of the balance from other properties of the debtor. *SONATUN SHAW v. ALI NEWAZ KHAN* I. L. R. 16 Cal. 423

88. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89, 90—Decree not satisfied by sale—Recovery of balance due on mort-*

to obtain such decree. *RAJ SINGH v. PARMANAND* I. L. R. 11 All. 468

89. ———— *Conditional decree for sale not made absolute.* A conditional decree for the sale of mortgaged property under s. 88 of the Transfer of Property Act cannot be executed unless and until it is made absolute by an order passed under s. 89. *RAM LAL v. NARAIN* I. L. R. 12 All. 539

90. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89, 90—Decree not satisfied by sale—Recovery of balance due on mort-*

person applying for a further decree under s. 90. S. 90 does not apply where the mortgaged property has been sold under a decree held by some other person. *Muhammad Albar v. Munshi Ram*, All Weekly Notes (1899) 208, followed. *BADUR DAS v. INAYAT KHAN* I. L. R. 22 All. 404

91. ———— *Transfer of Property Act (IV of 1882), s. 90—Nature of decree contemplated by that section.* The plaintiff ob-

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

against that decree on the ground, amongst others, that, looking to the terms of the original decree, the amount due was not to be recovered from the mortgaged property.

present instance the application for such a decree may have been superfluous, it may nevertheless be regarded as an application for execution of a decree by enforcement of a portion of it against property other than the mortgaged property. *Miller v. Dugambars Debysa*, All. Weekly Notes (1890) 142, distinguished. *Hafiz-ud din Ahmad v. Damodar Das*, All. Weekly Notes (1899) 149, and *Raj Singh v. Parmanand*, I. L. R. 11 All. 456, referred to. *DURGA DAS v. BHAGWAT PRASAD* I. L. R. 13 All. 356

92. ———— *Transfer of Property Act (IV of 1882), s. 90—Decree against the person and either property of the judgment-debtor as well as against the property mortgaged.* In a suit for enforcement of a mortgage-security the plaintiff prayed for a decree both as against the mortgaged property and also, in the event of the mortgaged property not realizing sufficient to satisfy his claim, as against the other property and the person of the debtor.

property not realize sufficient to satisfy the amount due on the mortgage.

*Agarwal v. Aggarwal*, All. Weekly Notes (1890) 142, referred to. *BATAK NATH v. PITAMBAR DAS* I. L. R. 13 All. 360

93. ———— *Rights of mortgagee in respect of non-hypothecated property of the mortgagor—Res Judicata—Transfer of Property Act (IV of 1882), ss. 68, 88, 89, and 90—Civil Procedure Code, Sch. IV, Forms Nos. 109 and 128.* Where there is nothing to show a contrary intention of the parties, every mortgage carries with it a personal liability to pay the money advanced. But a mortgagee is not bound to sue the mortgagor for the money advanced.

*Agarwal v. Aggarwal*, All. Weekly Notes (1899) 149, approved. *Balak Nath v. Pitambar Das*, I. L. R. 13 All. 360, distinguished. *Sulton v.*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

*Sutton, L. R. 22 Ch. D. 515; Raj Singh v. Parmanand, I. L. R. 11 All. 438; Miller v. Digambari Debye, All. Weekly Notes (1890) 142; and Durga Dai v. Bhagwat Prasad, I. L. R. 13 All. 356, referred to. Observations on the meaning and application of ss. 88, 89, and 90 of the Transfer of Property Act. Explanation of the term "legally recoverable" in s. 90. Sonatun Shah v. Ali Nawaz Khan, I. L. R. 16 Cal. 423, discussed.*

MUSABEH ZAMAN KHAN v. INAYAT-UL-LAH  
I. L. R. 14 All. 513

94. ———— *Transfer of Property Act, s. 90—Meaning of the term "legally recoverable."* A decree-holder having obtained separate decrees against his judgment-debtor on two unregistered bonds, each for a sum of less than Rs. 100, hypothecating one and the same property, took out execution on one bond and brought to sale the mortgaged property which was purchased by a

due, applied for a decree under s. 90 of the Transfer of Property Act. *Held*, that under the above circumstances, there was a balance legally recoverable otherwise than out of the property sold, and that the decree-holder was therefore entitled to a decree under s. 90. *Musabeh Zaman Khan v. Inayat-ul-lah, I. L. R. 14 All. 513, referred to.*

BAOESHEE DIAL v. MUHAMMAD NAQI  
I. L. R. 15 All. 331

95. ———— *Transfer of Property Act (IV of 1882), s. 90—Application for decree over against non-hypothecated property—Balance legally recoverable—Limitation.* On an application under s. 90 of the Transfer of Property Act, 1882, the time to be looked at in considering

referred to. *HANID-UD-DIN v. KEDAR NATH*  
I. L. R. 20 All. 388

96. ———— *Court executing decree not competent to go behind its terms—Transfer of Property Act (IV of 1882), ss. 88, 90.* Where a decree on a hypothecation-bond, besides decreeing sale of the hypothecated property, purported also to grant relief against the person and non-hypothecated property of the judgment-debtor, and such decree remaining unchallenged became final

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

*h/b Zaman Khan v. Inayat-ul-lah, I. L. R. 14 All. 513, distinguished. LALJI LAL v. BARBER*  
I. L. R. 15 All. 334

97. ———— *Transfer of Property Act, ss. 88, 90—Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.* Where a decree-holder has obtained a decree under s. 88 of the Transfer of Property Act and on sale of the mortgage property the proceeds of sale are insufficient to satisfy the decree, he must, before applying for a decree for the balance, obtain a decree for the balance of the decree.

98. ———— *Land Acquisition Act (X of 1870), s. 9—Acquisition by Government of land subject to a mortgage—Neglect of mortgagees to claim compensation—Assessment of compensation in favour of mortgagor—Subsequent remedy of mortgagees—Transfer of Property Act (IV of 1882), ss. 88 and 90.* B & M and others, mortgagees, obtained a decree under s. 88 of the Transfer of Property Act, 1882, for the sale of the mortgaged property. Before execution of that decree, the mortgaged property was taken up

tion money about to be paid to the mortgagor. On these facts, it was *held*, that the mortgagees were not entitled to attach such money in execution of their decree under the Transfer of Property Act, 1882. Their remedy was to proceed against the mortgaged property not taken up, and if the proceeds of sale

MUSABEH ZAMAN KHAN v. INAYAT-UL-LAH  
I. L. R. 14 All. 513

99. ———— *Transfer of Property Act (IV of 1882), ss. 88 and 89—Suit for sale on a mortgage—Future interest.* A decree for sale under s. 88 of the Transfer of Property Act, 1882, in a suit for sale on a mortgage declared a certain sum including principle and interest up to date of decree, to be payable to the plaintiff within a stated time, and also provided that the decree should

include future interest from the date of the decree under s. 88 to the date of sale, and that it was not

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

necessary that specific mention of future interest should be contained in the order under s. 89 of the Act. *Raj Kumar v. Bisheshwar Nath*

I. L. R. 10 All. 270

See also *Bhawani Prasad v. Brij Lal*

I. L. R. 10 All. 260

100. ———— Transfer of Property Act (IV of 1882), s. 88 and 89. A decree on a simple mortgage directing the sale of the

and cannot be executed unless it is made absolute by an order under s. 89 of that Act. *Ram Lal v. Norain*, I. L. R. 12 All. 539, followed. *Siva Pershad Mouty v. Nundo Lal Kar Mahapatra*, I. L. R. 18 Calc. 133, distinguished. *Poresh Nath Majumdar v. Ram Jodu Majumdar*, I. L. R. 16 Calc. 246, referred to. *Tana Prosad Roy v. Bhurodeb Roy*, I. L. R. 22 Calc. 931

101. ———— Transfer of Property Act (IV of 1882), s. 90—Personal covenant in mortgage to pay—Application to sell non-hypothecated property—"Balance legally recover-

case of this hypothecated property being insufficient for the satisfaction of the entire amount of the bond, the creditors would be at liberty to realize the amount remaining due from the obligors personally and from their other property." *Held*, that no separate cause of action for the personal remedy accrued after the mortgaged property was found on sale to be insufficient to satisfy the debt, I was or nant t

of the mortgaged property having been brought more than ten years after the date of the mortgage, the balance due upon the mortgage was not legally recoverable otherwise than out of the property sold, and an application for a decree under s. 90 of the Transfer of Property Act was not maintainable. *Musahab Zamon Khan v. Inayat-ul-lah*, I. L. R. 11 All. 512. I. L. R. 11 All. 512.

102. ———— Mortgage-decree—Transfer of Property Act (IV of 1882), Decree regarded as mortgage decree under. In a suit for

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

the rate of 6 per cent. per annum up to the date of realization, and that the mortgaged properties be made liable (*pro band lra jae*) for realization of the decretal money." *Held*, that the decree was to be regarded as a mortgage decree. *Held*, that the decree was to be regarded as a mortgage decree.

*Dass v. Thakomoni Dass*, I. L. R. 24 Calc. 473, and *Fazil Hossain v. Krishna Bandhoo Roy*, I. L. R. 25 Calc. 580, referred to. *Chundra Nath Doy v. Burroda Soondury Ghose*, I. L. R. 22 Calc. 813, distinguished. *LAL BEHARY SINGH v. HANIBER RAHMAN*, I. L. R. 26 Calc. 168

3 C. W. N. 8

103. ———— *Puise mortgagor*—Execution against properties outside the local jurisdiction of the High Court—Leave to sue—Letters Patent, High Court, 1865, cl. 12—Application of restrictive words of that clause. Properties within Calcutta were mortgaged to the plaintiff, and these properties, together with other properties out of Calcutta, were mortgaged to a second mortgagor. In a suit against the mortgagor and the second mortgagor: *Held*, that, after the usual mortgage

restrictive words of cl. 12 of the Letters Patent, 1865, applied to the case of the first mortgagor.

I. L. R. 24 Calc. 180

1 C. W. N. 156

104. ———— Execution of order in the possession-judgment-cre- of a Receiver mortgage-decree,

I. L. R. 26 Calc. 127

105. ———— Sale of mortgaged property—Order absolute for sale—Transfer of Property Act (IV of 1882), s. 89. An order absolute for sale under the provisions of the Transfer of Property Act is not indispensably necessary as a condition precedent for the sale of a mortgaged

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

property in execution of a mortgage decree; it is sufficient that there is an order for sale passed on the application of the decree-holder. *Siva Pershad Maity v. Nundo Lal Kar Mahapatra*, I. L. R. 13 Cal. 139, and *Tara Prasad Roy v. Bhobodeb Roy*, I. L. R. 22 Cal. 931, referred to *PHUL CHAND RAM v. NURSINGH PERSHAD MISSEH* (1899) . . . I. L. R. 28 Cal. 73

108. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89—Decree for sale after redemption of prior mortgages—Payment of money due on the prior mortgages after the time limited by the decree—Effect of such payment.* In a suit for sale on a mortgage in which there were prior mortgages to be redeemed, the plaintiff obtained a decree for sale conditioned on his redeeming the prior mortgages within two months. He did not do

*V. L. R. 24 All. 479*  
*DEBI PRASAD v. JAI KARAN SINGH* (1902)

I. L. R. 24 All. 479

107. ———— *Transfer of*

obtained a decree for the sale of part only of the mortgaged property. Such portion having been

mortgage-debt, there was, under the circumstances, no objection to the mortgagee obtaining a decree over, under s. 80. *Semle*: That there is nothing to prevent a mortgagee relinquishing his claim

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the unhyothecated property of the mortgagor. *SHEO PRASAD v. BEHARI LAL* (1902)

I. L. R. 25 All. 79

108. ———— *Transfer of Property Act (IV of 1882), s. 89—Order absolute for*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

sale of a portion of the mortgaged property only—Proceeds of sale of such portion insufficient to satisfy decree—Application for further order absolute for sale of other property. If an order absolute for

nothing in law to prevent the decree-holder from obtaining a further order to sell another portion of

109. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89—Order absolute for sale of part of property mortgaged—Appeal from decree—Application for further order for sale of entire property for an amount including interest accrued pending the appeal.* Certain mortgagees, in whose

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I. L. R. 20 All. 202

be a bar or defence to a suit for redemption the parties were otherwise entitled to redeem. Nor did the renewal of the leases or the making of a

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

new settlement in the names of nominees of the mortgagees after the real title to the lands. There had been no possession adverse to the plaintiffs, and the suit was, therefore, not barred by limitation. It appeared that there had been errors and defects in procedure both previous to the decrees of 1880-81 and in the execution proceedings and some of the

property of persons who were not parties to the proceedings or properly represented on the record. As against such persons the decrees or sales under them were void without any proceedings to set them aside. *Kishen Chunder Ghose v. Ashoorun, 1 Marsh. 647*, followed. The question whether an estate is or is not properly represented in a suit is not a mere question of form, but one of substance. One of the decrees, in execution of which the sales took place, was made on an award after reference of the suit to arbitration and the other was a decree on a compromise of the suit :—*Held*, that there had been no erroneous decision, ruling, or

I. L. H. 32 Calc. 286

III. ———— *Decree on mortgage against minors—Sale in execution—Reversal of decree in appeal—Attachment in execution of a money-decree—Title of the purchaser in execution of the decree on the mortgage—Lis pendens—Stay of execution.* A certain house belonged to a joint family consisting of two brothers Nathubhai and Dayabhai and their cousin Bhagubhai. A mortgage of the house was said to have been effected by Bhagubhai during the minority of his two cousins. The mortgagee got a decree for the recovery of the mortgage-debt from the mortgaged property. An appeal was presented on behalf of the minors on the ground that they were not bound by the decree and pending the appeal the mortgaged property was sold in execution of the decree and purchased by the defendant's father. Then the appeal came on and the decree was varied as to the minors by dismissing the suit against them and their property. Subsequently the plaintiff obtained a money-decree against Nathubhai and attached in execution thereof what he claimed to be his judgment-debtor's 1/4th share in the house. The

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

attachment was, however, raised at the time of the

thereupon brought the present suit for a declaration,

under the circumstances. *Zain-ul-Abidin Khan v. Muhammad Asghar Ali Khan, I. L. R. 10 All. 166*, *Tommy v. White, 3 H. L. C. 49*, referred to. The doctrine of *lis pendens* does not defeat a purchaser under a decree or order for sale, when the *lis pendens* is the very suit in which that decree or order is passed. The doctrine is not

that, by stay or otherwise, no detriment shall be suffered by the appellant in case the appeal succeeds. *SHIVLAL BHAGVAN v. SHAMBHUTRASAD (1905)*

I. L. R. 29 Bom. 435

## (q) PARTITION.

112. ———— *Decree for partition of property partly ascertained and partly unascertained—Part-execution.* In the course of a suit for declaration of right to property and for partition, a compromise was entered into, by which it was agreed that certain property already ascertained

could only be executed as to the property which had been ascertained as divisible, and that, as to the other property, the decree must be taken as declaratory only. *RAM LAXMI RAM v. CHOORAM, CHOORAM v. RAM LAXMI RAM, 4 C. L. R. 87*

113. ———— *Decree for share of undivided plot of land and removal of trees thereon—Separation of share—Civil Procedure Code, s. 265—Act XIX of 1873, ss. 107-110—Par-*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

property in execution of a mortgage decree; it is sufficient that there is an order for sale passed on the application of the decree-holder. *Siva Pershad Maity v. Nundo Lal Kar Mahapatra, I. L. R. 18 Cal. 139*, and *Tara Prasad Roy v. Bhobodeb Roy, I. L. R. 22 Cal. 931*, referred to *PHUL CHAND RAM v. NURSINGH PERSHAD MISSEER (1899)*. *I. L. R. 28 Cal. 73*

108. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89—Decree for sale after redemption of prior mortgage—Payment of money due on the prior mortgages after the time limited by the decree—Effect of such payment.* In a

*I. L. R. 20 All. 446, Raham Illahi Khan v. Ghasita, I. L. R. 20 All. 375; and Sita Ram v. Madho Lal, I. L. R. 24 All. 44*, referred to. *Ram Lal v. Tulsa Kuar, I. L. R. 19 All. 180*, distinguished. *DEBI PRASAD v. JAI KARAN SINGH (1902)*. *I. L. R. 24 All. 479*

107. ———— *Transfer of Property Act (IV of 1882), ss. 89, 90—Decree for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage debt—Applica-  
tion of the mortgage hold-  
ing immovable  
for and  
only of the  
mortgaged property. Such portion having been  
sold, and the nett proceeds of the sale having proved  
insufficient to satisfy the mortgage-debt, the decree-  
holder applied for a decree over, under s. 90 of  
the Transfer of Property Act, against the unhy-  
pothecated property of the mortgagor. Held, that, the*

the unhypothecated property of the mort-  
gagor *SUREO PRASAD v. BENARI LAL (1902)*

108. ———— *Transfer of Property Act (IV of 1882), s. 89—Order absolute for*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

*sale of a portion of the mortgaged property only—Pro-  
ceeds of sale of such portion insufficient to satisfy  
decree—Application for further order absolute for  
sale of other property. If an order absolute for  
the sale of a portion only of the mortgaged property  
has been obtained by the mortgagee decree-holder,  
and the proceeds of the sale of that portion prove  
insufficient to satisfy the decretal debt, there is  
nothing in law to prevent the decree-holder from  
obtaining a further order to sell another portion of  
the mortgaged property, provided that his applica-  
tion is within limitation. BALKISHANJI MATHURAS v.  
MIRRU LAL (1902). I. L. R. 25 All. 212*

109. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89—Order absolute for sale of part of property mortgaged—Appeal from decree—Application for further order for sale of entire property for an amount including interest accrued pending the appeal. Certain mortgagees, in whose favour a decree for sale of the mortgaged property has been passed, obtained an order absolute for sale of a portion of the mortgaged property. The judgment-debtors appealed from the decree for sale, and pending the appeal the amount realizable by sale of the mortgaged property was increased by the accretion of interest. The judgment-debtors' appeal was dismissed. Held, that under these circumstances,*

*I. L. R. 25 All. 264*

110. ———— *Sale not set aside within one year—Civil Procedure Code (Act XIV of 1882), s. 311—Limitation Act (XV of 1877), Sec. II, Arts. 12, 111, 143—Title of purchaser as against mortgagor—Adverse possession—Redemption—Right of judgment creditor, purchase by. The lands in*

acquiescence of the mortgagors not amounting to a release of the equity of redemption would be a bar or defence to a suit for redemption, if the parties were otherwise entitled to redeem. Nor did the renewal of the leases or the making of a

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

new settlement in the names of nominees of the mortgagees after the real title to the lands. There had been no possession adverse to the plaintiffs, and the suit was, therefore, not barred by limitation. It appeared that there had been errors and defects in procedure both previous to the decrees of 1880-81

them aside. *Kishen Chunder Ghose v. Ashoorun, I Marsh. 647*, followed. The question whether an estate is or is not properly represented in a suit is not a mere question of form, but one of substance. One of the decrees, in execution of which the sales took place, was made on an award after reference of the suit to arbitration and the other was a decree on a compromise of the suit:—*Held*, that there had been no erroneous decision, ruling, or exercise of the discretion of the Court in a matter in which it had jurisdiction. *Malkarjun v. Narhari, I. L. R. 25 Dom. 337: L. R. 27 I. A. 216*, distinguished. The lower Appellate Court having given a decree for redemption of the whole of the property:—*Held*, that under the above circumstances and the fact that the suit, which was compromised, was one for a debt not secured by a mortgage, redemption should be allowed only of the shares of those parties who had not been properly represented in the suits. *KHARAJMAL v. DAIK (1905)*

I. L. B. 32 Cal. 296

111. ———— Decree on mortgage against minors—Sale in execution—Reversal of decree in appeal—Attachment in execution of a money-decree—Title of the purchaser in execution of the decree on the mortgage—*Is pendens*—Stay of execution

was presented on behalf of the minors on the ground that they were not bound by the decree and pending the appeal the mortgaged property was sold in execution of the decree and purchased by the defendant's father. Then the appeal came on and the decree was varied as to the minors by dismissing the suit against them and their property. Subsequently the plaintiff obtained a money-decree against Nathubhai and attached in execution thereof what he claimed to be his judgment-debtor's 1/4th share in the house. The

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(p) MORTGAGE—*contd.*

attachment was, however, raised at the instance of the defendant, who relied on their father's Court-purchase and contended that the judgment-debtor Nathubhai had no claim to the house. The plaintiff thereupon brought the present suit for a declaration, affirming his right to attach. *Held*, confirming the decree, which dismissed the suit, that the title of the defendant's father as purchaser at the Court-sale must prevail. Though the decree on the mortgage was varied in appeal by dismissing the suit as against the minors and their property, still as the defendant's father was a purchaser in execution of the decree

to. The doctrine of *is pendens* does not defeat a purchaser under a decree or order for sale, when the *is pendens* is the very suit in which that decree was pronounced. The doctrine rests on the

an appeal is presented from a decree directing the sale of property in dispute in a suit, then the only course is to take such steps as will secure

## (g) PARTITION.

112. ———— Decree for partition of

was agreed that certain property already ascertained should be divided in certain proportions, and that certain other property not yet ascertained should, on being ascertained, be partitioned on the same basis. The Court merely recorded the compromise and declared that the decree should be according to terms therein set out. *Held*, that this decree could only be executed as to the property which had been ascertained as divisible, and that, as to the other property, the decree must be taken as declaratory only. *RAM LAPIT RAM v. CHOORAM, CHOORAM v. RAM LAPIT RAM. 4 C. L. R. 97*

113. ———— Decree for share of undivided plot of land and removal of trees thereon—Separation of share—Civil Procedure Code, s. 265—Act XIX of 1873, ss. 107-110—Partition of mahal. A obtained against R a decree for possession of "a one-fourth share of the two fallow lands, Nos. 490 and 541, measuring 7 bighas and



EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(g) PARTITION—*contd.*

2 bighas 16 biswas respectively, after removal of the trees planted thereon." The Court in executing the decree, placed the decree-holder in joint possession of the two plots to the extent of the one-fourth share decreed to him, but declined to remove the trees until the said share had been specifically ascertained and partitioned by the Collector in reference to s. 265 of the Civil Procedure Code. *Held*, that the decree could not be understood to entitle the plaintiff to remove the trees from a larger area than that to which he was entitled under that decree; and that, so long as that area remained joint and unascertained, the plaintiff could not execute the decree in the manner sought. *Held*, also, that the decree in the present case could not be called a "decree for the partition or for the separate possession of a share of an undivided estate paying revenue to Government" within the meaning of s. 265 of the Civil Procedure Code, so as to require the intervention of the Collector for the purpose of executing the decree; and that the Court of first ins-

114. — Powers of Court executing a decree for partition—*Civil Procedure Code, 1859, s. 396—Party wall. Held*, that a Court has no power, under s. 396 of the Code of Civil Procedure to order its Amm to cause a wall to be built separating portions of property of which partition has been decreed. *SOHAN LAL v. HARDEO SARKI*  
I. L. R. 19 All. 194

115. — Partition suit—*Decree—Application for execution by defendant—*

term as to Court-fees. The defendant having appealed against the said order: *Held*, reversing the order, that the executing Court having regard to the terms of the decree was not justified in requiring payment of an additional Court-fee on the plaint. *MIR SADRUDIN v. NURUDIN* (1905)  
I. L. R. 29 Bom. 79

## (r) PARTNERS.

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(r) PARTNERS—*contd.*

and the other partners of the firm. *KESHAV GOPAL GINDE v. RAYAPA* . . . 12 Bom. 165

## (s) POSSESSION.

117. — Order for delivery of possession—*Civil Procedure Code, 1859, s. 223. Semble*: A decree which is not a decree for possession cannot, under s. 223, be executed by an order for delivery of possession of property in the possession of a third party who has acquired a title subsequently to the institution of the suit. *AMEERONISSA KHATOON v. ABEDONISSA KHATOON*  
18 W. R. 307

118. — Decree for khas possession—*Civil Procedure Code, 1859, s. 223—Removal of building. If in executing a decree for khas possession it is necessary to remove any of the defendants from the land covered by the decree, the Court, on application, is authorized under Act VIII of 1859, s. 223, to remove such person; but if the decree is silent as to a building situated on the land, it is not within the province of the Court which executes to direct that the building be pulled down. *RADHA GOBIND SHAW v. BRIJENDRO COOMAR ROY CHOWDHRY* . . . 18 W. R. 527*

119. — Decree for possession of house—*Civil Procedure Code, 1859, s. 223—Possession of house locked up by judgment-debtor. In a case in which the officers of a Munsif's Court were unable to give a decree-holder possession of a house, because the judgment-debtor had bolted and locked the doors, and the Munsif struck the case off the file, the High Court held that the Munsif was bound, under the Code of Civil Procedure, s. 223, to remove the locks and to place the decree-holder in possession of the house. *GURKESH CHANDER SHAH v. RAM DHUNEEDOSSEE*  
22 W. R. 283*

120. — Decrees generally—*Civil Procedure Code, 1859, s. 223. Act VIII of 1859, s. 223, refers to decrees generally whenever they may be passed, and provides that, being so passed, they are to be effectual from the time the suit was instituted, so far as parties claiming under a title made by the judgment-debtor are concerned, even when such title was created before an appeal was*

missed and no petition of appeal is filed, the suit has no legal existence, and there is no suit pending. *CHANDR CHOMAR LAHOOREE v. GOFEE KRISTO GOSWAMIE* . . . 20 W. R. 204

121. — Decree partly in occupation of defendants' rayats—*Civil Proce-*

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(a) POSSESSION—*contd.*

*Civil Procedure Code, 1859, ss. 223, 224.* Where a decree is partly for a share of land in the occupancy or khas possession of the defendants and partly for a share of

SKINNER & Co. . . . . 7 W. R. 376

Reversing on review, *ac.* . . . 3 W. R. 144

122. ——— Decree for *ijmal* property—*Civil Procedure Code, 1859, ss. 223, 224.* Where in a suit against certain outpotters and potndars to recover possession of a share of an *ijmal* family talukh plaintiff obtained a decree, it was held that the Court executing was bound, under s. 223, Act VIII of 1859, to put her in possession of the immovable property adjudged, and, if necessary, to remove any person who might refuse to vacate; and that her having already been put in possession under the provisions of a 224 was no bar to her being put into the more direct and actual possession contemplated by s. 223. *ADOREMONNE DASSEE v. PREMCHUND MUSSANT* 9 W. R. 454

123. ——— Delivery of shares and interest in property—*Civil Procedure Code,*

of the shares and interest of R and G, but that the Court in execution was not authorized to make any enquiry into the extent or amount of these shares in relation to the other defendants. *ANNODA PERSHAD MOOKENJEE v. TROYLUCKHNATH PAUL CHOWDHRY* . . . . . 13 W. R. 123

124. ——— *Civil Procedure*

*Code, 1859, s. 224.* Application for execution of

125. ——— Khas possession—*Civil Procedure Code, 1859, ss. 223, 224.* Where a decree-holder, who had received possession under a

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(a) POSSESSION—*contd.*

224, Code of Civil Procedure, and gave the usual acknowledgment, was refused khas possession of part of the land which defendants claimed to hold as *ruyats*, it was held that his proper course was an application under s. 223, although the case had been struck off the execution file, and that defendant's allegation of purchase (their sole plea at the trial) having failed, they could not afterwards set up a *miyati* title. *BANEE MHTOON v. GOPPEE BHUGOOT* 12 W. R. 285

126. ——— *Civil Procedure Code, ss. 263, 264.* Applying the principle laid down in *Adoremone Dossee v. Prem Chand Mussant*, 9 W. R. 454, and *Banee Mhtoon v. Gopee Bhuggut*, 12 W. R. 285, it was held that a Munsif had jurisdiction to issue an order for khas possession under s. 263, Act VIII of 1859, although in the first instance he had ordered possession to be given under a 264. *HOR KISHORE ARDHKARY v. SUDOR CHANDER NUNDEE* . . . . . 17 W. R. 80

127. ——— Reversal of decree—*Reversal of decree giving mortgagors possession—Execution of decree made on reversal.* Where a decree under which mortgagors obtained possession of mortgaged property is reversed, the mortgagees are entitled to be replaced in possession and to get complete restitution, and to be placed in the same position as they were in before the erroneous decree was made, even if the decree reversing the erroneous decree does not provide that the mortgagees should recover possession. *KOONDUR LALL v. RAM RUCHA SINGH* . . . . . 14 W. R. 465

128. ——— Decree for possession of lands of which plaintiff is partly in possession. In a suit for possession of certain plots of land, where plaintiff appeared to be in exclusive possession of other lands devolving by the same title, the Munsif compelled the plaintiff to alter her

possession which were alleged to exceed the one-third decree. *Held*, that the decree-holder was entitled to execute her decree in respect of the lands in the hands of the defendant. *RADHA KRISTO PANJAH v. BAHASOONDUR DOSSEE* 13 W. R. 9

129. ——— Decree for specified property. Where it was ordered in execution that a decree-holder should get possession of a specified plot out of three into which certain property had been divided for purposes of valuation, and if that did not satisfy the decree, other property should be added from the other plots:—*Held*, that, so long as any portion of the specified plot remained, the decree-holder could not touch the remaining plots. *JOGENDRO NATH MULLICK v. BIJOY KESRUB BOY* 18 W. R. 161

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(g) POSSESSION—*contd.*

130. — Decree in partition suit—*Civil Procedure Code, 1882, s. 263—Delivery of possession to decree-holder in execution—Dispossession of third party—Partition, suit for.* The delivery of possession under s. 263 of the Civil Procedure Code contemplates the decree-holder being placed in actual possession by possibly dispossessing in the eye of law a third person who is not affected by the decree. The mere formal delivery of possession cannot of itself effect such dispossession unless the deprivation of possession be complete as a fact, a conclusion which the Court has to form on the whole of the evidence. It does not make any difference if such a decree is in a partition suit. *RAMCHANDRA SUBRAO v. RATJI*. I. L. R. 20 Bom 351

131. — Decree for possession of a village—*Possession of account-books—Right of the holders of such a decree to the possession of village account-books and other papers relating to the management of the village—Title-deeds.* The plaintiffs, as managers of a temple, obtained a decree for the possession of a certain Inam village. After taking possession of the village they called upon the defendants to hand over to them the village account books and other documents relating to the management of the village. The defendants refused. Thereupon the plaintiffs presented a dakhast in execution, praying (*inter alia*) for the delivery of those books and documents. The Subordinate Judge rejected this application on the ground that it was beyond the terms of the decree. *Held*, on appeal to the High Court, that the plaintiffs were entitled to the possession of the account books and documents in question as being essential to the proper and effectual enjoyment and management of the village awarded by the decree. Such books and documents were properly to be regarded as accessory to the estate and as claimable by those to whom it had been awarded. The title-deeds of an estate, counter part leases, and other documents of the like kind, such as *kabulats* in India, ought to be regarded as accessory to the estate, and to pass with it, whether the transfer is made by a conveyance, a decree or a certificate of sale. *BHAWANI DEVI v. DEVRAJ MADHAVRAJ*. I. L. R. 11 Bom. 485

132. — Sale in execution of property not belonging to the judgment-debtor—*Suit by owner of property so sold to recover possession—Limitation Act (XV of 1877), Sec. 11, Arts. 12 and 144* Where in execution of an order under s. 412 of the Code of Civil Procedure for payment of Court-fees certain immoveable property was sold as the property of the persons liable under such order, which in fact did not belong to them, but to a third person, who had no notice of the sale. *Held*, that the true owner of the property so sold was competent to treat the sale as a nullity and to bring his suit for recovery of possession at any time within 12 years from the date,

EXECUTION OF DECREE—*contd.*11. MODE OF EXECUTION—*contd.*(g) POSSESSION—*contd.*

when he lost possession. *Malkarjun v. Narhari*, I. L. R. 25 Bom. 337, distinguished. *Nathu v. Badri Das*, I. L. R. 5 All. 614, *Balwant Rao v. Muhammad Husain*, I. L. R. 15 All. 324, and *Sukhdeo Prasad v. Jamna*, I. L. R. 23 All. 60, referred to *JWALA SAHAI v. MASAT KHAN* (1904) I. L. R. 28 All. 346

133. — Execution in excess of decree—*Court's inherent power to make restitution upon application—Regular suit not necessary.* Plaintiff obtained a decree in the Court of first instance for confirmation of possession, and this decree was reversed on appeal. In the meantime in proceedings taken to execute the decree of the first Court, plaintiff had obtained possession. On defendant applying for restitution of possession plaintiff contended that in putting plaintiff in possession the Court had gone beyond the terms of the decree and the defendant's remedy was by bringing a regular suit. *Held*, overruling the contention, that the Court, which was induced to wrongly give possession, had inherent power to order restitution. *Raja Singh v. Koodip Singh*, I. L. R. 21 Cal. 989, and *Moolchand Lal v. Mahomed Sami Meah*, I. L. R. 14 Cal. 434, relied on *DINESH PROSHAD v. SHANKAR CHOWDERY* (1903) 8 C. W. N. 381

134. — Sale of property not included in decree—*Sale confirmed without objection on part of judgment-debtor—Private sale by heirs of judgment-debtor to a third party—Rights of purchasers inter se.* In execution of a decree for sale on a mortgage the interest of the judgment-debtor in the whole of certain property, instead of in half only, which was all that was mortgaged, was sold. The sale was confirmed, possession was delivered and mutation proceedings took place in favour of the

I. L. R. 27 All 62

## (h) PRINCIPAL AND SURETY.

135. — Decree against principal and surety—*Interest.* R sued M, B, C, and P for money due for goods supplied. Separate *soh-namas* were filed by each of the four defendants, in

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*(i) PRINCIPAL AND SURETY—*contd.*

which they admitted the debt, and each undertook to pay one-fourth thereof, with interest, by instalments; and each further agreed that, if the other three should make default and the amount due by them should not be realized by the sale of their property, then he should be liable to make good the deficiency. A decree was passed by the Court in accordance with the terms of the solehnamas. C and P each paid up their fourth shares, but M and B, having failed to pay, B applied for execution against C and P in respect of the liability of M and B. Held, that, in the absence of proof that the whole property of B had been sold, the decree was not entitled to interest after the time when he might and ought to have put up the property of the principal debtors for sale, when possibly it might have realized the whole of the debt then due. RAMANUND KOONDOL: CHOWDREY SOONDER NARAIN SARUNOY

I. L. R. 4 Calc. 331

136. ——— Stay of execution on giving security—Default of judgment-debtor—Liability of surety in execution—Decree how to be satisfied when property brought into Court by judgment-debtor and payment made by surety. The execution of a decree for partition was stayed pending appeal on the defendant giving security that he would satisfy such decree as might ultimately be passed against him by the Appellate Court. That Court confirmed the decree of the lower Court. In obedience to the decree, the judgment-debtor deposited in Court certain property in his possession consisting of bonds, decrees, and other articles. But as he did not produce the whole of the property as ordered by the decree, the Court directed execution to proceed against his surety. The surety paid into Court the full sum stipulated in the surety-bond. Thereupon the judgment-debtor applied that the same

produced in Court by the judgment-debtor should be first realised towards the debt.

GOPAL NANA BHET v. JOHARMAL

I. L. R. 18 Bom. 578

EXECUTION OF DECREE—*contd.*II. MODE OF EXECUTION—*contd.*

## (u) PRODUCE OF LAND.

137. ——— Decree for produce of land—Execution for future produce—Decree before Civil Procedure Code, 1859. In the execution of a decree for land passed prior to the enactment of the Code of Civil Procedure, in which the value of the produce of the land was fixed, the Court granted further allowance up to the date of execution. CHINMAYA CHETTY v. NARAYANAIA. 6 Mad. 15

## (v) REMOVAL OF BUILDINGS.

138. ——— Decree ordering removal of wall—Civil Procedure Code (Act X of 1877), ss. 235 and 260—Special appeal, power of High Court in. Upon an application under s. 235 of the Civil Procedure Code (Act X of 1877) for the removal of a wall

directed an order to issue to the plaintiff to remove the

order it had, but that it should have pointed out to the decree-holder the manner in which he should have acted the execution of the decree.

fixed by such notice; and that, if he fail to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order either for the judgment-debtor's imprisonment or for the attachment of his

CHOWDHRAIN

I. L. R. 6 Calc. 174; 9 C. L. R. 453

## (w) RIGHT OF WAY.

139. ——— Decree giving passage through doorway—Removal of door. Where a

**EXECUTION OF DECREE—*contd.*****11. MODE OF EXECUTION—*contd.*****(w) RIGHT OF WAY—*contd.***

decree only declared plaintiffs' right of passage through a doorway and to remove the brick-work with which it was filled :—*Held*, that in executing it the decree-holder was not authorized to remove a wooden door in existence there. **ROCKNEE KANT CHOWDHRY v. NOND LALL CHOWDHRY**

25 W. R. 120

**(x) SIRDAR, HEIR OF, DECREE AGAINST.**

140. ——— Decree against heir of Sirdar—*Suit on decree*. The mode of enforcing against a Sirdar's heir (who is not a Sirdar) a decree passed by the Agent's Court against that Sirdar is by a suit founded upon the decree. **GOVINDA VAMAN v. SARHARAN RANCHANDRA**. I. L. R. 3 Bom. 42

**(y) TEMPLE, SCHEME FOR MANAGEMENT OF.**

141. ——— Failure of trustees to carry out scheme—*Mode of enforcing proper management—Removal of trustees—Civil Procedure Code (Act XIV of 1882), ss. 539 and 260—Separate suit*. A decree was passed in a suit under s. 539 of the Civil Procedure Code (Act XIV of 1882) settling a scheme of management of a certain temple. The scheme provided that the defendants and their heirs were, during their good conduct, to be retained as trustees and managers of the

temple. The plaintiffs prayed that the defendants should be removed from their office, and that the

party, or by both. **DANODAREHAT v. BHOGHALL**  
I. L. R. 24 Bom. 45

**(z) VALIDITY OF DECREE.**

142. ——— Objection to validity of decree—*Civil Procedure Code (Act XIV of 1882), s. 244 (c)—Objection to validity of decree cannot be raised in execution proceedings. An objection*

**EXECUTION OF DECREE—*contd.*****11. MODE OF EXECUTION—*contd.*****(z) VALIDITY OF DECREE—*contd.***

by the defendant in a mortgage suit to the sale of properties directed to be sold by the decree in such suit, on the ground that such property is not liable for the decree, is not an objection relating to the execution, discharge or satisfaction of the decree within the meaning of s. 244 (c) of the Code of Civil Procedure but one questioning the validity of the decree itself and cannot be entertained in execution proceedings. **KUMARETTA SERVATHORAN v. SABAPATHY CHETTIAR** (1906). I. L. R. 30 Mad. 26

**12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES.**

1. ——— Agreement of parties not embodied in a decree. Execution cannot be issued upon a *razinama*, unless the terms of it are embodied in a decree of the Court. **DARBEE VENKATTA SASTRI v. VURELLA GANGAIA**. EX PARTE VURELLA GANGAIA. 2 Mad. 305

2. ——— Compromise of suit—*Decree made on razinama after lapse of five years—Execution of decree on razinama*. A suit was compromised by a *razinama* which required that a decree should be passed in conformity with its terms. The Munsif, instead of passing a regular decree, endorsed an informal order on the *razinama*, and five years afterwards, upon an application for execution, the Munsif made a formal decree and ordered its execution. The Civil Judge considered this procedure erroneous, and ordered that the decree should

3. ——— Application to execute *solanamah* made after decree. Where parties to a suit which had been decreed entered after remand into a compromise and filed a *solanamah* in accordance with which the case was decided :—*Held*, that an application to execute the *solanamah* was not a proceeding taken on the basis of the decree, and was illegal. **PREO MADHUR SINGAR v. BISSUMBHUR SINGAR**. 15 W. R. 514

4. ——— Agreement not to execute decree—*Injunction to restrain execution—Civil Procedure Code, 1859, s. 206*. Where a decree-holder agrees for a good consideration not to enforce

EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*contd.*

5. ——— Agreement not to execute unless on a contingency—*Agreement to give good title.* Certain property was handed over by a judgment-debtor to the decree-holder for the pur-

decree. *Held*, that the reasonable construction to be put upon this agreement was that, if there appeared to be a defect of title to any portion of the property handed over, and the decree-holder should be dispossessed of it by reason of such defect, then the transaction was to be put an end to, and he was to revert to his original right. As a part of the agreement, the judgment-debtor was held to have waived the benefit of the law of limitation if the event should happen upon which the decree-holder was entitled to fall back upon and execute his decree. *ROY LCHMEET SINGH v. JOWAHUR ALI* 18 W. R. 497

8. ——— Agreement for execution in a particular manner—*Agreement made before decree.* An agreement entered into before decree between a person who subsequently became the decree-holder and the defendant, his debtor, stipulating that the decree should be enforced in a particular manner, is no bar to the execution of that decree according to its terms. *SANKHARAM RAM CHANDRA DIKSHIT v. GOVIND VAMAN DIKSHIT* 10 Bom. 361

## 7. ——— Second execution after

execution-creditor, and misapplied by him. A second execution was afterwards issued under the same decree in ignorance of the first. *Held*, that, although the mootear may not have had authority to receive the proceeds of the first execution, the receipt of such proceeds by the Court officer absolved the execution-debtor from all further ha-

8. ——— Judgment-debtor acquiring interest in property after sale in execution—*Right to second execution for balance of*

EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*contd.*

on his decree. *GANESH PERSHAD v. SUEO CHURUN LALL* 8 N. W. 197

9. ——— Execution after satisfaction—*Decree for possession.* A decree for possession—

10. ——— Mistake, Agreement under—*Agreeing to interest at certain rate unpaid—Subsequent execution.* Where a decree-holder, under a misconception of the law, asked to receive interest, calculating that he was not entitled to more on account of interest than the principal sum decreed, and the judgment-debtor did not pay in the money;—*Held*, that the decree-holder was entitled to fall back upon the original decree, and execute it according to its terms. *ABED HOSSEIN v. ASAD ALY* 11 W. R. 29

11. ——— Execution after adjustment out of Court—*Certificates of partial satisfaction—Act X of 1877, s. 258.* Where a judgment-debtor has out of Court partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on

*ROY BAHADOOR v. CHUNNOONUL*

I. L. R. 5 Calc. 448

12. ——— Civil Procedure Code, 1877, s. 235. S. 235 of the Civil Procedure Code puts on the party applying for execution the obligation of stating any adjustment between the parties after decree, that is, any matter not done through the Court as well as any agreement through the Court. *PAURYA v. NARASANNAN*

I. L. R. 2 Mad. 216

13. ——— Civil Procedure Code, 1877, s. 258. An adjustment of a decree not certified to the Court by either party within the time limited by law cannot be recognized as a bar to execution. *CHEDUMBARA PILLAI v. RATNA ANIMAL*

I. L. R. 3 Mad. 113

14. ——— Satisfaction of decree—Sub-

*Marsh.* 211 : 1 Hay 587

15. ——— Satisfaction of decrees by agreement.—*One decree afterwards set aside.* By mutual agreement two decree-holders entered up satisfaction in respect of their cross-

EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*contd.*

The grounds upon which the application could have been entertained discussed. *GURKATH ROY v. DINABANDHU NANDI*. 3 B. L. R. Ap. 62

18. ———— Settlement of case—Subsequent application for execution. A

held, that, as the appellate Court did not reverse the decision of the first Court, the decree stood good, except so far as the plaintiffs, judgment-creditors, were debarred from executing it by their own agreement. *MEWA SING v. AZEEZOODDEEN KHAN*

13 W. R. 311

17. ———— Intended satisfaction—Striking off execution—Failure to complete satisfaction. An intimation to the Court of a contemplated satisfaction of the decree by arbitration, on which intimation the execution-case was removed from the file, would not preclude the decree-holder from suing out execution again, unless it be proved on enquiry that the result of the private arbitration was a satisfaction of the decree in the mode contemplated by the parties. *CHOOHNE LALL v. DOORGA PERSHAD*. 3 Agra 252

18. ———— Application by assignee of decree-holder after satisfaction entered. A share of a decree was mortgaged by the decree-holder's vendor, who sold his rights and interests to

19. ———— Service of idol—Deed of compromise. Two brothers executed and filed a deed of compromise, dividing between them the family property, and a decree was passed

EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*contd.*

widow was entitled to execute the decree for mere profits of the idol lands, without showing that the ceremonies had been performed by her husband out of his own private funds. *RADHAJIBUN MUSTARI v. TARANONEE DASSEE*

2 B. L. R. P. C. 79; 11 W. R. P. C. 31

12 Moo. I. A. 380

20. ———— Refund decreed—Application for further execution. A decree-holder attached certain money deposited to the credit of a suit in another Court, to which suit the judgment-debtor was a party, in the belief that the said money belonged to the judgment-debtor. The money having been remitted from the Court in which it was deposited to the Court executing the decree, a claim was made in that Court by the party entitled to the money. The claim was rejected, and the money was paid out to the decree-holder, and satisfaction of the decree was entered in the register. A suit was then brought against the decree-holder, and it was decreed that he should refund the

satisfaction being entered in the register was no bar to the application being granted. *LAKSHMIANA CHETTI v. NARASIMHASAMI*. 1 L. R. 7 Mad. 167

21. ———— Limitation—Partial satisfaction under arrangements made by Court—Subsequent application for execution. In execution of a decree, an order was made by the Court directing the payment of the rents of certain property which had been attached as they became due from the mukaridar to the judgment-debtor; to be made to the decree-holder to satisfy his decree; and afterwards the execution-case was struck off the file. Subsequently, default having been made by the mukaridar in the payment of the rents of certain years, and the decree not having been fully satisfied, the decree-holder applied for an order directing the payment of the rents which were in arrear to be made by the mukaridar in accordance with the previous order. Notice having been

22. ———— Partial satisfaction—Compromise—Further application for execution—Surety. A, having obtained a decree against B and C (the former being made primarily liable), took out execution, and, on obtaining partial pay-

EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*contd.*

ment of the amount due to him by the sale of certain property belonging to B, entered up satisfaction as to that amount. Subsequently, D,

(to which C was not made a party) was compromised by A, who agreed to make a partial refund. Held, on A's applying for execution a second time against the representatives of C, that the partial satisfaction of the decree entered up was binding upon A, so as to prevent a second application for execution for the same amount being made; and that, even were it not so, the refund made on a private understanding between them by A to D in the

EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*contd.*

non-payment of rent though stipulation for payment contained in compromise decree—*Civil Procedure Code (Act XII of 1882), s. 244*—Decree containing general stipulation—Power of Court to relieve against penalty in execution proceedings. Certain lands were held on lease, and the rent fell into arrears. A suit was then brought for the arrears and for possession, but the parties arrived at a compromise, and a decree was passed in terms of that compromise. The compromise

made, and possession of the lands and the arrears of rent were sought for in execution of the decree, when it was objected that the stipulation for forfeiture for non-payment of rent was not binding.

therefore competent to the Court to relieve against the forfeiture. *Shirehul Timapa Hegda v. Mahabhai, I. L. R. 10 Bom. 435*, dissented from. *Rai Ballishen Das v. Raja Run Bahadur Singh, L. R. 10 I. A. 162*, referred to. *NAGAPPA v. VENKAT RAO (1900)*. I. L. R. 24 Mad. 265

26. ——— Instalment decree—Agreement before decree not to enforce payment of an instalment—Part payment—*Civil Procedure Code (Act XII of 1882), s. 244*—Limitation. A decree being once made, it must be taken to be conclusive between the parties. When an instalment decree is made, and the parties agree that

payment of a part of the claim, alleged to have been made before the decree for the full claim was made, can be given effect to. *Laldas Narandas v. Kishandas Dandas, I. L. R. 22 Bom. 453*, distinguished. *BENODE LAL PAKRASHI v. BRAJENDRA KUMAR SHARMA (1902)*

I. L. R. 29 Calc. 810  
S.C. 8 C. W. N. 838

27. ——— Specific performance—Practice—Procedure—Decree upon a compromise for execution of a conveyance—Execution of decree. Where a decree based upon a compromise directed that one party should execute a *kobala* in favour of another within a certain time after the date of the decree: Held, that the proper course for the parties would be to proceed regularly as if a decree for specific performance was made. The procedure in such a case laid down. *HARE KRISHNA SAMANTA v. PRIYA NATH KHAMROI (1905)*. 10 C. W. N. 345

## 23. ——— Acquiescence. Certain property was attached in execution of a decree

decree of 1841 could not be foreclosed in 1847 under the decree of 1835 against the heirs of the judgment-debtor, and that no acquiescence in the part of the judgment-debtor under the decree of 1847 could render such execution valid. *BRYDA PRASAD v. AHMAD ALI*. I. L. R. 1 All. 388

24. ——— Claims to attached property. A obtained a money-decree against B declaring certain properties belonging to B liable to be sold in satisfaction of it. Other decrees were subsequently obtained against B, in execution of one of which certain of these properties were sold (subtlet to the hen) and purchased by A

GHOSH 7 W. R. 221

25. ——— Forfeiture, stipulation for—Landlord and tenant—Relief against forfeiture for



EXECUTION OF DECREE—*contd.*12. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—*concll.*

28. ———— Adjournment of sale for compromise—*Time, the essence of the agreement of parties—Failure to pay on the final date—Part-payment, refusal to accept—Jurisdiction of Court to extend time—Civil Procedure Code (XIV of 1882) ss. 244, 311.* Where time had previously been repeatedly granted by the Court at the instance of the judgment-debtor with the consent of the decree-holders for compromise, and on the final date to which payment was adjourned, the judgment-debtor prayed for further time and the decree-holder demanded it as a condition precedent to the grant of further time that the judgment-debtor should definitely agree that, upon her failure to pay the money on the date to be fixed, her right to challenge the validity of the sale should finally cease, and such an arrangement was definitely sanctioned by the Court with the consent of all the parties. *Held*, that the Court had no jurisdiction subsequently to vary the terms of the arrangement.

*I. L. R. 29 Calc 577, referred to. Held, further,*

to the party aggrieved to challenge by an appeal against the final order, which determines the rights of the parties, the propriety of the interlocutory orders made in the course of the proceedings. *CHANDRABALA DEBI v. PRABODH CHANDRA RAY* (1933) *I. L. R. 38 Calc. 432*

## 13. EXECUTION BY AND AGAINST REPRESENTATIVES.

1. ———— Right of execution—*Illegitimacy of decree-holder declared after decree.* Where a decree was made in favour of persons on the presumption that they were legitimate, and by a subsequent High Court decision they were found to be illegitimate:—*Held*, that they were not precluded from executing the decree. *HIMMUT BAHADOOR v. SOLANO* *17 W. R. 428*

2. ———— Execution by representative—*Illegitimacy, Question of—Civil Procedure Code, 1859, ss. 102, 103, and 203—Act XXIII of 1861, s. 11.* The questions which, under s. 11, Act XXIII of 1861, may be determined by a Court

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

decree is competent to entertain. *Ss. 102 and 103 of Act VIII of 1859 relate only to proceedings*

decree is seriously contested, and was not intended to enable a Court to try, on an application for execution, such an important question as the legitimacy of an heir. Since proceedings under s. 203, Act VIII of 1859 were, by s. 364 of the Act, not liable to appeal, a suit would probably lie to reverse an order passed therein. *ABIDUNNISSA KHATOON v. AMIRUNNISSA KHATOON* *I. L. R. 2 Calc. 327*  
*I. R. 4 I A. 68*

Affirming the decision of the High Court in  
*s.c. 20 W. R. 305*

3. ———— Purchaser from decree-holder—*Act XXIII of 1861, s. 11—Civil Procedure Code, 1859, s. 203—Right of appeal.* Where a decree had been purchased benami, and the party alleging herself to be the real purchaser had not been put upon the record as a party, and an application for execution made by her under s. 203 of Act VIII of 1859 had been refused, and there was a dispute as to who was the real purchaser of the decree:—*Held*, that the applicant was not a party to the suit within the meaning of s. 11 of Act XXIII of 1861, and had no right of appeal against the order refusing her application. *ABIDUNNISSA KHATOON v. AMIRUNNISSA KHATOON, I. L. R. 2 Calc 327, followed.* *SOMIA BIBEE v. SATHANATH ALI*  
*I. L. R. 3 Calc. 371; 1 C. I. R. 331*

4. ———— Death of decree-holder—*Injunction to restrain execution—Reversal of proceedings.* Where a decree-holder, whose right of execution has been, by injunction restraining him pending another suit from executing the decree, temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. *KALYANBHAI DIRCHAND v. GHANOSHANLAL JADUNATHJI*  
*I. L. R. 5 Bom. 29*

5. ———— Civil Procedure Code, ss. 207-208—*Representative of decree-holder—Application to be made for execution*

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

8. ———— *Representative of deceased decree holder—Civil Procedure Code, 1859, s. 103.* The claim of a petitioner to represent

upon the plaintiff to establish his right to represent the deceased. *WOOMA CHURN MOOKERJEE v. LUCKHEE NARAIN ROY CHOWDHRY*

1 W. R. MIs. 10

7. ———— *Right of representative of decree-holder to execution—Civil Procedure Code, 1859, s. 210.* The representative of a deceased person in whose favour a decree has been made cannot claim execution as a matter of strict right, but must satisfy the Court, under s. 210, Civil Procedure Code, that it is proper that he should

8. ———— *Representative of decree-holder—Attachment of decree—Civil Procedure Code, 1859, s. 210.*

been attached, the Court has jurisdiction to execute the attached decree on the application of the attaching creditor. *PEARY MOHUN CHOWDHRY v. ROMESH CHUNDER NUNDY* 1 L. R. 15 Cal. 371

8. ———— *Judgment-creditor who has attached a decree—Right to execute decree—Civil Procedure Code, 1882, s. 244.* A judgment-creditor who attaches a decree is, as being a representative of the judgment-debtor within the meaning of s. 244, cl. (c), of the Civil Procedure Code, competent to execute it. *PEARY MOHUN CHOWDHRY v. ROMESH CHUNDER NUNDY*, 1 L. R. 15 Cal. 371, followed. *RANGASAMI CHETTI v. PERIASAMI MUDALI* 1 L. R. 17 Mad. 59

10. ———— *Death of Judgment-debtor—Civil Procedure Code, 1859, s. 210 and s. 204—Application to make hire or surety of deceased liable—Delay.* An application under

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

incumbent on him to explain the reason of the delay. *AMEEN AHMED v. VELAET ALI KHAN* 20 W. R. 422

11. ———— *Civil Procedure Code, 1859, s. 210—Right to execute decree against representative where certificate of administration has been obtained.* A decree-holder is at liberty, under s. 210, Act VIII of 1859, to

12. ———— *Right of representative of co-sharer to execute decrees—Personal*

recover in a regular suit whatever sums he paid out of his own funds for keeping up the service of the idols. *RADHA JEEBUN MUSTOFE v. TARA MONEE DOSSEE* 3 W. R. MIs. 25

13. ———— *Judgment-debtor purchasing share in decree.* A mortgaged certain property to B, and afterwards sold a two-annas share thereof to C, and gave him an ijarra of a portion. B obtained a decree on his mortgage, which decree was purchased by C, who then applied for execution. The judgment-debtor A objected that C was not competent to take out execution, being a co-sharer and an ijaradar, but this contention was overruled. *KALLY DOSS BHADURY v. GOLAM ALI CHOWDHRY* 3 C. L. R. 237

14. ———— *Representative of minor—Execution by guardian—Death of minor.* When a party applies to execute a decree on behalf of a minor, his representative capacity comes to an end by the death of that minor; and further steps in execution, or otherwise, must be taken by the legal representative of the deceased, whoever that may be. *HULODHUR ROY CHOWDHRY v. JUDDO-NATH MOOKERJEE* 14 W. R. 162

15. ———— *Decree passed against dead man—Civil Procedure Code, 1859, s. 119.*

3 C. L. R. 192

16. ———— *Representative of debtor—Procedure.* Exposition of the procedure to be observed for the execution of a decree against the legal representative of a deceased person. *ROOPRO NARAIN ROY v. NITYAUN DOSS* 6 W. R. 195

**EXECUTION OF DECREE—contd.****13. EXECUTION BY AND AGAINST REPRESENTATIVES—contd.**

17. ——— Execution of decree against deceased judgment-debtor—*Civil Procedure*

18. ——— Execution of decree where judgment-debtor is dead. Execution

19. ——— Execution against person as representative. If execution has once been duly issued against a person as representa-

20. ——— Execution against person personally after failure to execute against him as representative. Where successive applications for execution had been made for years against a party merely as the representative of a deceased defendant; *Held*, that execution could not be taken out against him personally as one of the original defendants, even if he were liable in both capacities. *PREM LALL GOSSAMEE v. HOSSEIN-OOPEEN* 13 W. R. 36

21. ——— Decree against deceased person, effect on representatives—*Civil Procedure Code, 1859, ss 104, 203, 210, 249*. When a

and interest of the representative on the record  
*NATHI HARI v. JAMINI* 8 Bom. A. C. 37

22. ——— Representative of debtor—*Civil Procedure Code, 1859, s. 203*. S 203, Act VIII of 1859, although it primarily refers to a party who has been substituted before decree for the origi-

**EXECUTION OF DECREE—contd.****13. EXECUTION BY AND AGAINST REPRESENTATIVES—contd.**

which may have come into his hands. *JAFUR HOSSEIN v. HINGUN JAN* 8 W. R. 161

23. ——— Execution against representative where he has assets, but fails to satisfy decree. If a decree-holder can show that assets of a deceased judgment-debtor have come into the hands of such debtor's legal representative, and if the representative fails to satisfy the Court that he has duly applied such assets, the latter may be arrested in execution of the decree. *DIERAJ MAHTAB CHUND BAHADOOR v. MUNNOHNEE DASSEE* 12 W. R. 517

24. ——— Civil Procedure

satisfy the Court that such property of the deceased can be found as he can sell in execution  
*INDRO NARAIN MISSEN v. KRISTO CHUNDER MAHTO* 4 W. R. 362

25. ——— Death of judgment-debtor after appellate decree—*Civil Procedure Code, 1882, ss. 234, 248, 361 to 373 and 553—Parties, substitution of—Subordinate Judge, Jurisdiction of*. The Civil Procedure Code (Act XIV of 1882) does not contemplate the representatives of the judgment-debtor being placed on the record after the appellate decree has been passed. There is no express provision for it in the sections relating to execution. Ss 361 to 373 relate to changes

the minor class on and classes applich was which had no jurisdiction to entertain the application. *Held*, that

**EXECUTION OF DECREE—contd.****13. EXECUTION BY AND AGAINST REPRESENTATIVES—contd.**

in which case the application to execute the decree, having regard to s. 583, would be to the second class Subordinate Judge, although by s. 218 the notice to the party against whom execution was applied for would be issued by the first class Subordinate Judge to whom the decree was transferred for execution. *MIRACHAND HARIVANDAS v. KASTERCHAND KASIDAS*. I. L. R. 18 Bom. 224

28. ———— **Transfer of decree for execution—Execution against representative of debtor—Civil Procedure Code, 1882, ss. 234, 248, 249, and 578—Application by decree-holder for execution of decree by substitution on death of the judgment-debtor to the Court where the decree has been transferred.** A decree was transferred to another Court for execution. Pending the proceedings, one of the judgment-debtors died. On an application to that Court by the judgment-creditor to execute the

jurisdiction to entertain the application, and that the application should have been made under a 234 of the Code to the Court that passed the decree.

the decree-holder to apply to the Court which passed the decree to execute it against the legal representative of a judgment-debtor who is dead, and that the Court to which the decree has been transferred has full jurisdiction to allow execution to proceed against the legal representative. *Held*, also, that, even assuming that an application under s. 234 to the Court which passed the decree was a necessary preliminary to proceedings under s. 218 by the Court executing the decree, the omission to make it was only an irregularity which did not affect the merits of the case, and, under s. 578, the order of the Court of first instance should not have been reversed on account of such irregularity. *SHAM LAL PAL v. MODHU SUBAN SIRCAR*.

I. L. R. 22 Calc. 558

27. ———— **Attachment during lifetime of judgment-debtor—Civil Procedure Code, 1882, s. 234—Application after death of judgment-debtor to bring his representatives on the record of the execution-proceedings—Procedure.** In execution-proceedings, if the decree-holder desires to proceed after the death of the judgment-debtor against property which has not been attached during the lifetime of the judgment-debtor, his proper course is that marked out by s. 234 of Act XIV of 1882; but if the property has been attached during the lifetime of the judgment-debtor, it then comes into the hands of the law, and attachment does not abate on the death of the judg-

**EXECUTION OF DECREE—contd.****13. EXECUTION BY AND AGAINST REPRESENTATIVES—contd.**

ment-debtor, and for the purpose of proceeding against, and if necessary selling, that property, it is not necessary to implead any one as a legal representative. *ABDUR RAHMAN v. SHANKAR DAT DENE*. I. L. R. 17 All. 162

28. ———— **Alleged representative, execution against—Civil Procedure Code, 1882, s. 234—Application to execute decree against alleged representative of deceased judgment-debtor.** In the case of an application under s. 231 of the Code of Civil Procedure to execute a decree against a person alleged to be the representative of a deceased judgment-debtor, it is for the Court which passed the decree to decide whether the

I. L. R. 17 All. 431

widow enforced against. Under the terms of a deed of release executed by a Hindu widow relinquishing the estate inherited by her from her husband in favour of her son, the latter has

which was precisely that of the judgment-debt now sought to be recovered. The reversioners being on the record as representatives of the widow, and

I. L. R. 23 Calc. 454

30. ———— **Death of a party before delivery of judgment—Execution against the heirs of deceased judgment-debtor—Civil Procedure Code, 1882, ss. 234 and 248-250.** On the 30th November 1892 an appeal in the High Court was argued, and the

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

case adjourned for judgment. On the 12th June 1893, one of the defendant-respondents died. On the 6th July 1893, the High Court pronounced its judgment and a decree was drawn up as if the deceased respondent was still living. On the 15th December 1893, the decree-holder applied for execution of the decree, but the application was

1882) without placing them on the record of the suit. *RANACHARYA v. ANANTACHARYA*

I. L. R. 21 Bom. 314

31. ———— *Death of plaintiff after hearing, but before judgment—Judgment given by Court in ignorance of plaintiff's death—Judgment and decree valid—Doctrine of nunc pro tunc.* The successful plaintiff in a suit died a few days after the hearing of the suit had been concluded and judgment reserved. Unaware of the death of the plaintiff, the Court proceeded to deliver judgment and pass a decree in favour of the deceased

32. ———— *Death of legal representative—Execution—Execution against one of several representatives of a sole debtor—Death of such representative—Subsequent application for execution against other representatives—Practice.* An application for execution against one of the representatives of a sole judgment-debtor saves limitation against another representative. Accordingly, where the plaintiff, on the death of his

the record on his representative. Held that the application regards the death of the plaintiff.

I. L. R. 13 Bom. 43

33. ———— *Civil Procedure Code, 1882, s. 231—Successive deaths of judge*

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

*ment-debtor and his legal representative—Execution against legal representative of the legal representative.* The judgment-debtor under a simple money-decree died before execution was taken out against him. Execution of the decree was sought against his legal representative, into whose hands it was found that certain of the assets of the deceased judgment-debtor had come; but before anything was recovered, the legal representative in turn died. Held, that the decree-holder was entitled to execute his decree against the legal representative

34. ———— *Legal representative, liability of—Civil Procedure Code, 1882, s. 231.* Under s. 231 of the Civil Procedure Code, the legal representative of a deceased judgment-debtor is liable summarily only in respect of property actually received by him, or taken into his disposition. On the 27th March 1878 one B obtained a decree for Rs. 2,100 against one P, who died in July of that year, leaving his son H his legal representative. Subsequently, one Homjibhai sued H as the legal representative of P upon a mortgage executed by the latter in his lifetime, and obtained a decree, in execution of which he sold the mortgaged property by auction, and bought it in himself for Rs. 10. On appeal, this decree was reversed on the 3rd August 1884. Instead of the money realized by the sale, which

back the money realized by the sale, instead of accepting a compromise. On appeal, the order of

ing to it, is not liable in the same way as the property of the deceased which has come to his hands. In that section, property is not defined as identical

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

hands. It may well be that, while the Legislature intended to bring the representative under the control of a summary inquiry where he had actually received property, it did not intend to

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

tion-proceedings the decree must be taken as it

35. — Representation of estate by mother—Decree against mother when adopted son in existence. Plaintiff obtained a decree on a bond executed by S against the mother of S, whom he believed to be the heiress of S. In attempting to execute this decree against the estate of S, plaintiff was obstructed by the defendant, who was the adopted son of S. Plaintiff sued the defendant for a declaration that he was entitled to execute his decree against the estate of S in the hands of the defendant. *Held*, that the suit must fail, inasmuch as the estate of S was not properly represented in the former suit. *Sotiah Chunder Lahiry v. Nil Komul Lahiry*, I. L. R. 11 Cal. 45, distinguished. SUBBANNA v. VENKATA KRISHNAN. I. L. R. 11 Mad. 408

36. — Decree against executors—Debts incurred by executors while acting under a will afterwards found invalid—The heir's liability under the decree—The remedy of the decree-holder. Certain executors, acting under an order of the Court, borrowed a sum of money from K M for the funeral expenses of J D, the testator. K M obtained a decree for the amount

38. — Decree against widow's estate—Maintenance—Arrears of maintenance due to a Hindu widow at her death—Liability of such arrears to satisfy a decree against her assets. Where arrears due for a widow's maintenance have become a debt such a debt should be regarded as assets of the widow after her death liable to be taken in execution of a decree against her. A sued upon a bond executed in his favour by R, a Hindu widow, and after her death obtained a decree against N, as her legal representative, directing "that the judgment-creditor should be satisfied out of such assets of the deceased widow as may in course of execution be proved to have come into the possession of the defendant N." A sought in execution to obtain satisfaction out of arrears of an annuity due by N to the deceased on

representative. A should therefore be held ac-

hands; but, in order to make the estate liable for the debt, the proper course of the decree-holder was to bring a regular suit against F D. *FAKINDO DEN RAIEUT v. JUDISHWARI DABI*

I. L. R. 14 Cal. 316

37. — Decree for maintenance of widow—Liability of ancestral estate in execution—Civil Procedure Code, s. 234. A, the widow of an undivided member of joint Hindu family, obtained a brother of be a decree of the joint having been brought in as his representative.

I. L. R. 11 Bom. 528

39. — Decree against ancestral property—Survivorship—Civil Procedure Code, 1882, s. 234—Execution of a decree against the son of a Hindu judgment-debtor—Determination of questions as to the binding nature of the decree debt. In execution of a money-decree passed

*Held*, that the order dismissing the petition was wrong, for when a judgment-creditor seeks to attach ancestral property after it has vested in the son by survivorship under Hindu law upon the father's death, he cannot be considered as executing the decree against the property of the deceased judg-

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

ment-debtor within the meaning of s. 231 of the Code of Civil Procedure. *VENKATARAMA v. SETHIVELU* . . . L L R. 13 Mad. 265

40. ——— Legal representative of a joint undivided Hindu in respect of ancestral immovable property attached in execution—*Civil Procedure Code, s. 242*—Notice of execution. The plaintiff and his brother were joint undivided brothers possessed of certain immovable property. This property was attached in execution, but before a warrant for sale of the property was obtained, the plaintiff died. The attaching creditor issued a notice, under s. 248 of the Civil Procedure Code (XIV of 1882), addressed to the brother and widows of the plaintiff as his "legal representatives" within the meaning of that section, calling on them to show cause why execution should not proceed against them. *Held*, that his widows, and not his brother, were the plaintiff's

disappeared, having gone by survivorship to his brother. *NANABHAI GANPATRAO v. JANARDHAN VASUDEVI* . . . L L R. 16 Bom. 636

41. ——— Decree for mesne profits—Ascertainment of a defendant's liability, by an operative decree after the declaration of his general liability in a prior decree—His death in the interval between such decrees and effect, in execution of his representatives not being parties to the operative one—*Non-joinder of parties*. An operative decree, obtained after the death of a defendant, ascertaining for the first time the extent and quality of his liability, the latter having been already declared in general terms in a prior decree, cannot bind the representatives of the deceased, unless they were made parties to the suit in which such ascertainment was pronounced. The question of the amount of mesne profits due, they having

was made against the village proprietors whose

not the ancestor of the present plaintiffs had been a party to the decree of 1856, which did not ascertain the amount of the profits or determine whether the then defendants were liable, jointly or severally,

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

been parties to that decree, were not liable under it. *RADHA PRASAD SINGH v. LAL SANAR RAI*

L L R. 13 All. 53  
L R. 17 I. A. 150

42. ——— Party in possession of property of deceased. An order was made under s. 210 of Act VIII of 1859, making the legal representatives of a deceased judgment-debtor parties to a suit in execution of a decree obtained against the deceased in his lifetime. Subsequently, the decree-holder discovered that certain property which he claimed to be the property of the deceased was in the possession of a third person, C, and he applied to have C's name put upon the record and to be allowed to execute the decree against him. *Held*, that the Court had no power to put C's name on the record. *NADIR HOSSEIN v. BISSEN CHAND BASSARAT* . . . S C. L R. 8 437

43. ——— Civil Procedure Code, 1882, s. 234—Claim by judgment-debtor to property seized in execution of a decree against them as representatives of original debtor—*Burden of proof*. Where, in execution of a decree against the representatives of a deceased debtor, specific property was seized as the property of the deceased debtor and as being in the possession of his repre-

4 C. W. N. 101

44. ——— Marriage of party pending execution—"Judgment"—*Civil Procedure Code, 1859, s. 195*. A party having died while a suit against him was pending, his widow was brought upon the record as defendant, and judgment was

45. ——— Decree for an account—

**EXECUTION OF DECREE—contd.****13. EXECUTION BY AND AGAINST REPRESENTATIVES—contd.**

cutted against his widow and representative.  
**BIDHOO MOOKHEE DASSEE v. BEEJOY KRISHNA ROY**  
 12 W. R. 405

46. ——— Decree for damages—*Civil Procedure Code, 1859, ss. 102, 103—Liability of purchaser for personal debt.* A defendant, against whom a Principal Sudder Ameen had decreed damages on account of certain malicious and wrongful conduct towards plaintiff, appealed to the High Court, but the defendant failed to establish that

execute the decree which he had obtained in the lower Court. *Held*, that the *dena-payna* clause in *M's* deed of purchase from deceased did not make *M* liable to pay so purely personal a debt of deceased as that which the decree created, and consequently *M's* only title to be the appellant's legal representative failed. **MACLEOD v. KUNHOJE SAHOO**

9 W. R. 271

47. ——— Effect on decree of judgment-debtor becoming by inheritance one of decree holders. Where a judgment-debtor becomes by inheritance one of the decree-holders in respect of the same property, or a share in it, the effect of the inheritance, either as to a part or as to the whole of the decree, is to extinguish it *pro tanto*. **POOSE v. FAKHROODDEEN MAHOMED AHSAH alias ALINOODDEEN CHOWDHRY**

25 W. R. 343

48. ——— Judgment-debtor acquiring interest in decree as representative. A plaintiff who had obtained a decree having died and the defendant in the suit being one of the representatives of the deceased plaintiff, and as such entitled to succeed to a share in his estate:—*Held*, that the mere fact of the defendant being one of the representatives of the deceased did not debar the other representatives from executing the decree according to their rights. **WISE v. ABDULL ALI**

7 W. R. 136

49. ——— Decree for possession of immovable property—*Joint-decree—Purchase by judgment-debtor of rights of some of the decree-holders—Decrees extinguished pro tanto.* Where, subsequent to a decree, a portion of the rights to which the decree relates devolves either by inheritance or otherwise upon the judgment-debtor, or is acquired by him under a valid transfer, the decree does not become incapable of execution, but is extinguished only *pro tanto*. This rule of law is sufficiently general to comprehend alike cases in which the decree is for money only, and where it is for immovable property. The rule of law against breaking up the integrity of a mortgage-security is a rule aiming at the protection of the mortgagee, and is not applicable to cases where the

**EXECUTION OF DECREE—contd.****13. EXECUTION BY AND AGAINST REPRESENTATIVES—contd.**

mortgagee himself has acquired the ownership

50. ——— Right to raise question as to validity of decree. *Execution against sons of deceased judgment-debtor.* Where the sons of a deceased judgment-debtor, whose estate is declared by the decree to be liable to sale, are admitted on the record as his representatives, they are not entitled, in the execution stage, to re-open the whole case and to ask for a decision as to whether the debt incurred by the father was not for the benefit of the estate or was in some other way invalid under the Hindu law and not binding on the joint family. **SHAO SANOY PANDEY v. RAM BHUNJEN SINGH**

23 W. R. 127

**RAMANUJIA SINGH v. KISHAY KISHORE NARAYAN SINGH**

23 W. R. 265

**BURTOO SINGH v. RAM PURMESSUR SINGH**

24 W. R. 364

51. ——— Impeachment of the de-

grounds, viz., (i) that the decree had already been satisfied, and (ii) that the transfer of the decree was fraudulent and collusive. The lower Court rejected the application for execution, holding, as to the



EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

decree, it being unreversed and in full force. *MULCHAND RANCHODDAS v. CHHAGAN NARAN*

I. L. R. 10 Bom. 74

52. ——— Defendant—Injunction—Light and air—Decree in light and air suit—Death of defendant, after decree—Decree ordered to be executed against the deceased defendant's legal representative—Execution—Mode of enforcing decree—Civil Procedure Code (Act XIV of 1882), ss. 234 and 260 Plaintiff obtained

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house

which obstructed her windows should be pulled down. While this application was pending, the defendant died, and his son and heir (the appellant) was brought on the record. The lower Courts directed that the decree should be

to do so, empowered an officer of the Court to have it pulled down. On second appeal to the High Court it was contended (i) that, as the judgment-debtor had died after the commencement of the proceedings, a fresh application should have been made, instead of continuing the *darbhar*

orders under s. 260 of the Civil Procedure Code (XIV of 1882)

having  
again  
does

objection, that, as it was not raised in the lower

for execution was not in proper form, but the High Court allowed it to be amended. As to the third objection: *held* that, having regard to the provisions of s. 234 of the Civil Procedure Code, 1882, the injunction ordered against the deceased defendant might be enforced against his son as his legal representative *Dohyabhai v. Bapalal*, I. L. R. 26 Bom. 140, distinguished *SAKARLAL JASWANTRAI v. BAI PARVATIBAI* (1901) I. L. R. 28 Bom. 283

53. ——— Defendant Company—Civil Procedure Code (Act XIV of 1882), ss. 234, 372—Decree for money—Limited Company, debts and

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*contd.*

*liabilities of—Transfer of the properties of the Company to a third party—Dissolution of Limited Company—Legal representative.* A obtained a decree for money against a certain limited Company. The Company had sold all their properties to a third person, who again sold his rights to another limited Company. On an application for execution of the decree against the latter Company, substituting them on the record as the legal representatives of the former Company on their dissolution: *Held*, that the

54. ——— Father—Hindu law—Mitakshara family—Decree against father—Execution against son—Civil Procedure Code (Act XIV of 1882), ss. 234, 244—Separate suit. The interest of the father in a Mitakshara family in the joint ancestral properties is not assets in the hands of the son when he dies, and consequently proceedings cannot be taken against the son as the legal representative of the father under s. 234, Civil Procedure Code. If, after the death of the father, the creditor wishes to proceed against the son, it must be, not because he is the heir or the legal representative, but upon the ground of his obligation to pay his father's debts; but the question whether, having regard to

*late suit Umeda Munising v. Gouda* (1901), I. L. R. 20 Bom. 385, dissented from. *Venkatarama v. Senthivelu*, I. L. R. 13 Mad. 265; *Lachmi Narain v. Kunji Lal*, I. L. R. 16 All. 119; and *Byasphi Lal v. Gopal Lal*, (Unreported) [MACFHERSON and GHOSE, JJ.] relied upon. The question whether the decree was obtained against the father in his representative capacity cannot be gone into in the course of execution of the decree *JUGAL CHAUDHURI v. AUDH BEHARI PRASAD SINGH* (1900) 6 C. W. N. 223

55. ——— Widow—Parties—Decree against widow, whether binding upon person to whom the estate passes after widow's death. B executed a deed, under which he gave his adoptive mother, J, during her lifetime, full power to enjoy possession of certain properties. Some alluvial lands formed on the bank of one of these properties, and were taken possession of by J as re-formation *in situ*; the neighbouring

EXECUTION OF DECREE—*contd.*13. EXECUTION BY AND AGAINST REPRESENTATIVES—*concl.*

liable for the mesne profits and costs. *Held*, that the lower Court had rightly made *D* a party; and that, having regard to the position occupied by *J* under the deed, she must be regarded as acting on behalf of the estate. *Ram Kishore Chuckerbutty v. Kally Kanto Chuckerbutty*, 1. L. R., 6 Cal., 479, *reversed* upon. *DINAMONI CHAUDHURANI v. ELAKUDAD KHAN* (1903) 7 C. W. N. 678

58. ———— *Suit by representative—Sale of judgment-debtor's rights and interests as against representative of judgment-debtors—Sale not objected to at the time—Subsequent suit by representatives against auction-purchaser to recover property alleged to have been sold in excess of the share of judgment-debtors* A decree having been obtained by mortgagees for the sale of the rights and interests of the mortgagors in a 10-biswa share in a certain village, both mortgagors died. One Annu was substituted on the record of the case as the representative of both the mortgagors. The decree-holders, estimating the interest of the mortgagors—

brought a suit against the auction-purchaser to recover 1 biswa 11 biswas upon the allegation that the judgment-debtors' share had not amounted to more than 4 biswas 5 biswas. *Held*, that such a suit was not maintainable. *Malkarjun v. Narhari*, 1. L. R. 25 Bom 337, referred to. *Sanoo Das v. Bismillah Begam*, 1 L. R. 19 All 480, distinguished. *ANNU v. DEBI DAS* (1904) 1 L. R. 26 All 152

## 14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER.

1. ———— *Unchanging character of joint decree*—When once a joint decree has been given, that decree ever after remains a joint decree, any act or conduct of the decree-holder not withstanding. *JUGGVENATH SINGH v. ANVED-COLLAU* 8 W. R. 132

*ODDH BENARI LAL v. BROJO MOHUN LAL*

4 B. L. R. Ap. 41; 13 W. R. 128

2. ———— *Unchanging character of* A joint decree remains a joint decree, notwithstanding the acts of the decree-holder in realizing his money from one or more of the judgment-debtors—

3. ———— *Joint and several liability*—On 29th November 1861, *A* obtained a decree against *B, C, D*, and others in the following terms:—That "the suit be decreed with mesne profits as far as they can be ascertained to be

EXECUTION OF DECREE—*cont.*14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*cont.*

charged upon all the defendants jointly and severally; the costs of the plaintiff to be paid by the defendants—

while, *A* proceeded to execute his decree as against *B* and *D*, *D* objected; the lower Court allowed her objections; and the High Court on appeal, on 12th December 1866, affirmed that decision. The lower Court allowed *A* to proceed to execute his decree as against *B*, and on 2nd June 1866 certain property

stating that there was still a sum of money due to him under the decree of 29th November 1861, made an application, praying that the suit might be restored to the file, and that the rights of *B* in certain property might be put up for sale. *Held*, that, *A's* decree being a joint one, he was entitled to execute it against any of the defendants he might select. *WARED ALI v. MULLICK ENAYAT HOSSEIN ALI* 12 B. L. R. 500; 20 W. R. 31

*SREENATH GHOSH v. SAMI RAY ROY*

12 B. L. R. 504 note; 12 W. R. 304

*KRISHNA KISHORE CHUCKERBUTTY v. RAM LOCHUN BURDHUN* 2 W. R. Mis 49

*GOPAL PRESHAD v. RAMANOOJIA SINGH*

9 W. R. 201

*ROGHOOONATH DOSS v. ALLADEEN PATTUCK*

5 W. R. 9

4. ———— *Joint judgment-debtors, Liability of* In executing a joint

decree, nor can a Court, in such a case, upon proper action taken by the judgment-creditor, refuse to attach and sell the property of any one of the

*MOHUN PAL v. DINO NATH CHUCKERBUTTY*

8 C. L. R. 34

5. ———— *Joint and several decree for mesne profits* On an appeal from an order passed in execution of a decree for possession and mesne profits, the High Court laid down the principle that, though the decree was in words a joint and several decree for mesne profits, yet where it could be proved incontestably that out of a number of defendants any one had been in possession only of particular lands or a distinct

**EXECUTION OF DECREE—contd.****14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—contd.**

mouzah or lease, his liability to satisfy the decree would in equity extend no further than two such particular land, mouzah, or lease, and for such land

severally or jointly with those defendants, and realize the wasilat due on that village. **GUNDEP DUTT v. BULWANT SINGH** 14 W. R. 175

6. ———— *Liability of judgment-debtors.* When the judgment-debtors are jointly and severally liable to pay the decreed amount, the fact that one has paid his quota of an instalment will not modify his joint liability if default be made by the other judgment-debtor, and on order protecting the estate of the former from proceedings to realize the whole sum decreed is improper. **SALIG RAM v. RAM SENVU** 1 Agra, Mis 14

7. ———— *Release of some debtors on payment of part.* When a decree-holder having a joint decree against several persons, deals with some of them as severally liable for certain respective shares, he cannot execute the same decree as a joint one against the remaining judgment-debtors. **BISSONATH TEWARY v. KOLASHBANT NARAIN SINGH** 2 Hay, 297

8. ———— *Release of one debtor, effect of.* The fact of a decree-holder giving a release

16 W. R. 49

9. ———— *Release of one of several joint debtors.* Having regard to s. 44 of the Contract Act, a release of one of two judgment-debtors who are made jointly liable for the amount of the decree does not discharge the other from liability; execution can be taken out against him. **KIAM ALI v. KAYAMADDI** 8 C. L. R. 212

10. ———— *Part satisfaction of decree—Representatives of decree-holder.* Where two joint decree-holders, each interested in an eight-anna share in a money-decree, issued joint execution, and one of them, after the death of the other, received the whole amount due under the decree; *Held*, that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half. **MAHIMA CHUNDRA ROY v. PYARI MONUN CHOWDHRY** 2 B. L. R. Ap. 43: 11 W. R. 262

11. ———— *Joint shareholder, lien of.* Joint shareholders, debt due to, on mortgaged

**EXECUTION OF DECREE—contd.****14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—contd.**

property. A mortgaged property, burdened with the payment of an entire debt to two shareholders, is liable to sale at the instance of both creditors separately so long as their claims remain unsatisfied. The act of one of two holders of a bond cannot destroy the lien of the other on property pledged to both as security for a joint debt. **INDURJEET KOONWAR v. BIRJI BILAS LALL** 3 W. R. 130

12. ———— *Agreement by one decree-holder to take by instalments.* One of several joint decree-holders is not bound by the acts of another who has compromised with the judgment-debtor and agreed to receive payment by instalments. **BALGOBIND v. BHAWANEE DEEN SAROO** 1 Agra, Mis. 16

*See* **INDURJEET v. SEWARAM alias MUNERAM** 5 N. W. 13

13. ———— *Discharge by one of several joint decree-holders.* The representatives of one of several decree-holders conveyed his interest in the decree to A. Some time afterwards A filed a petition in Court, stating that the decree had been satisfied out of Court, and the case was thereupon struck out as far as he was concerned. Subsequently, the other decree-holders applied for execution of their share of the decree, but it was objected that the decree had already been satisfied by payment to A. *Held*, that the other decree-holders were entitled to proceed with execution for the

decree. **BUDHUN v. HAFEEZAH** 4 C. L. R. 70

14. ———— *Separate executions—Execution of share of decree.* Joint decree-holders are not entitled to apply separately for execution of the decree limited to what they consider their respective interests in it. **PRANNATH MITTER v. MOTHOOBNAUTH CHUCKERBUTTY** 6 W. R. Mis. 65

**INDURJEET KOONWAR v. MAZUM ALI KHAN** 6 W. R. Mis. 76

**RAE DANODHUR DOSS v. BHOLANATH** 3 N. W. 413

15. ———— *Application by one decree-holder for execution of share of decree.* Application of law which allows a decree-

made by one of several joint holders of a decree causes for the benefit of all. **BALESHOON v. MAHOMMED TAZAM ALLEE** 4 N. W. 90

(*Contra*) **CHOOA SAROO v. TRITOORA DUTT** 13 W. R. 244

16. ———— *Complex decree—Application for execution of portion of decree.* When a decree is of a complex nature and grants different kinds

**EXECUTION OF DECREE—contd.****14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—contd.**

of relief to be obtained by process of different kinds, there is no valid objection to separate applications for partial execution of the decree. **RAM BAKSH SINGH v. MADAT ALI** . . . 7 N. W. 9

**17. ——— Partial satisfaction—Execution for remainder.** The rule of law which forbids application for execution of part of a decree does not bar application for all that remains due upon a decree where the rest has been previously satisfied. **TEJ NARAIN CHATTERJEE v. RAM TUNOO MOJOMDAR** . . . 12 W. R. 370

**18. ——— Execution of portion of decree.** One out of several decree-holders cannot execute a decree in respect of his own separate interest, or otherwise than the decree as a whole. In this case, however, the decree-holder was allowed to amend his application to execute the decree for his own share and to convert it into an application to execute the whole decree. **JUDOO-NATH ROY v. RAM BUKSH CHUTTANGEE** . . . 7 W. R. 535

**19. ——— Application by joint decree-holder for execution of their share of a decree—Notice of execution.** Two out of several co-decree-holders applied to the Judge's Court to execute their share of a decree. *Held*, that this was

**SARADA CHURN ROY**

3 B. L. R. Ap. 21; 11 W. R. 241

**NURU KISHORE MOJOMDAR v. ANUND MOHUN MOJOMDAR** . . . 17 W. R. 10

**NUND COOMAR FOUTERDAR v. BUNSO GOPAL SAHOY** . . . 23 W. R. 342

**20. ——— Civil Procedure Code, 1859, s. 207—Execution of share of decree.** Though one of two or more decree-holders may, with the permission of the Court, take out execution of a joint decree under s. 207, the execution must be for the whole decree, and not for any fractional share to which the decree-holder may consider himself entitled, the Court making such orders as may be necessary for protecting the interest of other decree-holders. **THAKOOR DOSS SINGH v. LUCHMIPUT DOOPOH** . . . 7 W. R. 10

**JUJEEBUN GOOPTO v. GOLOCK MONEE DEBIA**

22 W. R. 354

**21. ——— Civil Procedure Code, 1859, s. 207—Parties.** Where one of several persons entitled to the benefit of a decree seeks to have it executed without joining the others interested, his proper course is to apply to the Court under s. 207 of the Civil Procedure Code, 1859. **AMATOO LASSOOL v. LUTEEFUN**

19 W. R. 302

**22. ——— Right of one of joint decree-holders to execution—Civil Proce-**

**EXECUTION OF DECREE—contd.****14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—contd.**

*dure Code, 1859, s. 207.* A co-decree-holder has no right to claim execution unless he satisfies the Court, within the provisions of s. 207, that there was sufficient cause for his asking to have execution alone; and in order to do this, the Court must hear all that the judgment-debtors have to urge against the application. **UMRATH NAUTH CHOWDHRY v. CHUNDER KISHORE SINGH** . . . 21 W. R. 31

**23. ——— Application by some of joint decree-holders for execution—Civil Procedure Code, 1859, s. 206.** All the judgment-creditors except one (*H*) having applied for execution of a decree for costs against one of the judgment-debtors, the answer was that she (the judgment-debtor) had paid all that was due from her under the decree to *H*, who had, under Act VIII of 1859, s. 206, certified the fact to the Court. The Subordinate Judge, without enquiring into the allegation, allowed execution to issue. *Held*, that the applicants, not being the whole of the decree-holders, had no right to make the application without showing sufficient cause for such a course, *viz.*, either that they did not know of the alleged payment to *H*, and that, if made, it had been made to defraud them, or that the defendant was privy to the fraud. **NYNA KOOR v. DOOLER CHURN** . . . 22 W. R. 77

**24. ——— Joint decree-holders—Civil Procedure Code, 1859, s. 207.** Where more persons than one are interested in a decree, any one or more of them may apply for execution of it under s. 207, but the Court, in passing an order in execution of such decree, ought to protect the interests of other decree-holders, and such other person ought not to apply for second attachment of the same property under the same decree, but should apply to share in the proceeds realized by the sale in the execution which has been ordered. **ABID ALI v. MUNNOO BYAS**

2 Agra, 183

**25. ——— Civil Procedure Code, 1859, s. 207.** Where one of several holders of the same decree wishes to take out execution, his proper course is to apply under s. 207, Act VIII of 1859, to execute the whole decree, and the Court, if it sees sufficient cause, may admit the application, passing such order as may be necessary for protecting the interests of the other decree-holders. **INORO COOMAR DOSS v. MOHMA MOHUN ROY**

15 W. R. 159

**AUSEENOOISSA KHATOON v. AMEEROOISSA KHATOON** . . . 22 W. R. 204

**FAZZ BUKSH CHOWDHRY v. SADUT ALI KHAN**

23 W. R. 282

**26. ——— Absence of some decree-holders—Protection of interests of absent.** Where some of the decree-holders in a joint decree apply for execution, the application may be refused or granted at the discretion of the Court, which is

EXECUTION OF DECREE—*contd.*14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*contd.*

bound to see that injury is not done to the rights of absent decree-holders; but whether the Court does so or not, all recoveries in execution are made must be for the benefit of all the decree-holders. *SHIB CHUNDER DASS v. RAM CHUNDER PODDAR*

18 W. R. 29

27. ———— *Execution by one creditor.* A and B obtained a decree against C. A obtained an order for execution of his share in the amount of the decree. C pledged immovable property as security to A, who caused it to be sold. B applied to the Court for her share of the sale-proceeds. The Principal Sudder Ameen re-

might apportion the amount realized amongst all the decree-holders. *TARASUNDARI BURNONI v. BEHARI LAL ROY* . . . 1 B. L. R. A. C. 28

28. ———— *Execution of portion of decree according to extent of the applicants' interest.* The effect of a Privy Council judgment being that each of two co-plaintiffs was entitled to a moiety of a taluk in the possession of the defendant, who then purchased the interest of one of them: *Held* that the other co-plaintiff could obtain execution according to the extent of her interest in the estate. *HURRISH CHUNDER CHOWDERY v. KALI SUNDARI DEBI*

I. L. R. 9 Calc. 482; 12 C. L. R. 511  
I. R. 10 I. A. 4

29. ———— *Civil Procedure Code, 1859, s. 207—Execution of portion of decree.* A joint decree was passed in favour of A and B, and A subsequently applied for execution alone, alleging that B would not join with him in the application. The judgment-debtor stated, and B admitted, that more than half of the decretal money had been paid to the latter (out of Court), but the Court disbelieved the statement, and ordered execution to issue for the full amount of the decree. *Held*, that the Court should, under s. 207 of Act VIII of 1859, have allowed execution for half the amount of the decree only. *PROJESWARI CHOWDHRAEE v. TRIPPOORA SOONDAREE DEBI* . . . 3 C. L. R. 513

30. ———— *Civil Procedure Code, 1859, s. 231—Application for partial*

EXECUTION OF DECREE—*contd.*14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*contd.*

31. ———— *Application by one joint decree-holder for execution in respect of his own share—Transfer of decree to judgment-debtor—Civil Procedure Code, 1877, ss. 231, 232.* A joint decree cannot be executed by one of the several joint holders in respect only of his share of the decree. *Ram Aular v. Ajudhia Singh*, 1. L. R. 1 All. 231; *Collector of Shahjahanpur v. Surjan Singh*, 1. L. R. 4 All. 72; and *Haru Sanker Sandyal v. Tarak Chandra Bhattacharjee*, 3 B. L. R. A. C. 114, followed. When by operation of law one of several joint judgment-debtors acquires the position of decree-holder in respect of

the decree, the effect is not to extinguish the entire judgment-debt, but so much only of it as such judgment-debtor has so acquired. *Wise v. Abdool Ali*, 7 W. R. 136; *Pogose v. Fikrooddeen Mahomed Ahsan*, 25 W. R. 343; *In re Degumburee Dabbe B. L. R. Sup. Vol. 938*; and *Khoshalee v. Nund Lal*, 6 N. W. I., referred to. *Held*, therefore, where one of several joint decree-holders applied for execution in respect of his own share only and the joint judgment-debtors under the decree had inherited the right therein of one of the joint decree-holders, that the application was contrary to law; that so much of the judgment-debt as had devolved upon such persons had been extinguished; and that application should have been made for execution in respect of the entire unextinguished portion of the judgment-debt. *PROJESWARI CHOWDHRAEE v. TRIPPOORA SOONDAREE DEBI*, 3 C. L. R. 513, and *Bibee Budhwa v. Hafeezah*, 4 C. L. R. 70, followed. *BANARSI DAS v. MAHARANT KUAR*  
I. L. R. 5 All. 27

32. ———— *Payment out of Court—Pay-*

the 12½ annas share claimed by him, and refused to recognize  
to him.  
and gran  
decree.

EXECUTION OF DECREE—*contd.*14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*contd.*

the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held*, also, that a judgment-debtor is entitled to credit for any sum paid *bona fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held*, further, that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, *first*, whether the payment to B was a fraud on the other joint decree holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of a 244 of the Civil Procedure Code. *Nyna Koor v. Dooles Chund*, 22 W. R. 77; *Brojeswari Choudhuranee v. Tripoora Soonderee Debi*, 3 C. L. R. 539, and *Mahima Chundra Roy v. Pyari Mohan Chowdhry*, 2 B. L. R. Ap. 43. TARBUE CHUNDER BHUTTA CHAIJEE v. DIVENDRO NATH SANYAL  
I. L. R. 8 Cal. 831; 12 C. L. R. 598

33. — Civil Procedure Code, ss. 231, 238—Application for uncertified

judgment-debtor on account of the decree out of Court, but this payment had not been certified. *Held*, that the payment was valid only to the extent of the share to which the payee was entitled, and that this share having been ascertained and credit given for it, the decree should be executed in favour of the present applicant for the balance. *SULTAN MOIDREH v. SATALAYANMAL*

I. L. R. 15 Mad 343

34. — Conditional decree—Joint decree-holders—Refusal of some to join in applying for execution—Civil Procedure Code, s. 231 The provisions of s. 231 of the Civil Procedure Code are not applicable to the case of joint decree-holders the execution of whose decree is conditional on their joint performance of a particular act. *FARZAND c. ABDULLAH* I. L. R. 8 All. 89

35. — Execution of portion of decree—Application by some of joint decree-holders. Where two out of several decree-holders petitioned the Court to execute their share of the decree (which was for possession and mesne profits), and the other decree-holders, though they virtually joined in the application by signifying their consent,

EXECUTION OF DECREE—*contd.*14. JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER—*contd.*

subsequently retracted their consent, and the original applicants declined to proceed with the execution of the decree for mesne profits; *Held*, that there was no application on the part of all the decree-holders to execute the decree for mesne profits, nor any application by some of them for execution of the whole decree, and that the Court's order directing realization of the unpaid portion of mesne profits was passed without any

36. — Civil Procedure Code, ss. 207, 208. When a decree is in favour of several persons and out of those persons some transfer their interest to a third party, the Court

it. BYJNATH SAHOO v. DOOLAB CHAND SAHOO  
24 W. R. 245

37. — Right to execute decree—Civil Procedure Code (Act XIV of 1882), s. 544—Appeal by one of several plaintiffs claiming under a joint right—Decree in such appeal binds other co-plaintiffs, although not parties to the appeal—Procedure. A and B brought a suit against C, and obtained a decree awarding a part of their claim. B appealed, and the Appellate Court reversed the decree, and rejected the

## COLLECTOR OF SALT REVENUE

I. L. R. 11 Bom. 596

38. — Decree for possession of immovable property—Purchase by judgment-debtor of rights of some of the joint decree-holders—Decree extinguished *pro tanto*. Where, subsequent to a decree, a portion of the rights to which the decree relates devolves either by inheritance or otherwise upon the judgment-debtor, or is acquired by him under a valid transfer, the decree does not become incapable of execution, but is extinguished only *pro tanto*. This rule of law is sufficiently general to comprehend alike cases in which the decree is for money only and where it is for immovable property. The rule of law against

EXECUTION OF DECREE--*contd.*

14. JOINT DECREES, EXECUTION OF, AND  
LIABILITY UNDER—concl'd. {

7 IV. R. 136; and *Pogose v. Fukurooddeen Mahomed Ahsan*, 25 IV. R. 343, referred to. KUDHAY v. SHEO DAYAL . . . . . I. L. R. 10 ALL. 570

39. ————— Decree for rent—Tenure or holding, sale of—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), s. 165. A 16-anna proprietor obtaining a decree for the whole rent due in respect of a molarari tenure in a suit brought against all the tenants is entitled under s. 165 of the Bengal Tenancy Act to sell the tenure in execution of the decree, although he recognized the fact that the tenants had sub-divided the tenure and chose to accept a decree making each of them separately liable for his own share of the rent. *Tarini Prosad Roy v. Narayan Kumar Debi*, I. L. R. 17 Cal. 301, referred to and explained, *Suroo Lal v. Wilson* (1905). I. L. R. 32 Cal. 680

### 15. LIABILITY FOR WRONGFUL EXECUTION.

*See* DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

See DAMAGES—SUITS FOR DAMAGES—  
TORTS

**1. Seizure in Execution—Trespass—Liability of judgment-creditor** Seizure of personal property in execution of a decree is not an act of the Court, but one of the party himself seeking execution, for which he is liable if any trespass be committed on the property of a stranger.

**SUBJAN BISHU SARIATTILLA**

S. B. L. H. A. C. 413: 12 W. R. 329

RASH BEHARY LALL & WAJAN

12 B. L. R. 208 note; 11 W. R. 516

2. \_\_\_\_\_ Liability of  
execution creditor in damages for wrongful seizure  
— Attachment of stranger's property — Measure of

a warrant which specified the rice in question and which had been issued upon a darkest presented by the defendants in which they prayed for the attachment of this particular rice as their judgment-debtor's property. The rice, while in the custody of a bailiff of the Court-nazir in the place where it had been attached, was clandestinely threshed and carried off by thieves who left the straw. In a suit brought by the plaintiff to recover the value of the

defendants had not in any way conduced to the loss of the rice. *Held*, by the High Court, reversing the decrees of the lower Courts, that the defendants

EXECUTION OF DECREE--*contd.*

### 15. LIABILITY FOR WRONGFUL EXECUTION—*concl'd.*

were liable. When the wrongful seizure was made at the instance of the defendants, the plaintiff's cause of action was complete, and was independent of the subsequent occurrence. The theft might have rendered the defendants unable to restore the rice in specie, but could not purge, and was no satisfaction of, the previous trespass which rendered the defendants liable for the full value of the rice.

**GOMA MAHAJ PANTIL v. GOKALDAS KRISHJI**

L. L. L. 3 Bom. 74

## 16. REFUSAL OF EXECUTION.

**1. Execution—Decree restraining defendant in user of land—Sale of land in execution of another decree—Purchaser at such sale in possession—No execution granted of former decree** The plaintiff obtained a decree restraining the defendant in his user of certain land, and applied for execution. Meanwhile the land had been sold in execution of another decree against the defendant, and the purchaser at the Court sale obtained possession. The plaintiff thereupon applied that the purchaser should be made a party to the execution proceedings, and that execution should go against him as well as against the defendant. *Held*, that no order for execution could be made. It could not be

(1901) . . . . . I. L. R. 28 Bom. 140

2. ——— Sale in execution of decrees —Selling aside sale—Invalid sales—Want of jurisdiction—Effect on validity of sale—Civil Procedure Code (Act XIV of 1852), s. 273. Where a Court executing its own decrees on receiving from another Court an order attaching the decrees returned the notice of attachment to the latter Court on the ground that it did not state the amount for which the attachment had been issued and proceeded with the execution and sold certain properties.—Held, that the Court on receiving the order was bound to comply therewith, and under s. 273 of the Civil Procedure Code it was debarred from proceeding with the execution, unless the bar was removed in one of the ways specified in the section and that the sale was invalid. **MANIK LAL SEAL v. BANAMALI MUKERJEE** (1905) . . . I L R. 32 Cal. 1104

### 17. STAY OF EXECUTION.

1. Application for stay of execution—Civ. Procedure Code, 1859, s. 333. Application for stay of execution of a decree, an appeal from which has been filed, should, under Act VIII of 1859, s. 338, be made to the Court of appeal, and not to the Court which passed the order under appeal. **AMBASSER BEGUN v. RAJ ROOP KNOOR**  
1 C. L. R. 388

1 C. L. R. 388

**EXECUTION OF DECREE—contd.****17. STAY OF EXECUTION—contd.**

3. ——— Power to stay execution—*Civil Procedure Code, s. 234, 290—Decree transferred for execution.* Where a decree of the High Court is transmitted to a Judge for execution under s. 234, Act VIII of 1859, and the judgment-debtor contends that the balance due on the decree is less than that for which execution is sought, the Judge has no jurisdiction to enquire into the question, but may, on cause shown under s. 290, stay execution, pending a reference to the High Court. *KIRUB CHENDER PAEL CHOWDERY v. KHELAT CHENDER GHOSE* . . . . . 9 W. R. 361

3. ——— Decree for arrears of rent is decree for money—*Code of Civil Procedure (Act XIV of 1882), s. 545.* A decree for arrears of rent is a "decree for money" within the meaning of s. 545 of the Code of Civil Procedure, and execution of such decree may therefore be stayed under that section. *RANU BENAFY SANYAL v. SYANA CHUN BHATTACHARJEE* . . . . . I. L. R. 25 Calc. 322

4. ——— Power of Court executing decree to go behind decree—*Question of service of notice.* Where an application is made by a judgment-debtor for stay of execution of an Appellate Court's decree, the Court executing the decree cannot enquire into the question whether any notice was served upon the applicant before the appeal judgment was passed. *MUKHDOON v. BHUGWAN DASS* . . . . . 24 W. R. 33

5. ——— Application by person not party to suit—*Civil Procedure Code, 1859, s. 230.* The Court will not interfere to stay execution upon the application of a person not a party to the suit who claims immovable property liable to be taken under the decree. The remedy of such a person under s. 230 of Act VIII of 1859. *KHELAT CHUNDER GHOSE v. PROSKUNOMYEE DASSEE*

Marsh. 478

8. ——— Security—*Consent.* Execution will be stayed only on security being given or by consent. *SAGORE CHUNDER CHUCKERBUTTY v. SHERBOURNE* . . . . . Bourke O. C. 103

7. ——— *Civil Procedure Code, 1859, s. 338—Stay of execution pending appeal—Act XXIII of 1861, s. 38* Pending the determination of the appeal, the execution of the decree shall be stayed.

of the petition of HAR SHANKAR PARSHAD

I. L. R. 1 All 178

8. ——— *Civil Procedure Code, s. 230* Stay of execution

matter of the petition of ISMAIL KOOKE

B. L. R. Sup. Vol. 1007 : 8 W. R. 448

**EXECUTION OF DECREE—contd.****17. STAY OF EXECUTION—contd.**

9. ——— *Act XXIII of 1861, s. 38—Security for restitution of money.* Before staying execution of a decree and preventing the decree-holder from receiving the fruits of his decree, or before requiring him under s. 36, Act XXIII of 1861, to give security for its restitution, probable cause must be shown of the judgment-debtor's inability to recover the money if the decree be reversed. *SUKHEE MONZE DERIA v. BROJORAJ MOOKERJEE* . . . . . 17 W. R. 89

10. ——— *Act XXIII of 1861, s. 38—Security in execution of decree—Decree against which no appeal brought.* The High Court could not, under s. 36, Act XXIII of 1861, direct the lower Courts to take security in the execution of a decree against which no appeal has been referred to it. *In re BHUGWAN CHUNDER GHOSE* . . . . . 8 W. R. Mis. 15

11. ——— Ground for staying execution—*Appeal, refusal to execute pending.* Execution of a decree for enhanced rent should not be refused merely because the decree has been appealed against on a point of law. *THEODORE v. ABDOOL BURKUT AMEENULLAH* W. R. 1864, Act X, 106

12. ——— The Court declined to stay the execution of a decree (1) because the applicant has not shown, as he was bound to show, something beyond the mere fact of an appeal having been preferred against it, and (2) because there seemed to have been great delay on his part. *LESLIE v. LAND MORTGAGE BANK OF INDIA*

17 W. R. 160

13. ——— *Expiry of time for appeal—Power of Court to stay execution—Code of Civil Procedure (Act XIV of 1882), ss. 239, 236, 243, and 246.* It is not open to the Court to refuse to execute a decree against which no appeal has been preferred and the time for appealing against which has expired. *ISHAN CHUNDER ROY v. ASHANULLAH KHAN* . . . . . I. L. R. 10 Calc. 817

14. ——— *Person sued as Government servant ceasing to hold that position.* A decree was passed by the Principal Sudder Ameen against the defendant declaring him personally liable to the claim. No appeal was preferred. Held, that an order by the Judge staying execution because the defendant, who was sued as a servant of Government, has ceased to fill that position, was illegal. *MANONED TOQUE BEG v. WALLIS*

2 Agra Mis. 5

15. ——— *Refusal to pay costs of advertising sale.* It is not within the discretion of a Court charged with the execution of a decree to withhold execution and abstain from selling because the decree-holder refuses to pay the costs of advertising. The Code does not require the decree-holder to pay such costs in advance. *KISTO KISHORE GHOSH v. SOOREJONATH SIRCAR*

19 W. R. 354



EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

18. *Civil Procedure Code, 1859, s. 290—Ex parte decree.* A principal Sudder Ameen is competent under s. 290, Act VIII of 1859, to allow the stay of execution of a decree of the High Court on its original side for a sufficient time to make a new trial, obtained by the debtor. *MOONJOY CHUCKERBUTTY v. COCHRANE* 8 W. R. 202

17. *Likelihood of injury from immediate sale.* Where a judgment-debtor proved that a sale in execution might be stayed, as material injury would otherwise be caused to him from the circumstance that the day fixed for the sale was so near to the latest safe day for the payment of the Government revenue:—*Held*, that good and sufficient cause was not shown for staying the sale. *AHMED REZA v. KHUJOORUNISSA* 13 W. R. 281

18. *Allegation of a private purchase by the decree-holder.* While a decree for money was being executed by the sale of immovable property, the judgment-creditor petitioned the Court to stay the sale for two days, as the defendants, the judgment-debtors, had entered into a razzinama with him. On the same day the judgment-debtors petitioned the Court to continue the sale for three days. Two days afterwards the judgment-creditor presented a petition to the Court, stating that the judgment-debtors had executed a note in his favour for Rs. 500 in part-payment of the

judgment-debtors might be examined in respect of the sale for Rs. 500, and that the sale to him be confirmed. The Civil Judge made an order refusing

*VENKATA NARASIMAMA APPAROW v. VENKATAKRISHNIAI NAIDU* 5 Mad. 410

19. *Pendency of cross-suit—Power of Court to which decree is transmitted for execution—Civil Procedure Code, 1859, s. 290.* S. 290 of Act VIII of 1859 provides that, whenever a suit shall be pending in any Court against the holder of a decree of such Court by the judgment-debtor, the Court may, if it appears just and reasonable to do so, stay execution of the decree, either absolutely or on such terms as it may think proper, until a decree shall be passed in the pending suit. Any Court to which a decree is transmitted for execution can under the section stay execution, notwithstanding that the suit pending between the judgment-debtor and the holder of the decree is pending in such Court, and not in the Court

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

which transmitted the decree. *COOKE v. HISEEBA BEEBEE* 6 N. W. 181

20. *Appeal pending in another suit—Civil Procedure Code (Act VIII of 1859) s. 290.*

*Brought a summons to set aside the sale of land.*

*Decree granted to the plaintiff.*

*GURU PERSHAD SINGH* 1. L. R. 11 Cal. 140

21. *Civil Procedure Code, 1859, s. 546—Application for stay of sale of immovable property in execution of money-decree under appeal.* An application under the

which passed the decree, and not to the Appellate Court. *Gossain Money Puree v. Guru Pershad Singh*, 1. L. R. 11 Cal. 140, referred to. In the matter of the petition of *MURAD-UN-NISSA* 1. L. R. 15 All. 196

22. *Civil Procedure Code, as s. 545, 546, 547—Stay of execution pending application for review—Jurisdiction.* S. 547 of the Civil Procedure Code provides for the procedure to be followed in miscellaneous matters

On the 20th July 1886, an application was made by

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

AMIR HASAN V. AHMAD ALI L. 22, 20, 0 1111, 00

23. — *Stay of execution pending suit between decree-holder and judgment-debtor—Civil Procedure Code, ss. 235 (d), 581, 583.* The words "such Court" in a 243 of the Civil Procedure Code do not limit the exercise of the powers given by that section only to decree passed by the Court in which the suit is pending, but with reference to ss. 235 (d), 581, and 583, that Court is empowered to stay execution of decree transferred to it for execution from either a Court of co-ordinate jurisdiction or a Court of Appeal. The plaintiff instituted a suit against defendant for recovery of money and other reliefs, which was ultimately decreed in favour of the plaintiff by the High Court, and he was

Plaintiff then applied for stay of the execution, and his application was refused by the first Court but granted by the District Court. On appeal by defendant to the High Court: *Held*, that the Judge's order was correct. *Mithun Bibi v. Burloor Khan*, 8 W. R. 392, disapproved. *KASSA MAT. v. Gori* . . . . . I. L. R. 10 ALL 389

24. — *Powers as to stay of execution of Court executing transferred decree—Civil Procedure Code, ss. 228, 239.* The powers which the foreign Court has under a 228 of the Civil Procedure Code are confined to the execution of the decree, and the Court cannot question the propriety or correctness of the order directing execution, nor can it, with reference to a 239 of the Code, stay execution except temporarily. *Held*, therefore, where the drawers of a hundi, against whom the indorsee from the payee had obtained a decree on the hundi, objected in the Court of first instance to the execution of the decree, and such Court refused to entertain the objection, that the order of the lower Appellate Court, directing that the parties should be allowed to

RADREY LAL . . . . . I. L. R. 7 ALL 330

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

25. — *Injunction to stay execution—Relief asked for in accordance with statements in plaint not forming a separate prayer in the plaint—General prayer for relief—Control of execution.* A, a joint owner of an estate with B, saved the joint estate from sale for arrears of Government revenue, in payment of which B had made default, for such purpose mortgaging her share in the estate to E. A then sued B for contribution. Pending that suit, B again made default, and the estate was sold and purchased by C, subject to incumbrances. Subsequently A obtained her decree against B and assigned her decree to D, who obtained an order for execution, and attached certain property belonging to B. D and E then entered into an agreement with C that they would release C and the share charged with payment of A's decree from all liability, and that they would entrust the whole conduct of the execution-proceedings to C in consideration of his granting a perpetual lease of part of the property to D and E. In pursuance of this agreement, D and E granted a release to C, and C granted a lease to E for himself, and it was contended also as benamidar of D. The agreement contained a proviso that should the Court order that

should not be bound by the release, and that it should be open to C to cancel the agreement. D

son and widow of B, in a suit brought against C and D, objected to the execution-proceedings, and after paying the sum due to D into Court, asked for an injunction staying all further proceedings in execution until the hearing of the suit. *Held*, that D had obtained, out of the lien directed by the decree, some benefit or advantage which the plaintiffs might have a right to have valued at the hearing, and that, notwithstanding this did not form the subject of a separate prayer in the plaint, the Court would grant the injunction. *KRISTO MOHINY DOSSEE v. KALLY PROSONNO GHOSH*

I. L. R. 8 Calc. 485 : 8 C. L. R. 43

26. — *Administration decree—Civil Procedure Code, ss. 213, 276, 295—Attachment after date of institution of administration suit under decree obtained prior to such suit.* On the 22nd July 1886, one R. L. obtained a money-decree against one P. C. On the 5th November 1886, P. C. died; and on the 18th December 1886 R. L. applied to attach certain properties belonging to the estate of his judgment-debtor, which properties were actually attached on the 8th and 12th January 1887. On the 21st December

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

1886 one S filed a suit to administer the estate of

LALL MITTER . . . I. L. R. 15 Calc. 202

27. ———— Appeal—Decree for injunction—Damages and costs—Stay of execution as to costs. A party appealing against a decree, which directs him to pay money, may obtain stay of execution of the decree, so far as it directs

granted. DRUNJIBHOY COWASJI UMRIKAR v. LISBOA . . . I. L. R. 13 Bom. 241

28. ———— Decree made by mistake and without jurisdiction—Decree in suit against *Sovereign Prince*. A suit was brought against the Thakur of Palitana (his title being omitted from the plaint), and an *ex parte* decree was obtained against him. An application on the part of the Thakur to have the decree set aside was dismissed, and the

declared null and set aside on the ground that it had been made by mistake and without jurisdiction. The Court (without expressing an opinion as to whether the order dismissing the application to have the decree set aside would have prevented it from declaring the decree void *ab initio*) held that, as the decree was made erroneously and without jurisdiction, it would not, when apprised of the error, assist the plaintiff in carrying it into execution in a case in which lapse of time made it incumbent on the plaintiff specially to invoke the aid of the Court for that purpose. LADKUYARBAI v. SANSANOT PARTABSANJI . . . 7 Bom. O. C. 150

29. ———— Modification or cancellation of security-bond—*Civil Procedure Code*, s. 338. K sued R for a sum of money due on pro-

s. 338, Code of Civil Procedure, ordered that execution might be stayed, provided good and sufficient security were given. Accordingly A appeared

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

before the Judge, and executed a security-bond binding himself, in the event of the appeal being dismissed, to liquidate the debt. The appeal was

From this judgment an appeal was preferred under s. 15 to a Full Bench. After the opinion of the Division Bench was pronounced, A applied to the Judge for the return of his security-bond; but his application was refused pending the final decree

calling for security, it had authority at any time to modify or cancel such order, or to direct the restoration of the security when no longer required, and

the security was no longer required, and the security-bond was reversed. The Judge's order refusing to return the security-bond was passed without jurisdiction, and was therefore null and void. On the reversal of the decree, the liability of the surety ceased, and the security-bond became a dead-letter. AMEER ALI v. KASSIM AIR KHAN . . . 19 W. R. 403

30. ———— Decree directing sale of land in pursuance of a contract specifically affecting it—*Civil Procedure Code*, 1877, s. 326—*Stay of sale*. S. 326 of Act X of 1877 does not

a case under s. 326. BHAGWAN PRASAD v. SHRO SAHAI . . . I. L. R. 2 All. 853

31. ———— Scheme for satisfying decree—*Civil Procedure Code*, Act X of 1877, s. 326—*Stay of public sale of attached property*. Where the Collector has applied to the Court under s. 326 of the Civil Procedure Code proposing a

bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed

HUBO PRASAD ROY v. KALI PRASAD ROY . . . I. L. R. 9 Calc. 290

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

32. ——— Security for restitution of property—*Act XXIII of 1861, s. 36.* After property, the subject of litigation, has been given over in execution of a decree to the plaintiff, it is not within the scope of s. 36 of Act XXIII of 1861 to exact security from the plaintiff for restitution of such property in the event of a successful appeal. *MANSEHRAM PURSHOTAM v. JAYAKRISHNA*  
7 Bom. A. C. 122

33. ——— Reversal of decree in favour of plaintiff—*Civil Procedure Code, 1859, s. 335—Duty of Appellate Court.* When an Appellate Court reverses a decree in favour of the plaintiff in a suit, it ought not to stay execution of its own decree under s. 338 of Act VIII of 1859. Order of District Court staying execution under such circumstances set aside. *KAVASJI BRUNJI v. DHONDIRAJ VINAYAK*  
10 Bom. 411

34. ——— Reversal of decree on appeal, effect of—*Security by decree-holder on being allowed to execute decree appealed from.* Where a decree-holder, pending appeal, gives a security-bond whereby he undertakes that, if the decision of the first Court is reversed or modified by the Appellate Court, he will make good any property taken by him

conform to a mere direction as to the manner in which the decree was to be executed when that direction came too late, but would need to be construed equitably, and the other party, if still a debtor to the decree-holder, would not be entitled to recover anything unless it were shown that he had sustained damage. *SHRIVATKOLLEJI MIRDHA v. TEETA GAZEE HOWLADAR* . . . 21 W. R. 82

35. ——— Execution completed by appointment of manager—*Civil Procedure Code, 1877, s. 345.* It having been directed by a decree that, pending an appeal, managers should be

cedure Code the Court had power only to stay execution, and that the words "stay execution" in that section could not be extended to a case in which execution was completed, as in the case before it. *DHARRAM SINGH v. KISHEN SINGH*  
12 C. L. R. 532

36. ——— Setting aside proceedings giving possession under decree—*Civil Procedure Code, 1882, s. 243—Possession given under decree.* There is no provision in the law which empowers the Court passing a decree to set aside the proceedings under which the decree-holder has already been placed in possession in execution of

EXECUTION OF DECREE—*contd.*17. STAY OF EXECUTION—*contd.*

37. ——— Right of judgment-debtor in giving security—*Amount of security.* Where a judgment-debtor asks for stay of execution—

than the amount awarded by the decree. *BABOO RIA DOORMA KOWAR v. LALLA JUWANUR LALL PADEWY* . . . 20 W. R. 52

38. ——— Security bond—*Amount of security—Order staying execution pending appeal—Civil Procedure Code (Act XIV of 1882), ss. 545, 553.* The Court which passed a certain decree for specific performance of a contract to execute a mortgage on property worth 4½ lakhs of rupees

objected to the amount of security required, and appealed to the High Court on that ground. *Held*, on the facts, that the security required was excessive, and it was reduced to Rs. 7,000. *UDEYADITA DEB v. GRISSON* . . . I. L. R. 12 Cal. 624

39. ——— Notice to decree-holder—*Civil Procedure Code, 1882, s. 545—Practice—Affidavit.* A final order for staying the execution of a decree should not be made without giving the decree-holder notice of the judgment-debtor's application. The application should be supported by an affidavit. *MULTANCHAND SHIVRAO v. KHANDSJI NARSIVANJI* . . . I. L. R. 15 Bom. 538

40. ——— Practice—*Appel—Civil Procedure Code (Act XIV of 1882), ss. 545, 546.* In order to obtain a stay of execution of a decree directing the payment of money, the applicant must satisfy the Court on affidavit that substantial loss may result to him unless execution is stayed. *GATEWAR SIKHAR of BARODA v. GHANDI KATCHARABHAI KASTURCHAND* (1899)  
I. L. R. 25 Bom. 243

41. ——— Appellate Court, power of—*Stay of execution when an appeal from an order in execution proceedings is pending before the Court—Civil Procedure Code (Act XIV of 1882), ss. 244 (c), 545 and 647.* The Appellate Court has power to stay execution of an order in that Court. *BOZE* (1902)

42. ——— Civil Procedure Code (Act XIV of 1882), ss. 244, 545—*Execution of decree—Order refusing stay—Appel—Deliberate*



EXECUTION OF DECREE—*contd.*18. STEP IN AID OF EXECUTION—*contd.*

the decree-holder consented. The present application was made within three years from the

decree-holder to the application made by the judgment-debtor was not "an application" by the

same principle applied to ss. 19 and 20. *Kuppusami Chetty v. Rengasami Pillai*, I. L. R. 27 Mad. 608, followed. *SREENIVASA CHARIAR v. PONNUSAWMI NADAR* (1905). I. L. R. 28 Mad. 40

4. ———— *Limitation Act* (XV of 1877), Sch. II, Art. 179—Step in aid of execution—A "batta memorandum" praying for

25 Bom. 639, distinguished. *Ambica Pershad Singh v. Suddhari Lal*, I. L. R. 10 Cal. 851, followed. *VIJAYARAGHAVALU NAIDU v. SRINIVASALU NAIDU* (1905). I. L. R. 28 Mad. 399

5. ———— *Limitation Act* (XV of 1877), Sch. II, Art. 179—Execution of decree—*Limitation—Step in aid of execution.* Held that an application made by the

to serve one of the judgment-debtors, whose address was not then known, with notice of the application for substitution were both applications made to the proper Court to take some step in aid of execution within the meaning of Art 179 of the second Schedule to the Indian Limitation Act, 1877. *PITAM SINGH v. TOTA SINGH* (1907)

I. L. R. 29 All. 301

8 ———— *Step in aid of execution—Limitation Act* (XV of 1877), Sch. II, Art. 179—Application to bring on record representative of deceased judgment-debtor is a step in aid of execution—*Civil Procedure Code* (Act XIV of 1882), ss. 232, 368—Application under s. 368 not prohibited by s. 232. Under the proviso to s. 232 of the Code of Civil Procedure, the transferee of a decree cannot obtain execution without notice to the judgment-debtor, and where the judgment-debtor is dead, no such notice can be sent until his representatives are brought on record. There is nothing in s. 232 to

EXECUTION OF DECREE—*contd.*18. STEP IN AID OF EXECUTION—*contd.*

prohibit the transferee from applying under s. 368 to bring the representative on record and such an application must be regarded as a step in aid of execution within the meaning of Sch. II of Art. 179 of the Limitation Act. *MAHALINGA MOOPANAR v. KUTTANACHARIAR* (1907). I. L. R. 30 Mad. 541

7. ———— *Mistake—Step in aid of execution—Limitation Act* (XV of 1877), Art. 179—Application against a dead person—Bond fide mistake. If an application for execution of a decree be made under the influence of a bond fide mistake—*Limitation Act* (XV of 1877), Art. 179 which time b I. L. R. 20 Cal. 383, followed. *Madho Prasad v. Kesho Prasad*, I. L. R. 19 All. 337, distinguished from. *BIRIN BEHARI MITTER v. BIBI ZOIRA* (1908). I. L. R. 35 Cal. 1047

8. ———— Application for delivery of possession—Execution proceeding, struck off as partly satisfied, no bar to fresh application for execution—Application for delivery of possession under Civil Procedure Code (Act XIV of 1882), s. 319, if step in aid of execution—*Limitation Act* (XV of 1877), Sch. II, Art. 179—Judicial or ministerial act. An order under a 319 of the Civil Procedure Code (Act XIV of 1882), can only be passed by the presiding officer of the Court and is a judicial act. Consequently an application by a

Act (XV of 1877), *Sadananda v. Kali Sankar*, 10 C. W. N. 28, followed. *Saratoolia v. Raj Kumar*, I. L. R. 27 Cal. 709, referred to. An order striking off proceedings in execution as partly satisfied which is made merely to avoid cases appearing in arrears in the quarterly returns has no particular judicial value and does not preclude the decree-holder from pursuing his remedy until the decree is satisfied. *PREM KRISHNA DHUR v. JURAMONI CHAUDHAR* (1903)

13 C. W. N. 694

## 19. STRIKING OFF EXECUTION-PROCEEDINGS.

1. ———— Striking off execution-order, effect of—Abandonment of proceedings. Striking off an execution-order from the file is an act which may admit of different interpretations according to the circumstances of the case, and is not conclusive proof that such execution-proceedings were intended to be abandoned. *HURENATH BRUNJO v. CHUNNI LALL GHOSH*

I. L. R. 4 Cal. 877; 3 C. L. R. 161

EXECUTION OF DECREE—*contd.*19 STRIKING OFF EXECUTION-PROCEEDINGS—*contd.*

RADHAKISSORE BOSE v. AFTAB CHUNDRU MAHATAP  
I. L. R. 7 Calc. 61

2. ——— Striking execution case off the file—*Act VIII of 1859, ss. 110 and 114.* There is no particular law authorizing the Court to strike cases for execution of decrees off the file. This can only be done under the provisions of ss. 110 and 114 of Act VIII of 1859. The practice of striking off execution-cases from the file, in order to clear it and enable judicial officers to make their quarterly returns, strongly condemned, as productive of the greatest hardship and injustice to the suitors. *GOUR MOHAN BANDOPADHYA v. TARACHUND BANDOPADHYA*

3 B. L. R. Ap. 17; 11 W. R. 567

(*Contra*) see *RAJPAI v. CHOQAMUN* 4 N. W. 10 where s. 110 of Act VIII of 1859 was held to apply to proceedings in execution of a decree.

3. ——— *Effect of, as to continuance of suit.* It is contrary to general principles and a senseless addition to all the vexations of delay in the course of procedure to hold that when, for any reason satisfactory or not, the execution of

NARAIN SINGH v. KISHRAMUND MISSEB

5 W. R. P. C. 7

2 Ind. Jur. O. S. 1

Marsh. 592; 8 Moo. I. A. 324

4. ——— *Effect of, on rights of parties.* Striking off execution-proceedings not being in accordance with the provisions of the Code, but merely for the convenience of the Court, when such proceedings are struck off on the motion of the Court, the rights of the parties to the proceedings are in no way affected. *BARODA SUNDARI DABIA v. FERGUSSON*

11 C. L. R. 17

SYAM SINGH v. BAIDYANATH RAI

13 C. L. R. 176

5. ——— *Effect of, on rights of parties.* The rights of the parties to execu-

C. L. R. 17, followed. The only proper mode of

GOSHYANY I. L. R. 10 Calc. 416

6. ——— *Jurisdiction of Principal Sudder Ameen—Act V of 1836.* The

EXECUTION OF DECREE—*contd.*19. STRIKING OFF EXECUTION-PROCEEDINGS—*contd.*

jurisdiction of a Principal Sudder Ameen to deal with a decree referred to him for execution by the Zillah Judge under Act V of 1836 did not cease by his striking the case off his file after partial execution, so as to render necessary a subsequent reference to the Sudder Ameen.

Affirming decision of lower Court in

2 W. R. Mis. 2

7. ——— *Order of sale—Application for execution struck off—Application for restoration—Finality of order.* A decree for money was passed on the 19th March 1865. The first application for its execution, made after Act X of 1877 came into force, was dated the 16th Decem-

the decree on the ground of limitation, and the decree-holders filed an answer to the objection. On the 14th July 1879, the case was struck off, because the decree-holder had not deposited certain process-fees, without the disposal of the objection. On the 1st October 1879, the decree-holders again applied for the sale of the property, and it was ordered to be sold. On the 17th February, the judgment-debtor presented a petition repeating the objection, which, on the 13th March 1880, the Munsif entertained and disallowed. This order

by the decree of the High Court in appeal,

it must be taken that that decree was correctly passed, and that the order for sale passed upon it was properly made, and that the sale ought to

EXECUTION OF DECREE—*contd.*19. STRIKING OFF EXECUTION-PROCEEDINGS—*contd.*

8. — *Order striking off execution-proceedings and maintaining attachment.* An order on an application for execution striking off the application, but maintaining attachment effected in pursuance thereof, is an order not warranted by law. *RASI NEWAZ v. RAM CHARAN* . . . I. L. R. 18 ALL 49

9. — *Mitalshara family—Decree for mesne profits against father—Attachment—Execution proceeding struck off whilst attachment was in force.* . . .

*Sham Chandra, I. L. R. 10 All. 1, overruled.* *Shaikh Kumaruddin v. Jawahir Lal*, 9 C. W. N. 601; I. L. R. 32 I. A. 102; 1 C. L. J. 381, relied on. When an executing Court in striking off an execution proceeding ordered the attachment

sustaining attachment followed by an order for sale made in the lifetime of the judgment-debtor, the decree holder was entitled to proceed with the sale and realise his decree. *Surya Bansi Koor v. Sheo Prasad Singh*, I. L. R. 6 I. A. 88, followed. *Madho Prasad v. Mehrban Singh*, I. L. R. 17 I. A. 194, distinguished. *Sheo Prasad v. Hiralal*, I. L. R. 10 All. 10, not followed.

ferred to. *PEARY LAL SINGH v. CHANDI CHARAN SINGH* (1906) . . . I. C. W. N. 103

10. — *Limitation—Application in continuation of previous proceedings in execution.* On the 7th December 1903, the sale of certain immovable property which had been attached, was ordered. On the 30th January 1904, the amir reported that he had been unable to hold the sale, as there were no bidders. Notice of this fact was given to the decree-holder, and

EXECUTION OF DECREE—*contd.*19 STRIKING OFF EXECUTION-PROCEEDINGS—*contd.*

he was allowed time till the 10th February to pay in fees for a fresh sale. On that date, no steps having been taken by the decree-holder, the case was ordered to be struck off "for the present". On the 13th January 1906 the decree-holder again applied, asking that the property, which was still under attachment, might be sold. Held, that this was not a fresh application in execution, but merely an application to remove the former attachment. . . .

. Sen, 5  
Khan v.  
MCA.

*JIR-ULLAH v. UMED BIBI* (1908)

I. L. R. 30 ALL 499

## 20. EXECUTOR, LIABILITY OF.

1. — *[Failure to produce fund at appointed time—Advisory duty—Appointment of an agent—Degree of care in the appointment—Want of diligence—Breach of duty—Loss caused to the estate—Liability of executor—Trusts Act (II of 1882), s. 32]* When those entrusted with a fund for the benefit of another cannot produce it at the appointed time, *prima facie* they are liable for the loss which thereby accrues. One who undertakes a duty is bound to know what his duty requires. Where a testator by his will committed the management of the property to his widow along with two out of the five executors including the widow, it is not open to one of the executors, who was not specifically entrusted with the management, to contend for the purpose of avoiding liability as executor that his duties were purely advisory, that he was but one of many, that votes of the majority of the executors governed, and that the real management was entrusted to two of the executors in co-operation with the widow. In the appointment of an agent to carry on business it is incumbent on an executor to act with the same degree of care as a man of ordinary prudence would in his own affairs. But where there is want of diligence on the part of the executor both in the selection and supervision of the agent, and the loss sustained by the estate can reasonably be connected with the want of such diligence, the loss must fall on the executor. The indemnity clause of a 30 of the Trusts Act (II of 1882) casts the onus of proof on those who seek to charge a trustee with loss arising from the default of an agent, when the propriety of employing an agent has been established. But where there is a clear breach of duty in the employment and supervision of the agent, the liability of the trustee for breach of trust arises. *LAKSHMINCHAND v. JAI KUMARBAI* (1903) . . . I. L. R. 29 Bom. 170

2. — *Hindu Law—Ancestral property—Trust by the father—Trusts Act (II of 1882), s. 6—Will—Legatees.* Certain legacies



EXECUTION OF DECREE—*concl'd.*20. EXECUTOR, LIABILITY OF—*concl'd.*

3. *Executor de son tort, liability of, under Hindu Law, when there is a legal representative—Power of, to pay own debt out*

same day, removes goods belonging to B's estate, A becomes liable as *executor de son tort*. The rule of English Law that no liability as *executor de son tort* can arise, when there is another personal representative, does not apply in India. *Magaluri Garudiah v. Narayana Rungiah*, I. L. R. 3 Mad. 359, referred to. An *executor de son tort* cannot plead *plene administravit*, if he retains the assets for his own use or pays his own debt. In this case A became a creditor of the estate, when he paid off the debt, and when he removed the goods he paid a debt due to himself and not to C. The consent by the heir to the appropriation by the *executor de son tort* will not be a defence to a creditor's action. Where there is an *executor de son tort*...

4. *Administrator General's Act (V of 1902), s. 4, cl. 2—Indian Trusts Act (II of 1882), s. 72—Discharge by Court of an executor—Vesting of property in the continuing executor.*

## 21. IRREGULARITY IN CONDUCT OF SALE.

1. *Material irregularity in conduct of sale—No proof of substantial injury—Postponement of sale—Order staying sale*

By an order of the Subordinate Judge of Gorakhpur, made *ex parte* on 11th February, the sale was stayed, and on 16th the Collector acting on that order struck the...

EXECUTION OF DECREE—*concl'd.*21. IRREGULARITY IN CONDUCT OF SALE—*concl'd.*

20th which had not been finished, and on the 23rd, the property of the judgment-debtors was sold to the decree-holder who had obtained leave to bid. On application for confirmation of the sale, the judgment-debtors applied under s. 311 of the Civil Procedure Code to have the sale set aside; but the

Judicial Committee, that the suit was not maintainable. Assuming that a fresh proclamation should have been issued, the omission was an irregularity which had involved no loss to the judgment-debtors, whose only course was to object, as they did, to the confirmation of the sale, which they could not afterwards impeach by regular suit. *GAJRAJMAI TEORAIN v. AKBAR HUSAIN* (1908)

I. L. R. 29 All. 196; L. R. 34 I. A. 37

## 22. MISCELLANEOUS CASES.

1. *Execution of decree—Civil Procedure Code (Act XIV of 1882), s. 317—Certified purchaser—Interpretation.* The expression "certified purchaser" in s. 317 of the Civil Procedure Code (Act XIV of 1882) includes the person standing in the shoes of the Court-purchaser. *HARI GOVIND v. RAMCHANDRA* (1908)

I. L. R. 31 Bom. 61

2. *Sale in execution—Purchase of share in property to some extent incumbered—Presumption—Civil Procedure Code, s. 318—Limitation Act (XV of 1877), Sch II, Art. 138—Suit for possession.* Where in execution of a simple money-decree an undivided share in immovable property, part of which was subject to mortgages, was sold: *Held*, that in the absence of specific indications to the contrary it must be presumed that the share sold was, as far as might be, the share which was not incumbered. *Held*, also, that the fact that an application under s. 318 of the Code of Civil Procedure made by an auction-purchaser has been rejected as made beyond time is no bar to a suit for possession of the property purchased. *Seru Mohan Bania v. Bhagaban Din Pandey*, I. L. R. 9 Cal. 602, and *Kishori Mohan Roy Choudhry v. Chander Nath Pal*, I. L. R. 14 Cal. 644, followed. *SHEO NARAIN v. NUR MUHAMMAD* (1907)

I. L. R. 29 All. 463

## EXECUTION OF DOCUMENT.

by purdanashin lady—

See TRANSFER OF PROPERTY ACT, s. 69.  
13 C. W. N. 40

See WITNESS . . . 13 C. W. N. 370

**EXECUTION OF WILL.**

*See WILL . I. L. R. 32 Mad 400*

**EXECUTION-CREDITOR.**

*See DECREE-HOLDER.*

**EXECUTION-PROCEEDINGS.**

*See PROSECUTION I. L. R. 35 Calc. 133*

**EXECUTION SALE.**

*See ADMINISTRATOR.*  
*I. L. R. 29 Bdm. 86*

*See CIVIL PROCEDURE CODE, 1892.*  
*I. L. R. 29 Bom 96*

*See CIVIL PROCEDURE CODE, 1892, ss.*  
*7, 53 . I. L. R. 33 Calc. 657*

*See SALE . 13 C. W. N. 249*

*See SALE IN EXECUTION OF DECREE.*

**EXECUTIVE OFFICERS.**

—statutory powers of—

*See TRESPASS . I. L. R. 38 Calc 433*

**EXECUTIVE ORDER.**

*See CRIMINAL PROCEDURE CODE, s 141*  
*13 C. W. N. 188*

**EXECUTOR**

*See ADMINISTRATOR GENERAL'S ACT.*  
*I. L. R. 28 Bom. 188*

*See ADMINISTRATOR PENDENTE LITE*  
*12 C. W. N. 237*

*See ATTORNEY AND CLIENT.*  
*3 B. L. R. O. C. 98*

*See COSTS—SPECIAL CASES—ATTORNEY*  
*AND CLIENT . 8 C. W. N. 306*

*See EVIDENCE . I. L. R. 32 Calc 710*

*See EVIDENCE ACT, s. 41*  
*I. L. R. 14 Calc 881*

*See EXPRESS TRUST.*  
*I. L. R. 31 Bom. 418*

*See HINDU LAW—WILL—CONSTRUCTION*  
*OF WILL—GENERAL RULES*

*I. L. R. 2 Bom 366*  
*I. L. R. 23 Calc 446*  
*10 C. W. N. 568*

*See LIMITATION ACT*  
*I. L. R. 31 Calc. 519*  
*10 C. W. N. 874*

*See MAHOMEDAN LAW—WILL*  
*4 N. W. 106*

*See MORTGAGE . 12 C. W. N. 983*

*See PARTIES—PARTIES TO SUITS—EXECUTORS*

*See PROBATE.*

*See PROBATE AND ADMINISTRATION ACT,*  
*s. 3 . 10 C. W. N. 232*

**EXECUTOR—contd.**

*See PROBATE AND ADMINISTRATION ACT*  
*ss. 90, 98 . I. L. R. 31 Calc. 828*  
*8 C. W. N. 382*

*See REPRESENTATIVE of DECEASED*  
*PERSON . I. L. R. 4 Calc 342*

*See TRUST . I. L. R. 30 Calc. 388*

*See TRUST ACT, 1882, s. 31.*  
*I. L. R. 33 Bom. 420*

*See WILL—CONSTRUCTION.*  
*I. L. R. 25 Bom. 429*  
*10 C. W. N. 682*

—by implication.

*See WILL—CONSTRUCTION.*  
*I. L. R. 20 Mad 487*  
*8 C. W. N. 310*

—commission to—

*See MAHOMEDAN LAW—WILL.*  
*I. L. R. 25 Calc. 8*  
*L. R. 24 I. A. 198*

—death of—

*See HINDU LAW—ADOPTION—REQUISITES OF ADOPTION—AUTHORITY.*  
*I. L. R. 24 Calc. 569*

—de son tort—

*See ADMINISTRATOR GENERAL'S ACT.*  
*10 C. W. N. 588*

*See LIMITATION ACT, 1877, ART 123.*  
*I. L. R. 12 Mad. 487*

*See REPRESENTATIVE OF DECEASED PERSON . I. L. R. 30 Calc. 1044*  
*2 Ind. Jur. N. 8. 234*

*See RIGHT OF SUIT—INTESTACY.*  
*I. L. R. 18 Bom. 337*

*See TRUST . I. L. R. 17 Calc. 620*

—nature of liability of—

*See RECEIVER . I. L. R. 30 Calc. 937*

—negligence of—

*See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . I. L. R. 26 Bom. 643*

—obtaining second grant of probate—

*See COURT FEES ACT, SCH. I, CL. 11.*  
*I. L. R. 3 Calc. 733*

—of Mahomedan will—

*See PROBATE . I. L. R. 33 Calc. 118*

—power of—

*See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.*

*I. L. R. 20 Bom. 238*  
*I. L. R. 21 Bom. 335*

—removal of, ground for—

*See MAHOMEDAN LAW—WILL.*  
*1 B. L. R. 8. N. 18*

**EXECUTOR—contd.**

renunciation by—

See LETTERS OF ADMINISTRATION.

I. L. R. 19 Bom. 123

See WILL—RENUNCIATION BY EXECUTOR.

I. L. R. 4 Calc. 508

rights of—

See HINDU LAW—WILL—CONSTRUCTION  
OF WILL—VESTED AND CONTINGENT  
INTERESTS . I. L. R. 1 Bom. 2691 Ind. JUR. O. S. 37 : 4 W. R. P. C. 114  
8 Moo. I. A. 528transfer by, to Administrator  
General.

See ADMINISTRATOR GENERAL'S ACT, s. 31.

I. L. R. 21 Calc. 732

I. L. R. 22 Calc. 788

L. R. 22 I. A. 107

See APPEAL TO PRIVY COUNCIL—EFFECT  
OF PRIVY COUNCIL DECREE OR ORDER

I. L. R. 32 Calc. 1011

L. R. 22 I. A. 208

1. ——— Position and rights of executors—Contract—Consideration—Crutinous contract—Contract to pay remuneration to executor for performance of his duties—Remuneration not coming out of assets of estate—Administrator General's Act (II of 1874), s. 56—Illegal contract as being opposed to public policy—Contract Act (IX of 1872), s. 23. The defendant's brother appointed as executrix and executors of his will his wife, K, together with the plaintiff and another, and the plaintiff being unwilling to undertake the duties of executor without remuneration, K offered him, and he accepted, a sum of Rs 125 a month for acting as executor; but before any formal agreement was entered into, the defendant's dewan on her behalf proposed to the plaintiff that he should accept a parwana for Rs 125 a month from the defendant instead of from K, to which the plaintiff agreed, and he accordingly received from the defendant a parwana, in which she agreed to pay him from her own pocket the above sum monthly as long as he continued to perform the duties of executor of the estate of her brother, in which she was interested. In pursuance of this agreement the plaintiff, in conjunction with the other executor, took out probate of the will, and the stipulated remuneration was paid for some time and then ceased. In a suit for his salary for the portion of the time during which he had acted as executor and had not received any remuneration, the plaintiff sought to recover the same from the receipt or retention by an executor or administrator of commission or agency charges from the assets of the estate.

**EXECUTOR—contd.**

policy, and a suit upon it was, under the circumstances, maintainable. NARAYAN COOMARI DEVI v. SHAJANI KANTA CHATTERJEE

I. L. R. 22 Calc. 14

2. ——— Position of an executor under the Act (XXI c in position

will and an executor under an English will. All executor under a Hindu will, before the Hindu Wills Act came into force, is not in the same position as an English executor under an English will, and the property does not vest in him; he holds it only as manager. SARAT CHAKRA BANERJEE v. BHUPENDRA NATH BASU . I. L. R. 25 Calc. 103

3. ——— of Chancer, of directions of executor

have not, by any general rule or uniform practice, adopted any Government security accessible to a private executor or trustee in such manner as to form an authoritative guide to him in his administration of the estate. Therefore, where the Will of a For-

cessively in specie, so as to exempt the executor from the duty of conversion, and the executor did not convert certain shares belonging to their testator, which subsequently became much depreciated in value—Held, that the executor was not liable for the loss so occasioned to the estate of the testator. DE SOUZA v DE SOUZA . 12 Bom. 184

4. ——— Derivative executor—Succession Act (X of 1865) Under the succession Act, the executor of an executor is not derivative executor of the original testator, even though such testator died before 1866 DE SOUZA v. SECRETARY OF STATE FOR INDIA 12 B. L. R. 423

5. ——— Express trustee—Limitation Act, XIV of 1859, s. 2—Trustee for heirs. An executor, who by the will is made an express trustee for certain purposes, is, as to the undisposed residue, a trustee within the scope of a 2 of Act XIV of 1859 for the heir or heirs of the testator. LALLU- BHAI BAPUBHAI v. MANEYVARRAI

I. L. R. 2 Bom 388

6. ——— Executor also legatee under will. An executor of a will is not obliged in this country, as in England, to shed his character of executor before he can appear in the new character of legatee. BAGGO JAN v. CHOWDHRY ZUNOORUL HUQ . 13 W. R. 69

7. ——— Appointment of executor—Administrator General's Act (II of 1874), ss. 18, 26,

EXECUTOR—*contd.*

*chard, L. R. 2 P. & D. 169, and In the goods of Adamson, L. R. 3 P. & D. 253, followed. In the goods of COURJON L. R. 25 Cal. 65*

estate is nevertheless liable for the loss occasioned by his co-executor neglecting to get in the assets. *Per PHAR, J.*—In order to make one executor liable for devastavit committed by his co-executor, there must be a distinct allegation in the plaint that the devastavit has been committed by the co-executor to the knowledge of the executor. *GREENWAY v. HOGG*

*Bourke A. O. C. 111 : Cor. 87*

In the same case in the Court below it was held by *LEVINGE, J.*, that an executor will not be held liable for devastavit if the will was so framed as to mislead him, and he was not called upon to act differently from his own views by any parties taking an interest under the will. *HOGG v. GREENWAY. 2 Hyde 3*

6. ——— Power of executor of Hindu will. The executor of a Hindu will has no power by acknowledgment to revive a debt barred by limitation except as against himself. *GOPALNARAIN MOZONDAR v. MUDHONUTTY GUPTA*

*14 B. L. R. 21*

10. ——— Power of executor to pay barred debt. An executor may pay a debt justly due by his testator, though barred by the Statute of Limitation, and will in equity be allowed credit for such payment. *TILLAKHAND HINDUMAL v. TILAMAL SUDARAM*

*10 Bom. 208*

11. ——— Renunciation of executorship—Fiduciary relationship—Administration suit—Suit against purchaser from executor to set aside sale *D.*, a Hindu, died leaving three sons, *S*, *SC*, and *R*, who on his death made a partition of his estate, and *S* covenanted with *SC* to discharge all claims made against the estate of *D.* In 1828 *B.*, who claimed a portion of the share taken by *SC*, on partition with mesne profits, filed a bill in the Supreme Court against *SC* and others as representatives of *D.*, and obtained a decree for Rs. 20,000. Pending this litigation, *SC* died, leaving six sons, *J*, *M*, *H*, *P*, *C*, and *SM*, and a will made before the birth of *SM*, by which he left all his property to his sons other than *SM*. On the

brought by *D.*, and obtained a decree for Rs. 70,000. In the meantime *H* died, leaving the plaintiffs, his sons and heirs, and his brothers *J* and *M*, his exe-

EXECUTOR—*contd.*

1857, in an administration suit which had been brought by the plaintiffs to compel *M* to account for the assets received by him from the estate of *H*, the master was directed to take an account, which was accordingly done. In a suit brought by the plaintiffs, the sons of *H*, against *J*, *M* and *SM* to set aside the deed of 23rd June 1854:—*Held*, that, notwithstanding the renunciation of executorship by *J*, he stood in a fiduciary relation to the plaintiffs, and the assignment, being found to have been made for an inadequate consideration, was ordered to be set aside on the plaintiffs paying the purchaser *J* the amount of the purchase-money. A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. *DHONDUR CHUNDER MOOKERJEE v. MUTY LALL MOOKERJEE*

*14 B. L. R. 278 : 23 W. R. 6 ; L. R. 2 I. A. 18*

12. ——— Liability of executor for funeral of testator. Although the executor-defendants first gave orders for a third class funeral for the deceased, yet, as they by their conduct induced the plaintiff to furnish a second class funeral, they were held liable to pay for the same, whether they had assets or not. *PAUL v. DONOHY*

*6 W. R. Civ. Ref. 27*

13. ——— Power of executor to mortgage—Hindu will *Per MARKBY, J.*—The executors of the will of a Hindu cannot, by virtue of their character as executors, mortgage the estate of the testator, in the absence of any power, express or implied, contained in the will. *NILKANT CRATTERJEE v. PEART MOHAN DAS*

*3 B. L. R. O. C. 7 : 11 W. R. O. C. 21*

14. ——— Hindu will—Mortgage—Liability of estate for loan. When, in order to save an estate from sale in execution of a decree against the testator, his executor raised a loan from the plaintiff giving him a mortgage of the testator's property:—*Held*, that, even if the executor had funds to pay the plaintiff the debt without raising a loan, that fact would not invalidate the plaintiff's claim against the estate unless there was good reason to infer that he knew of those funds or might have known of them if he had used ordinary diligence in making enquiries on the point. *KALEE NARAIN ROY CHOWDERY v. RAM COOMAR CHAND*

*W. R. 1864, 69*

15. ——— Executors, power of, to mortgage under Act V of 1831—Probate and Administration Act (V of 1831), s. 90—Probate

**EXECUTOR—contd**

and Administration Act (VI of 1889), s. 19, effect of, on a mortgage executed by executors between 1881 and 1889—Act VI of 1889, retrospective effect of—Construction of will. One A died in 1883, after having executed a will and leaving two minor and three major sons. The major sons, who were the executors, mortgaged a portion of the estate in favour of the plaintiff for the purpose of purchasing other properties, but they did not obtain the sanction of the District Judge required under s. 90 of Act V of 1881. The two material clauses of the will were as follows:—“(2) I have certain personal debt, and I have some debt also which is joint with my brothers. In order to pay off the said debt, the executors shall sell, mortgage, or pledge moveable or immovable properties of my estate or shall let out in *patni* or *mouras-mokurati* the immovable properties of my estate, and they shall pay off the said debt from the proceeds. (3) If the executors desire to sell the immovable properties which I own and hold in order to purchase more profitable properties than those, they shall be competent to do that even.” This suit was brought on that mortgage. *Held*, that, although under Act V of 1881, which was in force at the time the mortgage was executed, an executor had no power to sell immovable property without the sanction of the Court, s. 19 of the Probate and Administration Act (VI of 1889) had made valid all *involuntary* alienations that had been effected since 1881. That upon a construction of cls. 2 and 3 of the will, those clauses do not imply a limitation on the powers of the executors, and there is nothing in those clauses that interferes with the power of the executors under the law. **RAJANI NATH MUKHOPADHYAYA v. RAMANATH MUKHERJI**

3 C. W. N. 483

18. ————— *Power of executors to mortgage testator's properties—How far restricted by necessary implication. Where a will contained the following provision, viz—“The executor shall pay all my debts which are due to money-lenders, and to Babu Rsdheka Charan Sen as shown by his khattas; if there be any difficulty in paying off the debts from the money due to me, the executor shall either sell the whole or a portion of my estate, or make any other settlement of the estate such as *patni* or *dar-patni*, etc., and shall pay off my debts from the consideration-money thus acquired.”* *Held*, that upon such authority the executor had no power to mortgage any portion of the testator's estate. **KANTI CHANDRA CHATTOPADHYA v. KRISTO CHURN ACHARYEE**

3 C. W. N. 515

17. ————— *Manager under Hindu will—Power of mortgage and borrowing money* R R D died possessed of certain property in Calcutta, and left him surviving S D, widow of his son J C, deceased, and three granddaughters, upon whose marriages he directed H P, his ex-

**EXECUTOR—contd.**

deficit. H P expended on the marriages much

deceased, whom she had adopted under a direction in the will of her husband that she should adopt three sons in succession, a direction which H P was enjoined by R R D's will to see carried out. The mortgagee resisted her claim on the grounds that she had not adopted a second son, that the powers of sale to H P included a power of mortgage, and that the property was necessarily mortgaged for family purposes. Judgment was given for the plaintiff. *Held*, that R R D had no power to mortgage the property; that an attorney or executor under a Hindu will has not the same power over a testator's estate as an executor would have over leasehold estate according to English Law; that according to Hindu Law, a manager or an executor under a will has only a limited and qualified power over the immovable estate of the testator; that the general power of a

was effected that when a will directs a certain sum to be expended for marriage purposes, the manager or executor had no power to expend a larger sum thereon; that a mortgagee having notice of such a bequest is not justified in lending a larger sum for that purpose; that a direction in a will to sell houses and invest the surplus proceeds in Government securities does not authorize the executor to borrow money at a high interest, and amounts to a direction not to mortgage the houses; that when a plaintiff seeks to set aside a mortgage, on the ground that the mortgagor had no power to mortgage, and that the

18. ————— *Power of sale—Succession Act (X of 1855), s. 269—Mortgage.* Certain persons, being executors of the will of an Englishman domiciled in India, such will having been made after the Succession Act came into operation, and charging the testator's estate with the payment of his debts, having as such executors borrowed certain moneys from a bank wherewith to discharge

cutors aforesaid to the manager of such bank as used right, title, and interest in certain real estate of the

EXECUTOR—*contd.*

testator as security for the payment of the moneys authorizing and empowering, in default of payment of the same, the manager, his successors or assigns, absolutely to sell such real estate, either by private sale or public auction, for the realization of the moneys, and to sign a conveyance or conveyances, and a receipt or receipts for the purchase-money and declaring that such conveyance or conveyances, receipt or receipts, should be as valid as if the same were signed by them. *Re: the 1st instalment here.*

sell such real estate and to do all acts necessary for effecting the premises. Default having been made in payment of the moneys by an instrument in writing which recited the instruments already mentioned, the manager of the bank for the time being, described as such, in the exercise of the power of sale and for the purpose of reimbursing to the bank the moneys granted and conveyed to B such real estate and all the estate and interest therein of the executors freed from the mortgage above recited, and the manager for the executors executed the usual covenants for title and further assurance. B, having been resisted in obtaining possession of such real estate under such conveyance by a legatee of the testator, sued the legatee and the executors for a declaration of right to, and for possession of, such real estate in virtue of such conveyance. The legatee contended that the executors had no authority to confer a power of sale. *Held* (STUART, C.J., dissenting), that the executors had such authority under s 269 of the Succession Act, and that the conveyances were accordingly valid and operated to transfer the property to B. *SEALE v BROWN*

I. L. R. 1 All 710

19. ———— Power of, to charge estate of testator. *II K* died on the 5th

liable to her for the balance of Rs33,631 with interest at 9 per cent payable within twelve months. In consideration thereof, M was to release D as executor and the defendant from all claims.

DEBBI MAKING MISSED PERSONALLY RADIO TO M FOR 1222 021. Shortly afterwards a

EXECUTOR—*contd.*

tion of her whole claim. In pursuance of this agreement, D, as executor, paid the first instalment, J

released by M by this deed executed on the 5th March 1873, it was not competent for D as executor by a new contract to charge it with any liability in respect of the amount due to M. *Childs v. Monins, 1 B. & B. 460; Rose v. Boules, 1 H. B. 109, and Powell v. Graham, 7 Taunt. 551, followed. CASTIRAI v. RANSORDAS HANSRAJ*

I. L. R. 4 Bom. 5

20. ———— Power to sell property—Probate and Administration Act (V of 1881), s. 90. No one but an executor or administrator has power to apply to the Court under s. 90 of the Probate and Administration Act (V of 1881). Where a testator directed his executor to manage the whole of his estate through the Court of Wards—*Held*, that there was no restriction on the executor's power of sale, and that the provisions of s. 90 of the Probate and Administration Act did not apply to his case. *Held*, also, that an order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell was without jurisdiction, and appealable under s. 15 of the Letters Patent. *Hurish Chunder Chowdhry v. Kali Sundari Devi, I. L. R. 9 Calc. 432, applied. In the goods of INDRA CHANDRA SINGH. SARASWATI DASSI v. ADMINISTRATOR-GENERAL OF BENGAL*

I. L. R. 23 Calc. 580

21. ———— Powers of executor to sell—Probate and Administration Act (V of

subject to the usual rules of equity. *BEHARILALJI BHAGWATPRASADJI v. BAI RAJBAI*

I. L. R. 23 Bom. 342

22. ———— Power of disposition—Probate and Administration Act (V of 1881), s. 90. Under s. 90 of the Probate and Administration Act, the power of an executor to dispose of

used such dent has of NUNDO LALL MULLICK. I. L. R. 23 Calc 808

23. ———— Power of executor to lease. The executors of the will of a Hindu, to which neither the Hindu Wills Act, 1870, nor the Probate and Administration Act, 1881, apply, have

**EXECUTOR—contd.**

such authority only to deal with the estate as the terms of the will confer on them. Neither a power to "manage the estate as they may deem proper," nor a power to sell it, will authorize executors to lease any part of it for 999 years, or (semble) for any period exceeding 21 years. **JUGMORANDAS V. DRAWANDAS & PALLONJEE EDULJEE MOBEDKA**

**I. L. R. 22 Bom. 1**

**24. ——— Power of executor to borrow money—Probate and Administration Act (V of 1881), ss. 82 and 92—Direction in the will that all the executors will act jointly—Act of an executor who has taken out probate and the others not having done so, how far binding on the estate of the testator. Where by a will more than one person are appointed executors, and all of them jointly are empowered to alienate any property for payment of debts and to borrow money for the improvement and preservation of the estate of the testator, s. 92 of the Probate and Administration Act (V of 1881), by the reason of any such direction in the will, does not disqualify one of the several executors, who alone has obtained probate to act singly, the others having refused to accept service. Where such an executor renewed *hat-chittas* which were originally executed by the testator, in the same terms as the testator did, and a suit was brought upon these *hat-chittas* against the heirs of the testator:—**Held**, that the debt was binding on the estate of the testator. **Farhall v. Farhall**, **L. R. 7 Ch. App. 123**, referred to, and **Nurul Hossein v. Shoo Sahai Lal**, **I. L. R. 20 Calc. 1**, **L. R. 191 A. 221**, distinguished. **SATYA PRASAD PAL CHOWDHRY v. MOTILAL PAL CHOWDHRY**. **I. L. R. 27 Calc. 683****

**25. ——— Right of executor to have money lent to the estate.**

taken **KRISHNARAO RAMCHANDRA v. BENARAI**  
**I. L. R. 20 Bom. 571**

**26. ——— Sale of right, title, and interest of executor under will—Liability of, for costs—Charge on estate of testator—Gift to executors—Trust—Construction of will. K died leaving a will, which directed, among other dispositions of her property, that her executors should collect the rent of a house belonging to her, and after payment of revenue, taxes, and other expenses, should lay out every month Rs 30 for the worship of a deity.**

decree was made by consent, in execution of which the right title and interest of K was sold.

nothing done so then brought a suit against D, praying that the will might be construed, the rights of the plaintiff and the defendant ascertained, and

**EXECUTOR—contd.**

the portion she inherited, and that she should make the testatrix, was valid so far only as it conveyed such beneficial interest in the house as he took under the will. **Held**, also, that the property was not a mere gift to the testatrix.

**20 W. R. 39**

**27. ——— Executor de son tort, liability of, in Hindu law—Assets of deceased's estate—Onus probandi—Award of interest as damages. In a suit upon a registered bond, payable in eleven yearly instalments, to recover instalments 5-10 from the representatives of two deceased co-debtors, who, as managing members of an undivided Hindu family, had contracted the debt for family purposes, the plaintiff impleaded G, the son-in-law of one of the deceased co-debtors, and his brothers, on the ground that they, in collusion with the widow of such deceased co-debtor, had, as volunteers, intermeddled with, and possessed themselves of, substantially the whole property of the family of the deceased co-debtor. **Held**, that G and his brothers were properly**

received so much of the deceased debtor's property

**28. ——— Executor de son tort—What constitutes an executor de son tort—Liability of such executor to creditors of deceased—Intermeddling with estate after order for probate made, but before issue of probate—Receipt of assets with consent of person appointed executor—Succession Act (X of 1865), s. 255—Consent-decree—Parties. Probate is necessary to complete the title of a rightful executor, and until it is actually taken out, a person intermeddling with the assets constitutes himself executor de son tort. R, the executrix appointed by the will of one J, applied to the High Court for probate of the will, and N, the widow of J,**

**R4,178-10-9** or any other sum or sums of money to be received from the B. & C. I. Railway Co. In that same year, N obtained payment from the Railway Co. of the said sum of **R4,178-10-0** and of another sum of **R166** due to the deceased. On the 3rd February 1893, probate was issued to R. In 1894, the plaintiff sued N and R for **R166** due to him by the deceased J. He claimed against N as executrix

**EXECUTOR—contd.**

*de son tort.* Held, that, probate not having actually issued to *R* at the time that *N* received the money from the Railway Co., although an order for probate had been made, she had, by receiving it, constituted herself executrix *de son tort*, and was therefore liable to the plaintiff, and could be joined as co-defendant with *R* in the suit. Held, also, that the fact that by the terms of the consent-decree of the 25th February 1892 she was allowed to receive the money and retain it, was no defence. The consent-decree did not bind the creditors or free her from her responsibility to them to the extent of the assets which she received. **NAVABAI v. PESTONJI RATANJI** . I. L. R. 21 Bom. 400

29. — **Executor who has administered the estate without probate required to lodge will in Court and obtain probate.** One *T* died in 1883, and by his will appointed his brother *T* sole residuary legatee and also his executor, and he directed that, in case of *T*'s death, *D* (*T*'s son) should be executor. *T* accordingly acted as executor until his death in May 1886, and then his son *D* continued to administer the estate, but neither

**EXECUTOR—contd.**

testator by his will named a person to discharge any duties under the will, without expressly appointing him executor, the rule is that, unless it can be gathered from the will that the testator intended such person to pay the debts and legacies under the will, such person cannot be held to be the executor. **MUTHURAI v. CANJI KHERAJ** (1901)

I. L. R. 26 Bom. 571

31. — **Debtor executor—Limitation Act, 1877, Sec. 11, Art. 12C—Debtor taking possession of the estate of his creditor as executor—Death of such executor—Appointment of new administrator.** *See*

the appointment of a new administrator after the death of such debtor executor, a new cause of action

recover, from the executor of the deceased debtor's estate, the property and effects of the deceased creditor—to which Art. 120, Sec. 11, of the Limitation Act applies—would not be barred within six years of the death of such debtor executor. **KRISTO KAMINI DASJI v. ADMINISTRATOR-GENERAL OF BENGAL** (1903) . 7 C. W. N. 478

32. — **Executors who have not proved—Will—Probate—Probate granted to some of the executors—Executors who have not proved may call for inventory and account from executors who have proved and are managing the estate.** One Ardesbir R. Divecha, a Parsi inhabitant of Bombay, died in 1900. By his will he appointed his wife, his eldest son, and two other persons of whom the applicant was one, to be his executors, his wife and eldest son being named as managing executors. In 1901 the two latter applied for probate. The other two executors, though called on to join in the application, did not do so. The Court granted probate to the wife and the son, and reserved leave to the other executors to apply. No application was, however, made by them. In 1902 the applicant called upon the managing executors for an inventory and account of the deceased's estate. The applicant had no beneficial interest in the estate. It was contended for the managing executors that the applicant had no right to require an inventory and account from them. Held, that the applicant was entitled to an inventory and account. The facts that under s. 179 of the Indian Succession Act (X of 1865) the property of the deceased vested in the applicant as executor of the will, and that he might at any time apply for probate, gave him an interest sufficient to justify his application. **JEHANGIR RUSTOMJI DIVECHA v. BAI KUKIBAI** (1903)

I. L. R. 27 Bom. 281

33. — **Parties to suit for legacy—Legacy—Suit by one legatee for a legacy—Right of**

was fully administered, and that he had no funds left in his hands out of which to pay the costs of probate. Held, that the executor, *D*, must lodge the will in Court, and that, on the applicant paying half the estimated cost of obtaining probate (including probate duty), *D* should take out probate of the will. **DAYABAI TAPDAS v. DAMODAR TAPDAS** . I. L. R. 20 Bom. 227

30. — **Death of executor—Will—Substituted executor—Executor according to the tenor.** Kheraj Lalji, a Hindu, by a codicil to his will, appointed his wife Parvatibai to be his sole executrix, and directed that she should carry on all his affairs, distribute certain moneys annually, and defray certain *sadarat* expenses in Cutch. He then provided as follows. "In case of the death of my wife Parvatibai, the said affairs and distribution of money mentioned above to be paid by my second wife, Bai Mithubai." Parvatibai proved the will and died, and the plaintiff Mithubai thereupon applied for probate of the will. Held, that

death of the original executor, though he has proved the will, the executor so substituted may be admitted to the office, if it appear to have been the testator's intention that the substitution should take place on that event, whether happening in the testator's lifetime or afterwards. Where a



**EXECUTOR—contd.**

-executor to have other legatees made parties to the suit—*Civil Procedure Code (Act XIV of 1882), ss. 32 and 34—Form of suit—Practice—Procedure Liability of executor for breach of trust—Trust Act (II of 1882), s. 23* A legatee is entitled to sue an executor for a legacy bequeathed to him by a Hindu testator in the mofussil. In case such a suit is brought by one legatee, the executor may apply for his own protection that other legatees shall be made parties so that if any rateable abatement is requisite the extent of such abatement may be ascertained in a manner binding on all parties interested. But any such application must be made at the earliest possible opportunity, having regard to the provisions of s. 34 of the Civil Procedure Code (Act XIV

s. 32) If an executor commits breach of trust in respect of trust property that has come to his hands he is liable under s. 32 of the Indian Trusts

I. L. R. 26 Bom. 301

34. ———— **Loan by executor—Promissory note—Utilisation of loan for estate purposes—Whether loan chargeable on estate** Apart from any special power given by a Will to an executor, money borrowed by him on a promissory note for the benefit of an estate is not a charge upon the estate. *Farhall v. Farhall (1871), L. R. 7 Ch. 123*, referred to. *ROMANATH PAUL v. KANAI LAL DEB (1894)* . . . . . 7 C. W. N. 104

35. ———— **Debt contracted by executor—Co-executor, liability of—Liability of estate for debt incurred by executor** The estate of a testator is not liable for debts contracted by one of the several executors for goods apparently supplied to the estate. The executor, who contracted the debt, is personally liable for it. *Farhall v. Farhall, L. R. 7 Ch. 123*, and *Labouchere v. Tupper, 11 Moo. P. C. 198*, referred to. *DEBENDRA NATH BISWAS v. HEM CHANDRA ROY (1904)* . . . . . I. L. R. 31 Calc. 253

36. ———— **Personal liability upon a contract of borrowing—Estate not liable** Upon a contract of borrowing made by an executor after the death of the testator the executor is only liable personally and cannot be sued as executor so as to get execution against the assets of the testator. *Farhall v. Farhall, L. R. 7 Ch. App. Cas. 123*; *Labouchere v. Tupper, 11 Moo. P. C. App. Cas. 198*, followed. *DEBENDRA NATH BISWAS v. RADHIKA CHARAN SEN (1904) 8 C. W. N. 135*

37. ———— **discharge—competent to give a discharge for the joint amount of the decree—Executors** Held, that none of several joint decree-holders is not competent to

**EXECUTOR—contd.**

give a valid discharge for the amount of the joint decree, and his position in this respect is not affected by the fact that he and his fellow-decree holders are co-executors. *Tamman Singh v. Lachman Kunwar, I. L. R. 26 All. 318*, and *Moh Ram v. Haran Prasad, I. L. R. 26 All. 334*, followed. *LACHMAN DAS v. CHATTERJEE DAS (1905)* . . . . . I. L. R. 28 All. 252

38. ———— **Claims by or against—Civil Procedure Code (Act XIV of 1882), s. 44, rule (b)—Meaning of the rule** Those to whom rule (b) of s. 44 of the Code relates have the common characteristic that they owe their legal condition to the death of another. But there are others of whom this can be predicated, as for instance legatees or next-of-kin who are not named in rule (b). Executors, administrators and heirs have this characteristic in common, not shared by legatees and next-of-kin, namely, that not only do they acquire title from the deceased, but they may represent him. In this is to be found the clue to the meaning of the rule. *HATTAHOOD v. MAHOMED CASSIM (1906)* . . . . . I. L. R. 31 Bom. 105

39. ———— **Suit for account—Will—Intermeddling with estate—Decree of interference necessary to charge executor—Suit for account against executor—Account on footing of wilful default—Practice—Limitation—Limitation Act (XV of 1877), s. 10, Sch. II, Art. 120** In law a very small interference or intermeddling with the estate of his testator on the part of a party appointed executor under a will is sufficient to charge him with liability as executor. An executor once having acted unquestionably as an executor cannot renounce that character and all the liabilities which attach to it and having once acted, the subsequent renunciation is void, and he continues liable to be sued in the character of an executor. *Rogers v. Frank, (1827) 1 F. & J. 409*, followed. Modern practice allows of an order charging wilful default being made at any time during the action on a proper case being shown. The plaintiff brought a suit against the executors of the will of her grandfather, praying for a declaration that she was absolutely entitled to the property of her grandfather and for an account of the property in the hands of the executors. The plaintiff claimed as heir and not under the will. Held, she was only entitled to accounts for six years preceding the suit as she took no interest in the property under the will, and the executors were not trustees for her and the property did not vest in them for any specific purpose in her favour. Such a suit is not a suit for the purpose of following such property in the hands of the executors and trustees. *ABENUTAI v. EHRMAN (1908)* . . . . . I. L. R. 32 Bom. 364

40. ———— **Probate and Administration Act (V of 1881), ss. 11, 91, 102—Probate action—Successful objector is entitled to costs out of estate as of right—Executor or administrator purchasing property from legatee at auction sale—Validity—Right to perform religious ceremonies given to executors is survives in their heirs on**

**EXECUTOR—*contd.***

*death—Preceptive trustee, purchase by—Validity*  
*—Administrator de bonis non, if bound to take account from predecessor—Liability to account on failure—Suit for accounts against executor—Limitation—Limitation Act (XV of 1877), s. 10—Sch. II, Art. 120—Delay—Aquiesscence.* An executor cannot, as a general rule, be allowed either immediately or by means of a trustee to be a purchaser from himself of any part of the assets. Such a purchase is treated as a breach of trust without enquiry whether the transaction was beneficial or not. The position, however, is somewhat different when the executor or administrator purchases from a legatee. Such a purchase may be a perfectly justifiable one, though if challenged in proper time a Court of equity will enquire into it, ascertain the value that was paid by the trustee and throw upon him the onus of proving that he gave full value and that all information was laid before the *cestui que trust* when the property was sold. *Cook v. Collingridge, Jacob 607*; *23 R. R. 155, 767*; *Thompson v. Eastwood, L. R. 2 A. C. 216, 236* followed. The purchase at an execution sale of a legatee's interest by the administratrix *durante minoritate* was in this case upheld as not made in contravention of s. 91 of the Probate and Administration Act. A sale is not to be avoided merely because when entered upon the purchaser had the power to become the trustee of the property purchased. It is immaterial whether the purchaser subsequently does in fact become the trustee or not. The true test to be applied in such cases is, has the purchaser used his position in such a way as to render it inequitable that the sale should be upheld. *Clark v. Clark, 9 App. Cas. 733*, applied. The right to perform certain religious ceremonies, conferred by the will exclusively on the executors, passed on the death of one of them to the remaining executors, and was not transmitted to the heir of the deceased executor. Upon the death or termination of authority by operation of law of an administration *durante minoritate* it is the duty of the executor, or other person who succeeds him in the administration, to recover and take possession of the estate.

institution of appropriate judicial proceedings. If he fails to do so, he must be held liable to the extent to which the estate would have been benefited if he had faithfully performed his duty. In order to see whether s. 10 of the Limitation Act applies to a suit against an executor, it must be determined, *first*, whether upon the terms of the will there was a trust under which the property had become vested in the executors for a specific purpose, and, *secondly*, with reference to the frame and scope of the suit, whether its purpose was to follow in the hands of the trustee or his legal representative property which had become vested in trust for a specific purpose. An executor as such

**EXECUTOR—*contd.***

is not an express trustee for a legatee. *Evans v. Moore, [1891] 3 Ch. 119*; *Ramadhan v. Manibai, I. L. R. 25 Bom. 429*, followed. A suit for accounts pure and simple against an executor cannot be treated as a suit against a trustee for the purpose of following trust property. *Saroda v. Brojonath, I. L. R. 5 Calc. 910*, followed. Such a suit would be governed by Art. 120 of Sch. II of Act XV of 1877. How far delay on the part of the person interested, in instituting a suit for

13 C. W. N. 557

**EXECUTORY CONTRACT.**

See ASSIGNMENT . 10 C. W. N. 755

**EXECUTRIX.**

See POWER OF ATTORNEY.

13 C. W. N. 1191

\_\_\_\_\_ position of—

See TRESPASS . I L. R. 36 Calc. 28

*Maladministration—Creditor—Suit*  
*—Maladministration, charge of, cannot be gone into in an application under s. 241—Civil Procedure Code (Act XIV of 1882), ss. 231, 241—Suit, right to bring, by creditor of estate to have estate administered.* Where the real question involved in a suit is in substance whether or not the defendant, in administering the debtor's estate has been guilty of maladministration, and whether the plaintiffs, as creditors of that estate, are entitled to have the estate administered on that footing: *Held*, that this is a much wider question than one merely relating to the execution of the decree, and a regular suit must lie. *Held*,

I L. R. 11 Bom. 727, *Jogemaya Dassi v. Thackanoni*  
 1909 Cal. 179, *referred to* 8 221 at

BATA KRISHNA BANERJEE (1908)

I L. R. 35 Calc. 1100

s.c. 12 C. W. N. 614

**EXHIBITS.**

\_\_\_\_\_ application to alter endorsement

OR—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE

I L. R. 21 Calc. 476

\_\_\_\_\_ without objection—

See DEPOSITION . 13 C. W. N. 409

**EX-PARTE DECREE.**

See APPEAL—EX PARTE CASES.

**EX PARTE DECREE—*concl'd.***

See CIVIL PROCEDURE CODE, 1832, s. 108 (1839, s. 119).

See DECREE. !

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS—UNEXECUTED, BARRED, AND EX PARTE DECREES.

See FRAUD . I. L. R. 29 Calc. 395

See LIMITATION ACT, 1877, ART. 164 (1871, ART. 157).

I. L. R. 31 Bom. 303

See LIMITATION ACT, 1877, SCH. II, ARTS. 178, 179 . I. L. R. 28 Calc. 113

See PRACTICE . I. L. R. 32 Bom. 534

See RIGHT OF SUIT—DECREES, I. L. R. 28 Calc. 475

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL . I. L. R. 30 Calc. 588

1. ——— Appeal—Remand—Civil Procedure Code (Act XIV of 1832), ss. 108, 540, 562, 564, 588 (9)—On appeal against *ex parte* decree, Court may reverse decree on the ground that it was wrongly decided *ex parte* and remand the case. When a suit is decided *ex parte* an Appellate Court to which an appeal from the decree is preferred under s. 540 of the Code of Civil Procedure, has jurisdiction to reverse the decree of the lower Court on the ground that such Court was wrong in proceeding to decide the suit *ex parte* and remand the suit for rehearing. *Jenardan Dobey v. Ramdhone Singh*, I. L. R. 23 Calc. 733, not followed *Parvatishankar Durganankar v. Bai Naval*, I. L. R. 17 Bom. 733, and *Causanel v. Soures*, I. L. R. 23 Mad. 260, dissented from. *Perumbara Nayar v. Subrahmanian Patta*, I. L. R. 23 Mad. 445, followed *SADHU KRISHNA AYYAR v. KUPPA AYYANAR* (1906)

I. L. R. 30 Mad. 54

2. ——— Execution of decree—Civil Procedure Code, s. 108—Decree set aside as against one of several joint judgment-debtors—Decree passed subsequently against exempted party—Limitation. A decree for sale on a mortgage was passed against several defendants jointly on the 25th of August 1900 and made absolute on the 21st December 1901. As against one defendant, however, the decree was *ex parte*, and it was set aside as against her on appeal on the 11th March 1902. Subsequently a decree was passed on the merits against this defendant, and her appeal was dismissed by the High Court on the 16th November 1904. As against this defendant the decree was made absolute on the 27th of November 1905. *Held*, that the orders of the 25th August 1900 and the 16th November 1904, between them, operated as one decree for the sale of the mortgaged property; that the joint effect of the orders of the 21st December 1901 and the 27th November 1905 was to make absolute this decree, and

**EX PARTE DECREE—*concl'd.***

that an application for execution made on the 21st December 1905, was not barred by limitation. *Bhura Mal v. Har Kishan Das*, I. L. R. 24 All. 337; *Sham Suniar v. Muhammad Ihtisham Ali*, I. L. R. 27 All. 501, and *Shayda Hussain v. Hub Hussain*, All. Weekly Notes (1902) 184, referred to. *GAURI SAMAI v. ASHFAK HUSSIN* (1907)

I. L. R. 29 All. 623

**EX PARTE ORDER.**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 11 . I. L. R. 31 Mad. 5

See PRACTICE . 12 C. W. N. 65

See SMALL CAUSE COURTS ACT, 1882, CHAP. VII . I. L. R. 31 Bom. 45

**EX PARTE PROCEEDING.**

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION . 6 C. W. N. 925

**EXPECTANCY.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST. I. L. R. 17 All. 125

See ONUS OF PROOF—HINDU LAW—ALIENATION . I. L. R. 17 All. 125

**EXPERT AGENT.**

——— negligence of—

See CONTRACT . 13 C. W. N. 59

**EXPERT OPINION**

See VALUATION OF LAND. I. L. R. 32 Calc. 313

**EXPLOSIVE SUBSTANCES ACT (VI OF 1908)**

——— ss 4, 4A, 4B, 5, 6—

Conspiracy, charge of—Ingredients necessary to support charge—Possession or control of an explosive substance within the meaning of the Act—Conduct, evidentiary value of. In regard to a criminal charge, when an article is found in a room to which several persons have access, it cannot be held to be in the possession of any one of them. Where a bomb was found in one of the rooms of a house to which all the in-

**EXPLOSIVE SUBSTANCES ACT (VI OF 1908)—*concl'd.***

ss. 4, 4A, 4B, 5, 6—*concl'd.*

*All 129, 131, followed.* The evidence of conduct of an accused person unless it is incompatible with his innocence, is in fact a make-weight and nothing more, and care should be taken that it may not have an exaggerated effect. It

is dangerous to convict on a charge which covers a wide period of time and which is supported by evidence indefinite as to the point of time when the offence was committed. Where a charge of conspiracy against the accused was framed in these words:—"That you . . . on or between the 8th of June 1903 and 31st July 1903, at Madnapur, unlawfully and maliciously conspired to cause by an explosive substance, viz., a bomb, an explosion in British India of a nature likely to endanger life and thereby committed an offence, etc. . . ." *Semble*: That the charge should have specified with what other persons the accused had conspired. In a criminal trial, two documents were made exhibits, one of which purported to be a record of contemporaneous statements made to the Police by an informer in their service and the other a document written up by a police-officer for the purpose of assisting the informer in connection with the evidence, which the Police, then expected he would give: *Held*, that the statements contained in the documents were not evidence against the accused, but they were useful in so far as they tended to expose the methods employed in getting up the prosecution case. Their evidentiary value was in no sense constructive, but if anything, destructive of the case against the accused. *JOOJIBAN GHOSH v. THE KING-EMPEROR* (1909)

13 C. W. N. 861

**EXPRESS MALICE.**

*See LIBEL* . I L R. 32 Calc. 7318

**EXPRESS TRUST**

*See LIMITATION ACT (XV of 1877), s. 10*  
I L R 33 Bom 394

*See TRUSTS ACT 1882, ss 81, 83.*  
I L R 31 Bom 222

*See WILL* . I L R 31 Mad 283

*Limitation Act (XV of 1877), s. 10—Effect of limitation in cases where the person liable for payment of a legacy and the person entitled to receive the legacy are the same.* L K was a partner in the firm of R L. As such partner he was entitled to his proportion of certain shares of the Hongkong Mill and of the commission earned by his firm as agents of such mill. On his retirement from the firm in 1900 entries were made in the firm's books from which it appeared that 35 of such shares

**EXPRESS TRUST—*concl'd.***

were appropriated to the said L K and that he from the date of the entries ceased to have any interest in the firm of R L. *Held*, that under provisos 2 and 4 of s. 92 of the Evidence Act evidence was admissible to show that in fact the arrangement was that L K should continue to be entitled to his share in the commission. The suit was an executor of both wills. *Held*, (i) that R L was an express trustee in respect of L K's share of the commission, and that s. 10 of the Limit-

of the receipt thereof was occasioned by their own default. (ii) That when the person liable for the payment of a legacy and the person entitled to receive it are the same, no question of limitation can arise. *Binns v. Nichols, L. R. 2 Eq 257, followed. NARBONDAS v. NARBONDAS* (1907)

I L R. 31 Bom. 418

**EXTENSION OF TIME**

*See APPEAL TO PRIVY COUNCIL.*  
11 C.W. N. 1104

*See EXECUTION* I L R 38 Calc. 422

**EXTINGUISHMENT OF RIGHT**

*See LIMITATION ACT, 1877, s. 28.*  
5 C. W. N. 545

**EXTORTION.**

*See CRIMINAL PROCEDURE CODE, s. 233.*  
13 C. W. N. 507

*See SENTENCE—CUMULATIVE SENTENCES.*  
I L R 10 All 58

1. ——— Feigning attempt to commit offence—*Penal Code, s. 387.* The feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code. *REG. v. GREGORY* . 1 Ind Jur. N. S. 423

2. ——— Intentionally putting person in fear of injury. To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury and thereby dishonestly inducing him to part with his property. *QUEEN v. MEAJAN* . 4 W. R. Cr. 5

3. ——— Putting person in fear of his life and taking property—*Robbery* When a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion. *QUEEN v. DULELOEDDEEN SHEREKH*

5 W. R. Cr. 19

4. ——— Requisites for offence—*Penal Code, s. 384—Abetment.* *Held*, that it is not necessary in a case of extortion under the Penal Code that the threat should be used and the property

**EXTORTION—contd.**

received by one and the same individual, nor that the receiver should be charged with abetment, although that might be done. *REG. v. SANKER BHAGVAT* 2 Bom. 417: 2nd Ed. 394

5. ————— *Penal Code, s.*

6. ————— **Wrongful Confinement—**  
Money lent in ordinary course of business to pay amount extorted—Lender—Penal Code (Act XLV of 1860), ss. 213, 342, and 384—Accomplice. The accused, as sub-inspector of police, arrested one J, wrongfully confined him, and extorted from him Rs 200 under a threat that he, the accused, would not release J unless the money were paid. This money was paid on this account by P, a money-lender, who lent J the money for this purpose. Accused was convicted under ss. 342 and 384 of the Penal Code. In appeal the Sessions Judge held that P was not an accomplice, and having considered his evidence accordingly, dismissed the appeal. *Held*, that it was sufficiently shown that the money was not voluntarily given, that it was given by J to obtain his release from police custody, in which he was detained on no reasonable or sufficient ground, and it was extorted, because the sub-inspector refused to release J, as he was bound to do, unless he were paid that money. That P, paying such money under such circumstances, could not be regarded as an accomplice of the sub-inspector in such misconduct. *AKHOY KUMAR CHUCKERBUTTY v. JAGAT CHUNDER CHUCKERBUTTY* I. L. R. 27 Cal. 825 4 C. W. N. 755

7. ————— **Obtaining money by threatening not to conduct case.** The defendant was junior vakil for the complainant (the defendant in

victed of extortion *Held*, that the conviction was bad. *ANONYMOUS* 5 Mad. Ap. 14

8. ————— **Terror of criminal charge—**  
Fear of injury—Penal Code, s. 383. The terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion may be equally committed, whether the charge threatened is true or false. *QUEEN v. MORANICK* 7 W. R. Cr. 26

9. ————— **Making use of influence, supposed or real, to obtain money.** The

**EXTORTION—contd.**

10. ————— **Abetment—Confinement—Evidence—Appeal—Court—Misjoinder—Penal Code (Act XLV of 1860), s. 347—Criminal Procedure Code (Act V of 1898), s. 428.** A head constable in charge of a police out-post agreed to drop proceedings against K, who had been arrested on a certain charge, on condition that K paid to him a sum of money. The head constable sent away K in charge of two cheukidars to procure the money. In order to effect this object, the cheukidars subsequently confined K at various places and maltreated him. *Held*, that it would be im-

were not examined in the lower Court, is necessary, he should proceed under s. 428 of the Criminal

**EXTRADITION.**

*See* CHARGE—ALTERATION OR AMENDMENT OF CHARGE

I. L. R. 17 Bom. 369

*See* WARRANT OF ARREST—CRIMINAL CASES

I. L. R. 1 Bom. 340

— Act VII of 1854 (Fugitive

II of 1862—

s. 23 of

the Schedule to

the 6th of Nov.

Gaskwar of

provides for

latter section is therefore applicable in such a case. *Seemle*: That Government would not be justified in delivering up an accused person to His Highness the Gaskwar without holding a preliminary enquiry into the guilt of such accused. Where a warrant issued under s. 23 of Act VII of 1854 directed the accused person to be delivered up to the Resident at Baroda, without showing either that an enquiry had been made or was about to be made, the Court held that it was not therefore invalid, as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an enquiry as is required by the Act. A warrant issued under s. 23 of the Act should recite either that an

**EXTRADITION—*concl'd.***

enquiry has been held, or is about to be held, with reference to the guilt of the accused. *Reg. v. SOUTER. In re RAVJI BIN KESHAV* 8 Bom. Cr. 13

**EXTRADITION ACT (XXI OF 1879).**

See HIGH COURT, JURISDICTION OF—  
MADRAS—CRIMINAL.

I. L. R. 12 Mad. 39

1. ——— s. 8—European British subjects in Native States—*Law applicable to British subjects in Native States—Act III of 1881.* Act XXI of 1879, s. 8 (which corresponds with s. 8 of Act XI of 1872, now repealed), extends to all British subjects, European or native, in Native States in alliance with Her Majesty the law relating to offences and criminal procedure for the time being in British India. The Code of Criminal Procedure (Act X of 1882), with the amendments introduced by Act III of 1884, is thus, by virtue of that section, applicable to such British subjects, native or European. *QUEEN-EMRESS v. EDWARDS*

I. L. R. 8 Bom. 333

2. ——— s. 9 (and Act XI of 1872)—

discovered in the territory of another Native

a preliminary enquiry was held by a Magistrate who committed the accused for trial by the Court of Session. *Held*, that the Sessions Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under s. 9 of the Foreign Jurisdiction and Extradition Act, XXI of 1879, for when the accused was brought, from foreign territory to Ahmedabad, he was "found" at a place in British India within the meaning of that section. The expression "was found" used in this section must be taken to mean not where a person is discovered, but where he is actually present. *EMRESS v. MAGANLAL*

I. L. R. 6 Bom. 622

**EXTRADITION ACT (XV OF 1903).**

ss. 7 and 8—*Power of Magistrate to hold to bail the person arrested to appear before a tribunal in a Foreign State.* There is no provision in the Criminal Procedure Code (Act V of 1898) or in the Extradition Act (XV of 1903) authorizing a Magistrate to hold a person to bail to appear before a tribunal in a State, to which the Extradition Act applies, unless the warrant is endorsed under the provisions of s. 8 of the Act. *BALTHASAR v. EMPEROR* (1906)

I. L. R. 33 Calc. 1032

**EXTRAORDINARY CRIMINAL JURISDICTION, HIGH COURT.**

See SPECIAL TRIBUNAL.

13 C. W. N. 605

**EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURT.**

See TRESPASS. I. L. R. 38 Calc. 433

**F****FABRICATING FALSE EVIDENCE.**

1. ——— Necessity of finding the intention—*Penal Code (Act XLV of 1860), ss. 192, 193—Causing false entry of a marriage in the marriage register—Mahomedan marriage register.* In order to convict a person of fabricating false evidence under s. 193, Indian Penal Code, it is necessary to find that the person intended that the fabrication may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator. Where the accused by falsely representing to the

that the accused cannot be convicted of the offence of fabricating false evidence under s. 193, Indian Penal Code, in the absence of a finding that the

Code. *MOHAMED SIDDIQ v. EMPEROR* (1907)

11 C. W. N. 911

2. ——— *Penal Code (Act XLV of 1860), s. 192.* One Cheda Lal, whose

any of the prosecution witnesses Upon being asked by the Court where Debi was, Cheda Lal pointed out a man who, upon further investigation, was dis-

I. L. R. 29 All 351

**FACT.**

finding of—

See SECOND APPEAL. 11 C. W. N. 83

mis-statement of—

See LIBEL. I. L. R. 36 Calc. 883

questions of—

See CONCURRENT JUDGMENTS ON FACTS.

See PRIVY COUNCIL. 13 C. W. N. 830

**FACT—concl.**

— questions of—concl.

See SPECIAL OR SECOND APPEAL—  
GROUNDS OF APPEAL—QUESTIONS OF  
FACT.

**FACTORIES ACT (XV OF 1881).**

ss. 12, 15 (1) (e)—Fencing machinery  
—Manager—Occupier—Liability The accused,  
who was the manager of a gunning factory at  
Dhulia, resided in a part of the premises on which  
the factory stood. He was charged under s. 15 (1)  
(e) of the Indian Factories Act (XV of 1881) with

since the manager of a factory cannot be said with  
truth to have been the occupier thereof. *EMPEROR*  
*v. RANFRATAP* (1905). I. L. R. 29 Bom. 423

ss. 15 (g) and 17, prov. 1—Facto-  
ries Act Amendment Act (XI of 1891)—Bengal Mu-  
nicipal Act (Bengal Act III of 1884), ss. 320, 321—

MAN OF THE SERAMPORE MUNICIPALITY & INSPEC-  
TOR OF FACTORIES, HOOGHLY

I. L. R. 25 Calc. 454

**FACTORS.**

See PRINCIPAL AND AGENT—AUTHORITY  
OF AGENTS . . . 4 W. R. P. C. 1  
10 Moo. I. A. 229

See PRINCIPAL AND AGENT—COMMISSION  
AGENTS . . . I. L. R. 17 Bom. 520

**FACTORS' ACT (XX OF 1844).**

See PRINCIPAL AND AGENT—AUTHORITY  
OF AGENTS . . . 1 Ind. Jur. O. S. 17  
1 W. R. P. C. 43; 9 Moo. I. A. 140

**FACTUM VALET.**

— doctrine of—

See HINDU LAW—ADOPTION—FACTUM  
VALET, DOCTRINE OF

See HINDU LAW—FAMILY DWELLING-  
HOUSE . . . 4 B. L. R. O. C. 72

**FAIR COMMENT.**

See DEFAMATION I. L. R. 31 Bom. 283

See LIBEL . . . I. L. R. 36 Calc. 883

See PENAL CODE, ss. 499, EXCEP. 3, 6, 9;  
500, 52 . . . I. L. R. 31 Bom. 29

**FALSE CHARGE.**

See COMPENSATION—CRIMINAL CASES—  
TO ACCUSED, ON DISMISSAL OF COM-  
PLAINT . . . I. L. R. 30 Calc. 123  
I. L. R. 33 Calc. 1

See COMPLAINT—  
INSTITUTION OF COMPLAINT, AND  
NECESSARY PRELIMINARIES;  
I. L. R. 30 Calc. 415

See CRIMINAL PROCEDURE CODE, s. 193.  
I. L. R. 32 Calc. 180  
I. L. R. 33 Calc. 30

DISMISSAL OF COMPLAINT—POWER OF,  
AND PRELIMINARIES TO, DISMIS-  
SAL . . . 6 C. W. N. 295

See HINDU LAW—MARRIAGE—RIGHT TO  
GIVE IN MARRIAGE AND CONSENT.  
I. L. R. 11 Bom. 247  
I. L. R. 22 Bom. 613

See PENAL CODE, s. 211.

See PENAL CODE, ss. 192, 211.  
I. L. R. 31 Bom. 204  
I. L. R. 34 Calc. 43

See SANCTION FOR PROSECUTION—WHEN  
SANCTION MAY BE GRANTED.  
5 C. W. N. 254

— giving evidence in support of—

See ABETMENT . . . 9 B. L. R. Ap. 18  
10 C. L. R. 4

1 ——— Penal Code, s. 211.—Know-  
ledge by accused of offence To establish a charge  
under s. 211 of the Penal Code, it is necessary to  
show that the accused knew or had reason to believe  
that an offence had been committed. *QUEYER*  
*v. BHITTO KAHAR* . . . 1 Ind. Jur. O. S. 123

2. ——— Knowledge that  
charge is false. A person may in good faith insti-  
tute proceedings against another person, and be  
found to be  
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criminal proceedings knew their was  
lawful ground for such proceedings. The averment  
that the accused knew that there was no lawful

**FALSE CHARGE—contd.**

ground for the charge instituted is a most material one. *QUEEN v. CHIDDA*. 3 N. W. 327

3. ————— *False charge by police officer.* S. 211 of the Penal Code applies not only to a private individual, but also to a police officer who brings a false charge of an offence with intent to injure. *In the matter of the petition of NABODEEP CHUNDER SINGAR*. 11 W. R. Cr. 3

4. ————— *False charge in petition of complaint.* If the charge of voluntarily causing hurt, contained in a petition of complaint is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code. *QUEEN v. MATA DYAL*. 4 N. W. 8

5. ————— *False charge—False information—Penal Code, s. 182.* Where a person specifically complains that another man has

6. ————— *Compounding of offence—Discharge of accused charged under s. 211 upon plea of original charge having been compounded.* The fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code. A laid a charge against M for wrongful confinement. The police reported the case as a false one, and A not appearing to prove his complaint, the District Magistrate ordered him to be prosecuted under s. 211 of the Penal Code, and made over the case to a Deputy Magistrate. Upon the hearing of such charge, A pleaded that he had compounded the original

was illegal, as such plea was no conclusive answer to a charge under s. 211. *QUEEN-EMPRESS v. AFAR ALI*. I. L. R. 11 Cal. 79

7. ————— *Specific false charge.* Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code. *QUEEN EMPRESS v. JUDAL KISHORE*. I. L. R. 8 All 382

8. ————— *Requisites for offence—Making false charge.* To constitute the

W. R. Cr. 77, distinguished. *EMPRESS v. ABUL HASAN*. I. L. R. 1 All 497

*EMPRESS v. SALIK*. I. L. R. 1 All 527

9. ————— *Requisites to sustain offence.* To constitute the offence of pre-

**FALSE CHARGE—contd.**

fering a false charge under s. 211 of the Penal Code, the charge need not be made before a Magistrate. Nor need the charge have been fully heard and dismissed; it is enough if it is not pending at the time of trial. *QUEEN v. SUBBANNA GAUNDAN*. 1 Mad. 30

*s. c. QUEEN v. TOOBANA GAUNDAN*. 1 Ind. Jur. O. S. 138

10. ————— *Code of Criminal Procedure (Act V of 1898), s. 203—Order directing issue of process against a person for an offence of*

mitted, no proceedings can be instituted under s. 211 of the Penal Code against the person lodging that complaint. The original complaint must be first disposed of, according to law, before such proceedings can be taken. *GUNAMANY SAFOI v. QUEEN EMPRESS*. 3 C. W. N. 758

11. ————— *Making false charge to Court or officer having no jurisdiction.* It is necessary for a conviction under s. 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial. *In the matter of the petition of JAMOOKA, EMPRESS v. JAMOOKA*. I. L. R. 8 Cal. 620; 8 C. L. R. 215

12. ————— *Charge laid before police officer.* There is nothing in a 211 of

13. ————— *Complaint to police.* To prefer a complaint to the police in respect of an offence which they are competent to deal

15. ————— *Charge made to*

house searched, he prefers a charge against A, and



**FACT—*concl.***

— questions of—*concl.*

See SPECIAL OR SECOND APPEAL—  
GROUNDS OF APPEAL—QUESTIONS OF  
FACT.

**FACTORIES ACT (XV OF 1881).**

— ss. 12, 15 (1) (e).—*Fencing machinery—Manager—Occupier—Liability.* The accused, who was the manager of a ginning factory at Dhulia, resided in a part of the premises on which the factory stood. He was charged under s. 15 (1) (e) of the Indian Factories Act (XV of 1881) with

the accused On appeal by the Government of

since the manager of a factory cannot be said with truth to have been the occupier thereof. *EMPEROR v. RAMPRATAP* (1905) . I. L. R. 29 Bom. 423

— ss. 15 (g) and 17, prov. 1.—*Factories Act Amendment Act (XI of 1891)—Bengal Municipal Act (Bengal Act III of 1884), ss. 320, 321—*

prosecution against the manager of the mill, but the prosecution failed. He then prosecuted as

Bengal Municipal Act, s. 320 *Held*, that the conviction of the Chairman was unsustainable on the finding that the Municipality and the occupier of the factory were jointly responsible. *Held*, further, that it lay upon the occupier of the factory, as being primarily liable for breach of any of the provisions of the Factories Act, to give the strictest proof of circumstances exonerating himself from the liability in order to fix it on any other person. *CHAIRMAN OF THE SERAMPORE MUNICIPALITY v. INSPECTOR OF FACTORIES, HOOGHLY*

I. L. R. 25 Calc. 454

**FACTORS.**

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 4 W. R. P. C. 1  
10 Moo. I. A. 229

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R. 17 Bom. 520

**FACTORS' ACT (XX OF 1844).**

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 1 Ind. Jur. O. S. 17  
1 W. R. P. C. 43 : 9 Moo. I. A. 140

**FACTUM VALET.**

— doctrine of—

See HINDU LAW—ADOPTION—FACTUM VALET, DOCTRINE OF.

See HINDU LAW—FAMILY DWELLING-HOUSE . 4 R. L. R. O. C. 72

**FAIR COMMENT.**

See DEFAMATION I. L. R. 31 Bom. 293

See LIBEL . I. L. R. 36 Calc. 883

See PENAL CODE, ss. 499, EXCEP. 3, 6, 9 ;  
500, 52 . I. L. R. 31 Bom. 293

**FALSE CHARGE**

See COMPENSATION—CRIMINAL CASES—  
TO ACCUSED, ON DISMISSAL OF COM-  
PLAINT . I. L. R. 30 Calc. 123  
I. L. R. 33 Calc. 1

See COMPLAINT—  
INSTITUTION OF COMPLAINT, AND  
NECESSARY PRELIMINARIES ;  
I. L. R. 30 Calc. 415

See CRIMINAL PROCEDURE CODE, s. 193 .  
I. L. R. 33 Calc. 180  
I. L. R. 33 Calc. 80

DISMISSAL OF COMPLAINT—POWER OF,  
AND PRELIMINARIES TO, DISMISS-  
SAL . 6 C. W. N. 295

See HINDU LAW—MARRIAGE—RIGHT TO  
GIVE IN MARRIAGE AND CONSENT .  
I. L. R. 11 Bom. 247  
I. L. R. 22 Bom. 612

See PENAL CODE, s. 211.

See PENAL CODE, ss. 182, 211 .  
I. L. R. 31 Bom. 204 .  
I. L. R. 34 Calc. 42

See SANCTION FOR PROSECUTION—WHEN  
SANCTION MAY BE GRANTED .  
5 C. W. N. 254

— giving evidence in support of—

See ARRESTMENT . 9 B. L. R. Ap. 16  
10 C. L. R. 4

1 ——— Penal Code, s. 211.—*Know-  
ledge by accused of offence.* To establish a charge  
under a 211 of the Penal Code, it is necessary to  
show that the accused knew or had reason to believe  
that an offence had been committed. *QUEEN v.  
BHITTO KAHAR* . 1 Ind. Jur. O. S. 123

2. ——— *Knowledge that  
charge is false.* A person may in good faith insti-  
tute a charge which is subsequently found to be  
false, or he may, with intent to cause injury to an  
other person, institute a charge against him,  
them, but in  
ence under s.  
; this offence,

it must be shown that the person instituting  
criminal proceedings knew there was no just or  
lawful ground for such proceedings. The averment  
that the accused knew that there was no lawful

**FALSE CHARGE—contd.**

ground for the charge instituted is a most material one. **QUEEN v. CHIDDA** . . . 3 N. W. 327

3. *False charge by police officer.* S. 211 of the Penal Code applies not only to a private individual, but also to a police officer who brings a false charge of an offence with intent to injure. *In the matter of the petition of NABODEEP CHUNDER SIKKAR* . . . 11 W. R. Cr. 2

4. *False charge on* . . .

**QUEEN v. MATA DYAL** . . . 4 N. W. 6

5. *False charge—False information—Penal Code, s. 182.* Where a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under s. 211 of the Penal Code, and not under s. 182. **EXPRESS v. ARJUN** . . . I. L. R. 7 Bom. 184

6. *Compounding of offence—Discharge of accused charged under s. 211 upon plea of original charge having been compounded.* The fact that an offence alleged to have been committed has been compounded is no con-

Penal Code, and made over the case to a Deputy Magistrate, upon the hearing of such charge, A

undismissed the case. *Held*, that the course so taken was illegal, as such plea was no conclusive answer to a charge under s. 211. **QUEEN-EXPRESS v. ARAR ALI** . . . I. L. R. 11 Calc. 79

7. *Specific false charge.* Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code. **QUEEN-EXPRESS v. JUGAL KISHORE** . . . I. L. R. 8 All. 382

8. *Requisites for offence—Making false charge.* To constitute the

W. R. Cr. 77, distinguished. **EXPRESS v. ABUL HASAN** . . . I. L. R. 1 All. 497

**EXPRESS v. SALIK** . . . I. L. R. 1 All. 527

9. *Requisites to sustain offence.* To constitute the offence of pre-

**FALSE CHARGE—contd.**

ferring a false charge under s. 211 of the Penal Code, the charge must not be made before a Magistrate

1 Mad. 30  
s. c. **QUEEN v. TOOBANA GAUNDAN** . . . 1 Ind. Jur. O. S. 138

10. *Code of Criminal Procedure (Act V of 1898), s. 203—Order directing issue of process against a person for an offence of bringing a false complaint before final determination of the complaint, propriety of.* So long as a complaint is not dismissed under s. 203 of the Code of Criminal Procedure or otherwise judicially determined, no proceedings can be instituted under s. 211 of the Penal Code against the person lodging that complaint. The original complaint must be first disposed of, according to law, before such proceedings can be taken. **GUNAMANY SAPIU v. QUEEN-EXPRESS** . . . 3 C. W. N. 756

11. *Making false charge to Court or officer having no jurisdiction.* It is necessary for a conviction under s. 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial. *In the matter of the petition of JAMOONA*. **EXPRESS v. JAMOONA** . . . I. L. R. 8 Calc. 820; 8 C. L. R. 215

12. *Charge laid*

I. L. R. 5 Calc. 281

13. *Complaint to police.* To prefer a complaint to the police in res-

14. *Charge made to police—Penal Code, s. 182.* Ss. 182 and 211 of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the now complainant with having caused the death of the accused's child by poisoning. **RAFFEY MAHOMED v. ABBAS KHAN** . . . 6 W. R. Cr. 87

15. *Charge made to police.* Where a person who is interested in the





**FALSE CHARGE—contd.**

if such charge be false, he may be convicted under s. 211, Penal Code. *QUEEN v HANMOHAN LAL*  
19 W. R. Cr. 5

18. \_\_\_\_\_ *Statement made to police as to suspicion of offence—Institution of criminal proceedings.* A statement made to the police of a suspicion that a particular person had committed an offence is not a "charge" within the meaning of s. 211 of the Penal Code, nor does it

convicted under that section. *IN THE MATTER OF BRAMANUND BHUTTACHARJEE*. 8 C. L. R. 233

17. \_\_\_\_\_ *Charge on insufficient evidence.* It is not sufficient ground for a charge under s. 211 of the Penal Code that a person to whom a wrong has been done, or who con-

18. \_\_\_\_\_ *False charge of burning house.* Where a man burns his own house

*BRUGWAN AMIR*. 6 W. R. Cr. 50

19. \_\_\_\_\_ *Charge of refusal to give stamped receipt.* The refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt is not an indictable offence. *REG v GAYAU KUM KUBADI*. 1 Bom. 92

20. \_\_\_\_\_ *Institution of criminal proceeding.* Under s. 211, Penal Code, "in-

21. \_\_\_\_\_ *Institution of cri-*

Code, and if a person only makes a false charge, his case falls under the first part of the section, irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards." *EMPERESS v PITAM RAI*

I. L. R. 5 All. 215

**FALSE CHARGE—contd.**

22. \_\_\_\_\_ *Institution of criminal proceedings.* Where no criminal proceed-

*EMPERESS v PARAHU*

I. L. R. 5 All. 585

23. \_\_\_\_\_ *A false charge before the police is a false charge falling within the first portion of s. 211 of the Penal Code.* The latter portion of s. 211 of the Penal Code is confined to cases in which criminal proceedings have been instituted, and does not apply to false charges merely. *EMPERESS OF INDIA v PITAM RAI*, I. L. R. 5 All. 215, and *EMPERESS v PARAHU*, I. L. R. 5 All. 585, followed *QUEEN-EMPERESS v KARIM BUKSH*. I. L. R. 14 Calc. 633

24. \_\_\_\_\_ *False charge made to police—Institution of criminal proceedings—Penal Code, s. 211.* A person who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of s. 211 of the Penal Code; and if the offence fell within the description in the latter part of the section, he is liable to the punishment there provided. *KARIM BUKSH v QUEEN-EMPERESS*. I. L. R. 17 Calc. 574

25. \_\_\_\_\_ *False charge of offence punishable with death—Criminal proceedings, necessity for institution of.* To constitute the

*BISHESHAR*

I. L. R. 16

26. \_\_\_\_\_ *False charge of dacoity made to a police station-house officer—Institution of criminal proceedings.* A false charge of dacoity was made to a police station-house officer, who, after some investigation, referred it to the Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under Penal Code, s. 211, and was found to have acted with the intent and the knowledge therein mentioned, and he was convicted and sentenced to four years' rigorous imprisonment. Held, that the prisoner had instituted criminal proceedings within the meaning of that section, and that the conviction and sentence were in accordance with law. *QUEEN-EMPERESS v NARJUNDA RAO*. I. L. R. 20 Mad. 70

FALSE CHARGE—*contd.*

27. \_\_\_\_\_ *False report by*  
*Criminal Procedure Code (Act V of 1893)*

211, Penal Code, was bad in law. **THAKUR TEWA-  
 RY v QUEEN-EMPRESS** . . . 4 C. W. N. 347

28. \_\_\_\_\_ *Penal Code,*  
*ss 211, 499, and 500—Falsely charging a person*  
*with an offence—Defamatory statement made by a*  
*person in the course of an official duty*

denied having sent any petition to Government,  
 then  
 Mr.  
 the result of his inquiry to Government. Govern-  
 ment permitted the Deputy Collector to prosecute

The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss 211 and 500. But subsequently he struck out the charge of defamation under s. 500, and convicted the accused under s. 211 of making a false charge. On appeal, the Joint Sessions Judge was of opinion that the charge under s. 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate

under s. 211, and acquitted the accused of defamation under s. 500 of the Code. Against this order of acquittal, Government appealed to the High Court. *Held*, that the accused was guilty of defamation. *Held*, also, that s. 211 of the Penal Code

FALSE CHARGE—*contd.*

officer; and though what he stated, in answer to questions put to him, was defamatory, the imputations did not constitute a "false charge" within

are obviously used in a technical and exclusive sense, and the same constituted offence must be applied to the  
 plying  
 Empress  
 also, that, in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a taking cognizance of the offence. **QUEEN-EMPRESS v. KARIGOWDA**  
 I. L. R. 19 Bom. 51

29. \_\_\_\_\_ *Prosecution under*  
*s. 182—Rejection of complaint with reference*  
*to police report. K made a report at a police-*

the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police report. Subsequently R, with the sanction of the police authorities, instituted criminal proceedings against K under s. 182 of the Penal Code in respect of the report which he had made at the police station, and K was convicted.

against the entertainment of the case. The views expressed in **Government v. Karimdad**, I. L. R. 6 Cal. 496, concurred in **EMPRESS v. RADHA KISHAN** . . . I. L. R. 5 All. 36

30. \_\_\_\_\_ *Report of police*  
*Absence of judicial proceeding—Criminal Procedure Code (Act V of 1893), ss 157, 159.* Where the petitioner laid information to the police charging a certain person with criminal trespass in his house to commit a particular offence and the police reported that they did not believe the object was to commit the offence stated, but that they were not disinclined to be . . . the charge of trespass, where-

**FALSE CHARGE—contd.**

tioner was bad. That s. 159, Civil Procedure Code, had no application to the present case; an inquiry can only be made under that section only on a report submitted within the terms of s. 157 and the police report, and this case was not of that description. **MOULI DURZI v. NAURANGI LALL**

4 C. W. N. 351

31. — Charge made on report of police that case was false—Charge of giving false information. A commitment for trial under the provisions of s. 211 of the Penal Code, for knowingly making a false charge with intent to injure.

PRESS v. SALIK ROY I. L. R. 6 Cal. 582  
8 C. L. R. 255

32. — Enquiry into truth of charge—Criminal Procedure Code, 1872, s. 471. A petition was presented to the Joint

rejected the petition, and directed the petitioner to be prosecuted under s. 211 of the Penal Code for

Sing, 16 W. R. 44 and in the matter of Nissar Hossein, 25 W. R. 10, considered In the matter of CHOOBHAI TELEE 2 C. L. R. 315

33. — Dismissal of complaint—Criminal Procedure Code (Act X of 1872), ss. 470 and 471. Where a charge had been preferred against a person, and the Magistrate before whom it was heard, after hearing the statement of the complainant, but not those of the witnesses, dismissed the complaint; and subsequently, on the application of the person charged, granted him leave under s. 470 to prosecute the complainant for bringing a false charge.—Held, that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done. Held, also, that there is a distinction in the proceedings to be adopted when a sanction is given under s. 470, and the institution by the Court of its own motion of proceedings under s. 471. **Nissar Hossein v. Ramgopal Singh, 25 W. R. Cr 10, dissented from. In the matter of GYAN CHUNDER ROY v. PRATAP CHUNDER DASS** I. L. R. 7 Cal. 208  
8 C. L. R. 287

34. — Allowing opportunity to show grounds for charge. Where a person is charged under s. 211 of the Penal Code with having, with intent to injure, made a false charge with an lawful grounds should be

**FALSE CHARGE—contd.**

he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him. **REG. v. NEVALMAL VALAD UMEDMAL**

3 Bom. Cr. 16

35. — False charge—Criminal Procedure Code (Act X of 1872), ss. 146, 147. Where a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code.

36. — Prosecution for making a false charge—Opportunity to accused to

GOVERNMENT v. KARNIDAD I. L. R. 6 Cal. 496  
7 C. L. R. 467

37. — Sanction to prosecution for making false charge. A sanction for a prosecution for making a false charge under s. 211 of the Penal Code, without hearing all the witnesses

38. — Opportunity of substantiating charge. Upon a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local inquiry by a competent police officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted.

39. — Opportunity of substantiating charge. A Magistrate should not direct a prosecutor to be put upon his trial under

FALSE CHARGE—*contd.*

s. 211 of the Penal Code without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. *In the matter of the petition of GIRIDHARI MUNDAL—GIRIDHARI MUNDAL v. UCHIT JHA*

I. L. R. 8 Cnlc. 435  
10 C. L. R. 48

NISSAR HOSSEIN v. RAMGOLAM SINGH

25 W. R. Cr. 10

See QUEEN v. GOUR MOHUN SINGH

18 W. R. Cr. 44

40. ————— Enquiry into truth of charge. Where a charge of theft was reported by the police to be false—*Held*, that the Magistrate ought first to have enquired into the charge of theft and age of the accused.

41. ————— Enquiry into truth of charge—*Penal Code, s. 182*. J complained to the police that she had been raped by R. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime J made a complaint in Court, again charging R with rape. This complaint was not disposed of, but the proceedings against her under s. 182 of the Penal Code were continued, and she was eventually convicted under that section. *Held*, setting aside the conviction and directing that J's complaint should be disposed of, that such complaint should have been disposed of under s. 211 before proceedings were taken against her under s. 182. *EMPRESS v. JAMINI*

I. L. R. 5 All. 387

42. ————— Preliminary enquiry—*Criminal Procedure Code, 1872, s. 471—Penal Code, s. 182*. An offence under s. 211 of the Penal Code.

ceed under s. 211. *BROKTERAM v. HEERA KOLITA*

I. L. R. 5 Calc. 184

43. ————— False information to police—*Penal Code, s. 182—Charge found false by police*. Where a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified merely on a perusal of a police report, which has found the charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *ex officio*, until a reasonable interval has shown that the complainant accepts the result of the investigation. *In the matter of RUSSICK LALL MULLICK*. 7 C. L. R. 382

*In the matter of BIRGOBI BHAGAT* 4 C. L. R. 134

FALSE CHARGE—*contd.*

44. ————— Dismissal of complaint without giving complainant opportunity to prove it true. A charge laid against certain persons before the police having been reported false by that body, the person who made the charge complained to the Magistrate of the district who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition, in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer. No further investigation having taken place, the complainant was ordered to be prosecuted under s. 211 of the Penal Code, and on trial was convicted and sentenced. On appeal to the High Court, it was *held* that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. *In the matter of RUSSICK LALL MULLICK*, 7 C. L. R. 382, and *In the matter of BIRGOBI BHAGAT*, 4 C. L. R. 134 followed. *Per MACLEAN, J.* The proper principle which should guide a Magistrate is that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police enquiry, he would be justified in proceeding against a person who has made a complaint to the police which has been found to be false; but if a complaint is made, that complaint must be dealt with judicially. It is unfair even then to proceed against the complainant without hearing any witnesses whom he may wish to examine. *Per MITTER, J.* Although a Magistrate has power under s. 147 of the Criminal Procedure Code to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under s. 211 of the Penal Code should be granted. See *In the matter of GYAN CHUNDER ROY*, 8 C. L. R. 267. *In the matter of CHURRADAY POTTI*. 8 C. L. R. 286

45. ————— Conviction by Sessions Court—Opportunity not given to accused to prove charge before Magistrate. R made a complaint

I. L. R. 7 Mad. 292

46. ————— Prosecution for making a false charge—Opportunity to accused to



FALSE CHARGE—*contd.*

of the Penal Code. *Held*, that the order under a 199 of the Criminal Procedure Code should not have been passed until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police. *Government v. Karimdad*, I. L. R. 6 Cal. 496, referred to. *QUEEN-EMPRESS v. GANGA RAM*  
I. L. R. 8 All. 38

47. *Criminal Procedure Code (Act X of 1882), s. 191—Cognizance of an offence on suspicion—Police report—False charge, Prosecution for, without first enquiring into truth of original complaint* A person having laid an in-

FALSE CHARGE—*contd.*

thereupon taken by the police. *Held*, also, that the fact that no opportunity was allowed to the accused by the Magistrate to substantiate his complaint before striking it off was not a circumstance which invalidated the commitment duly made, and the conviction otherwise good could not be set aside on account of such omission. The trial before the committing Magistrate and in the Sessions Court gave ample opportunity to the accused to substantiate his complaint, and he was not prejudiced by the omission. *QUEEN-EMPRESS v. JISHBAI GOVIND*  
I. L. R. 22 Bom. 596

49. *Procedure before framing charge. Procedure before framing a charge, under s. 211 of the Penal Code, of the offence of making a false charge with intent to injure considered. In the matter of the petition of GOUR MOHUN SINGH*  
S. C. *QUEEN v. GOUR MOHUN SINGH*  
18 W. R. Cr. 44

50. *False charge, conviction on—Entry of, in calendar. When a pri-*

51. *Information given to police—Record. Where the charge is one of*

52. *Penal Code (Act XLV of 1860), s. 211—Code of Criminal Procedure (Act V of 1898), ss. 4 (h), 195, 476—Giving false information to police of an offence, order for prosecution for—"Complaint," meaning of—Judicial proceeding—Jurisdiction of Magistrate—Procedure. Where, upon a police-report that a complaint is false, the complainant is called upon to show*

*Moula Durzi v. Naurangi Lal*, 1 O. W. R. 20 distinguished. The Magistrate does not exercise a proper discretion when, on receipt of a police-report that the complaint is false, he forthwith

matter of sound judicial discretion, a Magistrate should not so proceed and direct that the person suspected be tried until some person aggrieved has complained, or until he has before him a police report on the subject based on an investigation directed to the offence to be tried, and in cases of

48. *False complaint to police. The accused complained to the police that A and B had robbed him. After inquiry the police reported to the Magistrate that the charge was false. The Magistrate thereupon struck off*

*Held*, that, in order to constitute an offence under s. 211, it was not necessary that the complaint should be made to a Magistrate. It was enough that it was made to the police authorities and related to a cognizable offence, and that action was

FALSE CHARGE—*contd.*

quiry into the matter before proceeding further—  
LALJI GOPE v. GIRIDHARI CHAUDHURI (1900)

5 C. W. N. 106

53. ——— It is improper for a Magistrate to convict a person of an offence under s. 211 of the Penal Code in a summary proceeding.  
PARSI HAJRA v. BANDHI DHANUK (1900)

I. L. R. 26 Cal. 251

54. ——— Penal Code (Act XLV of 1860), ss. 182, 211—False charge to police of cognizable offence—False information to public servant with intent to use his lawful power to the injury of another—Charge partly true and partly

plaint, part of which is true and part of which is

in respect of the question, and each case must depend upon its own circumstances. GIRIDHARI NAIK v. EMPRESS (1901)

5 C. W. N. 727

55. ——— Complaint—Dismissal of complaint as false, vexatious and malicious—False charge with intent to injure—Prosecution—Compensation—Criminal Procedure Code (Act V of 1898), s. 250. Where, in a criminal trial, it is found by the Magistrate that, owing to the previous relations between the principles of the complainant and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceedings: Held, that it was a case in which proceedings under s. 211 of the Penal Code should have been instituted against the

ing.  
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sation to the accused, did not exercise a proper discretion. KINA KANMAKAR v. PREO NATH DUTT (1901)

I. L. R. 29 Cal. 479

56. ——— False charge be-

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57. ——— Penal Code (Act XLV of 1860), ss. 211, 182—Instituting false complaint—Giving false information. The word

FALSE CHARGE—*contd.*

constitute an offence under s. 182, it must be shown that the person giving the information knew or

The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false. RAYAN KUTTI v. EMPRESS (1903)

I. L. R. 26 Mad. 640

58. ——— Penal Code, s. 211—Preferring a false charge—"Charge" made to Village Magistrate—Sustainability. An accusation of murder made to a Village Magistrate (who, under s. 13 of Regulation XI of 1816, has authority to arrest any person, whom he suspects of having committed the murder of a person, whose body is found within his jurisdiction) is a "charge" within the meaning of s. 211 of the Indian Penal Code, even though it does not amount to the institution of criminal proceedings and even though no criminal proceedings follow it owing to the police referring it as false on investigation. CHENNA MALI GOWDA v. EMPRESS (1904)

I. L. R. 27 Mad. 129

59. ——— Preferring a false charge—Statement not reduced to writing by police

against those persons. The statement had not

**FALSE CHARGE—*concl'd.***

s. 211: *Held*, (1) that the test is—did the person,

police officer had not been reduced to writing in accordance with s. 154 of the Code of Criminal Procedure did not prevent the statement made from being a false charge within the meaning of that section. *MALLAPPA REDDI v. EMPEROR* (1904)

I. L. R. 27 Mad. 127

60. ————— *Police—Deputy Magistrate—Order by the District Magistrate sanctioning a prosecution—Legality of order—Offence not brought to his notice in the course of a judicial proceeding—Criminal Procedure Code (Act V of 1893).*

inquiry, passed the final order in the police report in these terms—"Enter false, s. 436, Penal Code. Prosecution under s. 211, Penal Code, sanctioned. To Babu M. N. Mukerjee for trial"—*Held*, that the order of the District Magistrate was made under s. 476 and not under s. 195 of the Criminal Procedure Code, and was bad as the matter of the false

**FALSE EVIDENCE—*cont'd***

*See ATTEMPT TO COMMIT OFFENCE.*

I. L. R. 25 All. 750

*See CHARGE—FORM OF CHARGE.*

I. L. R. 28 Cal. 434

*See CONFESSION—CONFESSIONS TO MAGISTRATE.*

I. L. R. 11 Bom. 702

*See CONTRADICTORY STATEMENTS.*

*See CRIMINAL PROCEEDINGS.*

I. L. R. 24 Mad. 875

*See CRIMINAL PROCEDURE CODE, s. 487.*

PARA. 1 (1872, s. 473) . 10 Bom. 73

18 W. R. Cr. 15

22 W. R. Cr. 49

I. L. R. 1 Bom. 311

I. L. R. 1 All. 625

I. L. R. 14 All. 354

I. L. R. 20 Mad. 393

*See CRIMINAL PROCEDURE CODE, s. 525.*

I. L. R. 28 All. 331

*See FABRICATING FALSE EVIDENCE.*

*See FORGERY.*

*See FORM OF CHARGE—FALSE EVIDENCE.*

*See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—FALSE EVIDENCE.*

*See PENAL CODE . I. L. R. 26 All. 387*

*See PERJURY.*

*See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION*

I. L. R. 29 Cal. 887

I. L. R. 38 Cal. 808

**1. GENERAL CASES.**

1. ————— *Requisites for legal conviction of false evidence—Attestation of record by Magistrate Before criminalising a man upon his*

Magistrate, following a certificate to be given by his own hand. *QUEEN v. NERUNI*

7 W. R. Cr. 49

*See QUEEN v. MUNGUL DASS*

23 W. R. Cr. 28

2. ————— *Requisites for conviction of giving false evidence. The true rule in a case*

regions, but that as to statements made on oath can be true. *QUEEN v. AHMED ALY* . 11 W. R. Cr. 25

3. ————— *False statement under affirmation criminalising witness himself. Where a party makes a false statement when legally bound by a solemn affirmation, the fact that the statement*

(1900) . . . . . I. L. R. 28 Cal. 808

61. ————— *Penal Code, s. 211—Practice—Opportunity to be given to prove charge before prosecuting. Where it is intended to prosecute any person under s. 211 of the Indian Penal Code such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. Queen-Empress v. Ganga Ram, I. L. R. 8 All. 38, and Queen-Empress v. Raghu Tiwari, I. L. R. 15 All. 336, followed. EMPEROR v. TULA* (1907)

I. L. R. 29 All. 567

**FALSE DECLARATION.**

*See MARRIAGE ACT, 1872, s. 18.*

I. L. R. 16 All. 212

**FALSE EVIDENCE.**

Col.

1 GENERAL CASES . . . . . 4238

2 FABRICATING FALSE EVIDENCE . . . . . 4253

3 CONTRADICTORY STATEMENTS . . . . . 4259

1. PROOF OF CHARGE . . . . . 4268

5. TRIAL OF CHARGE . . . . . 4269

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence.  
**ANONYMOUS** 3 *Mad. Ap. 29*

4. ——— False statement of witness criminating himself—*Penal Code, s. 191.* Although a person under examination as a witness is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of facts for fear of penal consequences. Although without such a warning he may make a false denial and thereby become guilty of the offence of intentionally giving false evidence his offence will not be deserving of severe punishment. **JADDOO NATH DUTT v. EMPRESS**

2 *C. L. R. 181*

5. ——— Evidence of corrupt intention—*Statement known by accused to be false.* Upon a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that in making it the accused intentionally gave false evidence. **QUEEN v. AMERU ALI KHAN** 3 *N. W. 133*

6. ——— Contradictory statements in cross-examination. Intention is the essential ingredient in the constitution of an offence under s. 193, Indian Penal Code. Where a person made contradictory statements in the course of cross-examination, and he was convicted under s. 193, Indian Penal Code: *Held*, that the Magistrate should have taken into consideration the fact that the statements were made in course of cross-examination when possibly he may have been either confused, or under some mistake regarding the question put to him. *In the matter of MUNNI BUKSH*

3 *C. W. N. 81*

7. ——— Proof that accused knew statement to be false—*Penal Code, s. 193.* To support a charge of giving false evidence under s. 193, it must be shown that the accused intentionally made a particular statement false to his own knowledge. **QUEEN v. MAHARAJ MISSEH**

7 *B. L. R. Ap. 68; 18 W. R. Cr. 47*

8. ——— Proof of deposition alleged to be false. In a case of false evidence it is necessary to prove the deposition alleged to contain the false statement. **QUEEN v. BHAKAS TETUN**

7 *W. R. Cr. 13*

9. ——— Proper Court to direct prosecution for giving false evidence—*Criminal Procedure Code, 1861, s. 169—Specific charge.* There is nothing in s. 169 of the Code of Criminal Procedure which gives a Judge, not sitting in appeal, any original jurisdiction to entertain a charge of giving false evidence before another Court. No other Court than that before which false evi-

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

dence is given can direct a prosecution in respect thereof. In a prosecution for false evidence, there must be some specific charge of making some particular and specific false statement, and some direct evidence that such specific statement was false. **ASMERU KOOONWAR v. TAYLER. KHORSEED ALI v. TAYLER** W. R. 1864, 15

10. ——— Affirmation for cases during one day, not for each case as called on—*Penal Code, s. 193.* Where a witness was, at the

evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing and the names of the cases in the day's list were not mentioned when the affirmation was administered. **QUEEN v. REV. KATACHALAM PILLAI** 2 *Mad. 43*

11. ——— Evidence not given on oath—*Hindu convert—False statement—Penal Code, s. 191, 193, 199.* A Hindu who has become a convert to Christianity is not under a legal obligation to speak the truth unless his evidence has been given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of s. 199 of the Penal Code, nor is the witness bound to make a declaration under s. 191. **QUEEN v. VEDAMUTTU**

4 *Mad. 185*

12. ——— \**Penal Code, s. 193—Giving false evidence—Omission to state that accused was sworn or affirmed—Oaths Act (X of 1873), ss. 6, 13, 14.* The offence of intentionally giving false evidence, referred to in s. 193 of the Penal Code may be committed, although the person giving evidence has neither been sworn nor affirmed. **GOBIND CHANDRA SEAL v. QUEEN-EMPRESS**

1, *L. R. 19 Cal. 355*

13. ——— Materiality of statement—*Penal Code, ss. 191, 193.* The materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding, and an indictment under ss. 191, 193 of the Penal Code, though it does not allege materiality, is good if it alleges sufficiently the substance of the offence. **QUEEN v. AIDRYS SANIS**

1 *Mad. 38*

14. ——— *Penal Code, ss. 191 and 193.* To prove that the accused

15. ——— *Penal Code, s. 191—Intention.* The words of s. 191 of the Penal

3 *JOHN C. L. 60*

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient that the statement is made upon oath.

MAHOMED HOSSEIN . . . 18 W. R. Cr. 37

16. ———— *Untrue statement immaterial to case before Court.* A statement untrue to the facts known to the witness made upon oath.

Court. QUEEN v. SHIB PRASAD GIRI . . . 19 W. R. Cr. 69

17. ———— *Judicial proceeding—Intentionally giving false evidence at a judicial proceeding*

18. ———— *Judicial proceeding, statement made in—Penal Code, s. 193—Form of charge.* It is essential in order to sustain a charge under s. 193 of the Penal Code that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. QUEEN v. VENKATARAMANNA . . . I. L. R. 23 Mad. 223

18. ———— *Judicial proceeding, statement made in—Penal Code, s. 193—Form of charge.* It is essential in order to sustain a charge under s. 193 of the Penal Code that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. QUEEN v. PATIK BISWAS . . . I B. L. R. A. Cr. 13  
s. c. QUEEN v. TUTTEAH BISWAS . . . 10 W. R. Cr. 37

19. ———— *Preliminary enquiry, statement made in—Penal Code, ss. 193 and 457—Criminal Procedure Code (Act X of 1852), s. 337—Evidence of accused illegally pardoned.* In cases

mine him as a witness. Statements made by the accused in the course of such examination are irrelevant; and if subsequently retracted, they cannot

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

be used against him, or subject him to a prosecution for giving false evidence, under s. 193 of the Penal Code. *Reg. v. Hanmantia*, I. L. R. 1 Bom. 610, followed. QUEEN-EMPRESS v. DALA JIVA . . . I. L. R. 10 Bom. 190

20. ———— *Enquiry by Magistrate—Penal Code, s. 193—Judicial enquiry.* An enquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him

under s. 193 of the Penal Code. QUEEN v. BYKANT NATH BANERJEE . . . 5 W. R. Cr. 72

21. ———— *Examination of complainant—Statement in petition of complainant—Judicial proceeding—Investigation—Penal Code, s. 193.* The examination of a complainant in reference to the matter of his petition of complaint is an investigation directed by law, and therefore a stage of a judicial proceeding. That examination is given by the complainant with the officer of the Court. QUEEN v. MALA DYAL . . . 4 N. W. 8

22. ———— *Examination on oath without jurisdiction—Criminal Procedure Code, 1861, ss. 163, 169—Judicial proceeding.* When a plaintiff before a Munsif came and petitioned the Judge complaining that the Munsif had improperly refused to examine his witnesses and had dismissed his suit, although informed that witnesses were in attendance, and the Judge, upon examining the petitioner upon solemn affirmation and finding the charge un-

been made, and the evidence given *coram non judge*, could not form the subject of a prosecution for false evidence. QUEEN v. JADUA CHUNDER BISWAS . . . W. R. 1884 Cr. 15

23. ———— *Affidavit affirmed before*

Code. In the matter of the petition of ISWAR CHUNDER GUHO . . . I. L. R. 14 Calc. 653

24. ———— *False statement made by a convict in an affidavit in support of an application for revision of the order by which he was convicted—Criminal Procedure Code, 1861, s. 312—Penal Code, s. 193.* Held, that a person seeking by an application in revision to get

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

25. — Annulment of proceedings in trial at which false evidence was given—*Judicial proceeding.* The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness therein, made on solemn affirmation a false statement. The proceed-

must be reversed, as the false statement was not made in a stage of a judicial proceeding. *REG. v. RAVJI VALAD TAOU* S Bom. Cr. 37

26. — Proceeding in which Judge had no authority to administer oath—*Penal Code, ss. 191, 193—Criminal Procedure Code, s. 477—“Judicial proceeding.”* A man died leaving some money due to him in the hands of the telegraph authorities. P wrote a letter to those authorities

false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. *Held*, that, as the reference to the District Judge by the telegraph authorities of P's letter for verification and the subsequent action in regard thereto did not constitute a judicial proceeding, the District Judge had no authority to administer the oath. *EXPRESS 6 ALL 103*

27. — Examination on oath of person by Magistrate for purpose of obtaining information in order to take proceedings—*Whether such person a witness—Contradictory statement made by such person at trial as witness—Code of Criminal Procedure (Act V of 1898), s. 190, cl. (c)—Indian Oaths Act (X of 1873), s. 5—Penal Code (Act XLV of 1860), ss. 191 and 193.* *Held*, that, where an accused person was examined by a Magistrate for the purpose of obtaining information, and

sequently any charge for giving false evidence

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

founded on this statement was bad, and it therefore followed that a conviction and sentence founded on this statement as being contrary to another statement made by the accused when examined as a witness at the trial, without any proof of finding that the second statement was false, could not be maintained. *HARI CHARAN SINGH v. QUEEN-EMRESS I. L. R. 27 Calc. 455 4 C. W. N. 249*

28. — Proceedings by District Judge without jurisdiction—*Penal Code, ss. 193, 199—Bengal Tenancy Act, 1885, s. 95.* The Bengal Tenancy Act does not authorize a proceeding calling upon a person to show cause why he should not make over documents and papers belonging to an estate of which a common manager has been appointed. A person giving false evidence in such proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code. *ABDUL MAJID v. KRISHNA LAL NAU I. L. R. 20 Calc. 724*

29. — Collector under Land Acquisition Act whether “a Court.”—*Power of such Collector to administer oath or require verification—Deputy Collector under Land Acquisition Act—Judicial officer—Revenue Court—Over-estimate of*

Land Acquisition Act does not make a Collector, nor is there any authority given to the Collector to administer an oath or to require a verification. It is a false statement made under a verification that constitutes an offence under s. 193 of the Penal Code.

Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed, a party dissatisfied can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially; therefore, to subject parties who claimed the right to

tion of a Court, is obviously premature and improper, and is almost certain to operate very prejudicially towards them in the trial before the Civil Court of the same matter. In proceedings under the Land Acquisition Act what may be found to be an exaggeration or over-estimate of the value of land cannot properly constitute a false statement, which would demand a prosecution for perjury, and

**FALSE EVIDENCE—*contd.*****1. GENERAL CASES—*contd.***

the fact that some years before the land was offered for sale at a much lower price is no sufficient ground for imputing such an offence. **DURGA DAS RUKH v. QUEEN-EMPRESS**. I. L. R. 27 Cal. 820

**30. — Enquiry under Legal Practitioners' Act—Penal Code, ss. 181, 193—Legal Practitioners' Act, XVIII of 1879—Judicial proceeding—Examination of accused on solemn affirmation.** Where three persons, of whom one was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an enquiry into the conduct of the pleader under the provisions of the Legal Practitioners' Act; *Held*, that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. *Held*, further, that an enquiry under the Legal Practitioners' Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code. **KOTHA SUBBA CHETTI v. QUEEN**. I. L. R. 6 Mad. 252

**31. — Penal Code, ss. 191 and 193—Giving false evidence before a police patrol—Bombay Act VIII of 1867 (Village Police), s. 13** A person who makes a false statement upon oath before a police patrol, acting under s. 3 of Bombay Act VIII of 1867, gives false evidence within the meaning of s. 191 of the Penal Code, and is punishable under s. 193. **EXPRESS v. IRBASAPA**. I. L. R. 4 Bom. 479

**32. — Evidence not given in Court of Justice—Penal Code, ss. 191, 191—Statement made to police officer.** It is not necessary under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police officer, would amount to the offence of giving false evidence as defined in s. 191, taking s. 118 of the Code into consideration. **QUEEN v. NIM CHAND MOOKERJEE**. 20 W. R. Cr. 41

*In the matter of JUGGERNATH SARAI*  
S. C. L. R. 236

**33. — Police investigation—Penal Code, s. 191—Criminal Procedure Code, 1872, ss. 118, 119.** Neither the words "shall answer all questions" in s. 118 of the Code of Criminal Procedure, nor the words "shall be bound to answer all questions" in s. 119 of the same Code, constitute

any implied obligation on those persons to speak the truth. **EXPRESS v. KASSIM KHAN**. **EXPRESS v. DAHIA**. I. L. R. 7 Cal. 121; S. C. L. R. 300

**FALSE EVIDENCE—*contd.*****1. GENERAL CASES—*contd.***

**34. — Criminal Procedure.**

refusal to answer questions asked by a police-officer under s. 161 of the Code of Criminal Procedure is not punishable under ss. 176, 179 and 187, of the Penal Code. **QUEEN-EMPRESS v. SANKARALINGA KONE**. I. L. R. 23 Mad. 544

**QUEEN-EMPRESS v. APPICADU**  
I. L. R. 23 Mad. 544 note

**35. — Judicial proceeding—Code of Criminal Procedure, Act X of 1882, ss. 155 and 161—Penal Code (Act XLV of 1860), s. 193.** S. 161 of the Code of Criminal Procedure, Act X of 1882 makes it obligatory on a person examined in the course of a police investigation under Ch. XIV to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture), and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of a judicial proceeding under s. 193 of the Penal Code. **QUEEN-EMPRESS v. PARSHRAM RAYSING**. I. L. R. 8 Bom. 216

**36. — Criminal Procedure Code, 1882, s. 161—Penal Code, s. 193—False statement to police officer.** The law laid down by the Full Bench in the case of *Empress v. Kassim Khan*, I. L. R. 7 Cal. 121, has been altered by the provisions of s. 161 of the Code of Criminal Procedure (Act X of 1882), and a witness who makes a false statement to a police officer in reply to a question

**37. — Penal Code, ss. 191, 193—Statements to police officers investigating under Criminal Procedure Code, s. 161.** The provisions of ss. 191 and 193 of the Penal Code do apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. **QUEEN-EMPRESS v. BHAGWANTIA**. I. L. R. 15 All. 11

**38. — Statement made in Judicial proceeding before Magistrate—Penal Code, ss. 181, 193.** Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181 of the Penal Code, but should commit to the Sessions under s. 193 of that Code. **QUEEN v. NUSSEEROODDEEN SHAH WAL**. 11 W. R. Cr. 24

**39. — Statement made in the course of a "judicial proceeding"—Penal Code (Act XLV of 1860), s. 193—Criminal Procedure Code, s. 161—Statements made before a Magistrate under s. 161.** *Held*, that where a witness had made one statement on oath or solemn affirmation

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

before a third class Magistrate under s. 161 of the

under the first—paragraph of s. 193 of the Penal Code. *Queen-Empress v. Bharna, I. L. R. 11 Bom. 702*, considered and distinguished. *Queen-Empress v. Khem, I. L. R. 22 All. 115*

40. \_\_\_\_\_ Oaths Act (X of

41. \_\_\_\_\_ *Falsely denying possession of document—Witness.* Where a witness denies on oath that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding. In *re PRENHAND DOWLATRAO, I. L. R. 12 Bom. 83*

42. \_\_\_\_\_ Penal Code (Act XLV of 1860), ss. 191 and 193—Witness in

Code, for trial on a charge under s. 193, Penal Code

before a competent jury. *It was held that the trial for dacoity had to be commenced de novo*

witness at the first trial from being made the subject of an offence under s. 191 or 193 of the Penal Code. *Queen-Empress v. VIRASAMI, I. L. R. 19 Mad. 375*

43. \_\_\_\_\_ Statement made in proceedings without jurisdiction—Penal Code, ss. 181, 193. A conviction under s. 181 of the Penal Code is good, though the offence falls within s. 193. *ANONYMOUS, 4 Mad. App. 18*

44. \_\_\_\_\_ False statement before Income-Tax Commissioner—Penal Code, ss. 181, 193. When an offence under s. 193 of the

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

held that such statement amounted to the offence of giving false evidence in a judicial proceeding under s. 193 of the Penal Code, and was therefore not cognizable by a full power Magistrate, as it could not be treated as constituting an offence triable under s. 181 of the Penal Code, making a false statement to a public servant. *REG. v. DAYALJI ENDALJI, 8 Bom. Cr. 21*

45. \_\_\_\_\_ False statement in verified petition under s. 19 of the Income-Tax Act (IX of 1889) The prisoner was convicted of

QUEEN

46. \_\_\_\_\_ Making false return of service of summons—Penal Code, s. 193.

ROY \_\_\_\_\_ 8 W. R. Cr. 27

47. \_\_\_\_\_ Statement before Collector as Revenue officer—Penal Code, s. 193—Judicial enquiry. A conviction may be had for giving false evidence under s. 193, Penal Code, even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Reg. XIX of 1814), but it must be proved that the false statement was made under the sanction of the law. *QUEEN v. ARDHUN ROY, 14 W. R. Cr. 24*

officer, and no other, to whom power is given by law to make enquiries into applications for allowances for spoiled stamps, to take evidence on oath in

to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable. *EMPRESS v. NIAZ ALI, I. L. R. 5 All. 17*

49. \_\_\_\_\_ False statement made before Registrar—Proceedings under the Registration Act, 1566. A Sub Registrar is competent, for any purpose contemplated by Act XX of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution. *QUEEN v. JAGGUT CHUNDER DUTT, 6 W. R. Cr. 81*



FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

50. ————— *Petitions not re-  
sisted—Prosecution under the Registration Act (III of  
1877), s. 82, cl. (a), and s. 83, ss 72 and 73. Where  
the accused was tried for intentionally making a  
false statement in the course of certain proceedings*

*Turner v. Post  
Master General, 5 B & S 756; Queen v. Hughes,  
L. R. 4 Q. B. D. 614 Queen v. Smith, L. R. 1  
Q. C. R. 110, followed. Held, also, that, except as  
directed by s. 82 of Act III of 1877, the Magistrate  
has no authority on his own mere motion to frame a  
charge against the accused.*

I. L. R. 10 Calc. 604

51. ————— *Registration Act  
(III of 1877), s. 82—Penal Code (Act XLV of 1860),  
s. 193—"Judicial proceedings"—Delegation of  
powers by District Registrar. It is no offence to  
make a false statement before a person purporting  
to act in execution of the Registration Act, but not  
legally authorized so to do. RADHIKA MOHAN KURI  
v. LAL MOHAN SHA I. L. R. 20 Calc. 719*

52. ————— *Statement in unsigned peti-  
tion—Penal Code, ss. 193, 190. A petition not  
bearing the signature of the accused, and therefore  
not a declaration made or subscribed by him, can-  
not be made the foundation of a charge or convic-  
tion under s. 199 of the Penal Code, but a deposi-  
tion on oath supporting such a petition, if false,  
justifies a charge under s. 193 of the Code. In the  
matter of RAM RAWAZ KOOWAR 7 C. L. R. 536*

53. ————— *Statement in petition not*

54. ————— *False statement in vaka-  
latnamah—Penal Code, s. 193. The prisoner, a  
vakil, presented a vakalatnamah in the District  
Munsif's Court signed by the defendant in a civil  
suit, authorizing the prisoner to appear for the de-*

FALSE EVIDENCE—*contd.*1. GENERAL CASES—*contd.*

defendant. The vakalatnamah falsely purported to

his discharge from custody. QUEEN v. KELLASUM  
PUTTER 5 Mad. 373

55. ————— *Statement in document  
not requiring verification—Civil Procedure  
Code, 1859, ss. 119, 120. The verification of an  
application filed in the Civil Court, in which it was  
stated that the applicant did not sign an alleged  
deed of compromise, does not subject him to punish-  
ment for giving false evidence. Such an applica-  
tion falls not under s. 120, Act VIII of 1859, but  
under s. 119 of that Act and need not, therefore, be  
verified. QUEEN v. KARTICK CHUNDER HALDAR  
8 W. R. Cr. 56*

56. ————— *Statement in application  
for new trial—Penal Code, ss. 191, 192—Verifi-  
cation of document as a plaint. A made an appli-*

57. ————— *False verification of writ-  
ten statement—Civil Procedure Code, ss. 51, 115  
Penal Code (Act XLV of 1860), s. 191. A person  
filing a written statement in a suit is bound by law  
to state the truth, and if he makes a statement  
which is false to his knowledge or belief, or which he  
believes not to be true, he is guilty of giving false  
evidence within the meaning of a. 191 of the Penal  
Code. QUEEN-EMRESS v. MEHRBAN SINGH  
I. L. R. 6 All. 626*

58. ————— *Witness deposing falsely  
in another's name—Penal Code, s. 193, and ss  
416, 419. A witness falsely deposing in another's  
name should be charged with giving false evidence  
under s. 193, and not with cheating by personation  
under s. 419 of the Penal Code. REG v. PRANNA  
BARKA 1 Bom. 69*

59. ————— *Putting forward person  
knowing him to be guilty of a crime—Abetment*

to have been convicted not of intentionally giving  
false evidence in a judicial proceeding, but on a  
charge of abetting the giving of false evidence.  
QUEEN v. CHUNDI CHURN NAUTH 8 W. R. Cr. 6

80. ————— *Statement unintentionally  
causing conviction of murder—Penal Code,  
ss. 193, 194—Power of Sessions Judge. The Ses-*

FALSE EVIDENCE—*contd.*I. GENERAL CASES—*contd.*

murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held*, that such witness was guilty under a. 193, and not under a. 194, of the Penal Code, as he did not know that he would cause a conviction for murder. *QUEEN v. HARDYAL*.

3 B. L. R. A. Cr. 35

61. — Subornation of perjury—*Penal Code, s. 196*. The provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence. *QUEEN v. SUFFRIDGE*. 1 Ind. Jur. O. S. 122

62. — Intentional omission to mention adjustment of decree in application for execution—*Penal Code, ss. 193, 199—Civil Procedure Code, s. 235—Intentional omission*. Under s. 235 of the Code of Civil Procedure (XIV of 1882), the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. *Paupayya v. Narasannah*, 1. L. R. 2 Mad 216, followed. Intentional omission to make such statement amounts to an offence under s. 193 of the Penal Code (XLV of 1860). S. 199 of the Penal Code (XLV of 1860) does not apply to applications for execution containing false averments. *QUEEN-EMPRSS v. BAPUJI DAYARAM*.

1. L. R. 10 Bom. 268

63. — Charge—*Criminal Procedure Code (Act V of 1898), ss. 195, 477—Bail, order for, before commitment—Preliminary inquiry—Charge, framing of, if absolutely necessary—Jurisdiction—Penal Code (Act XLV of 1860), s. 193—False evidence, giving of*. S. 477 of the Code of Criminal Procedure contemplates that there should be a charge upon which the commitment is based; in other words, the person accused of having committed the offence should know the specific nature of the accusation against him, so as to be able to answer it. Where an order was made, directing a witness to give bail before a Court of Session and to appear, when called upon, before such Court, to answer charges under s. 193, Indian Penal Code, without any reference to the specific false statements alleged to have been made by the witness in the course of a judicial proceeding, it was *held* that the order could not be regarded as a commitment under s. 477, Criminal Procedure Code. Such an order is not warranted by law, and is without jurisdiction. *MOHIN CHUNDER MORTUMBAR v. KING-EMPEROR* (1901). 5 C. W. N. 615

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FALSE EVIDENCE—*contd.*I. GENERAL CASES—*contd.*

64. — Commitment—*Criminal Procedure Code (Act V of 1898), ss. 476, 477—Commitment to Court of Session for giving false evidence—Preliminary inquiry, if necessary—Sessions Judge, jurisdiction or power of, as a Court of appeal to order commitment—Difference in procedure between the provisions of ss. 476 and 477—Applicability of the sections—Penal Code (Act XLV of 1860), s. 193—False evidence, giving of*. S. 477 of the Code of Criminal Procedure deals with cases which tran-

sact the Criminal Procedure Code. *The Queen v. Nomal*, 12 W. R. Cr. 69, referred to. Where evidence was given by a witness before a Deputy Magistrate, which was in conflict with the statements of certain other witnesses, and the Deputy Magistrate did not believe the statements of that witness, and the Sessions Judge, on appeal, was inclined to take the same view, and committed that person to take his trial before the Court of Session on a charge of giving false evidence in a judicial proceeding: *Held*, that there was no fact before the Sessions

applicable to the facts of the present case was s. 476, and that the commitment of the petitioner under s. 477 was illegal. *In the matter of UMESH CHANDRA CHAKRAVARTI* (1901). 5 C. W. N. 630

65. — Security for appearance—*False evidence, giving of—Criminal Procedure Code (Act V of 1898), s. 477—Security to appear when called upon, to answer charges yet to be framed*. There is

*deed a forgery*. Petitioner denied execution and refused to register a mortgage-deed. On appeal, the special Sub-Registrar found the deed to be genuine, and ordered registration and sanctioned prosecution of the petitioner under s. 82 of the Registration Act, subject to the approval of the

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**FALSE EVIDENCE—*contd.*****1. GENERAL CASES—*concl'd.***

District Registrar. The sanction was given, but the notices issued for stay of proceedings were not.

(1900) . . . . . 5 C. W. N. 44

67. ——— Assignment of perjury—Penal Code (Act XLV of 1860), s. 193—Criminal Procedure Code (Act V of 1898), ss. 435, 439—Evidence Act (I of 1872)—Intentionally giving false evidence in a judicial proceeding—Absence of discussion of evidence for the defence—Explaining away the statement of the accused to his prejudice—Proof—Misreading of documentary evidence—Fundamental errors in principle—Revisional jurisdiction. According to the Criminal Law in England from which the Indian system is largely drawn, the assignment of perjury must be proved by two witnesses or by one witness and the proof of other material and relevant facts confirming his testimony. This "is not a mere technical rule, but a rule founded on substantial justice." The Indian Evidence Act (I of 1872) does not provide that there must be corroboration to support a conviction, but in ordinary cases and where the provisions peculiar to Indian law do not apply, a rule which is founded on substantial justice may well serve as a safe guide to those, who have to administer the criminal law in India. Where with reference to an adoption the accused made a statement, and where no other expression would with equal propriety have been used to express the corporal act (of giving and taking in adoption), it is antagonistic to the first principles of criminal jurisdiction to explain away to the prejudice of the accused that statement, which in its legitimate sense indicated a corporal giving and taking. *Per JENKINS, C.J.*—A conviction for perjury cannot stand where the onus has been wrongly placed; explanations have been demanded from the accused, when no occasion for them existed; and the rule that there must be something in the case to make the oath of the prosecution witness preferable to the oath of the accused has not been satisfied. For silence to carry incriminating force in a case like the present there must have been circumstances which not only afforded the accused an opportunity to speak, but naturally and properly called for the declaration, which is said to be absent. *EMPEROR v. BAL GANGADHAR TILAK* (1904) 1 L. R. 28 Bom. 497

**2. FABRICATING FALSE EVIDENCE.**

1. ——— Fabrication of false evidence—Penal Code, s. 193 and s. 120—Illegal concealment to fabricate evidence. The term "fabrication" in s. 193 of the Penal Code refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is

**FALSE EVIDENCE—*contd.*****2. FABRICATING FALSE EVIDENCE—*contd.***

essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence. *QUEEN v. RAJCOOMAR BAVARJEE* . . . . . 1 Ind. Jur. O. S. 105

and the suit was dismissed for want of evidence. He afterwards sued to recover rent for one of the same years, and recovered the amount. The Judge

37th section of the Act requires that the statement of claim shall be verified by the plaintiff or his agent, and enacts that, if the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. *Held*, that there was no foundation for the order, the averment having been made by the agent, and not by the plaintiff; and besides, there was no evidence that it was untrue, there having been no finding in the first suit that the rent was not due. *TARAPERSAD ROY CHOWDHRY v. GOPAL DASA DUTT* Marsh. 72; W. R. F. B. 24 1 Ind. Jur. O. S. 79; 1 Hay 235

3. ——— False accounts—Penal Code, s. 193—Making up false accounts to produce before forest officer. The making up falsely of accounts, with the intention of producing them before a forest officer not empowered by law to hold an investigation and take evidence, is not a fabrication of false evidence within the meaning of s. 193 of the Penal Code. *REG v. RAMAJIRAY JYVABRAY* 12 Bom. I

4. ——— Intention to procure conviction—Penal Code, s. 195. The prisoner was convicted under s. 195 of the Penal Code of fabricating false evidence with intent to procure the conviction of a certain person of an offence. The prisoner's act was committed in a most public manner, and was not calculated to lead to the conviction of the person, nor did it appear that the prisoner took any steps to secure his conviction. *Held*, that the conviction of the prisoner could not be sustained. *QUEEN v. SARA DYAL* . . . . . 5 N. W. 188

5. ——— Making it appear offence had been committed—Failure to live charge—Penal Code, s. 193. A person having made a hole in the wall of his own house, broke open a

FALSE EVIDENCE—*contd.*2. FABRICATING FALSE EVIDENCE—*contd.*

of the box *Held*, that the circumstances did not warrant the charge under s. 193 of the Penal Code of fabricating false evidence. *THEVA RAM v. EMPRESS* 10 C. L. R. 187

8. ——— Statement (in petition) of payment on account of tenure after tenure had been set aside—*Penal Code, s. 193* A certificate allowed to be used as evidence to the Court—*Held*, that the circumstances did not warrant the charge under s. 193 of the Penal Code of fabricating false evidence. *THEVA RAM v. EMPRESS* 10 C. L. R. 187

KHOADHYA 10 C. L. R. 433

7. ——— Attempt to commit offence—*Penal Code, s. 193*. If instigated Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. If acted with the intention that such endorsement might be used

I. L. R. 2 All. 105

Intention Court—*Penal Code, s. 193*. If instigated Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. If acted with the intention that such endorsement might be used

*Held*, that the letter was fabricated for use before the Registrar, it was no valid objection to the conviction. *LAKSHMAJI v. QUEEN-EMPRESS*

I. L. R. 7 Mad. 289

9. ——— Framing incorrect record—Public servant making false entry—*Penal Code, s. 192*

3 Agra Cr. 1

FALSE EVIDENCE—*contd.*2. FABRICATING FALSE EVIDENCE—*contd.*

10. ——— False report—*Penal Code, s. 218*. A kulkarni who makes a false report with reference to an offence committed to his village, with intent, etc., is punishable under s. 218 of the Penal Code. *REG. v. MALHAR RAM CHANDRA* 7 Bom. Cr. 64

11. ——— Fabricating documents by public servant—*Penal Code, s. 218*. A public servant in charge as such of certain documents, having been required to produce them and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment. *Held*, that, such fabricated documents were not admissible as evidence. *THEVA RAM v. EMPRESS* 10 C. L. R. 187

HUSAIN I. L. R. 5 All. 553

12. ——— Public servant—Forgery—*Penal Code, s. 218*—Abetment. S was charged with the preparation of a certain record and was in the habit of preparing it from certain abstracts made and read to them by D. D made and read false abstracts whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that S had no guilty knowledge or intention in the matter. *QUEEN v. BRIJ MOHAN LAL* 7 N. W. 134

13. ——— *Penal Code, s. 218*—Intention. The intention is an essential ingredient in the offence contemplated by s. 218, Penal Code. *QUEEN v. SHAMA CHURN ROY* 6 W. R. Cr. 27

14. ——— False entry in chowkidari book—*Penal Code, s. 218* Where a chowkidar was charged under s. 218, Penal Code, with having made a false entry in a chowkidari attendance book with a view to prevent a person

cause loss or injury to the Sub-Inspector, it was held that the intention was too remote to fall within s. 218. *QUEEN v. JUSOLE LALL* 19 W. R. Cr. 40

15. ——— *Penal Code, s. 192, 218*—Public servant. A police officer, who had suppressed a document intrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document,

FALSE EVIDENCE—*contd.*2 FABRICATING FALSE EVIDENCE—*contd.*

prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to this intention, it might have been used against him, such police officer was improperly convicted, in respect of such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. *Held*, also, that such police officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 218 of the Code. *EMRESS v GAURI SHANKAR* . . . I. L. R. 6 All. 42

16. — *Penal Code, s. 218—Public servant.* A treasury accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs500, which was in the treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the Rs500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury officer for the transfer of the money to the

and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs500 which had been made sub-

first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, that the prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save

FALSE EVIDENCE—*contd.*2 FABRICATING FALSE EVIDENCE—*contd.*

17. — *Penal Code, (Act XLV of 1860), s. 218—Public servant framing an incorrect record to save himself from legal punishment.* A public servant who does that which, if done to save another from legal punishment, would bring the public servant within s. 218 of the Penal Code, has equally committed the offence punishable under s. 218 if the person whom he intends to save from legal punishment is himself. *Queen-Emress v. Gauri Shankar, I. L. R. 6 All. 42, quoad hoc, overruled. Queen-Emress v. Giridhari Lal, I. L. R. 8 All. 653, referred to. QUEEN-EMRESS v. NAND KISHORE*

I. L. R. 19 All. 305

18. — *Penal Code (Act XLV of 1860), s. 218—Public servant framing incorrect Record—Injury to the public—Police officer*

to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant. *Held*, that on the above facts, the police officer was guilty of the offences punishable under s. 204 and s. 218 of the Penal Code. *QUEEN-EMRESS v. MUHAMMAD SHAH KHAN*

I. L. R. 20 All. 307

19. — *Penal Code (Act*

in the special diary relating to a case which was being investigated by him could not be convicted, therefore, of the offence of fabricating false evidence as defined in s. 192 of the Penal Code, inasmuch as the document in which the alleged false entry was made was not one which was admissible in evidence. *Emress v. Gauri Shankar, I. L. R. 6 All. 42, and Queen v. Ketasum Putter, 5 Mod. 373, referred to. QUEEN-EMRESS v. ZAKIR HUSAIN* . . . I. L. R. 21 All. 159

20. — *Penal Code (Act*

in the special diary relating to a case which was being investigated by him could not be convicted, therefore, of the offence of fabricating false evidence as defined in s. 192 of the Penal Code, inasmuch as the document in which the alleged false entry was made was not one which was admissible in evidence. *Emress v. Gauri Shankar, I. L. R. 6 All. 42, and Queen v. Ketasum Putter, 5 Mod. 373, referred to. QUEEN-EMRESS v. ZAKIR HUSAIN* . . . I. L. R. 21 All. 159

under  
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certain house. In order to save two persons from legal punishment for having committed an offence under the Gambling Act in that house, D framed a first information and a special diary incorrectly. *Held*, that he was properly charged with, and found guilty of, having committed an offence under s. 218 of the Penal Code. The word "charged" in that section is not restricted to the narrow meaning of

**FALSE EVIDENCE—contd.****2. FABRICATING FALSE EVIDENCE—concltd.**

"enjoyed by a special provision of law." An offence under the Gambling Act being an offence for which the District Superintendent of Police may

turo by any law limits the power of arrest to any particular class of police-officers. *QUEEN-EMRESS v. DEODHAR SINGH* . I. L. R. 27 Calc. 144

**21. ——— Putting whole of long**

cused person had made to the police-officer each and every statement contained in the document. *ISAB MANDAL v. QUEEN-EMRESS* (1900)

I. L. R. 28 Calc. 348  
a.c. 5 C. W. N. 65

**3. CONTRADICTORY STATEMENTS.**

1. ——— Circumstances and intention of contradictory statement—*Penal Code, s. 193*. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193 of the Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must in each case be considered before it can be held that the offence has been committed. *QUEEN v. SOONDER MOONOREE*

9 W. R. Cr. 25  
*QUEEN v. DEONATH BUJJUR* 9 W. R. Cr. 52

2. ——— Weight to be given to contradictory statements. To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the

**FALSE EVIDENCE—contd.****3. CONTRADICTORY STATEMENTS—contd.**

3. ——— Alternative charge—*Statements made before Civil and Criminal Courts*. Where a person makes one statement before the Magistrate and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained under s. 169 of the Code of Criminal Procedure, is strictly legal. *QUEEN v. OOTTUR NARAIN SINGH* 8 W. R. Cr. 79

4. ——— Inconsistent statements in judicial proceeding Where a person

5. ——— *Penal Code, s. 72*  
—*Alternative finding*. Proof of contradictory statement on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to

—*Criminal Procedure Code and English law upon the subject stated*. *QUEEN v. PALANY CHETTY*  
4 Mad. 51

6. ——— Statement inconsistent with previous one—*Criminal Procedure Code (Act XXV of 1861), s. 172* Where a witness makes a statement before the Sessions Court which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot, under s. 172, Act XXV of 1861, be said that an offence has been committed under the cognizance of the Sessions Court. A Judge's duty in dealing with the contradictory statements of a witness discussed. *QUEEN v. NOMAL*  
4 B. L. R. A. Cr. 9 : 12 W. R. Cr. 69

7. ——— Statements inconsistent with previous one—*Penal Code, s. 193*. The

made;—*Yes, in a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to*

8. ——— Plea of guilty on one charge, effect of. Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. **QUEEN v. HOSSEIN ALI** . . . 8 B. L. R. Ap. 25

9. *Legality of conviction.* The prisoner, who, as a witness in a former case, had made one statement before the Magistrate. . . .

trate. **QUEEN v. ZAMIRAN**

B. L. R. Sup. Vol. 521  
8 W. R. Cr. 65

10. *Alternative statements—Perjury.* *Per NORMAN, J.—*Quare: Notwithstanding the decision of the Full Bench in *Queen v. Zamiran*, B. L. R. Sup. Vol. 521: 6 W. R. Cr. 33, as to the correctness of conviction for perjury upon alternative statements. **QUEEN v. HARI KHOWA** . . . 3 B. L. R. A. Cr. 36  
12 W. R. Cr. 31

11. *Criminal Procedure Code (Act X of 1872), s. 455, sch. III—Penal Code (Act XLV of 1860), s. 193.* Where a person was convicted of giving false evidence upon an

lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative is true. **QUEEN v. MAHOMED HOOMAYOON SHAW**

13 B. L. R. F. B. 324: 21 W. R. Cr. 72

(*Contra*) **QUEEN v. BINU NOSHVO**

13 B. L. R. 325 note: 11 W. R. Cr. 37  
12 W. R. Cr. 11

12. *Proof of truth of each branch of charge.* To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. **QUEEN v. GONOWAL** . . . 22 W. R. Cr. 2

13. *In order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory.* **NATHU SHEKH v. QUEEN-EMPEROR** . . . I. L. R. 10 Cal. 405

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

14. *Intentionally giving false evidence by contradictory statements.* A conviction and sentence founded on one statement as being contrary to another without any proof or finding that the second statement was false, cannot be maintained. **HARI CHARAN SINGH v. QUEEN-EMPEROR**

I. L. R. 27 Cal. 455: 4 C. W. N. 249

15. *Validity of conviction—Statements which cannot both be true.* It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time and a directly contradictory one at another. The charge

which is impeached as untrue. *Reg. v. Jackson, 1 Lewis, C. C. 270; Reg. v. Wheatland, 8 C. & P. 238; and Reg. v. Harris, 5 B. & Ald. 926,* referred to. S. 455 of Act X of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly charged with "having on or about the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such

have proceeded to try each of them separately and that, there being no evidence that either of the statements made by two of such persons was false except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false. **EMPEROR v. NIAZ ALI**  
I. L. R. 5 All. 17

16. *Charge in alternative of two different offences under two different*

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

sections of Penal Code—False information to public servant—*Criminal Procedure Code*, ss. 225, 232, 233, 537—*Penal Code (XIV of 1860)*, ss. 182 and 193—*Forest Act, VII of 1878*. The accused was

the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Penal Code

upon a charge framed in the alternative as in the form given in Sch. V-XXVIII-(4) of the Criminal Procedure Code (X of 1882); for, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged under s. 193 of the Penal Code (XIV of 1860) on contradictory statements because he only made one depo-

In charges founded upon supposed contradictory statements every presumption in favour of the possible reconciliation of the statements must be made. *QUEEN-EMPRESS v. RAMJI SAJANRAO*

I. L. R. 10 Bom. 124

17. ——— Validity of—  
Conviction on—*Penal Code (Act XIV of 1860)*, s. 193—*Criminal Procedure Code (Act X of 1882)*, ss. 233, 544, and Sch. 5, No. XXVIII-(4). A prisoner was convicted on an alternative charge in

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. *Held* (NORRIS, J., dissenting), that s. 283 of the Criminal Procedure Code did not affect the matter, and that the conviction was good. *Semble per* WILSON, J.: The decision in *Queen v. Noshiyo*, 12 W. R. Cr. 11, though a guide to the discretion of Courts in framing and dealing with charges, was not intended to, and does not, affect the law applicable to the matter. *HABIBULLAH v. QUEEN-EMPRESS*

I. L. R. 10 Cal. 937

18. ——— *Penal Code*, s. 193—*Criminal Procedure Code*, Sch. V, No. XXVIII-(4)—Assignment of false statement not necessary—*English law*. In a charge under s. 193 of the Penal Code, it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. *Queen v. Zamiran*, B. L. R. Sup. Vol. 521: 6 W. R. Cr. 65; *Queen v. Palany Chetty*, 4 Mad. 51; and *Queen v. Mahomed Hoomayoon Shah*, 13 B. L. R. 324, followed. *Empress v. Niaz Ali*, I. L. R. 5 All. 17, overruled. *Per* DUTHOIT, J.—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon the ground that one of them is necessarily false. The English cases upon this subject are irrelevant to the interpretation of the law of India, since the Indian Legislature has not followed the law of England in regard to perjury. *Trimble v. Hill*, L. R. 5 Ap. Cas. 342, and *Kathama Natchiar v. Dorananga Teer*, L. R. 2 I. A. 159, referred to. *QUEEN-EMPRESS v. GRULET*. I. L. R. 7 All. 44

19. ——— Statement made to police-officer investigating case—*Penal Code (Act XIV of 1860)*, ss. 191, 193—*Criminal Procedure Code (Act X of 1882)*, s. 161. An accused was charged with giving false evidence upon an alternative charge, one statement having been made to a police-officer investigating a case of arson and the other having been made when he was examined as a witness before the Joint Magistrate when the case was being enquired into. The two statements

was to the effect that an enquiry was being made about the burning of a house. The jury acquitted the accused, and the case was referred to the High Court by the Sessions Judge, who disagreed with



FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. *QUEEN v. HOSSEIN ALI*, S.B. L. R. A. 25

9. *Legality of conviction.* The prisoner, who, as a witness in a former case, had made one statement before the Magistrate, and another before the Sessions Judge, before the Magistrate. *Held* (NORMAN and CAMPBELL), the conviction was right.

trate *QUEEN v. ZAMIRAN*

B. L. R. Sup. Vol. 521  
6 W. R. Cr. 65

10. *Alternative statements—Perjury.* Per NORMAN, J.—*Quere* Notwithstanding the decision of the Full Bench in *Queen v. Zamiran*, B. L. R. Sup. Vol. 521 6 W. R. Cr. 35, as to the correctness of conviction for perjury upon alternative statements *QUEEN v. MATI KHOWA*, 3 B. L. R. A. Cr. 36 12 W. R. Cr. 31

11. *Criminal Procedure Code (Act X of 1872), s. 455, and Penal Code (Act XLV of 1860), s. 193.* Where a person was convicted of giving false evidence upon an

J., that such a charge is bad, and further that an alternative finding upon such charge is invalid. *Held* per PHILLIPS, J., that although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative is true. *QUEEN v. MAHOMED HOOMAYOON SHAW*

13 B. L. R. F. B. 324 : 21 W. R. Cr. 72

(*Contra*) *QUEEN v. BIDU NOSHIO*

13 B. L. R. 325 note : 11 W. R. Cr. 37  
12 W. R. Cr. 11

12. *Proof of truth of each branch of charge.* To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. *QUEEN v. GONOWRI*, 22 W. R. Cr. 2

13. In order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. *NATHU SURESH v. QUEEN-EMPERESS*, I. L. R. 10 Calc. 405

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

14. *Intentionally giving false evidence by contradictory statements.* A conviction and sentence founded on one statement as being contrary to another without any proof or finding that the second statement was false, cannot be maintained. *HARI CHARAN SINGH v. QUEEN-EMPERESS*

I. L. R. 27 Calc. 455 : 4 C. W. N. 249

15. *Validity of conviction—Statements which cannot both be true.* It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue. *Reg. v. Jackson*, 1 Lewis. C. C. 270 ; *Reg. v. Wheatland*, 8 C. & P. 233 ; and *Reg. v. Harris*, 5 B. & Ald. 328, referred to. S. 455 of Act X of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly charged

an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons instead of several and specific in regard to each of them ;

and that, there being no evidence that either of statements made by two of such persons was false except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false. *EMPERESS v. NARAI ALI*

I. L. R. 5 All. 17

16. *Charge in alternative of two different offences under two different*

FALSE EVIDENCE—*contd.*3. CONTRADICTIONARY STATEMENTS—*contd.*

sections of Penal Code—False information to public servant—Criminal Procedure Code, ss. 225, 232, 233, 537—Penal Code (XLV of 1860), ss. 182 and 193—Forest Act, VII of 1878. The accused was charged, in the alternative, by the trying Magistrate as follows: I, W. W. Drew, Magistrate, first class, hereby charge you, Ramji Sajabarao, as follows: That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen Vishnu Vaman and Mahadu Lakshman carrying teakwood from Gohe Forest to Narayan Ramchandra, range forest officer, and on 14th February 1885 you stated on oath before the first class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (XLV of 1860) and with-

and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under a 182 or a 193 of the Penal Code (XLV of 1860). *Held*, that the charge was bad in law, being an alternative charge in a form forbidden by a 233 of the Criminal Procedure Code (X of 1882), which directs that for every distinct offence of which any person is charged there shall be a separate charge. Nor could the accused be tried

dictory statements because he only made one deposition in which there was no discrepancies; and, similarly, he could not be charged under a 182 of the Penal Code, for he only once gave information

detence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements every presumption in favour of the possible reconciliation of the statements must be made. *QUEEN-EMPRESS v. RAMJI SAJABARA*

I. L. R. 10 Bom. 124

17. *Validity of—*  
Conviction on—Penal Code (Act XLV of 1860), s. 193—Criminal Procedure Code (Act X of 1882), ss. 233, 544, and Sch. 5, No. 221111(f). A prisoner was convicted on an alternative charge in

FALSE EVIDENCE—*contd.*3. CONTRADICTIONARY STATEMENTS—*contd.*

and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. *Held* (NORRIS, J., dissenting), that s. 283 of the Criminal Procedure Code did not affect the matter, and that the conviction was good. *Semble per* WILSON, J. The decision in *Queen v. Noshoy*, 12 W. R. Cr. 11, though a guide to the discretion of Courts in framing and dealing with charges, was not intended to, and does not, affect the law applicable to the matter. *HABIBULLAH v. QUEEN-EMPRESS*

I. L. R. 10 Calc. 937

18. *Penal Code, s. 193—Criminal Procedure Code, Sch. V, No. 221111(f)—Assignment of false statement not necessary—English law.* In a charge under s. 193 of the Penal Code, it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. *Queen v. Zamiran*, D. L. R. Sup. Vol. 521: 6 W. R. Cr. 65, *Queen v. Palany Chetty*, 4 Mad. 51; and *Queen v. Mahomed Hoomayoon Shah*, 13 B. L. R. 324, followed. *Empress v. Niaz Ali*, I. L. R. 5 All 17, overruled. *Per* DUTHOIT, J.—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon the ground that one of them is necessarily false.

*Doravanga Tever*, L. R. 2 I. A. 159, referred to. *QUEEN-EMPRESS v. GRULET*. I. L. R. 7 All 44

19. *Statement made to police officer investigating case—Penal Code (Act XLV of 1860), ss. 191, 193—Criminal Procedure Code (Act X of 1882), s. 161.* An accused was charged with giving false evidence upon an alternative charge, one statement having been made to a police-officer investigating a case of arson and the

was to the effect that an enquiry was being made about the burning of a house. The jury acquitted the accused, and the case was referred to the High Court by the Sessions Judge, who disagreed with

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

the verdict of acquittal. *Held*, that the verdict

even though the statement were proved to be false, a conviction could not be sustained. *Held*, further, that in such a case it is also necessary for the prosecution to establish that the police-constable was making an investigation under Ch. XIV of the Criminal Procedure Code. *QUEEN-EMPRESS v. BAIKANTA BAURI*. I. L. R. 18 Cal. 349

20. ——— Form of charge—Statement made to a police-officer during a police-investigation—Contradictory statement made before a Magistrate holding a preliminary inquiry—Penal

Procedure (Act X of 1882) and the other to a Magistrate holding a preliminary inquiry, he cannot be charged, and still less convicted, on an alternative charge. In such a case, if there is no other evidence at the trial but the contradictory statements made by the accused, separate charges cannot be framed. *QUEEN-EMPRESS v. MUGAPA*

I. L. R. 18 Bom. 377

21. ——— Penal Code, (Act XLV of 1860), s 193—Fabricating false evidence—Report made by amin executing Civil Court's decree that he had been obstructed—Similar report to police—Subsequent contradictory deposition in Court—Alternate charges—Form of charge. *Held*, that a report made by an amin of a Civil Court deputed

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

Criminal Procedure, but does not bear his signature in accordance with the provisions of that section. The record, not being made in accordance with the law, cannot be used as evidence of the statement made. There is no provision, with regard to complaints, analogous to that contained in s 533 of the Code of Criminal Procedure with reference to confessions or other statements of an accused person. The law requiring the record under s. 200 to be made in a particular way, non-compliance with its directions does not constitute a defect which is curable under s 537 of the Code of Criminal Procedure. *BAIJOO MANDAL v. EMPEROR* (1902)

6 C. W. N. 840

23. ——— Contradictory statements by witnesses before same Magistrate in the course of one and the same trial, on two different days—*Indian Penal Code* (Act XLV of 1860), s 193—Charge of giving false evidence—Conviction—Legality. On the 18th January 1900, the accused deposed before a Magistrate that he had seen P and others gambling in a certain place. The deposition was read over to the accused, and acknowledged by him to be correct. On the 1st February, he was cross-examined, in the same case, before the same Magistrate, and he then deposed that he did not know P and had never seen him gambling. He was charged and convicted under s. 193 of the Penal Code of having intentionally given false evidence in that he made two contradictory statements one of which he either knew or believed to be false or did not raise a legal question. *Held*, that the same Magistrate and in the course of one and the same trial. *Held per* BENSON, J. (to whom the case was referred)—That the conviction was legal. *Per* MOORE, J.—As no rule can be laid down to the

ATYANGAR, J.—The conviction was bad in law. No statement made by a witness in a deposition can

be the earlier statement as subsequently retracted or the subsequent statement itself, if it intentionally contradicts and thus retracts the earlier. *Habibullah v. Queen-Empress*, I. L. R. 19 Cal.

22. ——— Irregularity—Code of Criminal Procedure (Act V of 1898), ss 200, 533, 537—Complainant, examination of—Signature of complainant, if necessary—Irregularity, if curable—Penal Code, s. 193. A conviction cannot be had under s. 193 of the Indian Penal Code, in respect of two contradictory statements, where one of those statements has been made by the accused in the course of examination as a complainant under s. 200 of the Code of

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

937, considered. *In the matter of PALANI PALAGAN* (1902) . . . I. L. R. 28 Mad. 65

24. ——— Practice—Penal Code (Act XLV of 1860), s. 193—Criminal Procedure Code (Act V of 1898), ss. 435, 439—Perjury—Contradictory statements—Power of the High Court to interfere in revisional jurisdiction Where the accused was convicted and sentenced under s. 193 of the Penal Code (Act XLV of 1860) of giving false evidence in a judicial proceeding and where the charge was based on the allegation that in two depositions, one given on the 3rd December 1896 and the other on the 23rd March 1901, the accused had made two contradictory statements, and the case for the prosecution was that on that ground, though it could not be proved which of the alleged contradictory statements was false, the accused's conviction should be upheld: *Held*, by JENKINS, C.J.,

is false, but that he also either knew or believed it to be false or did not believe it to be true. Where it is sought to establish guilt solely on contradictory statements, although the Court "may believe that on the one or the other occasion the prisoner swore what was not true, it is not a necessary con-

circumstances at a subsequent time be convinced that he was wrong and swar to the reverse without meaning to swear falsely either time." Where the conviction is based on merely the statements contained in the charge without examining the whole of the depositions, the conviction is an error of law. Where the conviction of the accused for perjury in such a case was sustained by additional evidence, namely, the statements of the brother of the accused

the circumstances of each particular case, anxious attention being given to the said circumstances which vary greatly. This discretion ought not to be crystallized, as it would become in course of time, by one Judge attempting to prescribe definite

FALSE EVIDENCE—*contd.*3. CONTRADICTORY STATEMENTS—*contd.*

take one view at one time and a contrary view at another, there can be no perjury, unless on oath he has stated facts on which his first statement was based and then denied those facts on oath on a subsequent occasion. Where the sole and whole question is—are the statements forming the subject of the charge so contrary that one or the other of them must be necessarily false?—the answer to that question depends upon the construction to be put upon the two depositions from which the statements are taken and their construction, as indeed the construction of any document, is a question of law, not of fact. It is not correct to say that the law as laid down in the Criminal Procedure Code (Act V of 1898) gives the High Court no power to go into evidence in revision. The Bombay High Court has, as a matter of practice, held that it will not go into evidence as a rule, but will interfere only under special circumstances, or where there is an error of law. The accused in a criminal case is merely on the defensive and, unless there is any positive admission of a fact by him, any omission, on his part, to explain what indeed can be explained without his explanation should not be pressed against him. *Per ASTOR, J. (contra)*—The rule of practice is that the High Court ordinarily refrains from opening questions of fact, when no appeal lies, except on some ground of law and in order to remedy a clear miscarriage of justice. Where the question before the High Court exercising its powers of revision under s. 439 of the Criminal Procedure Code (Act V of 1898) is one of appreciation of evidence, the rule of practice adopted is to refuse to disturb a conviction when there is legal evidence, oral or documentary, to sustain it. "Under the law of British India, it is not necessary that the charge should allege which of two contradictory statements upon oath is false, but it is sufficient (unless indeed some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time and a directly contradictory statement at another." It is not the duty of the Court of first instance (and far less of a Court on appeal or revision) to supply *ab extra* an explanation, which the accused himself has not suggested or an intention or knowledge which the accused has not claimed. *EMPEROR v. BANKATRAY LACHMAN* (1904) . . . I. L. R. 28 Bom. 533

## 4. PROOF OF CHARGE.

1. ——— Retraction of statements  
*Locus penitentiae* for witness. *Held* by the majority of the Court (*dissentiente* JACKSON, J.),

**FALSE EVIDENCE—*concl'd.*****4. PROOF OF CHARGE—*concl'd.***

that there ought to be a *locus penitentiae* for witnesses who have deposed falsely to retract their false statements. **QUEEN v. GULLIE MULLICK**

W. R. 1864, Cr. 10

2. ———— **Uncorroborated evidence of single witness—*Penal Code (Act XLV of 1860), s. 193.*** A person cannot be convicted in the refusal of giving false evidence upon the uncorroborated evidence of a single witness. **CAMPBELL, J., dissenting QUEEN v. LALCHAND KOWRAH**

B. L. R. Sup. Vol. 417

1 Ind. Jur. N. S. 83 : 5 W. R. Cr. 23

**QUEEN v. MOHINA CHUNDER CHUCKERBUTTY**

5 W. R. Cr. 77

3. ———— **Uncorroborated evidence of single witness.** A conviction for perjury should not be sustained on the bare testimony of one witness. **QUEEN v. KHOAB LALL**

9 W. R. Cr. 86

4. ———— **Evidence of single witness—*Evidence to establish fact of statement.*** The evidence of one witness in cases of perjury is sufficient to establish the factum of the statement which is charged as being false. **QUEEN v. ISSUR CHUNDER GHOSE**

14 W. R. Cr. 53

5. ———— **Comparison of signatures—*Testimony of single witness.*** Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence. **QUEEN v. BAKHOREE CROWSEY**

5 W. R. Cr. 98

**5. TRIAL OF CHARGE.**

1. ———— **Joint trial—*Penal Code, ss. 193, 196—Using evidence known to be false—Separate trial.*** Where several persons are accused of having given false evidence in the same proceeding, they should be tried separately. **A, S, B, D, and P** were jointly tried; **A** in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document and on three charges of using evidence known to be false; **S, B, D, and P** on charges of giving false evidence in the same judicial proceeding.

been improperly tried together, set aside the convictions and ordered a fresh trial of each of the accused separately. **EMPRESS v. ANANT RAM**

I. L. R. 4 All. 293

2. ———— **Examining witnesses only once in four cases.** When four persons were accused of having given false evidence in

**FALSE EVIDENCE—*concl'd.*****5. TRIAL OF CHARGE—*concl'd.***

gether, and was an improper mode of procedure. **NATHU SHYKH v. QUEEN-EMPRESS**

I. L. R. 10 Calc. 405

**FALSE IMPRISONMENT.**

*See DAMAOF, SUIT FOR.*

I. L. R. 29 All. 44

*See WRONGFUL CONFINEMENT.*

8 Mad. 38

1. ———— **Wrongful arrest under decree already satisfied—*Mistake of officers of the***

the money due under the decree had already been paid, as was the fact. Plaintiff could not produce the receipt of payment, and the bailiff refused to raise the arrest until payment was made. The plaintiff thereupon paid the money under protest, and was set at liberty. The mistake was sub-

the decree had been paid, but was told it was not, and a certificate of non-payment was issued. In conformity with the usual practice of the Court, the chief clerk of the Court, on receipt of the certificate, issued the writ of arrest under the seal of the Small Cause Court, and the plaintiff was arrested. In March 1884, the plaintiff presented a

returned to the plaintiff to be amended, but at the same time allowed to be filed. The plaintiff sub-

first defendants so as to make him responsible for the wrongful arrest. The plaintiff's imprisonment having taken place under a warrant of the Court issued in regular manner, and such Court being of competent jurisdiction, the plaintiff had no cause of action against the first defendant; the error was wholly and entirely the error of the officers of the

**FALSE IMPRISONMENT—concl'd.**

Small Cause Court. *Held*, also, as regards the

PEARSE . . . . . I. L. R. 30 Bom. 1

2. ——— False imprisonment, suit for—Limitation Act (XV of 1877), Sch. II, Art. 19—"Imprisonment"—Release on bail—Period from which limitation runs. To support an action for false imprisonment, nothing short of actual detention and complete loss of freedom is sufficient. *Bird v. Jones*, 7 Q. B. 742, followed. A person is not under imprisonment, after his release on bail. Limitation therefore runs from the date of such release, and a suit for false imprisonment is barred (under Art. 19 of Sch. II of the Limitation Act) unless brought within one year from that date. *MAHAMMAD YUSUFUDDIN v. SECRETARY OF STATE FOR INDIA* (1903) . . . . . I. L. R. 30 Cal. 872  
s.c. 7 C. W. N. 729; I. L. R. 30 I. A. 154

**FALSE INFORMATION.**

See CRIMINAL PROCEDURE CODE.

I. L. R. 26 All. 512

I. L. R. 32 Cal. 180

See PENAL CODE, s. 177.

See PENAL CODE, ss 182, 211.

I. L. R. 31 Bom. 204

See PENAL CODE, s. 211.

I. L. R. 27 Mad. 127

——— in road-cess returns—

See PENAL CODE, s. 177.

13 C. W. N. 191

**FALSE PERSONATION.**

1. ——— Personation before Registrar—Registration Act (XX of 1866), ss 53 and 94—Penal Code, s. 419. A vendor proceeded in company with three persons to Dacca to register

personation, and the other two of abetting that offence. *Held*, on revision, that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under ss. 93 and 94 of Act XX of 1866, and not under s. 419 of the Penal Code. *QUEEN v. LUTHI BEWA* . . . . . 2 B. L. R. A. Cr. 25  
*In re LUTHI BEWA* . . . . . 11 W. R. Cr. 24

2. ——— Personating party required to complete conveyance. Three persons who put up a fourth to personate one whose authority was required to complete a conveyance of immovable property were held guilty under s. 94 of the Registration Act XX of 1866. *QUEEN v. SOLEEMOONEEN* . . . . . 7 W. R. Cr. 89

**FALSE PERSONATION—concl'd.**

3. ——— Personating imaginary person—Penal Code, s. 205. Under s. 205 of the Penal Code, it is criminal to personate an imaginary person. *QUEEN v. BITTOO KAHAR*  
1 Ind. Jur. O. S. 123

4. ——— Personating imaginary persons. To constitute the offence of false personation under s. 205 of the Penal Code, it is not enough to show the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual. *Reg. v. Bittoo Kahar*, 1 Ind. Jur. O. S. 123, dissenting from. *QUEEN v. KADAR RAYATTAN* . . . . . 4 Mad. 18

5. ——— Fraudulent gain. Fraudulent gain or benefit to the offender is not an essential element of the offence of false per-

6. ——— Intention of falsely personating. It is necessary to a conviction for false personation, under s. 205 of the Penal Code that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual held, under the circumstances of the case, to be insufficient to show any intention of falsely personating such person. *QUEEN v. NARAIN ACHARJ*  
S W. R. Cr. 80

7. ——— Evidence as to identity of heirs of estate. Where the main question was whether, in fact, the heir to an estate, a minor in possession through the manager under the Court of Wards, had been, as the plaintiff alleged him to have been, put forward by false personation, a

time in existence an heir born of the parentage which the defense in this suit alleged to be that of the minor defendant. It was disputed in the present suit whether the minor defendant was the same individual whom his alleged mother, the defendant in the former suit (there being the same plaintiff in both suits), stated to be her son; also whether, if that identity were proved, the suit would be barred as *res judicata*. This latter question was decided in the negative by the Full Bench, which held the judgment in the former suit not to be conclusive upon the present one, but also held the record to be admissible. There was no appeal from that decision; and on an appeal from the decree of the Divisional Court, the Judicial Committee affirmed on the facts the decree made. *PALAKDHARI SINGH v. COLLECTOR OF GORAKHPUR*  
I. L. R. 15 All. 261

**FALSE STATEMENT.**

in application for license—

See **BENGAL MUNICIPAL ACT, 1834, s. 133.**

**I. L. R. 22 Calc. 131**

**False statement in sale-deed—**  
*Penal Code (Act XLV of 1860), s. 423—“ Dishonestly ”—“ Fraudulently ”—False statement of price in a sale-deed with the view of defeating claims of pre-emptors. Held, that the making of a false statement in a sale-deed of immovable property, as to the consideration for the sale, such statement being made for the purpose of preventing any person who might have a right of pre-emption in respect of property sold from coming forward to assert his right of pre-emption, is an offence which falls within the definition contained in s. 423 of the Indian Penal Code. EMPEROR v. MAHABIR SINGH (1902) . . . I. L. R. 25 All. 31*

**FALSIFICATION OF ACCOUNTS.**

**Intention to defraud—False entries made to conceal previous embezzlement—Penal Code (Act XLV of 1860), s. 477.1.** The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of s. 477A of the Penal Code, inasmuch as the intention is to defraud. *Lalit Mohan Sarkar v. Queen-Empress, I. L. R. 22 Calc. 313. In re Annasami Ayyangar, I. W. R. 554, followed. Empress v. Jwanand, I. L. R. 22 Cal. 1.*

**FAMILY ARRANGEMENTS**

See **HINDU LAW—JOINT FAMILY.**

**12 C. W. N. 783**

**FAMILY CUSTOM.**

See **BABUANA GRANT.**

See **CUSTOM.**

See **EVIDENCE ACT, s. 32, CL. 7.**

**10 B. L. R. 263**

See **HINDU LAW—CUSTOM.**

See **HINDU LAW . . . 10 C. W. N. 825**

See **PRACTICE . . . 10 C. W. N. 230**

See **SUCCESSION . . . I. L. R. 30 I. A. 180**

**adoption of daughter's son—**

See **HINDU LAW . . . 13 C. W. N. 920**

**FAMILY DWELLING-HOUSE.**

See **CRIMINAL TRESPASS.**

**6 B. L. R. Ap. 80**

See **EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.**

**B. L. R. Sup. Vol. 172**

**6 W. R. 218**

**6 W. R. MIA. 276**

**8 W. R. 239**

**I. L. R. 10 Calc. 244**

**FAMILY DWELLING-HOUSE—*conold.***

See **HINDU LAW—FAMILY DWELLING-HOUSE.**

See **INJUNCTION—UNDER CIVIL PROCEDURE CODES . . . 6 B. L. R. 571**

See **LIMITATION ACT, 1877, ART. 127 (1859, s. 1, CL. 13) . . . 12 B. L. R. 349**

**25 W. R. 37**

See **PARTITION—MODE OF EFFECTING PARTITION . . . I. L. R. 3 Calc. 514**

**I. L. R. 26 Calc. 518**

**“FASLI” YEAR.**

See **DEED—CONSTRUCTION.**

**I. L. R. 16 All. 396**

**FATAL ACCIDENTS ACT (XIII OF 1855).**

**‘Representatives of the deceased,’ who are—**The right under the Act is distinct in each and is a several, not joint, right—*Limitation Act (XV of 1877), ss. 7, 8, Art. 21, Sch. II—Representatives under Act XIII of 1855 not persons entitled to sue within the meaning of s. 7 nor ‘joint creditor’ or joint claimants within the meaning of s. 8 of the Limitation Act—Construction of statute. The word ‘representative’ in Act XIII of 1855 does not mean only executors or administrators but includes all or any one of the persons for whose benefit a suit may be brought under the Act and it makes no difference whether the deceased was a European or Eurasian. Under Art. 21, Sch. II of the Limitation Act, the suit must be brought within one year from death, unless the bar is saved s. 7 or 8 of that Act. The right of the beneficiaries under Act XIII of 1855 is not a joint right, but a distinct and several right in respect of the same cause of action enforceable at the suit of all or one of them suing for himself and the rest. *Pym v. The Great Northern Railway Co., 1 B. & S. 398**

tion conferred on one or more of several joint decree-holders by s. 231 of the Code of Civil Procedure. The beneficiaries therefore are not persons ‘entitled

nor joint claimants under s. 8 of the Limitation Act. Joint claimants are persons whose substantive

**FATAL ACCIDENTS ACT (XIII OF 1855)—*concl'd.***

express words, that they do not so apply. *Johnson v. Madras Railway Company* (1903)  
I. L. R. 28 Mad. 479

**FATHER.**

Liability of—

See HINDU LAW . . . 13 C. W. N. 9

**FATHER AND SON.**

See HINDU LAW . . . 13 C. W. N. 388

**FEEES.**

See COURT FEES.

See COURT-FEES ACT.

See PLEADER—REMUNERATION.

7 C. W. N. 300  
I. L. R. 28 Mad. 854

of Counsel, receipt for—

See STAMP ACT, SCH. II, ART 15  
I. L. R. 18 All. 132

landlord's fee, on transfer of  
tenure—

See BENOAL TENANCY ACT, s. 13.  
8 C. W. N. 180  
7 C. W. N. 388 ; 581

on succession, non-payment of—

See BENOAL TENANCY ACT, s. 16.  
I. L. R. 24 Calc. 241

**FERRÉ NATURE.**

See PENAL CODE, s. 378.

I. L. R. 27 Mad. 551

**FERGUSON'S ACT (9 GEO. IV, C. 33).**

See LAND TENURE IN BOMBAY.

4 Bom. O. C. 1

**FERRIES ACT (BOM. XXXV OF 1850).**

Illegal conviction under. On a reference by a Sessions Judge, a conviction and sentence by a District Magistrate under the Bombay Ferries Act for conveying passengers for hire from Uran to Bombay was reversed, as the act charged did not constitute an offence under any section of the Act. *Reg. v. Malharji Bin Shivji*

3 Bom. Cr. 41

**FERRY.**

See Co-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

I. L. R. 19 Calc. 253  
L. R. 19 I. A. 48

See FERRIES ACT (BOMBAY).

See JURISDICTION OF CIVIL COURT—  
FERRIES.

**FERRY—*concl'd.***

compensation for—

See COMPENSATION.

I. L. R. 34 Calc. 470

infringement of right of—

See RIGHT OF SUIT—FERRY, SUIT RELAT-  
ING TO . . . I. L. R. 4 Calc. 598

lease of Government—

See CONTRACT ACT, s. 23—ILLEGAL CON-  
TRACTS—GENERALLY.

I. L. R. 2 All. 411

meaning of—

See BENGAL MUNICIPAL ACT, 1884, SS. 155.  
156 . . . I. L. R. 27 Calc. 317

plying boat for hire near public—

See CRIMINAL TRESPASS.

I. L. R. 1 All. 527

See PENAL CODE, s. 188.

I. L. R. 1 All. 527

plying unsound boat on—

See CAUSING DEATH BY NEGLIGENCE.

I. L. R. 18 All. 472

right of—

See FISHERY, RIGHT OF . . . 5 N. W. 95

See POSSESSION, ORDER OF CRIMINAL  
COURT AS TO—CASES WHICH MAGISTRATE  
CAN DECIDE AS TO POSSESSION.

I. L. R. 26 Calc. 188  
3 C. W. N. 48, 148  
4 C. W. N. 813

See SPECIFIC RELIEF ACT, s. 9

I. L. R. 13 Mad. 54

1. ——— Right of ferry—*Right of pri-*

2. ——— *Right of owner of both banks of a river. The mere fact of being the owner of both banks of a river does not give the right of ferry. SORR MERDIA v. NOMO KISHORE*

2 W. R. 288

3. ——— *Right to establish new ferry—Right to cross river or phul in other way than by ferry. A stream, if navigable, is of itself a public highway. In the case of a stream, therefore, a riparian proprietor might start in a boat*

not lead to any inference that any proprietor of lands on the banks of the phul would have any right



**FERRY—contd.**

to cross either way to the terminus of a public highway in any other manner than between the ascertained points and by the accustomed means, viz., the owner's ferry boat. **HUNDOOAN DOSS v. SHAMACHURN BHUTTA** . . . **1 Hay 426**

4. ————— *Change in starting point owing to change in course of river.* The right to a ferry-ghaut cannot follow the starting point of the ferry wherever it may be carried by a change in the course of the river, unless the new position is within the possessor's own land. **GORDON v. GOPPE SOONDURKE DOSSE** . . . **25 W. R. 53**

5. ————— *Right to land at a ghaut as part of right of ferry—Form of suit.* A plaintiff may recover possession of a ferry of

ferry may include also a right at certain seasons of the year to land upon or start from a part of the river bank not included in the land taken for the ferry. **BRJO KISHOREE CHOWDHRAIN v. BILASH MONEE CHOWDHRAIN** . . . **5 W. R. 195**

8. ————— *Dispute concerning ferry including land and water over which it plies—Possession, Order of Criminal Court as to.* The right to a ferry, i.e., the right to carry

subject-matter of dispute is a ferry including the land and water upon which the right of ferry is exercised. **HORBULLUHH NARAIN SINGH v. LUMMESWAR PRASAD SINGH** . . . **1. L. R. 26 Calc 188**  
3 C. W. N. 49

But see **HORBULLUHH NARAIN SINGH v. BAJRANG DASS** . . . **3 C. W. N. 148**

7. ————— *Rights of private ferry—Invasion of right of ferry by order of Magistrate—Beng. Reg VI of 1819.* In a suit to maintain the old boundaries of a ferry which had

by them their labourers and cultivators and imple-

tending the boundaries of the public ferry was an invasion of their ancient right to cross in whatever ferry boat they liked, as by s. 6 of the Regulation (VI of 1819) persons are prohibited from

**FERRY—contd.**

8. ————— *Infringement of rights of ferry—Right to restrain party starting second ferry—Crown grant—User—Limitation Act (XV of 1877), ss. 23, 26, 27, 28—Nuisance—Cause of*

British Government or in the Regulations before or after 1793 to show that any person is entitled to claim a monopoly of a right of ferry by prescription or by any other means than a grant from the Crown. To such a monopoly Part IV (ss. 26, 27, 28) of the Limitation Act of 1877 relating to the acquisition of ownership by prescription is not applicable. The franchise of a ferry is not necessarily appurtenant to land, but where a right of ferry was claimed as appurtenant to certain villages—*Held*, that the grant of such right by the Crown

ance of a right of ferry is in the nature of a nuisance (*Yard v. Ford*, 2 Saunders 172), and the cause of action in the case of the violation of this right is a continuing wrong within s. 23 of the Limitation Act. **NITYAHARI ROY v. DUNNE** . . . **1. L. R. 18 Calc. 652**

ferry is improperly kept and is in a dangerous condition, he should proceed under s. 4. **QUEEN v. DEEYANTOOLLAH** . . . **7 W. R. Cr. 83**

10. ————— *Proprietary rights, interference with—Dispossession.* There are pro-

with the  
at, if not  
with a dis-

18 W. R. 200

11. ————— *Suit to re-open ferry—Bengal Act I of 1866, s. 2.* A suit to re-open a ferry which had been included in a settlement of an estate

MAGISTRATE OF SHAHABAD . . .

12. ————— *Rival ferry—Interference with existing ferry.* A rival ferry cannot be set up so as to interfere with proprietary rights in an existing

**FERRY—concl'd.**

13. ——— Stipulation in lease of land that no ferry is to be made—*Right of private ferry*. It is quite competent to a lessor, when granting a lease of his land, to stipulate that no ferry shall be established thereupon to the prejudice of his own ferry (existent or possible), and it is quite competent to a lessee to agree to such a stipulation. *JUDOOT CHUNDER CHOWDHRY v. BHURUT CHUNDER CHOWDHRY* . . . . . 23 W. R. 237

14. ——— Transfer of license to collect ferry charges—*Contract—Validity, as between renter and transferee, where transfer is contrary to terms of license*. Where, by the terms of a lease of a ferry, the renter should not transfer or sub-rent the ferry, but such a transfer or sub-lease is not prohibited by Statute, or by a rule framed under a Statute, a transfer of it will be valid as between the renter and his transferee, though it may be invalid as against the Government. *ABDULLA v. MAHMUD* (1902) . . . . .

I. L. R. 28 Mad 158

**FIDUCIARY RELATIONSHIP.**

See ATTORNEY AND CLIENT. 4 W. R. 88  
2 Ind. Jur. N. 8. 180

1 N. W. 1

11 B. L. R. 60 note

I. L. R. 3 Calc. 473

I. L. R. 26 Bom. 888

I. L. R. 29 Calc. 595

I. L. R. 38 Calc. 483

See FRAUD—WHAT CONSTITUTES FRAUD  
AND PROOF OF FRAUD.

I. L. R. 11 Bom. 78

See HUSBAND AND WIFE 8 C. W. N. 808

See ONUS OF PROOF—DEEDS, SUIT TO  
ENFORCE OR TO SET ASIDE.

I. L. R. 18 Calc. 545

I. L. R. 18 I. A. 144

I. L. R. 12 All. 523

See TRUSTEE . . . Bourke O. C. 292  
8 Mad. 293

See VENDOR AND PURCHASER—INVALID  
SALES . . . 1 B. L. R. A. C. 95

2 N. W. 163

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1. ——— Parent and child, transaction between—*Undue influence—Parent and even strangers claiming benefit bound to show that the child was a free agent and had independent advice—Delay and acquiescence, when a bar to equitable relief—Limitation Act (XV of 1877), Sch. II, Art. 91—*

trans-  
is pro-  
priety at

**FIDUCIARY RELATIONSHIP—concl'd.**

the right of doing a thing as to which his rights were or to act upon them. Where beyond signing the deed the defendant does not do anything to

*shankar, A. L. R. 12 Bom. 501, distinguished. Ranganath Satharam v. Govind Narayan, I. L. R. 20 Bom. 639, referred to and followed. Lakshmi Doss v. Roop Lalul (1906) I. L. R. 30 Mad. 168*

**FIERI FACIAS, WRIT OF SALE UNDER—**

See HIGH COURT, JURISDICTION OF—  
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See APPEAL TO PRIVY COUNCIL  
I. L. R. 35 Calc. 818

See ATTORNEY AND CLIENT.  
I. L. R. 38 Calc. 493

See CIVIL PROCEDURE CODE (ACT XIV  
of 1852), s 595

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12 C. W. N. 545

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See COURT FEES ACT, SCH. I, ART. 11.  
11 B. L. R. Ap. 39

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See APPEAL IN CRIMINAL CASE—CRIMINAL  
PROCEDURE CODE, 1852, ss 413, 423.

I. L. R. 23 All. 497

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**FINE—contd.**

**Levy of fine—Procedure.** The proper course of procedure under s. 308 of the Code of Criminal Procedure was to impose a fine and out of the fine

10. ———— **Costs, order for—Compensation to complainant—Criminal Procedure Code, 1872, s. 308—Court Fees Act, 1870, s. 31.** A, B, and C having been convicted of mischief, the Joint Magistrate sentenced A to one month's imprisonment, and B and C each to pay a fine of R10. He also directed that R12 should be paid to the complainant. *Held*, that the order for costs was not a fine

of the R12 being undetermined as sentenced to fine and imprisonment, and therefore no appeal lay; and that, as the case was one in which the police could not arrest without warrant, the Magistrate had power to award costs under s. 31 of the Court Fees Act, 1870, but that these costs must be limited to costs out of pocket. **MOHESH MUNDEL v. BHOLANATH BISWAS**  
3 C. L. R. 405 note

11. ———— **Fine, amount of—Criminal Procedure Code, 1861, s. 63—Fines inflicted by Magistrate.** The description of fine which it was the

12. ———— **Fine for continuing offence—Beng. Act VI of 1866.** Sagur Dutt was convicted

was continued. *Held*, that the conviction was bad. *In the matter of SAGUR DUTT.* **QUEEN v. JUSTICES OF THE PEACE FOR CALCUTTA**

1 B. L. R. O. Cr. 41; 18 W. R. Cr. 44 note

*In re LOVE* . . . . . 8 B. L. R. Ap. 35  
18 W. R. Cr. 44

**QUEEN v. TARINEE CHURN BOSE**  
21 W. R. Cr. 31

**KRISTODHONE DUTT v. CHAIRMAN OF COMMISSIONERS FOR SUBURBS OF CALCUTTA**  
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**FINE—contd.**

13. ———— **Daily payment of fine, order of—Illegality of such order.** An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed. *In the matter of Sagur Dutt*, 1 B. L. R. O. Cr. 41; *In re Love*, 9 B. L. R. Ap. 35; 18 W. R. Cr. 44; *Kristodhone Dutt v. Chairman of the Municipal Commissioners for the Suburbs of Calcutta*, 25 W. R. Cr. 6, referred to. **RAM KRISHNA BISWAS v. MOHENDRA NATH MOZUMDAR**  
I. L. R. 27 Calc. 585

14. ———— **Offence under Act XXVI of 1850.** Where accused was convicted under Act XXVI of 1850 of disobedience of an order made by the Municipal Commissioners of Puna and was sentenced to pay a fine of twenty rupees and

was reversed by the High Court as being illegal. **REG. v. JAGANNATH BHAT BIN APPA BHAT**  
5 Bom. Cr. 103

15. ———— **Fine for future default—Order for payment of monthly maintenance.** Where the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and

order as being irregular and bad in substance. **ANONYMOUS** . . . . . 5 Mad. Ap. 34

18. ———— **Power of Court to dispose of fine.** The Court had no power to dispose of fines inflicted upon prisoners; such power existed in Government alone. **QUEEN v. GOLUCK DAS**  
1 Hyde 282

17. ———— **Power of High Court to award fine to prosecutor on conviction for felony—Felony.** The High Court had power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. **REG. v. HOSSEIN JAN** . . . . . 2 Ind. Jur. N. S. 180

18. ———— **Order of part of fine to wit—**

19. ———— **Order for part of fine to ameen—Deputation to restore land marks.** The Joint Magistrate was held not competent to direct, under s. 44 of the Code of Criminal Procedure, that

G U

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See ARMS ACT, 1860 . . . 5 Mad. Ap. 24  
I. L. R. 1 Bom. 308

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See CATTLE TRESPASS ACT (I of 1871),  
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See SENTENCE—FINE

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE.

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## — distribution of—

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## — for neglect to take out certificate—

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## — for non-attendance before Collector in partition-proceedings.

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## — realization of—

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I. L. R. 22 Calc. 139

1. ——— Compensation—*Criminal Procedure Code, 1861, Ch. XIV.* A fine cannot be awarded as compensation in a case falling under Ch. XIV, Code of Criminal Procedure. *QUEEN v. NILJANUND . . . 3 W. R. Cr. 60*

2. ——— Excise Act XXI of 1856—*Power of Magistrate—Criminal Procedure Code, 1861, s. 22.* A Magistrate may impose a fine exceeding Rs. 1,000 under the Excise Act, XXI of 1856, s. 22 of the Code of Criminal Procedure notwithstanding. *QUEEN v. SUBROO CHUNDER DUTT . . . 7 W. R. Cr. 29*

3. ——— Cattle Trespas Act, 1857—  
*Fine levied by magist.*

4. ———

BHAGIRATHI NAIK v. GANGADHAR MAHANTY  
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5. ——— Death caused by rash and

ceased, is illegal *In re LUTCHMARA*  
I. L. R. 12 Mad. 352

6. ——— License tax—*Act XXIX of 1867, s. 15—Amount of fine.* Under s. 15, Act XXIX of 1867, the fine to be imposed for non-payment of the tax could not be less than the amount stated in the notice. *QUEEN v. BISSESSUR SEIN . . . 9 W. R. Cr. 62*

7. ——— *Act XXIX of 1867, s. 3—Previous fine.* Under s. 3, Act XXIX of 1867, a person once fined for not taking out a license was not liable to a second fine or to any further demand for the tax. *In the matter of DOORGA CHURN GIRER . . . 9 W. R. Cr. 64*

8. ——— Omission to give notice to party against whom order is made—*Order to remove fence . . .*

9. ——— Levy of fine—*Compensation to complainant—Civil Procedure Code, 1872, s. 303—*

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of fine—*Procedure* The proper course of procedure under s. 308 of the Code of Criminal Procedure was to impose a fine, and out of the fine paid to direct payment to the complainant of amount as the Court thinks fit, having regard to the provisions of the section. **MOHESH MUNDUL BHOLA NATH MUNDUL** 3 C. L. R. 404

Costs, order for—*Compensation to complainant—Criminal Procedure Code, 1872, 28—Court Fees Act, 1870, s. 31.* A, B, and C being convicted of mischief, the Joint Magistrate sentenced A to one month's imprisonment, B and C each to pay a fine of Rs 10. He also ordered that Rs 12 should be paid to the complainant. *Held*, that the order for costs was not a fine to be applied under the provisions of s. 308, Criminal Procedure Code; that what portion of the Rs 12 payable by each of the accused being undeterred, it could not be said that A was sentenced to and imprisonment, and therefore no appeal; and that, as the case was one in which the Magistrate had power to award costs under s. 31 of Court Fees Act, 1870, but that these costs be limited to costs out of pocket. **MOHESH MUNDUL t. BHOLANATH BISWAS** 3 C. L. R. 405 note

Fine, amount of—*Criminal Procedure Code, 1851, s. 63—Fines inflicted by Magistrate.* The description of fine which it was the act of s. 63 of the Criminal Procedure Code to

12. Fine for continuing offence *Beng. Act VI of 1866.* Sagur Dutt was convicted before a Justice of the Peace for using a warehouse, &c., in the town of Calcutta for the keeping and

As continued. *Held*, that the conviction was bad. *In the matter of SAGUR DUTT* QUEEN t. JUSTICES OF THE PEACE FOR CALCUTTA

1 B. L. R. O. Cr. 41: 18 W. R. Cr. 44 note

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13. Daily payment of fine, order of—*Illegality of such order.* An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed. *In the matter of Sagar Dutt*, 1 B. L. R. O. Cr. 41; *In re Love*, 9 B. L. R. Ap. 35: 18 W. R. Cr. 44; *Kristodhone Dutt v. Chairman of the Municipal Commissioners for the Suburbs of Calcutta*, 25 W. R. Cr. 8, referred to **RAM KRISHNA BISWAS v. MORENDRA NATH MOZUMDAR**

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14. Offence under Act XXVI of 1850. Where accused was convicted under Act XXVI of 1850 of disobedience of an order made by the Municipal Commissioners of Puna and was sentenced to pay a fine of twenty rupees and (eight days' time being allowed him within which to

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15. Fine for future default—*Order for payment of monthly maintenance.* Where

dure, the High Court quashed the latter part of the order as being irregular and had in substance, **ANONYMOUS** 5 Mad. Ap. 34

16. Power of Court to dispose of fine. The Court had no power to dispose of fines inflicted upon prisoners; such power existed in Government alone. **QUEEN t. GOLUCK DASS**

1 Hyde 282

17. Power of High Court to award fine to prosecutor on conviction for felony—*Felony* The High Court had power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. **REG v. HOSEIN JAN**

2 Ind. Jur. N. 8. 180

19. Order for part of fine to be paid—*Deputation to restore land marks.* The Joint Magistrate was held not competent to

FINE—*contd.*

20. ——— Order for payment of municipal taxes out of fine—*Power of Magistrate*. A Deputy Magistrate had no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him. *QUEEN v. BROJO KISHORE DUTT*. 8 W. R. Cr. 17

21. ——— Fine for contempt of Court—*Omission to state reasons for*. A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine. *In the matter of the petition of PANCHANADA TAMBIRAN*. 4 Mad. 229

22. ——— Procedure to enforce fine—*Madras Act V of 1865*. The procedure to be followed in enforcing the fines from persons convicted under Act XXIV of 1859 (Police Act) was that laid down in Madras Act V of 1865. *ANONYMOUS*. 3 Mad. Ap. 9

23. ——— Levy of fine—*Distress—Criminal Procedure Code, 1861, s. 61—"Court"* In

salu. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor; but the Court which levies the fine must be the same as the Court which imposed it. *CHUNDER COOMAR MITTER v. MOHGOOSOODUN DEX*. 9 W. R. Cr. 50

24. ——— Liability for fine after imprisonment in default. An offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine is still liable to have the amount levied by distress and sale of any moveable property

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25. ——— Recovery of, from immovable property—*Criminal Procedure Code, 1861, s. 61—Penal Code, s. 70*. On a reference as to

26. ——— Realization of fine after death of person fined—*Moveable property—Immovable property—Penal Code (Act XLV*

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of 1860), s. 70—*Criminal Procedure Code (Act XXV of 1861), s. 6—Criminal Procedure Code (Act X of 1882), s. 336*. Where a person was fined under the Penal Code and died before the fine was paid, and

that the liability of the immovable property of the deceased could not be enforced by distress. *Reg. v. Lallu Karwar, 5 Bom. H. C. 63*, followed. S. 336 of the Criminal Procedure Code is not applicable to such a case. *QUEEN-EMRESS v. SITA NATH MITRA*. I. L. R. 20 Calc. 478

27. ——— Refund of fine—*Imprisonment after payment of fine*. A prisoner was sentenced to

under these circumstances, the Court had no power to order the fine to be refunded. *REG. v. NATHU MOLA*. 4 Bom. Cr. 37

28. ——— Recovery of fine when ordered to be refunded—*Portion of fine paid as compensation to complainant—Sentences of fine set aside—Recovery of compensation from complainant—Procedure—Criminal Procedure Code, 1882, ss. 545 and 547*. On a sentence of fine being

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*See THUMB IMPRESSION.*

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See INFORMATION OF COMMISSION OF  
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*First information when to be recorded—Object of recording—Investigation by Police commenced without a first information—Criminal Procedure Code (Act V of 1898), s. 154—Irregularity A finding his brother M to be missing gave information to the Sub-Inspector of Police, but the latter did not record it under s. 154, Code of Criminal Procedure. Nevertheless he commenced investigation and after four days when the matter had so developed that there was some reason to believe that M had been murdered, he for the first time recorded a statement by A as the first information. Held, that such a practice is altogether contrary to the provisions of s. 154, Code of Criminal Procedure, and a statement recorded under such circumstances cannot be regarded as a first information. The first information if recorded as directed by s. 154 at the time it is made is of considerable value at the trial because it shows on what materials the investigation commenced and what was the story then told. Any statement recorded, as in this case, several days after the commencement of the investigation and after there had been some development, is not only*

**FIRST INFORMATION—concl'd.****FIRST OFFENDERS.**

*Criminal Procedure Code, s. 562—Powers conferred by s. 562 exercisable by a Court of Appeal—Criminal Procedure Code, s. 523 (d). Held, that the powers conferred by s. 562 of the Code of Criminal Procedure upon a Court by which a first offender is convicted are, by virtue of s. 423 (d) of the Code, exercisable by the High Court sitting as a Court of Appeal. EMPEROR v. BIRCH (1902) . I. L. R. 24 All. 308*

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I. L. R. 24 Mad. 61

1. ——— Nature of right—*Incorporeal hereditament*. Jalkar, or the right of fishery, may exist in India as an incorporeal hereditament, and as a right to be exercised upon the land of another  
FORBES v. MR MUHAMMAD HOSSEIN

12 B. L. R. P. C. 210; 20 W. R. 44

2. ——— Immoveable property—*General Clauses Consolidation Act (I of 1863), s. 3—Transfer of Property Act (IV of 1882), s. 106* A jalkar, or right of fishery, as being a benefit arising out of land covered by water, comes within the definition of "immoveable property" set out in the General Clauses Act (I of 1863), and is therefore immoveable property under s. 106 of the Transfer of Property Act (IV of 1882) *RAM GOPAL BISACK v. NURUMDIN alias NOOR MAHANED MUNDUL* . . . I. L. R. 20 Cal. 446

3. ——— Right to soil beneath water—*Right to jalkar*. The right to a jalkar by no

4. ——— Right to soil and water in one person—*Interest in the soil*. Though the right of jalkar does not imply any interest in the soil, yet where it is found as a fact that both water and land are the property of the zamindar as such, the two rights are not to be separated *CHUNDER COOMAR ROY v. BURUDA KANT ROY*  
W. R. 1864, 63

5. ——— Right to tank—*Fishing in tank*. The exercise of the right of fishing in a tank is no proof of ownership in the tank. *ENTOZAH HOSSEIN v. THREE PERSHAD SINGH* 5 W. R. 261

**FISHERY—contd.**

6. ——— Right in the soil—"Interest in land"—*Road Cess Act (Beng Act X of 1871)*. A jalkar does not impart any interest in the soil itself, and therefore a patni of a jalkar is not an "interest in land" within the meaning of the definition in the District Road Cess Act. *DAVID v. GIRISH CHUNDER GUHA*  
I. L. R. 9 Cal. 183; 11 C. L. R. 305

7. ——— Settlement of jalkar. There is no such broad proposition of law as that the settlement of a jalkar implies no right in the soil. *RAKHIAL CHURN MUNDUL v. WATSON & Co.* . . . I. L. R. 10 Cal. 50

8. ——— Jalkar drying up—*Right of holder of jalkar*. When a jalkar dries up, the dried land does not, as a matter of course, become the right of the holder of the jalkar. *BISSEK LALL DOSS v. KHYRUNISSA BEGUM* . . . 1 W. R. 79

9. ——— Drying up of *phl*. By pottah certain land was leased, and a right of jalkar or fishery in a bhl or lake was granted on payment of certain jamma. The bhl became permanently dried up. *Held*, that the grant being merely of the fishery, the lessee acquired no interest in the soil, and the lessor was entitled to re-enter on the land formerly covered with the water of the bhl *SUROOF CHUNDER MOZOOMDAR v. JARDINE, SKINNER & Co.* . . . Marsh. 334; 2 Hay 465

10. ——— Change in course of river—*Right of owner of soil*. If a river merely changes its course, the old dry course of the river must be taken to have become private property; and as incident to and part of the same, the owner of the

11. ——— Jalkar—*Navigable river*. The jalkar, or right of fishing, in a navigable river is not affected by reason of the river having merely changed its course *Gray v. Anund Mohun Maitro, W. R. 1864, 103*, followed. *Sibesbury Dabee v. Lukhy Dabee*, 1 W. R. 88, distinguished. *TARINI CHURN SINHA v. WATSON & Co.* . . . I. L. R. 17 Cal. 983

12. ——— Joint right of fishery. A co-proprietor cannot be sued for trespass for fishing in a jalkar in which he and the other proprietors were entitled to fish, merely because the

SHANA v. ARDOOL GUNNY . . . 1 W. R. 116

13. ——— Drying up of river—*Land*. In a suit to establish right was decree hat the

**FISHERY—contd.**

...beds of water south of the river occupied

...that the lower

up and the defendants acquired a right to the land

14. ———— **Diversion of flow of stream**  
—Increase and decrease in flow of water. It matters not whence the water in which A has a right of fishery comes. A's right is not lessened, nor B's increased, because a portion of the water formerly flowing in A's channel has been diverted from it, and because the water of B's river now flows through it. **NONIN CHUNDER ROY CHOWDERY v. RADHA PERSEE DEBIA** . . . . . 6 W. R. 17

15. ———— **Rights of jalkar in flooded lands.** The gradual flooding of a talukh may

over it. **SIBESURY DASSEE v. LUKHY DASSEE** . . . . . 1 W. R. 83

16. ———— **Restriction on fishery rights by owners of bed of river—Limiting area of water.** The owners of the bed of a river

**MOOKENJEE** . . . . . 8 C. L. R. 242

17. ———— **Interference with right—**

18. ———— **Jalkar rights in pergunnah**  
—Right of owner of pergunnah. A proprietor of the entire jalkar rights of a pergunnah is entitled to fish in any natural water-course, or any jhal or pond not made by human agency. **KHOOSAMAYE CHOWDHRAIN v. JOY SUNKER CHOWDERY** . . . . . W. R. 1864, 267

19. ———— **Presumption of right of fishery from long possession of tank.** Where a person is found to have been from of old in possession of a tank, it may be presumed that he is entitled

**FISHERY—contd.**

to the fish therein, although there be no actual proof that he has asserted his property in the fish by fishing. **HUR PERSHAD ROY v. BADREE NARAIN GIRI** . . . . . 1 N. W. 14

20. ———— **Exercise of right of fishery from permanent settlement—Open channels in river.** A party owning the right of fishery in a

net, become finally closed at both ends, i.e., so long as fish can pass to and fro. **KRISHNENDRO CHOWDHRY v. SURSOMAYI** . . . . . 21 W. R. 27

21. ———— **Adverse right of—Exercise of right of fishery—Right to possession.** When a person exercises the right of fishing in a tank adversely for twelve years, his right to fish becomes absolute and indefeasible. **LUCKHYMOY DASSEE v. KORUNA KANT MOITRO** . . . . . 3 C. L. R. 509

22. ———— **Dispute as to fishery rights—Possession—Title.** In a dispute about jalkars between the proprietors of a neighbouring estate, where the title-deeds of the two parties do not specially mention the particular pieces of land or water in contest, the title of the parties must depend on the fact as to which of them has been in possession. **SHAMA SOONDUREE DEBIA v. COLLECTOR OF MULDAY** . . . . . 12 W. R. 184

23. ———— **Right of fishery in navigable river, proof of—Private against public right.** When the exclusive jalkar right in a navigable river is set up against the ordinary rights of the State and the community, it must be established by clear and strong proof. **BAGRAM v. COLLECTOR OF BRULLOOK** . . . . . W. R. 1864, 243

24. ———— **Right of fishery in navigable river.** The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river. **CHUNDER JALEIN v. RAM CHURN MOOKERJEE** . . . . . 15 W. R. 213

25. ———— **Right of Government—Semi.** The Government may have an exclusive right of fishery in a navigable river. **ACHUTAI JHA v. JAWAN** . . . . . 11 G. L. R. 11

26. ———— **Jalkar—Private and public rights.** A private right of fishery in a total navigable river must, if it exists at all, be derived from the Crown and established by very clear evidence, as the presumption is against any such private right. **Quare** Whether such right can be created at all. A mere recital in quinquennial

... if construed to apply exclusively to a right to

FISHERY—*contd.*

fish within enclosed water, such as a jhil. *PROSUNNO COOMAR SIRCAR v. RAM COOMAR PAROEEY*  
I. L. R. 4 Calc. 53

27. *Right of fishery in tidal river—Prescription* The right of the public to fish in tidal waters in British India may be curtailed by an exclusive privilege granted to an individual.

acquisition of an easement against the Crown. *VIRESA v. TATAYYA*. I. L. R. 8 Mad. 467

28. *Right of fishery in tidal navigable river—Grant of rights by Crown—Grant, where there is no title by prescription, must be proved—Evidence as to nature and extent of grant.* The exclusive right of fishery in tidal navigable river is a right which can be granted by the Crown.

prescription is persons alleging themselves to be the holders of a jalkar under an ijara, the mere payment of rent by fishermen to former ijaradars is not sufficient to establish their title.

rights of the alleged holders of the ijara, and of acquiescence in their title. In the case of a grant of a jalkar, in ascertaining what the boundaries of the jalkar are, or what rights of fishery are contained within those boundaries, whether the subject of the grant is a jalkar or not, is immaterial.

the right of fishery in tidal navigable rivers. *HARI DAS MAL v. MAHOMED JAKI*  
I. L. R. 11 Calc. 434

29. *User—Prescription* Plaintiffs claimed right to catch fish in a tidal river at a certain place by putting up stake nets across the river. This right was alleged to be based on custom which was not denied by defendants, and user for thirty years was proved. The claim was decreed. *Held*, that plaintiffs were not bound to prove sixty years' exclusive use to support their claim. *NAHASAYYA v. SAMI* I. L. R. 12 Mad. 43

30. *Right of Government in navigable rivers and fishery therein—Grant by Government of right to private individuals* As regards this side of India, the bed of a tidal navigable river is vested in the Crown, and the right of fishery in such river, as also the bed of the river itself, may be granted by Government (whether it be in the exercise of their prerogative as the Crown or as representing the public) to private individuals to be held by them as private property

FISHERY—*contd.*

subject to the right of navigation and such other rights as the public has in such rivers. *Doe d. Seebkristo v. East India Co.*, 6 Moo. I. A. 267; *Gurdeb Hossain Chowdhree v. Lamb*, S. D. A. 1859, 1357; *Bagram v. Collector of Bhulloo*, Gap Number W. R. (1864), 243; *Chunder Jaleah v. Ram Churn Mookerjee*, 15 W. R. 212; *Baban Mayacha v. Naya Shrivachha*, I. L. R. 2 Bom. 19; *Prosunno Coomarr Sircar v. Ramcoomarr Paroee*, I. L. R. 4 Calc. 53; and *Hari Das Mal v. Mahomed Jaki*, I. L. R. 11 Calc. 434, referred to. Value as evidence of the thakbast map in such a case discussed. *Syama Lal Sahu v. Luchman Chowdhry*, I. L. R. 15 Calc. 353, and *Syama Sunderi Dassya v. Jagobundhu Sootar*, I. L. R. 16 Calc. 186, referred to. *SARAT CHOWRI GHOSH MONDAL v. SECRETARY OF STATE FOR INDIA*. I. L. R. 22 Calc. 352

31. *Fishery in navigable river—Doba left by recession of river*—When a river recedes, the doba left by it is not a navigable river.

such lakes, *adwas*, &c., so long as these latter remain in communication with the main channel at all seasons of the year. *J. J. Grey v. Anund Mohan Maitra*, W. R. Gap No. 108, relied on. *Krushnendro Ray Chowdhry v. Surnomeyee*, 21 W. R. 27; and *Tarini Charan Sinha v. Watson & Co.*, I. L. R. 17 Calc. 963, referred to. *HARI CHANDRA CHOWDHURY v. JAGADENDRA NATH RAY* (1905) 9 C. W. N. 934

32. *Jalkar rights—Grant by Government, presumption of—Right of fishery by prescription—Fishing in navigable river.* Though there may not be any express grant a right of fishery in a navigable river running through land permanently settled with the plaintiffs may still be presumed in their favour, as included in the settlement, from a long continued user of such right. *Hari Dass Mal v. Mahomed Jaki*, I. L. R. 11 Calc. 434, referred to. *SARAT CHANDRA ROY v. KALARAM MALO* (1906) I. L. R. 33 Calc. 1549

33. *Fishery right in tidal and navigable river when the river changes its course—Right of Government* When a tidal river changes its course, the fishery rights in the old bed are not lost.

34. *Fishery—Independent jalkar—Proof—Navigable river—Survey*—When a river is navigable, the jalkar is independent. *Comparative value.*

**FISHERY—contd.**

his estate. What evidence is necessary to prove  
 . . . . . ry in a  
 . . . . . CHAT.

I. L. R. N. 334

35. ——— Public navigable river, fishery in—Arm of the river ceasing to be an arm of a flowing river, effect of. When on account of a change in the course of a public navigable river an arm of the river ceases to be an arm of the flowing river, the person, who had a right of fishery in the river, ceases to have any right to it; it becomes the property of the adjacent owner. *Krishendra v. Maharani Surnomoyee*, 21 W. R. 27; *Jogendra Narain v. Crawford*, 1 L. R. 32 Cal. 1141; *J. J. Grey v. Anund Mohun*, W. R. 1864, 108, referred to. *ISHAN CHANDRA DASS SARKAR v. UPENDRA NATH GHOSH* (1908) 12 C. W. N. 559

39. ——— Non-tidal and non-navigable river—Jalkar—Gradual encroachment upon neighbouring estate—Right of fishery over portion encroaching—Regulation XI of 1825, s. 4, cl. 5.

explained *Lopez v. Muzum Shonan Shauar*, 13 Moo. 1. A. 467, relied on. *NARENDRA CHANDRA LAHIRI v. SURESH CHANDRA LAHIRI* (1906)

10 C. W. N. 549

The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. That right may, in certain portions of the sea, be regulated by local custom. Members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others

I. L. R. 2 Bom. 19

39. ——— Adjunct of right of fishery—Right of ferry. A right to the jalkar of a river—that is, right to the produce of the water, such as fish, etc.—does not necessarily carry with it a right of ferry. *GOFER THAKOORALL v. SHRO SEVUK MISSEER*. . . . . 5 N. W. 95

39. ——— Dispute relating to a fishery—Whether proceedings should be under s. 107 or s. 145 of the Criminal Procedure Code (Act I of 1898). Where there is a *bond fide* dispute relating to a fishery right, the proper course for the Magistrate to adopt is to proceed

**FISHERY—concl.**

under s. 145 of the Criminal Procedure Code, and not under s. 107. The words in s. 145 are mandatory, while the language of s. 107 is discretionary. *Dolegobind Choudhry v. Dhanu Khan*, 1 L. R. 25 Cal. 559, followed. *BALAJIT SINGH v. BHOJJI GHOSH* (1907) . . . I. L. R. 35 Cal. 117

**FITNESS OF SURETY.**

See SECURITY FOR GOOD BEHAVIOUR.

13 C. W. N. 80

**FIXITY OF RENT.**

See BENGAL TENANCY ACT (VIII OF 1885), s. 115 . . . 12 C. W. N. 904

**FIXTURE.**

See ENCROACHMENT.

I. L. R. 34 Cal. 844

See INSOLVENCY ACT (II & 12 VICT., c. 21), s. 23 . . . I. L. R. 25 Bom. 659

Landlord and tenant—Lease—Assignment of lease—Privity of contract—Liability to repair—Transfer of Property Act (IV of 1882), s. 3. The word fixture is one of common use in English law, but in India the word is not so familiar, and the maxim, '*quicquid plantatur solo, solo cedit*,' on which the law of England as to fixtures seems to have been originally founded, has never received so wide an application here as there. For anything to be a fixture it must be "attached to the earth" as that expression is defined in s. 3 of the Transfer of Property Act. Where the occupiers of premises continue in possession in the belief common to them and the owner of such premises that they hold under the terms of a lease, which had never been assigned to them by the original lessee and which had expired, they are bound to carry out such covenants as to repairs, etc., as would have to be performed

on any privity of contract or estate, whether legal or equitable, created by the lease. *CHATURBHTI v. BENNETT* (1905) . . . I. L. R. 29 Bom. 323

**FOOD.**

adulteration of—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), s. 495.

I. L. R. 30 Cal. 643

destruction of—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), ss. 502, 503.

I. L. R. 30 Cal. 421

**FORD.**

See PUBLIC NUISANCE.

I. L. R. 32 Cal. 930

**FORECLOSURE.**

See BENOAL REGULATION XVII of 1806,  
s. 8 . . . I. L. R. 29 All. 145

See MORTGAGE . . . 10 C. W. N. 778

See MORTGAGE—FORECLOSURE.

See TRANSFER OF PROPERTY ACT, 1832,  
ss 87, 89 . . . I. L. R. 32 Calc. 253  
9 C. W. N. 577

See TRANSFER OF PROPERTY ACT, ss. 86,  
87 . . . 13 C. W. N. 742

— suit for—

See JURISDICTION—SUITS FOR LAND—  
FORECLOSURE . . . I. L. R. 4 Calc. 283

See MORTGAGE . . . 13 C. W. N. 300

**FOREIGN AND NATIVE RULERS.**

See JURISDICTION OF CIVIL COURT—  
FOREIGN AND NATIVE RULERS.  
I. L. R. 21 Bom. 351

**FOREIGN COURT.**

See EXECUTION OF DECREE—FOREIGN  
COURT.

See FOREIGN COURT, JUDGMENT OF.

See INJUNCTION . I. L. R. 38 Calc. 233

**Private International Law—Suit in British Court on foreign judgment—Territorial jurisdiction—British subject—Domicile—Nationality—Decree of Foreign Court as evidence in Court in British India—Civil Procedure Code (XIV of 1882), s. 13.** A foreign Court has no jurisdiction over a person who is a British subject domiciled and residing in British India, who was not within the territorial jurisdiction of that Court either at the time when a suit was brought against him or previously, and who never subjected himself by any act of his, such as by appearing and defending the suit, to the jurisdiction of that Court. A decree passed by

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birth on the soil, and not by citizenship by descent. There is a distinction between a case in which a defendant puts forward a foreign judgment as a bar to a suit under s. 13 of the Code of Civil Procedure, and a case in which a plaintiff seeks to enforce a foreign judgment. In the former, it may fairly be supposed that the parties submitted to the jurisdiction of the foreign Court. *Gurdial Singh v. Raja of Faridkot*, I. L. R. 22 Calc. 222: L. R. 21 I. A 171, followed. *CHRISTIE v. DELANEY*  
I. L. R. 26 Calc. 931

**FOREIGN COURT, JUDGMENT OF.**

See AWARD . . . I. L. R. 31 Calc. 274

See CAUSE OF ACTION.

I. L. R. 31 Calc. 274

**FOREIGN COURT, JUDGMENT OF—  
contd.**

See COMPANY—WINDING UP—GENERAL  
CASES . . . 8 Bom. O. C. 200  
I. L. R. 8 Bom. 346

See DEBTOR AND CREDITOR  
I. L. R. 16 Mad. 65

See EXECUTION OF DECREE—APPLI-  
CATION FOR EXECUTION, AND POWERS  
OF COURT . . . I. L. R. 7 Calc. 92

See EXECUTION OF DECREE—DECREES  
OF COURTS OF NATIVE STATES  
I. L. R. 15 Bom. 216

See RES JUDICATA—COMPETENT COURT  
—GENERAL CASES.  
I. L. R. 13 Bom. 224

— admissibility of, in evidence—

See TRADE MARK.  
I. L. R. 25 Bom. 433

— against insolvent, validity of—

See JURISDICTION—CAUSES OF JURISDI-  
CTION—CAUSE OF ACTION—PRINCIPAL  
AND AGENT . I. L. R. 28 Mad. 544

1. — Execution of decrees of foreign Court—Objections to foreign judgments. The rule in the case of foreign judgments sought to be executed in our Courts is, that such judgments must finally determine the points in dispute, and must be adjudications upon the actual merits, and that they are not open to impeachment on the ground of want of jurisdiction, whether over the cause, the subject-matter, or the parties, or that the defendant was not summoned, or had no opportunity of defence, or that the judgment was fraudulently obtained. *SREENIVAS BHEEM v. GOVILCHUNDER SAMST* . . . 15 W. R. 500

2. — Suit against person in representative capacity. The plaintiff obtained a judgment in a French Court against the father (now deceased) of the defendant Plaintiff

judgment. The lower appellate Court for the plaintiff against the defendant personally for the full amount of the decree in the French Court and interest. Held, that the defendant was bound by the judgment in the French Court against him as representative of his father and personally bound to pay all costs awarded against him; but that, in giving effect to the French judgment, it was to be executed according to the rules

# FOREIGN COURT, JUDGMENT OF— contd.

3. — *Procedure in giving effect to foreign judgment—Proof of service of process—Notice, service of, on contributory of Company.* Courts in British India, when called upon to give effect to a foreign judgment, should insist upon a strict proof of the validity and service of summonses and other processes alleged to have emanated from a foreign Court, and made a foundation for a liability to be enforced here by Courts that have no cognizance of the case on its merits. *EDULJI BURJORJI v. MANEENJI SOHARJI PATEL*. L. L. R. 11 Bom. 241

4. — *Execution of decree—Foreign decree—Execution in British India of decrees of Courts of Native States—Evidence—Certified copies of foreign judicial records—Cooch Behar, execution in British India of decree passed by Courts of* A decree of the Court of the

order was forthwith issued for the attachment of

Cooch Behar Court through the District Judge in order that a certificate might be given in proper form, and directed that the other points raised should be decided after the return of the papers.

*Held*, that the Subordinate Judge acted properly in sending the record back to the Cooch Behar Court to be properly certified, and also that he should have set aside the execution-proceedings as being altogether void, but, as that formed no portion of the grounds of appeal urged in the lower Appellate Court, the appeal should be dismissed. *GANEE MAHOMED SARKAR v. TARIQI CHAKK CHUCKERBARTI*. L. L. R. 14 Cal. 546

5. — *Suits in British Court on judgments and decrees of Courts established in recognized foreign States—Territorial jurisdiction of each separate State in personal actions—Civil Procedure Code, 1882, ss 431 and 434—Right of suit Jurisdiction, being properly territorial and attaching, with certain restrictions, upon every person permanently or temporarily resident within the territory, does not follow a foreigner, after his withdrawal thence, living in another State. As to land within the territory, jurisdiction always exists, and may exist over moveables within it, and exists in questions of status or succession governed by domicile. But*

# FOREIGN COURT, JUDGMENT OF— contd.

no territorial legislation can give jurisdiction, which a Court of a foreign State, established

the cause of action has arisen, nor in cases of contract

actions *Ex parte* decrees for money were made in the territories of the ruling Chief of Faridkot, a State in subordinate alliance with the Government of India, against a person who had been employed by that State within its territories, but had, before suit brought, relinquished his employment, had left the State, and was then, at the time when he was sued, resident in another State of which he was the domiciled subject. *Held*, that these decrees were a nullity by international law, and could not receive effect in a British Indian Court. *Requet v. Macarthy*, 2 B. & Ad. 951, distinguished. The judgment of BLACKBURN, J., in *Schibby v. Westenholtz*, L. R. 6 Q. B. 155, referred to and explained. There is no ground for supposing, as did one of the Courts below, that no suit will lie upon the judgment of a recognized foreign Indian State. *GURDIAL SINGH v. RAJA OF FARIDKOT*

I. L. R. 22 Cal. 222  
L. R. 21 I. A. 171

6. — *Private international law—Suit in British Court on foreign judgment—Territorial jurisdiction—British subject—Domicile—Nationality—Decree of foreign Court as evidence in Court in British India—Civil Procedure Code (XIV of 1882), s. 13.* A foreign Court has no jurisdiction over a person who is a British subject domiciled and residing in British India, who was not within the territorial jurisdiction of that Court either at the time when a suit was brought against him or previously, and who never subjected himself by any act of his, such as by appearing and defending the suit, to the jurisdiction of that Court. A decree passed by a foreign Court against such a person cannot be given effect

inction between a case in which a defendant puts forward a foreign judgment as a bar to a suit under s. 13 of the Code of Civil Procedure, and a case in which a plaintiff seeks to enforce a foreign judgment. In the former it may fairly be supposed that the parties submitted to the jurisdiction of the foreign Court. *Gurdial Singh v. Raja of Farid-*

FOREIGN COURT, JUDGMENT OF—  
contd.

*kat, I. L. R. 22 Cal. 222 : L. R. 21 I. A. 171, followed. CHRISTIAN v. DELANNEY*

I. L. R. 26 Cal. 931  
3 C. W. N. 614

7. ————— Decree "in absentem"—Submission to jurisdiction—Suit on judgment of foreign Court. The plaintiff brought a suit in the French Court at Karikal against the defendant, a British subject, resident in British India. The defendant employed a vakil to defend the suit, but, on the case coming on for hearing, the vakil stated he had no instructions, and an *ex parte* decree was passed. An application by the defendant to have the decree set aside was held to be time-barred. The plaintiff now brought a suit on the judgment of the French Court to recover the amount decreed to him. *Held*, that the suit was not maintainable for the reason that the decree had been passed against the defendant in *absentem* by a foreign Court, to which he had not submitted himself. *Semle*. Even if the foreign judgment had not been entirely invalid as against the defendant, the British Court would have had jurisdiction to disallow an item of claim allowed by the foreign Court on account of prospective damages which was unsupported by evidence. *SIVARAMAN CHETTI v. ISURAM SAHER* I. L. R. 18 Mad. 327

8. ————— Suit in foreign judgment—Judgment not for an ascertained sum of money—Maintainability of suit. Plaintiff, having obtained a decree in a District Court in the province of Mysore, applied to that Court, in execution of the said

brought a suit for an account in the District Court of South Canara. *Held*, that, as the foreign judgment on which the action purported to be brought was not a judgment for an ascertained sum of money, it constituted no foundation for an action. *SMITH v. COELHO* I. L. R. 22 Mad 382

9. ————— Suit on a foreign judgment—Civil Procedure Code (Act XIV of 1852), s. 14, as amended by Act VII of 1853. A suit will lie on a judgment of a Court in a Native State. *MAYARAM v. RAYJI* I. L. R. 24 Bom. 86

10. ————— Native Courts, suit on decree of—Suits in India on judgments of Courts in India—Jurisdiction of Small Cause Court—Civil Procedure Code (Act X of 1877), s. 431. No suit is maintainable in any Court in British India founded upon the judgment of a Court situate in a Native State. The Courts of British India cannot enforce the decrees of any Native Courts, except as provided by s. 431 of the Civil Procedure Code, Act X of 1877. Under that section, the decrees of certain Native Courts may be executed in British India, as if they had been made by the Courts of British India. A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in

FOREIGN COURT, JUDGMENT OF—  
contd.

igation belonging to the class of implied contracts. A Court which entertains a suit on a foreign judgment cannot institute an enquiry into the merits of the original action or the propriety of the decision. *Quare*: Whether suits on foreign judgments are maintainable in the Civil Courts of India. *BIHAVANISHANKAR SHEYAKRAM v. PURSADRI KALIDAS* I. L. R. 6 Bom. 292

11. ————— Judgment of Court of Native State—Jurisdiction of Civil Court. The Civil Courts of British India have jurisdiction to entertain suits brought upon the judgments of Courts of Native States. *Bhatonishankar Sherakram v. Pursadri Kalidas*, I. L. R. 6 Bom. 292, dissented from. *SAMA RAYAR v. ANNAMALAI CHETTI* I. L. R. 7 Mad. 164

12. ————— Parties—Members of firm not resident in place where judgment was obtained. A obtained a decree against B and C in Ceylon, and, having realized a portion of the sum decreed by sale of property in Ceylon, instituted a suit for the balance upon the foreign judgment in British India against B, C, D, E, F, G, on the ground that all were members of one firm. *Held*, that the suit would not lie against D, E, F, G, upon the foreign judgment. *LAKESEMAN v. KARUPPAN* I. L. R. 8 Mad. 273

13. ————— Native State—Cause of action—Jurisdiction—Objection to jurisdiction on appeal. K sued C, who resided in British India, upon a bond executed by C in favour of K within the territory of P, a Native State, and obtained a decree. Having obtained satisfaction in part, K sued C upon the judgment of the Court of P in a British Indian Court at T. *Held*, reversing the decrees of the lower Courts, that the Court at P had jurisdiction, and that K could sue upon the judgment of that Court in the Court at T. *KALITYOAM CHETTI v. CHOELINGA PILLAI* I. L. R. 7 Med. 105

14. ————— Limitation—Cause of action—Act XIV of 1859. In a suit brought upon a judgment in the French Court at Chandernagore:—*Held*, that the period of limitation must be reckoned from the day on which the French decree was dated, and therefore in all Courts to which Act XIV of 1859 applied, such suit would be barred at the expiration of six years from that date. *HEERAMONEE DOSSEZ v. PROMOTHONATH GHOSH* 2 Ind. Jur. N. S. 233: 8 W. R. 32

15. ————— Limitation—Cause of action. The remedy by suit in a foreign Court continues open for the period prescribed by the law of that Court, without reference to our own Law of Limitation of suits. A foreign judgment is conclusive as between the parties when it cannot be questioned upon the ground of fraud, or

# FOREIGN COURT, JUDGMENT OF— contd.

want of jurisdiction, or that it was unduly obtained. Suits on foreign judgments may be maintained within "six years from the time the cause of action (the judgment) arose." **BOLORAM GOOY v. KAM-RENEE DOSSEE** . . . 4 W. R. 108

16. ———— *Jurisdiction of foreign Court—Residence of defendant—Constructive* . . . . . of It and ordinarily resident in British India, and that he had not appeared to defend the suit at Kandy, and was not at the date of that suit, or subsequently, even temporarily resident in Ceylon; but he was a partner in a firm which earned on business at Kandy, and he was interested in lands at that place which he had visited once or twice. *Held*, that the Court at Kandy had no jurisdiction over the defendant. **NALLAKARUPPA SEITIAH v. MAHOMED IBRAHIM SAHEB** I. L. R. 20 Mad. 112

17. ———— *Jurisdiction of foreign Court—Notice, want of.* The defendants, who were British subjects, purchased goods from the plaintiff in French territory. The plaintiff sued the defendants in the French Court and obtained judgment against them, but the defendants neither resided nor owned property in French territory, and

would have had jurisdiction (apart from the question of notice) if it had been proved that it was intended that payment should be made in French territory. **BANGARUSAMI v. BALASUBRAMANIAN** I. L. R. 13 Mad. 496

18. ———— *Civil Procedure Code, s. 14—Right to re-hearing of case—Waiver of objection to jurisdiction.* In a suit upon the judgment of a Court at Bastar, it appeared that in the suit in which the judgment was pronounced the defendant took no objection as to the jurisdiction of the Court, and that he carried on business by his agent in the Bastar territory, and that a decree was passed for the plaintiff after evidence adduced on both sides in the ordinary way. *Held*, that the defendant was not entitled to have the case re-

I. L. R. 10 Alur. 62

19. ———— *Civil Procedure Code, 1882, s. 14—Power of Court to inquire into the merits.* Where a suit was brought in a Court in British India upon the basis of a decree of the Council of Regency of the State of Bampur; *Held*, that the Court was empowered by s. 14 of the Code of Civil Procedure, as amended by s. 5 of Act VII of 1883, to consider the merits of the case in which the decree of the Council of Regency had

# FOREIGN COURT, JUDGMENT OF— contd.

been passed. **COLLECTOR OF MORADABAD v. HARBANS SINGH** . . . I. L. R. 21 All. 17

20. ———— *Joint contract—Liability of partners—Judgment recovered against one partner—Res judicata—Civil Procedure Code (Act XIV of 1882), ss. 13 and 14.* The defendant were partners trading in the name of Vishnuram Gopinath and Company. On 6th July 1895, at Ahmedabad, the first defendant borrowed from the plaintiff, for the purposes of the partnership business, a sum of Rs 10,000 and passed a khata in the name of his firm. On 25th April 1896, at Baroda, he passed another agreement to plaintiff under which the plaintiff was to recover the debt due to him from the partners jointly and severally. On 2nd October 1896, plaintiff obtained a decree on an award against the first defendant in the Civil Court at Barods for Rs 13,909-4-0, and in execution of this decree he recovered a sum of Rs 7,000. In 1897 plaintiff filed this suit in the Court of the first class Subordinate Judge at Ahmedabad to recover the balance, viz. Rs 6,909-4-0, from all the partners (defendants Nos. 1 to 8). Defendants Nos. 6 to 8 resided in Baroda territory, the rest in British India; defendants Nos. 2, 3, and 4 defended the suit. The rest did not appear. The Subordinate Judge dismissed the suit, holding on the authority of *King v. Hoare, 13 M. & W. 491*, that the judgment of the Baroda Court against one partner (the first defendant) was a bar to a fresh suit against the other partners on the same cause of action. The plaintiff appealed to the High Court. *Held*, that the principle of *King v. Hoare* did not apply, and that the suit was not barred. The Baroda Court had no jurisdiction

I. L. R. 24 Bom. 77

21. ———— *Effect of foreclosure decree passed by a foreign Court—Lis pendens—Transfer of Property Act (IV of 1882), s. 52—Notice of existence of decree.* In 1887, K, who resided at Singapore, mortgaged certain lands in the Madura district to S, who sued and obtained a conditional foreclosure decree on the 13th June 1892 in the Supreme Court of Singapore. This decree became absolute on the 3rd October 1892. On the 12th August 1892, K hypothecated the said land to P. In a suit brought by S, ———— *Held*, that the decree of a foreign Court cannot directly affect land situated in British India; that at the date of the mortgage there was no decree purporting to operate upon the land; that the doctrine of *lis pendens* was inapplicable. *Quære*: Whether P would have been bound if he had had notice of the existence of the conditional decree at the date of his mortgage. **PALANI CHETTI v. SUBRAMANIAN CHETTI** . I. L. R. 19 Mad. 227



# FOREIGN COURT, JUDGMENT OF— contd.

22. ———— Effect of adjudication of insolvency in French territory—*French law*—“*Code de Commerce*” of France, s. 443—*Suit against insolvent for debt* By s. 443 of the Code de Commerce the effect of an adjudication of insolvency in French territory is to deprive the insolvent of the possession and management of his property,

as to exempt him from future liability in respect of property which he might subsequently obtain, no suit could be brought against him in French territory, and, for that reason, outside French territory, so long as the adjudication of insolvency remained in force. *Quelin v. Mousson*, 1 Knapp 256n, followed. *MURUGESA CHETTI v. ANJAMALAI CHETTI*

I. L. R. 23 Mad. 458

23. ———— Effect of foreign judgment—*Objection to jurisdiction, waiver of—Limitation Act*, 1871, s. 23; 1877, s. 23. Where a defendant sued in a foreign tribunal takes no exception to the jurisdiction, he cannot question the jurisdiction afterwards, inasmuch as he has led the plaintiff to believe that the proceedings are allowed by him to be effectual, and encouraged the plaintiff to proceed in them instead of withdrawing from them and instituting proceedings elsewhere. Irregularity of procedure on the part of a foreign tribunal, which ordinarily proceeds in accordance with recognized principles of judicial investigation, is not a sufficient ground for refusing to give effect to its judgment. Where limitation bars the remedy, but does not destroy the right, the judgment of a foreign tribunal is not open to the objection that the suit (on a contract) was barred by the Law of Limitation applicable in the country where the contract was made. *NALLATAMBI MEDALIAH v. PONNUSAMI PILLAI*

I. L. R. 2 Mad. 400

24. ———— *Objection to jurisdiction, waiver of—Cause of action* If a party sued in a foreign tribunal, which has no jurisdiction except by virtue of its own peculiar laws, protests against the assumption of jurisdiction by that tribunal, but defends the suit to escape the inconvenience of being made liable to arrest and attachment of property in foreign territory, and appeals from the adverse decision of such tribunal to a foreign appellate tribunal without repeating his objection to the jurisdiction, his submission to the jurisdiction is not voluntary, and the judgment of the foreign tribunal does not constitute a valid cause of action in a Court of British India. *PARRY & CO. v. APPASAMI PILLAI*

I. L. R. 2 Mad. 407

25. ———— *Where party has submitted to jurisdiction, irregularities not affecting jurisdiction of the Court do not vitiate the judgment.* A party who has submitted to the jurisdiction of a foreign Court is bound by its judgment when each

# FOREIGN COURT, JUDGMENT OF— contd.

judgment is within jurisdiction and does not offend the principles of natural justice. Irregularities which do not affect the jurisdiction of the Court do

be impeached on grounds which could have been, but were not taken in the foreign Court. *Pemberton v. Hughes*, [1899] 1 Ch 781, referred to. *GUDARU KRISTNAYYA NAIDU v. MARADUGULA VENKATARAMNAM* (1907) . I. L. R. 30 Mad. 292

26. ———— *Private international law—Foreign Court—Suit on a foreign judgment to recover money due for board, lodging*

into merits of the action in the English Court—*Civil Procedure Code* (Act XIV of 1832), ss. 2, 13, *Expt. 6—Order XI, Rule 1 (e)*, under the *Judicature Act—Residence in England, if necessary to fix liability on a foreign judgment—Interest on money decreed, when no provision for such is made in foreign judgment, if recoverable—Order XLII, Rule 16—1 & 2 Vict. c. 110, s. 17—*Indian Interest Act* (XXXVII of 1839). As a general rule, a Court can exercise jurisdiction over a foreigner, only if he is resident within the limits of its territorial jurisdiction. Natives of British India, though foreigners, owe allegiance to the common sovereign of England and British India, and are subject to the supreme legislative authority in the British Empire. Therefore, the supreme legislature in the British Empire authorises an English Court in any class of cases to exercise jurisdiction over a non-resident foreigner by reason of the cause of action arising within its jurisdiction, and that foreigner is a native of British India, he cannot treat the judgment passed as a nullity merely because he did not reside within the jurisdiction of the Court which passed it. *Order XI, rule 1 (e)*, under the *English Judicature Act* constitutes a legislative Act of the Sovereign power, regulating the jurisdiction in the case of a British subject resident in British India and outside the ordinary territorial jurisdiction of the English Courts, and gives the English Courts jurisdiction over such British subjects in a case which falls within the order. But it is open to a defendant to show that this is not so, and that the*

FOREIGN COURT, JUDGMENT OF—  
confd.

27. ——— Domicile—Defendant not resident or domiciled in foreign country—No appearance by defendant or submission to jurisdiction—Jurisdiction—"Foreigner"—Subject of the Sovereign both of British India and of a British colony Court generally exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction, and, apart from some statutory power, cannot exercise jurisdiction over anyone beyond its limits. *Whaley v. Burfield*, L. R. 32 Ch. D. 131, referred to. A judgment of a foreign Court, obtained in default of appearance against a defendant, cannot be enforced in a Court in British India, where the defendant at

*v. Rousillon*, L. R. 14 Ch. D. 351, referred to. A person does not cease to be a "foreigner" within the meaning of the rule laid down in the above cases, because he is the subject of a Sovereign who is the Sovereign of the country where the judgment was obtained and the country where it is sought to be enforced. *Turnbull v. Wolter*, 67 L. T. Rep. 767, referred to. *KASSIM MAHOODJEE v. ISHT MAHOMED SULLMAN* (1902)  
I. L. R. 29 Calc. 509  
a.c. G. C. W. N. 829

28. ——— Jurisdiction of Court over absent foreigner—International Law—Judgment of Court against absent foreigners subject to the same sovereignty—Authority to bind absent foreigner must be conferred by express words by the supreme authority—Submission to jurisdiction of foreign Court, what amounts to. The rule of International Law that Courts cannot, by their judgments, bind absent foreigners who have not submitted to

enforced have separate and distinct systems of administration and judicature, though owing allegiance to the same sovereign. A judgment of the Court of Madras, in a case of British India,

FOREIGN COURT, JUDGMENT OF—  
confd.

in obedience to the process of the foreign Court and not as for a foreigner to defend the action.

of such Court. *Ferry & Co. v. Appaswamy Pillai*, I. L. R. 25 Mad. 407, distinguished. *Siva Raman Chetty v. Ibram Sahib*, I. L. R. 15 Mad. 327, distinguished. *SHAIK ATHAM SAHIB v. DAVID SAHIB* (1909), I. L. R. 32 Mad. 469

FOREIGN COURT, JURISDICTION OF.  
— proceedings of—

See CERTIFICATE OF ADMINISTRATION—  
RIGHT TO SUE OR EXECUTE DECREE  
WITHOUT CERTIFICATE

I. L. R. 17 Mad. 14

See EVIDENCE ACT, s. 89.

I. L. R. 14 Calc. 546

I. L. R. 27 Calc. 839

## — record of—

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 12 All. 595

See FOREIGN COURT, JUDGMENT OF.  
I. L. R. 2 Mad. 400, 407

See REPRESENTATIVE OF DECEASED PERSON I. L. R. 18 Mad. 405

— Contract, suit on—Making of contract—Cause of action A, a Hindu British subject, neither domiciled, resident, nor possessing property in the foreign State of Pudukotta, casually resorted thither and there drew a bill for a sum found due to his creditor B, resident in that State. B sued A on this bill in the Civil Court of Pudukotta and got a decree in his favour. B then sued A in the subordinate Court of Madura for enforcement of this decree. A pleaded that the Pudukotta Court had no jurisdiction to pass the decree sued on, and that he had had no notice of the suit. It was found, on regular appeal, that A had had notice, and decided that the Pudukotta Court had jurisdiction. *Held*, on special appeal, that the Civil Court of Pudukotta had no jurisdiction to try the suit. That the mere making of a contract within the

I. L. R. 1 Mad. 196

## FOREIGN GOODS, SALE OF.

See MARKET I. L. R. 11 C. W. N. 1128

FOREIGN JURISDICTION ACT (XXI  
OF 1879).

See NATIVE STATES I. L. R. 10 C. W. N. 861

ss. 4, 6 and 8—

Criminal Procedure Code, s. 4—Indian Penal Code, s. 4—Jurisdiction of Magistrate in Mysore I. L. R. 10 C. W. N. 861

# FOREIGN JURISDICTION ACT (XXI OF 1878)—*concl'd.*

ss. 4, 6 and 8—*concl'd.*

convict a European British subject for an act amounting to an offence under the Mysore law, but not an offence under the Indian Penal Code. A European British subject was charged and tried before, and convicted by, a First-class Magistrate and Justice of the Peace appointed, under the Extradition Act, 1879, in and for the territories of Mysore. The act for which he was so tried and convicted (namely, being in possession of mining materials) constituted an offence under the Mysore Mines Regulation, but was not an offence under the Indian Penal Code. It was contended, in revision, in the Madras High Court that the conviction was wrong on the ground that a Justice of the Peace appointed under the Extradition Act has no authority to deal with an offence committed by a European British subject against a law of a foreign State. *Held*, that the Magistrate had

offences and to criminal procedure for the time

as used in s. 6 of the Act of 1879, is not restricted to offences as defined by s. 40 of the Indian Penal Code. Nor is it restricted to any definition of "offence" to be found in the Code of Criminal Procedure, although, as a matter of fact, the present definition of "offence" in the Code of Criminal Procedure [s. 4 (o)], which is the same as that contained in the General Clauses Act, is sufficiently wide to include the wrongful act with which the accused in the present case was charged. *ADAMS v EMPEROR* (1903) I. L. R. 26 Mad. 607

## FOREIGN OFFENDERS (FUGITIVES).

See EXTRADITION . S Bom. Cr. 13

## FOREIGN STATE.

in— effect of insolvency proceedings

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT . I. L. R. 26 Mad. 644

promissory note executed in—

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS I. L. R. 17 Mad. 262

1. Civil Procedure Code, 1862,

of the Code of Civil Procedure do not mean individual rights as opposed to those of the body politic

# FOREIGN STATE—*concl'd.*

or State, but those private rights of the State which must be enforced in a Court of Justice, as

by a foreign State against private individuals as distinguished from rights which one State in its political capacity may have as against another State in its political capacity. *Emperor of Austria v. Day*, 30 L. J. Ch. 690; 2 Giff. 628; *United States of America v. Wagner*, L. R. 2 Ch. App. 582, approved of. There is nothing to prevent a foreign or

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The State must be regarded as a quasi corporation which continues to exist as a State so long as it is recognized as such by Her Majesty, whatever the rule of succession to it may be and whatever may be its form of government. Case in which it was found on the facts that certain immovable property situated in British India, which had formerly belonged to the State of Cherrapoonjee, having been granted by a former Raja of that State to the defendant, was still the property of the State, on the ground that the Raja was not competent to alienate it, and that the defendant's plea of adverse possession and limitation was not supported by the evidence. *HAYON MANICK v BUR SING*

I. L. R. 11 Cal. 17

## 2. Lapse to the British Government of a foreign State in ceded territory—

British Government. Before the lapse, the issues now in suit belonged to the Chief, and were in the hands of managers on his behalf. The last manager, the ancestor of the present parties, remained, after 1840, in possession of the estate till his death in 1880, having been continued therein for life in 1852. In 1867 the Government directed the continuance of the entire estate to "the loyal members of his family." *Held*, that no proprietary interest in the estate had been shown to have belonged to the ancestors when Jalau was a principality; that all that could be claimed by the defendants was derived from the Government which, after the lapse of the State, had the right at their discretion to control the descent of the estate, and had exercised this discretion. There had been no formal sanad; but on the true construction of the official correspondence, as to which the Courts below had differed, the Government first continued the possession of the ancestor for life, and afterwards conferred the inheritance, as to one moiety of the estate, upon the defendant, who was one of the sons of the original holder, and, as to the other moiety of the estate, upon the plaintiffs, who were the four

**FOREIGN STATE—concl'd.**

brothers of the defendant then living. The claim made by the plaintiffs, having been founded on a different title, was dismissed by the High Court. But this dismissal was accompanied by a declaration that the above grant had been made. This was now altered into a declaratory decree to the same effect with the direction that inquiry be made as to who were entitled to the plaintiffs' moiety, and further directions were reserved. **GONIND KAO v SITARAM KESHO** I. L. R. 21 All. 53  
I. L. R. 25 I. A. 105  
2 C. W. N. 681

**FOREIGN TERRITORY.**

offence committed in—

See JURISDICTION OF CRIMINAL COURT  
—GENERAL JURISDICTION.

I. L. R. 5 Mad. 23

I. L. R. 13 Mad. 423

See JURISDICTION OF CRIMINAL COURT—  
OFFENCES COMMITTED ONLY PARTLY IN  
ONE DISTRICT.

See WRONGFUL CONFINEMENT

I. L. R. 10 Bom. 72

taking evidence in—

See PRACTICE—CIVIL CASES—COMMISSION  
I. L. R. 30 Calc. 634

**FOREIGNERS.**

See JURISDICTION OF CRIMINAL COURT  
—GENERAL JURISDICTION.

I. L. R. 19 Bom. 741

I. L. R. 22 Bom. 54

See WARRANT OF ARREST.

I. L. R. 16 Bom. 636

jurisdiction over—

See FOREIGN COURT, JUDGMENT OF.

suits against—

See JURISDICTION—CAUSES OF JURISDICTION—  
CAUSE OF ACTION—GENERAL  
CASES I. L. R. 25 Bom. 528

See JURISDICTION—CAUSES OF JURISDICTION—  
DWELLING, CARRYING ON BUSINESS,  
OR WORKING FOR GAIN.

I. L. R. 17 Bom. 603

See SMALL CAUSE COURT, PRESIDENCY  
TOWNS—JURISDICTION—GENERAL  
CASES I. L. R. 17 Bom. 663

Act III of 1884, validity and ap-

foreigners, resident in Bombay, having been arrested  
by the police and sent to jail under warrants issued

**FOREIGNERS—concl'd.**

imprisonment were illegal (i) inasmuch as Act III of 1864 was *ultra vires* of the Indian Legislature; (ii) that the Act, being intended only to secure the "peace and security" of British India, was in this case improperly applied. *Held*, (i) that Act III of 1864 was not *ultra vires* of the Governor-General of India in Council; (ii) that it was rightly applied in the case of the foreigners in question, although their residing in Bombay may not have been likely to have affected or endangered the peace and security of British India. *Per STANLEY, J.*—S. 3 of Act III of 1864 gives the fullest power to the Government to order any foreigner to remove himself from British India. The Government is the sole judge of what is necessary for the peace and security of British India, and, if it acted in accordance with the letter of the Act, the Court could not inquire into the sufficiency of its reasons for so acting. **ALTER CAUFMAN v. GOVERNMENT OF BOMBAY** I. L. R. 16 Bom. 686

**FOREST ACT (VII OF 1865).**

Wrongfully cutting timber—*Lia-*

**FOREST ACT (VII OF 1878).**

*Land Acquisition Act (I of 1894)—Distinction between the two Acts.* The most important distinction between the Land Acquisition Act (I of 1894) and the Indian Forest Act (VII of 1878) lies in this—that whereas in the Land Acquisition Act the Legislature has expressly constituted the Local Government the

I. L. R. 20 Bom. 480

FOREST ACT (VII OF 1878)—*contd.*

ss. 3, 4, 10—"To constitute a reserved Forest"—Local Government, powers of, regarding waste land—*Ultra vires order*—Nullity—Civil Courts—Jurisdiction. S 3 of the Indian Forest Act (VII of 1878) does not make the exercise of the power conferred dependent on the opinion or decision of the Local Government, but upon a question of fact. It runs "the Local Government may constitute any forest land or waste land, which is the property of Government, etc." If the land actually fulfils that condition, Government can exercise the powers, not otherwise. The test is, not what appears to the Local Government, but

questions of law and fact wherever their jurisdiction is not expressly barred by the Legislature. The power in s 4 of the Indian Forest Act (VII of 1878) to appoint an officer to inquire and determine as to rights is limited to land, which it is proposed to constitute reserved forest and "to constitute a reserved forest" is a phrase defined in s 3. And under that definition, the constitution of a reserved forest connotes as the object forest or waste land only. The specified character of the land is an essential part of the Act defined. According to the definition the phrase "to constitute a reserved forest" means to convert land by notification from forest or waste. The land, therefore, to which a proposal under s. 4 relates, must be forest or waste land, and it is only in respect of such land that the officer appointed has power to inquire and determine. When the land is forest or waste, the Forest officer has the power to inquire into and determine as to rights of way or pasture, forest produce or water courses, and he may admit or reject such claims with finality, because he is dealing with land in respect of which he has a duly delegated jurisdiction. It is possible there may be other rights in or over land which may render it desirable for Government to acquire full ownership and for such cases s. 10 of the Indian Forest Act (VII of 1878) provides, without, however, extending the application of the section to any land incapable of constitution as reserved forest. The provisions of the Indian Forest Act (VII of 1878) do not bar the jurisdiction of the Court to decide whether the land in suit is or is not forest or waste land and whether, if it be not such land, the plaintiffs are entitled to the occupation thereof. *BALVANT RAMCHANDRA v. SECRETARY OF STATE* (1905)

I. L. R. 29 Bom. 480

s. 10.

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

I. L. R. 21 Bom. 396

s. 45—Drift and stranded timber, Right of Government, under s. 45, to collect and store, with obligation to notify—Meaning of "jalkar"—Test of *res judicata*—Civil Procedure Code, 1882, s. 13—Construction of decree. The

FOREST ACT (VII OF 1878)—*contd.*

s. 45—*contd.*

object of Ch. IX of the Indian Forest Act, 1878, is to regulate the rights of owners, and not to deprive them of their property in drift and stranded timber and wood. S. 45 of that Act does not divest the owner of, or transfer to the Government, any right therein. Nor does anything in the Act affect the right of the Government to take possession and dispose of timber and wood whereof they are the undisputed owners. But upon certain conditions only, the Government have a right to the possession of any drift and stranded timber and wood collected by their officers, which, however, may be claimed by the true owner, who may be a person holding a jalkar or water right comprehending those things. The conditions are that the officers of Government shall store the timber in the manner, and issue the notifications, required by the Act. In case of such procedure not being followed, and the wood being treated as the property of the Government, the latter are in the event of the wood being found not to belong to them, in no better position than any other trespasser. The title to collect given to the Government by the Act is coupled with, and dependent upon, the duty of giving notice to the public, in order that the true owner, whether he be a person from whom the wood has drifted away or the owner of a jalkar, or however he may be entitled, may claim the drifted timber in the manner, and within the time, prescribed by the Act. There is

water right, was aptly used to include the right of fishing or

that suit. They concurred with the orders of that correspondence and orders by officers, of dates subsequent to the former decree, could not be received as aids to its construction. But the record showed that the right was in controversy before the Judge, and that he meant to include it in the jalkar, which he decreed. The zamindar's claim was therefore judged to be established.

FOREST ACT (VII OF 1878)—*contd.*s. 45—*concl'd.*

ANRITESWARI DEBI v. SECRETARY OF STATE FOR INDIA . . . I. L. R. 24 Calc. 604  
I. L. R. 24 L. A. 33  
I. C. W. N. 240

ss. 52, 73—Sub-Assistant Conservator of Forests—Suspicion of theft—Seizure and detention of timber—Want of a valid pass. A Sub-Assistant Conservator of Forests having seized timber on the suspicion that it had been stolen from the Government forests—*Held*, that it was open to him to justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass. According to s. 52 of the Indian Forest Act (VII of 1878), a forest officer cannot justify the detention of goods on the ground of an offence against the forest laws, if he has not taken the course which that section requires of bringing the matter before a Magistrate. WAMAN RANCHANDRA GAUNDE v. DIPCHAND BALKISAN . . . I. L. R. 15 Bom. 229

s. 54 and s. 25—Conviction of offence under Forest Act—Subsequent order for confiscation of boats—Confiscation a punishment—When such order should be made. Certain accused persons were tried summarily and convicted under s. 25 of the Indian Forest Act, and sentenced

to the offence. That, being a punishment, the order should have been passed simultaneously with the other punishment for the offence of which the accused have been convicted. *Empress v. Nothul Khan*; I. L. R. 4 All 417, referred to. ANSUDDI SHEIKH v. QUEEN-EMPRESS

I. L. R. 27 Calc. 450

ss. 54, 58—Offence under Act—Order confiscating produce. No order confiscating forest produce which is the property of Government in respect of which a forest offence has been committed is necessary or can be made. All that need be done is to direct a forest officer to take charge of such forest produce. An order directing the confiscation of forest produce not belonging to Government, in respect of which a forest offence has been committed, can only be made at the time the offender is convicted. *EMPRESS v. NATHU KHAN* . . . I. L. R. 4 All 417

s. 58.

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

I. L. R. 4 All 417

s. 69—Cattle Trespass Act (I of 1871), s. 11—Cattle straying in a reserved forest—Seizure by forest officer of such cattle. S. 11 of the Cattle Trespass Act (I of 1871) having been

FOREST ACT (VII OF 1878)—*contd.*s. 69—*concl'd.*

applied to forest by s. 69 of the Indian Forest Act (VII of 1878), the seizure by a forest officer of cattle found straying in a reserved forest is legal, even though no damage has actually been done. QUEEN-EMPRESS v. BABAJI LAXMAN

I. L. R. 22 Bom. 933

ss. 75 and 78—Khoti tenure—Khoti Ihargi land—Right to cut trees—Dunlop's proclamation—Right of Government to rescind proclamation—Crown grant, construction of. In 1824, by a proclamation, known as Dunlop's proclamation, it was declared that the owners of land in the Ratnagiri District, on which teak and other forest trees were growing or should thereafter be grown, should be the owners of these trees and might dispose of them at their pleasure without any claim on the part of Government. In 1851, however, this proclamation was rescinded by a subsequent proclamation which do-

contended that he was absolute owner of the trees under Dunlop's proclamation. He was convicted, and applied to the High Court under its revisional jurisdiction. *Held*, that the conviction must be

*Latrav Norayan Surve*, 8 Bom. A. C. J., followed. *Per FULTON, J.*—Khasgi land, of which the khot was actually in possession, was clearly within

seems also manifest that the contention is untenable that the benefit of the first proclamation did not extend to the case of trees planted after its cancellation in 1851. Even though the khot may not be the proprietor of the soil in khoti khasgi lands, he is certainly the holder of an interest in it, and that interest, having in 1823 been increased by the concession of all trees which he might grow thereafter, could not subsequently be reduced by the withdrawal of the right to such trees. *In re ANTAJI KESHAV TAMBE* I. L. R. 18 Bom. 670

See SECRETARY OF STATE FOR INDIA v. SITARAM SHIVRAM.

I. L. R. 23 Bom. 618

**FOREST ACT (VII OF 1878)—*concl'd.***

*s. 78—Refusal to serve as member of a panch—Penal Code (Act XLV of 1860), s. 187.* A person was convicted under s. 187 of the Indian Penal Code for refusing, when called on by a forest guard, to serve as one of a *panch* for the purpose of drawing up a *panchnama* with reference to certain wood alleged to have been illegally cut in a reserved forest. *Held*, that the conviction was illegal. The accused was not shown to be one of the persons contemplated by the first three paragraphs of s. 78 of the Indian Forest Act (VII of 1878), nor was the purpose for which he was called upon to give his assistance one of the purposes mentioned in *cls.* (a) to (d) of the section. He was therefore not legally bound to assist the forest guard. *QUEEN-EMPERESS v. BABAJI*, I. L. R. 22 Bom. 769

*s. 81.*

*See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY*  
I. L. R. 20 Bom. 764

*s. 172.*

*See PENAL CODE, s. 182.*  
I. L. R. 10 Bom. 124

**FOREST ACT (MAD. V OF 1882).**

*See MADRAS FOREST ACT (V OF 1882).*

**FOREST LANDS.**

*Claim for hills—Village and land made over to claimant's ancestor by Government—Hills situated within immemorial boundaries of village—Right of inamdar irrespective of evidence of actual enjoyment—Necessity for proving adverse possession against Government.* A jagirdar preferred a claim to certain hills. It appeared that in 1842 the uncontrolled management of a certain village and pieces of land was made over to the ancestor of the present claimant. Prior to such handing over, Government officers had been in possession on behalf of the Inamdar. It was not alleged that, when such possession was handed over, the hills in question were excepted; and it was not disputed that the hills were within the immemorial boundaries of the village. *Held*, that upon these facts, apart from any evidence of actual enjoyments by the Inamdar, he should be held entitled to the hills. *Held*, also, that it was not necessary for the claimant, in these circumstances, to prove adverse possession as against Government. *AJAJUDDIN ALI KHAN v. SECRETARY OF STATE FOR INDIA (1905)*, I. L. R. 28 Mad. 69

**FOREST OFFICER.**

*See BOMBAY LAND REVENUE ACT, s. 3.*  
I. L. R. 20 Bom. 803

*See BOMBAY REVENUE JURISDICTION ACT, s. 11.* I. L. R. 20 Bom. 803

*See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.*  
I. L. R. 20 Bom. 764

*Liability of, to tax—*

*See MADRAS DISTRICT MUNICIPALITIES ACT, SCH. A.* I. L. R. 25 Mad. 747

**FOREST RIGHTS.**

*See KHOTI TENURE.*

I. L. R. 4 Bom. 284

**FOREST SETTLEMENT OFFICER.**

*See MADRAS FOREST ACT, s. 4.*

I. L. R. 17 Mad. 193

*See PENSIONS ACT, s. 4.*

I. L. R. 17 Mad. 193

*jurisdiction of—*

*See MADRAS FOREST ACT, s. 10*

I. L. R. 20 Mad. 279

**FORFEITURE.**

*See CONFISCATION.*

I. L. R. 34 Calc. 988

*See FORFEITURE OF PROPERTY.*

*See LANDLORD AND TENANT.*

I. L. R. 31 Mad. 403

12 C. W. N. 525

*See PENALTY.* I. L. R. 36 Calc. 980

1. *Civil Procedure Code (Act XIV of 1882), s. 375—Consent decree—Status of landlord and tenant—Suit to enforce for—When a plaintiff*

*ht to*  
*assd*  
*ord-*  
ance with a lawful agreement recorded under that section), whereby the status of landlord and tenant is established between the plaintiff and defendant, the Court in the exercise of its equitable jurisdiction is not precluded from granting such relief against forfeiture as it might have granted, had the status arisen from contract or custom. *Per JENKINS, C.J.*—As under s. 375 of the Civil Procedure Code (Act XIV of 1882) the

*with the agreement,*  
*s*  
*n*  
*y*  
*e*  
passed in accordance with the agreement.  
*BEAMAN, J.*—The difference between a consent decree declaring the agreement of parties, and the agreement of parties themselves, when the one or the other is sought to be afterwards enforced, goes no further than this, that in the former case it would be the "accuracy of no was the li Timapa, dissented 106)

I. L. R. 31 Bom. 15

2. *Land Revenue Code (Bombay Act V of 1879), ss. 56, 57, 155—Arrears of assessment—Forfeiture by Government—Mortgage—Land in possession of the occupant—Recovery by Government to the occupant—Suit by mortgagee to recover possession—Equities arising out of the conduct of the parties. Forfeiture ordinarily*

**FORFEITURE—concl'd.**

Implies the loss of a legal right by reason of some breach of obligation. When arrears of assessment are levied by sale, then s. 50 of the Land Revenue Code (Bombay Act V of 1873) in pursuance of an obvious policy, empowers the Collector to sell "freed from all tenures, incumbrances and rights created by the occupant..... or any of his predecessors-in-title or in anywise subsisting against such occupants." Should the Collector otherwise dispose of the occupancy, the action affords no such protection, and the legal relations must be determined by reference to the ordinary law. So judged, the effects of a forfeiture and the subsequent acquisition of the forfeited property are subject to the control of equities arising out of the conduct of the parties. *Balkrishna Vasudev v. Madharav Narayan*, 1 L. R. 5 Bom. 73, followed. *AMOLAK BANERJAY v. DHORDI* (1906).

I. L. R. 30 Bom. 460

**FORFEITURE OF PROPERTY.**

See ABSCONDING OFFENDER.

See ACT OF STATE. 12 B. L. R. 167

See BOMBAY LAND REVENUE ACT, s. 151.

I. L. R. 16 Bom. 455

See BOMBAY REVENUE JURISDICTION

ACT, s. 4. I. L. R. 16 Bom. 455

See CONFISCATION.

I. L. R. 34 Calc. 866

See HINDU LAW—

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE;

WIDOW—DISQUALIFICATIONS.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

12 B. L. R. 238

I. L. R. 1 Bom. 559

I. L. R. 6 Bom. 106

I. L. R. 15 All. 383

I. L. R. 17 Mad. 393

See HINDU LAW—WIDOW—POWER OF

WIDOW—POWER OF DISPOSITION OR

ALIENATION. I. L. R. 1 All. 503

See LANDLORD AND TENANT—EJECTMENT.

6 C. W. N. 926

See LANDLORD AND TENANT—FORFEITURE.

See LEASE—CONSTRUCTION.

I. L. R. 17 Calc. 826

I. L. R. 20 Calc. 273

See MESNE PROFITS—RIGHT TO AND LIABILITY FOR. 2 Agta Mis. 6

See PAYMENT INTO COURT.

I. L. R. 25 Mad. 535

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 111.

I. L. R. 35 Calc. 807

**FORFEITURE OF PROPERTY—cont'd.**

See WILL—CONSTRUCTION.

I. L. R. 20 Calc. 15

of rebel's property.

See LIMITATION—ACT IX OF 1879, s. 20.

1. ——— Confiscation—*Abconding of fender—Beng. Reg. XI of 1796, sale under—Construction of Regulation.* Regulation XI of 1796, being a highly penal statute, should be construed strictly. As it makes no express provision for the case of joint proprietors of land, or persons jointly

MOTHOORANATH CHOWDHRY

7 W. R. P. C. 16; 11 Moo. I. A. 223

2. ——— Forfeiture against some members of joint Hindu family—*Beng. Reg. XI of 1796.* Under Regulation XI of 1796, the Governor General in Council could pronounce an order of confiscation in cases of persons charged with offences of a criminal nature who should abscond or conceal themselves so as not to be found upon process issued against them. After the issuing of the attachment by the Court and the subsequent declaration of forfeiture, everything previous to the attachment must be presumed to have been

KOOONWAR v. COLLECTOR OF BENARES

7 W. R. P. C. 47; 4 Moo. I. A. 246

3. ——— Confiscation of rebel's property—*Seizure and attachment under Acts XXV of 1857 and IX of 1859.* The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to such property under Act IX of 1859,

14 W. R. 114

4. ——— Attachment against forfeited property—*Act XXV of 1857—Priority to Govern-*



FORFEITURE OF PROPERTY—*contd.*

*ment.* Judgment-creditors having *bond fide* attachments upon property at the time that the property of their debtors become forfeited to Government under Act XXV of 1857 are entitled in priority to Government. *OODIT DAS v. GOVERNMENT*

Marsh. 259 : 2 Hay 117

5. \_\_\_\_\_ *Right of decree-*

cation. An attachment cannot be presumed to have existed or continued from the fact that there was a proclamation of sale before confiscation. *RADHA BIBEE v. GOVERNMENT*

2 Hay 562

6. \_\_\_\_\_ *Withholding of payment of annuity—Act IX of 1859, s. 18.* Plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader, and after a time he was captured. No formal proceedings were taken under s. 18 of 1859.

was withheld, and was no longer regarded as a charge on the estate, but was treated as merged. *Held*, that the mere withdrawal of the payment of

was authorized to make attachment of rebels' property, it was with reference to the nature of the property equivalent to an attachment or seizure, and could not be questioned except under the provisions of s. 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. *CHUNDA v. ROOP SINGH*

3 Agra 281

7. \_\_\_\_\_ *Forfeiture of share in joint Hindu family property—Mitakshara law—Act XXV of 1857, s. 3.* B S, the father of the plaintiff and in possession of immoveable property subject to the Mitakshara law inherited from his ancestor, was on the 10th December 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be confiscated to Government. On the 16th April 1858, B S was arrested, and being tried and convicted on a charge of rebellion was sentenced to death. The sentence was carried out on the 21st April, and an order was made on that day for the confiscation of his property. In a suit instituted by the plaintiff to recover the property:—*Held*, that B S had such an interest in it as made it the subject of forfeiture under s. 3, Act XXV of 1857, and the plaintiff therefore did not, on the death of B S, become entitled to his estate. *THAKOOR KAPILNATH SAH v. GOVERNMENT*

13 B. L. R. 445 : 22 W. R. 17

FORFEITURE OF PROPERTY—*contd.*

8. \_\_\_\_\_ *Forfeiture of land subject to rent—Act XXV of 1857—Right to arrears of rent due at time of forfeiture.* Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to rent, the person entitled to the rent is not entitled to recover arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may subsequently accrue. *NEELMONEY SINGH DEO v. GOVERNMENT. NEELMONEY SINGH DEO v. CHUTTERDHUN SINGH*

Marsh. 308 : 2 Hay 226

9. \_\_\_\_\_ *Queen's Proclamation, effect of—Conviction for rebellion—Act XI of 1857, s. 1—Remission of punishment.* Where N and M were convicted of rebellion under Act XI of 1857, s. 1, and sentenced, the former to be transported for life and to have all his property confiscated and the latter to have all his property confiscated, the

The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' — *Held*, it was

convicts the title to which was undisputed, it was *held* that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November 1859), coming after the conviction and confiscation, had not the effect of re-vesting in the convicts the property confiscated. *Held*, also, that the property in question, being Government paper, was liable to confiscation; and lastly, that N's widow was not entitled to maintenance out of the property confiscated by the State. *GUNGA BAKE v. HOGG*

2 Ind. Jur. N. B. 194

10. \_\_\_\_\_ *Retrospective effect of for-*

the Queen, and sentenced to transportation for life. The offence for which the property was confiscated was committed before the Queen's Proclamation of Amnesty. *Held*, that the property was not restored to the convicts by the Queen's Proclamation of Amnesty. *L. 80*

11. \_\_\_\_\_ *Effect of forfeiture—Confiscation under Act X of 1858.* The confiscation of

FORFEITURE OF PROPERTY—*contd.*

ation, does not revive the rights which are absolutely avoided by the confiscation. *TEEKUM SINGH v. DULLO* . . . 2 Agta 324

12. ———— *Act X of 1858*—*Power of Government to cancel tenures and eject raiyats.* Act X of 1858 gave Government the power as to landed property acquired by confiscation thereunder (if it thought fit to exercise it) of ejecting raiyats. As to under-tenures, the words are of still stronger import. But it must be held rather to confer a power to cancel than absolutely and without act done to annul the tenures. *DOONGA PERSHAD v. ZORAWAR* . . . 2 N. W. 76

13. ———— *Act X of 1858*, s. 7—*Under-tenures.* The Legislature did not intend to include in the term "under tenures," in s. 7 of Act X of 1858, the holdings of raiyats, but employed that term in the sense in which it is commonly used in this part of India, as applying to tenures of a proprietary character inferior to the zamindari, but superior to the khashtkareo tenure. Consequently such holdings were by that Act made voidable, but not absolutely void. The power of avoiding such holdings expired with the Act. *BASIR ALI v. MAN SINGH* . . . 2 N. W. 140

14. ———— *Procedure in forfeiture*—

15. ———— *Evidence of forfeiture*—*Order of confiscation*—*Attachment, evidence of.* An order of confiscation or an order sanctioning confiscation is not equivalent to an actual confiscation by way of attachment or seizure. A list of confiscated houses is not by itself proof of actual attachment. *DEO KARUN v. MAHOMED ALI SHAH* . . . 3 N. W. 328

16. ———— *Power of Magistrate to seize property of convict.* A Magistrate has no power to seize the property of a person convicted where he has not been directed to pay a fine. *ANONYMOUS* . . . 4 Mad Ap. 28

17. ———— *Charges on forfeited property*—*Debts and liabilities.* General debts and liabilities are not charges against property forfeited upon conviction of felony. *HURRY BOSS BAYERJEE v. HOGG* . . . 1 Ind. Jur. O. S. 88

18. ———— *Offences for which forfeiture may be enforced*—*Penal Code, s. 62.* S. 62 of the Penal Code, which provides for forfeiture of property of offenders, limits it to cases where the parties shall have been transported or sentenced to imprisonment for at least seven years. *QUEEN v. KRIFAMOTEE CHASSANEE* . . . 8 W. R. Cr. 35

FORFEITURE OF PROPERTY—*contd.*

19. ———— *Penal Code, s. 62.* Where a zamindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under s. 62 of the Penal Code, the High Court set aside the sentence under s. 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances. *QUEEN v. MAHOMED ALI alias TOTAH MEH* . . . 12 W. R. Cr. 17

20. ———— *Indian Penal Code, ss. 62 and 495*—*Criminal breach of trust*—*Sentence.* Held, that the special sentence provided for by s. 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. *QUEEN v. MAHOMED ALI alias, 12 W. R. Cr. 17*, followed. *EMERSON v. AMRIT LAL* (1906) . . . I. L. R. 29 All. 25

21. ———— *Sale of forfeited property*—*Condition of sale*—*Act of State*—*Right of suit against Government.* Where a sale of landed property, which has been executed by the Government, was made by Government without any restriction being attached to the original notice of sale, which stated that the highest bidder was to be the purchaser—Held, that the Government could not, subsequent to the bid and the deposit of the earnest-money, impose any condition, but was bound to make over possession irrespective of the character of the highest bidder. In selling the property of rebels which it had confiscated, the Government does not

refuse to give up possession or transfer the possession to another. *SHEO LALL BOHREE v. MAHOMED* . . . 13 W. R. P. C. 4

22. ———— *Rights of auction-purchaser.* Rights acquired by a purchaser at auction from Government of the confiscated property of a rebel cannot be defeated or lessened by any subsequent act of the Government. *ESHREE PERSHAD v. DEEKE CHURN* . . . 2 N. W. 470

23. ———— *Order for confiscation.* passed subsequently and not at time of

24. ———— *Order of confiscation by independent Chief*—*Cognizance by English Courts*—*Proof of confiscation.* Where the Chief of an independent State, exercising the sovereign power of that State within its territories, confiscates property within those territories, the confiscation

FORFEITURE OF PROPERTY—*contd.*

ment. Judgment-creditors having *bond fide* attachments upon property at the time that the property of their debtors become forfeited to Government under Act XXV of 1857 are entitled in priority to Government. *Oonrit Dass v. Government*

Marsh. 259 : 2 Hay 117

5. \_\_\_\_\_ *Right of decree-*

*\_\_\_\_\_ v. \_\_\_\_\_*

*Bisbee v. Government* . . . . . 2 Hay 582

6. \_\_\_\_\_ *Withholding of payment of annuity—Act IX of 1859, s. 18.* Plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader, and after a time he was captured. No formal proceedings were taken against him.

was withdrawn, and was no longer regarded as a charge on the estate, but was treated as merged. *Held*, that the mere withdrawal of the payment of

was authorized to make attachment of rebels' property, it was with reference to the nature of the property equivalent to an attachment or seizure, and could not be questioned except under the provisions of s. 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. *CHUNDA v. ROOP SINGH* . . . . . 3 Agra 291

7. \_\_\_\_\_ *Forfeiture of share in joint Hindu family property—Mitakshara law—Act XXV of 1857, s. 3.* *B S*, the father of the plaintiff and in possession of immoveable property subject to the Mitakshara law inherited from his ancestor, was on the 10th December 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be confiscated to Government. On the 16th April 1858, *B S* was arrested, and being tried and convicted on a charge of rebellion was sentenced to death. The sentence was carried out on the 21st April, and an order was made on that day for the confiscation of his property. In a suit instituted by the plaintiff to recover the property:—*Held*, that *B S* had such an interest in it as made it the subject of forfeiture under s. 3, Act XXV of 1857, and the plaintiff therefore did not, on the death of *B S*, become entitled to his estate. *THAKOOR KAPIL-NATH SARI v. Government*

13 B. L. R. 445 : 22 W. R. 17

FORFEITURE OF PROPERTY—*contd.*

8. \_\_\_\_\_ *Forfeiture of land subject to rent—Act XXV of 1857—Right to arrears of rent due at time of forfeiture.* Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to rent, the person entitled to the rent is not entitled to recover arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may subsequently accrue. *NEELMONEY SINGH DEO v. Government. NEELMONEY SINGH DEO v. CHUTTERDHUN SINGH*

Marsh. 308 : 2 Hay 226

s. 1, and sentenced, the former to be transported

The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to other property of the convicts the title to which was undisputed, it was *held* that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November 1853), coming after the conviction and confiscation, had not the effect of re-vesting in the convicts the property confiscated. *Held*, also, that the property in question, being Government paper, was liable to confiscation; and lastly, that *A's* widow was not entitled to maintenance out of the property confiscated by the State. *GURGA BEE v. HOGG* . . . . . 2 Ind. Jur. N. 8. 124

10. \_\_\_\_\_ *Retrospective effect of forfeiture after conviction—Attachment in execution—Act XI of 1857, s. 1—Penal Code, s. 121.* In execution of a decree against the defendant, the plaintiff, on 17th July 1871, attached certain property belonging to the defendant. On

under of the against for life -e for stem- from here- was

invalid. *GANESHDALL v. AMIR KHAN*  
8 B. L. R. 83 : 17 W. R. 80

11. \_\_\_\_\_ *Effect of forfeiture—Confiscation under Act X of 1858.* The confiscation of

FORFEITURE OF PROPERTY—*contd.*

a village under Act X of 1858 cancels the rights of

SINGH v. DULLO . . . 2 Agra 324

12. \_\_\_\_\_ Act X of 1858—  
Power of Government to cancel tenures and eject  
rayats. Act X of 1858 gave Government the power  
as to landed property acquired by confiscation there-  
under (if it thought fit to exercise it) of ejecting  
rayats. As to under-tenures, the words are of still  
stronger import. But it must be held rather to con-  
fer a power to cancel than absolutely and without  
act done to annul the tenures. DOONDA PERSHAD  
v. ZORAWAR . . . 2 N. W. 75

13. \_\_\_\_\_ Act X of 1858,  
s. 7—Under-tenures. The Legislature did not  
intend to include in the term "under tenures," in  
s. 7 of Act X of 1858, the holdings of rayats, but  
employed that term in the sense in which it is com-  
monly used in this part of India, as applying to  
tenures of a proprietary character inferior to the  
zamindari, but superior to the khastkaree tenure.  
Consequently such holdings were by that Act made  
voidable, but not absolutely void. The power of  
avoiding such holdings expired with the Act.  
BASIR ALI v. MAN SINGH . . . 2 N. W. 140

14. \_\_\_\_\_ Procedure in forfeiture—  
Criminal Procedure Code, 1861, ss. 131, 132. The  
procedure prescribed in ss. 131 and 132 of Act  
XXV of 1861 must be followed before an order con-  
fiscating property is made. BEHARY SHAMA v.  
NURBY KHAN . . . 9 W. R. Cr. 13

15. \_\_\_\_\_ Evidence of forfeiture—  
Order of confiscation—Attachment, evidence of.  
An order of confiscation or an order sanctioning con-  
fiscation is not equivalent to an actual confiscation  
by way of attachment or seizure. A list of con-  
fiscated houses is not by itself proof of actual  
attachment. DEO KARN v. MAHOMED ALI SHAH  
3 N. W. 328

16. \_\_\_\_\_ Power of Magistrate to  
seize property of convict. A Magistrate has  
no power to seize the property of a person convicted  
where he has not been directed to pay a fine.  
ANONYMOUS . . . 4 Mad. Ap. 26

17. \_\_\_\_\_ Charges on forfeited prop-  
erty—Debts and liabilities. General debts and  
liabilities are not charges against property forfeited  
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18. \_\_\_\_\_ Offences for which for-  
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S. 62 of the Penal Code, which provides for for-  
feiture of property of offenders, limits it to cases  
where the parties shall have been transported or  
sentenced to imprisonment for at least seven years.  
QUEEN v. KRIPANOOYE CHASANEE . . . 8 W. R. Cr. 35

FORFEITURE OF PROPERTY—*contd.*

19. \_\_\_\_\_ Penal Code,

rents and profits of the prisoner's estates under  
s. 62 of the Penal Code, the High Court set aside the  
sentence under s. 62 as too severe. That sentence  
should be inflicted for offences of the most atrocious  
kind, or for offences committed under the most  
aggravated circumstances. QUEEN v. MAHOMED  
AKIR alias TOTAH MEAH . . . 12 W. R. Cr. 17

20. \_\_\_\_\_ Indian Penal  
Code, ss. 62 and 406—Criminal breach of trust—  
Sentence. Held, that the special sentence provided  
for by s. 62 of the Indian Penal Code is a sentence  
which should only be inflicted in rare cases—those  
in which crimes of an atrocious nature are exposed  
or in which offences have been committed under  
aggravated circumstances. Queen v. Mahomed  
Akhir, 12 W. R. Cr. 17, followed. EMPEROR v.  
AHMAD LAL (1900) . . . I. L. R. 29 All. 25

21. \_\_\_\_\_ Sale of forfeited property—  
Condition of sale—Act of State—Right of suit  
against Government. Where a sale of landed prop-  
erty has been ordered by the Government

subsequent to the bid and the deposit of the earnest-  
money, impose any condition, but was bound to

13 W. R. Cr. 2

22. \_\_\_\_\_ Rights of auc-  
tion-purchaser. Rights acquired by a purchaser at  
auction from Government of the confiscated prop-  
erty of a rebel cannot be defeated or lessened by  
any subsequent act of the Government. ESHREE  
PERSHAD v. DEESEE CHURN . . . 2 N. W. 470

23. \_\_\_\_\_ Order for confiscation  
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24. \_\_\_\_\_ Order of confiscation by  
independent Chief—Cognizance by English  
Courts—Proof of confiscation. Where the Chief of  
an independent State, exercising the sovereign  
power of that State within its territories, confiscates  
property within those territories, the confiscation

FORFEITURE OF PROPERTY—*contd.*

must be respected by English Courts of Justice. The fact of such confiscation, if disputed, must be ascertained by the Court in the same manner as are all other facts which are in issue between the parties. *SHOAY ATT v. SHOAY DOANG*. 14 W. R. 218

25. — Order of forfeiture, irregularity in making—*Criminal Procedure Code, 1861, s. 184*. An order of forfeiture under s. 184, Code of Criminal Procedure, if substantially legal cannot be disturbed for an immaterial error of procedure. *BALJOO BOUL v. GUGUN MISSEER*. *QUEEN v. GUGUN MISSEER*. 8 W. R. Cr. 61

26. — Lands attached

27. — *Parlakimfdi, zamindari of*  
— *Forfeiture—Re-grant—Malikhs or hill tracts, retained by Government—Bisoyees service tenure holders under Government—Nature of tenure—Kattubadi or quit rent—Savaras, inhabitants of hill tracts, position of—Zamindari charged with payment of kattubadi—Ownership, if passed to zamindar—Adverse possession—Acquiescence under mistake—Estoppel—Evidence Act (I of 1872), s. 115*. Prior to the forfeiture by Government of the Parlakimfdi zamindari in 1800, the *Malikhs* (certain hill tracts to the north of the zamindar) formed part of the zamindari. The inhabitants of these hill tracts, the *Savaras*, were once a turbulent people and in order to control them and to defend the passes to the plains, the country was divided into *Muttas* or forts and each placed under the control of a local chief or *Bisoyee*. The *Bisoyees* held the *Muttas* on a mere service tenure paying an annual sum to the zamindar by way of *kattubadi* or quit-rent—an arrangement not unlike that which prevails in other hill tracts in India. In 1802, the zamindari of Parlakimfdi was re-granted to the zamindar in permanent settlement, but Govern-

zaminadar, when the *Malikhs* were again placed under the control of the zamindar in 1823 and the *Bisoyees* required to pay their quit-rent through him, and when again in 1825, in consideration of a grant to the zamindar of certain villages situated

zamindari in the mistaken belief that it belonged to

FORFEITURE OF PROPERTY—*contd.*

the zamindari, and other Government officials acquiesced therein. The Government officials under the same mistake also encouraged the expenditure of zamindari funds upon the making of roads in the *Malikhs*. But on the first occasion that a claim of ownership was distinctly put forward by the zamindar it was repudiated by Government. *Held*, that the Courts in India were right in holding that the zamindar had failed to make out a title by adverse possession. Also, that these facts did not estop the Government from claiming ownership of the *Malikhs*. *GOURA CHANDRA GAJAPATI NARAYANA DEO MAHARAJAULUN GAU v. SECRETARY OF STATE FOR INDIA* (1903)

I. L. R. 28 Mad. 130

9 G. W. N. 553

L. R. 32 I. A. 53

28. — Forfeiture of tenancy—

ants not only denied the existence of the relation of landlord and tenant between them and the then plaintiffs, but set up a third party as their landlord in respect of the disputed land, they incurred a liability to have their tenancy forfeited. *Held*, further, that though in England any joint tenant may put an end to his demise as far as it operates on his own share, whether his companions join him in putting an end to the whole lease or not, yet according to the decisions, the relation created by contract with several joint landlords continues, until there exists a new and complete volition to change it. Where therefore the relation of joint landlords continues, the tenancy of the lessees cannot be put an end to, except by all lessors acting together. *Ebrahim Pir Mahomed v. Cursetji Sorabji De Vitre, I. L. R. 11 Bom. 644*, explained; *Fayi Dhal v. Afsharuddin Sirlar, 6 G. W. N. 575*; *Ramgati Mohur v. Pran Hari Seal, 3 C. L. J. 201*, and *Ram Lochi* 11 C. W. N. 397.

when *has possession is not*  
*Prashad Wasti v. Esuf, I. L. R. 7 Calc. 414*; *Haren*  
*ni v. Kiron*  
*o. GOPAL*  
*D. NARAIN*  
*Calc. 807*

FORGED DOCUMENT, USING AS  
GENUINE.

See FORGERY . . . 11 C. W. N. 839

— forged indorsement—

See NEGOTIABLE INSTRUMENT.  
I. L. R. 36 Calc. 239

## FORGERY.

See APPEAL IN CRIMINAL CASES—PROCEDURE. B. L. R. Sup. Vol. 428

See CHARGE—FORM OF CHARGE.

I. L. R. 28 Calc. 434

I. L. R. 30 Calc. 822

See CREATING. I. L. R. 12 Mad. 114

See CRIMINAL PROCEDURE CODE.

8 C. W. N. 643

See HUND—ENDORSEMENT.

5 C. W. N. 313

See PENAL CODE.

8 C. W. N. 278

I. L. R. 28 All. 358

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION.

I. L. R. 28 Calc. 887

See WILL—VALIDITY OF WILL.

8 C. W. N. 787

abatement of—

See ATTEMPT TO COMMIT OFFENCE.

I. L. R. 16 All. 409

committal by Civil Court for—

See CRIMINAL PROCEEDINGS.

I. L. R. 16 Bom. 729

I. L. R. 18 Bom. 561

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

1. ——— Requisites for offence—*Penal Code, s. 47*—*False document*. To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person. A writing which is not legal evidence of the matter expressed may yet be a document within the meaning of s. 47 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter. *QUEEN v. SHIVAM AIA*

2 B. L. R. A. Cr. 12 : 10 W. R. Cr. 61

2. ——— *Penal Code, ss. 453, 454*—*Criminal Procedure Code, 1899, s. 195*. The word "forgery" is used as a general term in s. 453 of the Penal Code (Act XLV of 1870); and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act V of 1898) so as to embrace all species of forgery, and thus includes a case falling under s. 454 of the Penal Code. *QUEEN-EMPEROR v. TULJA*

I. L. R. 12 Bom. 38

3. ——— "Valuable security"—*Settlement of accounts*—*Penal Code, s. 47*. A settlement of accounts in writing, though not signed by any person, is a "valuable security" within the definition of s. 47 of the Penal Code. *Ex parte KARALAVATA SARAYA*

2 Mad. 247

4. ——— *Copy of law*—*Penal Code, ss. 47, 454*. A copy of a law is not a valuable security within the meaning of s. 47 of the Penal Code, and therefore a conviction under

FORGERY—*contd.*

s. 467 for fabricating such a document cannot be supported. *REG. v. KUTSAL HIRANAN*

4 Bom. Cr. 28

5. ——— *Deed of divorce*—*Penal Code, s. 47*. A deed of divorce is a "valuable security" within the meaning of s. 47 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of that Code. *QUEEN v. AHMOODKHY*

11 W. R. Cr. 15

6. ——— *Sanad*—*Penal Code, ss. 47, 454, 455, 457, 471*—Using as genuine a forged document with intent to defraud—*Sanad conferring a title of dignity*. The accused, in order to obtain a recognition from a settlement officer that they were entitled to the title of "Laskur," filed a sanad before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471, 454 of the Penal Code. *Held*, on appeal, that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the settlement officer that they were entitled to the dignity of "Laskur," and that this could not be said to constitute "an intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code. *JAY MANOJ v. QUEEN-EMPEROR, WAKH MIAH v. QUEEN-EMPEROR*

I. L. R. 10 Calc. 584

7. ——— Using forged document—*Copy of document, production of*. A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of it. *QUEEN v. NUTAM AIA*

8 W. R. Cr. 41

8. ——— Intention, proof of—*Making false document*. A conviction for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made. *QUEEN v. RANGPAL DEVI*

10 W. R. Cr. 7

9. ——— False assertion of title—*Dissever and fraudulent intent*. A prosecution in a case of forgery, in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable ground for asserting the title, and that accused asserted the title dishonestly or fraudulently in the sense in which these terms are used in the Penal Code. *QUEEN v. KANAY PRASAD*

2 H. W. 202

10. ——— Attempting to use fabricated evidence—*Knowledge of forgery*—*Inten-*

**FORGERY—contd.**

tion to use fabricated evidence. Where a prisoner produced an evidence—

the book was tendered. **QUEEN v. MODHOOSODUN SHAW** . . . 7 W. R. Cr. 23

**11. ——— Intention to defraud—**  
Wrongful gain or wrongful loss—Avoidance of litigation. A signed B's name to petitions presented by C to the—

into the belief that it was B himself who had signed the petitions, still, if there had been no intention to defraud any body, or if no wrongful gain or wrongful loss could have been—

11 Bom. 3

**12. ——— Intention to injure—Penal Code, s. 463** To—

10 C. L. R. 184

**13. ——— Forgery of copy of document—Penal Code, s. 463** The forgery of the

**14. ——— Unauthorised use of name as agent—Signing vakalatnamah in name of decree-holders.** The signing of a vakalatnamah in the name of—

**15. ——— Antedating a document—Penal Code, ss. 463, 464.** Where a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI of 1867, filed stamp paper for a copy of the assessor's decision after the period

**FORGERY—contd.**

forgery of a document within s. 463 and cl. 1, s. 464 of the Penal Code. **QUEEN v. SOOKHOY GHOSE** . . . 10 W. R. Cr. 23

**SHANKAR** . . . I. L. R. 4 Bom. 657

**17. ——— Falsification of book to**

**JAOSHUR PERSHAD** . . . 6 N. W. 56

**18. ——— Proof of deception—**  
Making false document—Penal Code, s. 464. It must be proved that the accused practised deception, so as to prevent a person from knowing the nature of the document before the accused can be found guilty under s. 464 of the Penal Code of making a false document. **QUEEN v. NUJEE BUTOOLLAH** . . . 9 W. R. Cr. 20

**19. ——— False entries in account book—Penal Code, s. 464.** The prisoner made

guilty of forgery under s. 464 of the Penal Code. **ANONYMOUS** . . . 1 Ind. Jur. N. S. 46

**20. ——— Ignorance of contents of document—Penal Code, s. 464—Absence of deception.** Where the accused, a mohurrir in a registry office, was charged with making false endorsements of registration on the back of certain deeds, which endorsements were signed by the Registrar, it was held that, before he could be convicted of forgery under part 3, s. 464, Penal Code, it must be shown that the Registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing. **QUEEN v. DWARKANATH GHOSE**

20 W. R. Cr. 49

**21. ——— Misrepresentation in document by false description—Penal Code, s. 464.** A misrepresentation by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by G L, a patwari, and it was said that it had been signed by G L, but at a time when G L was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code. **JOY KURN SINOH v. MAN PATUCK** . . . 21 W. R. Cr. 41

FORGERY—*contd.*

22. ——— Fabricating false evidence—*Penal Code, ss. 192 and 464*—Alteration of date of document Where the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently" within cl. 2, s. 464 of the Penal Code, but fabricating false evidence within s. 192. *In re EKNAR ALI EXPRESS v. EKNAR ALI* . I. L. R. 6 Cal. 482

23. ——— Altering office report to screen negligence, Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Penal Code. *QUEEN v. LAL GUMUL* . 2 N. W. 11

24. ——— Making false entries in account book with the intention of concealing criminal breach of trust—*Penal Code (Act XLV of 1860) ss. 24, 25, 465* Where a clerk, who had committed criminal breach of trust

Code. *Queen v. Jageshur Pershad*, 6 N. W. 56, and *Queen v. Lal Gumul*, 2 N. W. 11, followed. *EXPRESS v. JIWANANO* . I. L. R. 5 All. 221

25. ——— False entry in public record—*Penal Code, ss. 192, 465, 466*. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused in order to save an estate from forfeiture, made a false entry of rent received in a public book.

ings. *In the matter of JUDOUN LALL* . 7 C. L. R. 358

26. ——— Fabrication of a receipt as a voucher to cover a contemporaneous embezzlement—*Penal Code, s. 471*—Using a

FORGERY—*contd.*

contended that no forgery had been committed because the receipt was made merely to cover the embezzlement. *Empress of India v. JIWANANO*, I. L. R. 5 All. 221. *Held*, that the conviction was

I. L. R. 11 Mad. 411

27. ——— Fabrication of a document to conceal a contemporaneous or past embezzlement—*Penal Code, ss. 463, 464, 467, and 471*—"Dishonestly"—"Fraudulently" An accused person who was in the service of zamindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a *List* received from them a certain sum of money with no specific instruction as to its application. On receipt of that money, he paid a portion only of it into the Collectorate on account of the revenue, and having done so, he then altered the challan given back to him showing the amount actually paid, and made it

on the money. He was charged (i) with criminal breach of trust as a servant (s. 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered challan; (ii) with forgery (s. 467) in respect of the challan; and (iii) with using a forged document (s. 471) in respect of the same document. The accused was

used in the Penal Code, not having been made with the intention of causing any wrongful gain or wrongful loss, but with the intention of committing an offence of criminal breach of trust which had previously committed. *Held*, further, that it was not necessary for the purpose of



**FORGERY—contd.**

evidence to show that the accused had abetted the forgery of the challan and had used the sum, and that he had been properly convicted of all the offences charged against him, except that of the actual forgery, and that he should have been convicted of abetment of that offence. **LOIT MOHAN SARKAR v. QUEEN-EMPRESS**

I. L. R. 22 Calc. 313

28. ——— Alteration of Collectorate challan—*Penal Code, s. 467*. The fraudulent alteration of a Collectorate challan is the forgery of a document as described in s. 467 of the Penal Code. **QUEEN v. HURISH CRUNDER BOSE**

W. R. 1864, Cr. 22

29. ——— Document with illegible seal and signature—*Using forged document—Penal Code, ss. 462, 471*. A conviction may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon. **QUEEN v. PROSORNO BOSE**

5 W. R. Cr. 96

30. ——— Forging copy of document which is unavailable when forged. *Penal Code, s. 467*

under s. 467 of the Penal Code. **REG v. NARO GOPAL**

5 Bom. Cr. 56

31. ——— Falsification of document with intent to deceive—*Penal Code, s. 468*. *Penal Code, s. 468*

QUEEN v. NARO GOPAL . . . 10 W. R. Cr. 20

Box . . . 8 W. R. Cr. 81

33. ——— Using document knowing it to be forged—*Penal Code, s. 471*. To support a conviction of the offence under s. 471 of the Penal Code, there must be a using of a document by a person who knows or has reason to believe that it is forged. **QUEEN v. BHOLAY PRAMANICK**

17 W. R. Cr. 32

34. ——— False alteration of police diary—*Penal Code, s. 471*. The false alteration of a police diary by a head constable was held to fall under s. 471 of the Penal Code, as the forgery of a document made by a public servant in his official capacity. **QUEEN v. RUONOO BANICK**

11 W. R. Cr. 44

35. ——— Evidence of fraudulent use of document—*Penal Code, s. 471—Requisites*

**FORGERY—contd.**

for findings for conviction. Where the accused was charged under s. 471 of the Penal Code with having, in a suit brought against him by the *kamdar* of his sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine, knowing, or having reason to

whether the document was a forgery, and whether the accused knew it was a forgery when he used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly. **KHOORSHED KAZI v. EMPRESS**

8 C. L. R. 542

36. ——— *Penal Code, ss. 461, 470, 471—Using a "forged" document—Using "false" evidence—"Dishonestly"—"Fraudulently"—Act XLV of 1860, ss. 24, 25, 196*. The vendors of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. Held, that the alteration of the deed did not amount to "forge Code, design: by s. 2

wrongful gain or to defraud being wanting; nor could it be said that in using the deed the vendees were "dishonestly" or "fraudulently" using as "false" evidence, and therefore the

INDIA v. FATEH . . . I. L. R. 5 All. 217

37. ——— Public servant framing incorrect record—*Penal Code, (Act XLV of 1860), ss. 218, 463, 471*. A public servant, in charge as

such fabricated documents not being records or

RUSSAIN . . . I. L. R. 5 All. 217

38. ——— Public servant using forged

**FORGERY—contd.**

lent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction; and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged. *In the matter of DRUMUM KAZEM.*

EMRESS v. DRUMUM KAZEM

I. L. R. 9 Calc. 53; 11 C. L. R. 109

39. — Intention in fabricating documents—*Penal Code, s. 464—Fraudulent and dishonest fabrication.* The accused, who was a copyist in the Subdivisional Office at B, applied for a

falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Subdivisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Subdivisional Officer, having some suspicion as to the genuineness of this letter, wrote a demi-official letter to the

respect of the three documents. *Held*, that the conviction was right with regard to the two first documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section. *ABDUL HAMID v. QUEEN-EMRESS*

I. L. R. 13 Calc. 349

40. — *Penal Code, s. 465, and ss 24 and 25—"Dishonestly"—"Fraudulently"* A Treasury Accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs500, which was in the Treasury and was payable

covered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil

**FORGERY—contd.**

of the cheque by the Treasury Officer was delayed for some time, and meanwhile the cheque was

transfer of the second payee's Rs500 to the Civil Court, as if it had been the first Rs500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs500; that under these circumstances he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that therefore his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. *QUEEN-EMRESS v. GIRDHARI LAL* I. L. R. 8 All. 653

41. — *Penal Code, ss. 24, 25, 471—Fraudulently using as genuine a forged document—"Dishonestly"—"Fraudulently."* The creditors of a police constable applied to the District Superintendent of Police that Rs2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs18, the whole amount due. It

setting up the altered receipt to defeat his creditor's claim, and that therefore he ought not to have been convicted of an offence under s. 471 of the Penal Code. *QUEEN-EMRESS v. HUSAIN*

I. L. R. 7 All. 403

42. — *Penal Code (Act XLV of 1860), ss. 471, 24, 25—Fraudulently using as genuine a forged document—"Dishonestly"—"Fraudulently."* In a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dis-

**FORGERY—contd.**

and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471. *QUEEN-EMPRESS v. SHRO DALAL*. I. L. R. 7 All. 459

43. ——— Possession of counterfeit seals, etc.—*Intention to commit forgery—Penal Code, ss. 472, 473.* Counterfeit seals and forged documents were found in the prisoner's possession.

44. ——— 2 W. R. Cr. 5 *Penal Code, s. 473—Intention to commit forgery.* Where several seals of different denominations were found in the possession of the prisoner, it was held that he was guilty of forgery.

45. ——— Attempt to commit forgery —*Abetment of forgery* To prepare, in conjunction with others, a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document.

46. ——— *Penal Code, (Act XLV of 1860), ss. 465 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

47. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

48. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

I. L. R. 7 Cal. 352; 8 C. L. R. 572

**FORGERY—contd.**

47. ——— Suspicious document used in a case "of 1860", s. 471. A document was given for the prosecution of a pleader who in the conduct of a case had presented to the Court for his clients a document of suspicious appearance and which his clients were charged with having forged. The sanction was granted by the Sessions Judge on the ground that the document was suspicious.

48. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

49. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

50. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

51. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

52. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

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I. L. R. 25 Cal. 207  
1 C. W. N. 681

49. ——— *Penal Code, (Act XLV of 1860), ss. 463 and 511.* A person charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence. *REG. v. PADALA VENEKATASAMI*. I. L. R. 3 Mad. 4

**FORGERY—contd.**

of police, had been inserted in its place, the intent

*Queen-Empress v. Mohd. Naim, 1. L. R. 10 Bom. 515; and Lohit Mohan Sarkar v. Queen-Empress, 1. L. R. 22 Cal. 313, referred to QUEEN-EMPRESS v. MUHAMMAD SAEED KHAN*

**I. L. R. 21 All. 113**

**50. ——— Intention—Penal Code, s. 466.** Where a document is made for the purpose of being used to deceive a Court of Justice, it is made with the intention of being used for that purpose

**51. ——— Cheating by personation—Penal Code, ss. 415, 419, 463.** A falsely represented

cheating by personation. *QUEEN-EMPRESS v. APPASANI* **I. L. R. 12 Mad. 161**

**52. ——— Using a forged certificate—Penal Code, s. 471—Fraudulent intention.** The accused passed the Public Service Examination in 1883, and in a certificate given him by the educa-

**53. ——— Cheating—“Fraudulently”—“Dishonestly”—Penal Code (Act XLV of 1860), ss. 24, 25, 415, and 471.** In construing ss. 24 and 25 of the Penal Code, the

**FORGERY—contd.**

to the effect, *inter alia*, that he is of good moral character and has submitted himself to a test examination by, and furnished exercises to, the person signing the certificate, sufficient in that person's opinion to show that his qualification

sent to the Registrar and the prescribed fee paid, that officer forwards a receipt to the candidate with his roll number thereon, which is also an authority for him to appear at the examination and enter the examination-hall. A private student forwarded to the Registrar, with his application for permission to appear, a certificate in the prescribed form, purporting to be signed by the head master of a high school, such signature, however, being, as the applicant well knew, a forgery. The Registrar, knowing at the time that the signature of the head master was

desk allotted to him, and commenced the examination. Upon charges being preferred against the applicant of using as genuine a forged document (s. 471) and attempting to cheat (ss. 415 and 511):—*Held*, that his primary object or intention was by falsely inducing the Registrar to believe that the certificate was signed by the head master of a

quently, that the use of the forged document, though with the knowledge or belief that it was forged, was not fraudulent or dishonest, and that, as these are essential elements to offences under

*Queen-Empress, 1. L. R. 10 Cal. 584, cited. QUEEN-EMPRESS v. HARADHAN alias RAHUL DASS GHOSH* **I. L. R. 19 Cal. 380**

**54. ——— Penal Code, ss. 463, 471, and ss. 24 and 25—False certificate of attendance at law lectures—“Claim”—“Property.”** The term “claim” in s. 463 of the Penal Code is not limited in its application to a claim to property. The term “property” in the same section will cover a written certificate. It is not

**I. L. R. 15 Bom. 300, approved. One S B presented**

**FORGERY—contd.**

the Principal of Queen's College, Benares, and

it would have entitled *S B* to attend a further course of law lectures at any one of several

above certificate, *S B* obtained permission to attend and attended a course of second year lectures at Queen's College, Benares, without attending or paying the fees required for the first year course.

when he presented the false certificate to obtain admission to the second year law class at Queen's College, Benares, and again when he endeavoured by its use to obtain the consolidated certificate in order to gain admission to the pleaders examination in Calcutta, *S B* was guilty of the offence provided for by s. 471 of Penal Code *QUEEN-EMPRESS v. SOMI BHUSHAN* . . . I. L. R. 15 All. 210

55. ————— Penal Code (Act XLV of 1860), ss. 463 and 471—Using as genuine a false document. The accused applied to the Superintendent of Police at Benares for admission

56. ————— "Fraudulently" meaning of—Penal Code (Act XLV of 1860), ss. 463, 471—Deprivation of property, actual or intended, is not an essential element in the offence of fraudulently using as genuine a document which the accused knew or had reason to believe to be false. *Queen-Emress v. Haradhan*, I. L. R. 19 Calc. 330, overruled. *QUEEN-EMPRESS v. ABBAS ALI*

I. L. R. 25 Calc. 512  
1 C. W. N. 255

57. ————— Penal Code (Act XLV of 1860), ss. 24, 25, 467, 471—Using a "Fraudulently"—"False" element of wrongful Intention

**FORGERY—contd.**

to cause wrongful loss to another, and deception, actual or intended, are not necessary ingredients of the intent to defraud. There is a real distinction between the meaning of the terms "fraudulently" and "dishonestly," as used in the Penal Code; the former denotes an intention to deceive. The production of a forged bond by a person in a suit, with the intent to make the Court believe that he was entitled to

*Queen-Emress, I. L. R. 22 Calc. 313; In re Dhunu Kaze, I. L. R. 9 Calc. 53, referred to. Queen-Emress v. Sheo Dayal, I. L. R. 7 All. 459, dissented from. KEDAR NATH CHATTERJEE v. KING-EMPEROR* (1901) . . . 5 C. W. N. 897

58. ————— Using as genuine a forged document—Penal Code (Act XLV of 1860), s. 471—Attempt to commit offence. The accused gave his

*QUEEN-EMPRESS* . . . I. L. R. 28 Calc. 883

59. ————— Penal Code (Act XLV of 1860), ss. 466, 471—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use. Held, that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under s. 471 of the Indian Penal Code for the use as under s. 466 for the forgery. *QUEEN-EMPRESS v. UMRAO LAL* (1900)

I. L. R. 23 All. 84

60. ————— Penal Code (Act XLV of 1860), s. 471, interpretation of—Forged document, using, as genuine. When in a judicial enquiry under s. 202, Criminal Procedure Code, against a person accused of having forged a document, the accused states before the enquiring Magistrate that the document is genuine, he cannot be said to have used the document so as to make himself amenable to the provisions of s. 471, Indian Penal Code, even though he knew the document to be a forged one. The use of a forged document which is contemplated by s. 471, Indian Penal Code, is such use as causes wrongful gain or wrongful loss. That is to say, that section applies to the case of a person who appears before some other person or before a Court, with a document and endeavours to induce that person or Court to do some act which he or it would not do if it was known to be a forgery. *ASAFUDDI SZEIKH v. EMPEROR* (1907)

11 C. W. N. 838

61. ————— Using false name with intent to defraud—Penal Code, ss. 419, 420, 467, and 468—Cheating. The accused was alleged

### FORGERY—contd.

by the prosecution to have advertised that a work on English Idioms by Robert S. Wilson, M.A., was ready, stating that the price was Rs. 2-4-0, and that intending purchasers might remit it by money order to Robert S. Wilson, Council House Street, Calcutta; to have then requested the postal

62. ————— Forgery of valuable security—Penal Code (*Act XLV of 1860*), ss. 463, 464, 467, 474—False document—Onus of proof—Dishonest or fraudulent intent, proof and inference as to. To justify a conviction under s. 457, Indian Penal Code, it must be shown that the documents is a false document within the meaning of s. 463, Indian Penal Code.

may be inferred from the facts, but it is necessary that such intent should be established by evidence. The accused was found in possession of two documents; one was a registered conveyance in respect of certain lands from one A D to the wife of the accused; the second purported to be a conveyance in respect of the same lands from the same vendor to the accused himself, but this was registered. The accused requested a school-boy to have the registration endorsement from the former copied on to the latter, and was thereupon arrested and charged under s. 467 with s. 116, and under s. 474. At the trial A D deposed that he never executed the second conveyance, but as regards the first he said that he had executed it in favour of accused's wife, but that the accused was in possession of the lands and had also paid him the consideration-money. Held, that,

6 C. W. N. 382

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**FORGERY—cont'd.**

signed by S, stating that his certificate had been lost, and requesting that a duplicate might be issued. Enclosed with the letter was what purported to be a certificate by the head-master of a local school, corroborating the statement as to the loss, and supporting the application for the issue of a duplicate. This document had not, in fact, been written by the head-master, and S had not in fact lost his Matriculation certificate. C was then charged with cheating and forgery to commit cheating. The Deputy Magistrate found, on the evidence, that the writer of the application for a duplicate certificate was the accused, and convicted and sentenced

he dismissed the appeal. On a revision petition being filed in the High Court, *Held*, that the charge of cheating must fail, inasmuch as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University which he represented. Nor was it shown that the accused, in applying for the duplicate certificate, had any intention of causing wrongful gain to himself or wrongful loss to the University, to whom he had

fraudulently or dishonestly and with intent to cause damage or injury to the public or to anyone. The

L. L. 20 May, '26

64. \_\_\_\_\_ Filing forged document—

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L. L. R. 35 Calc. 820

65. ——— **Alteration of Accounts—**  
*Dishonestly using as genuine Forged Document—*  
*Falsification of Accounts—Penal Code (Act XLV*  
*of 1860), ss. 465, 471, 477A—Reading over*  
*Deposition to witness in the presence of the*  
*Accused or his Pleader—Criminal Procedure Code*  
*(Act V of 1898), s. 360—Practice. The alteration*  
*of accounts so as to show the receipt of a sum of*  
*money criminally misappropriated and in order*  
*to remove evidence of such misappropriation, is*  
*not an offence either under s. 465 or s. 477A of the*  
*Penal Code, there being no intent to commit fraud.*  
*Lokt Mohan Sarkar v. Queen-Empress, I. L. R. 22*  
*Cal. 313, and Emperor v. Rash Behari Das, I. L. R.*

**FORGERY—*concl***

35 Calc. 450, distinguished. Whether or not there is an intent to defraud in any particular case depends on the circumstances of the case. S. 360 of the Criminal Procedure Code is mandatory. The evidence given by a witness must be read over to him in the presence of the accused or his pleader, and no practice to the contrary can alter the plain words of the law. *JYOTISH CHANDRA MUKERJEE v. EMPEROR* (1909). I. L. R. 36 Calc. 955

**FORMA PAUPERIS.**

See CIVIL PROCEDURE CODE.  
10 C. W. N. 857

See PAUPER SUIT.

**FORTY-FIVE DEGREES ANGLE RULE.**

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3 W. R. P. C. 45; 7 Moo. I. A. 923

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I. L. R. 34 Calc. 988

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**FRANCHISE, RIGHT OF.**

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**FRAUD.**

Col.

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4 C. W. N. 538

**I. WHAT CONSTITUTES FRAUD, AND PROOF  
OF FRAUD.**

1. Imputations of fraud—Dis-  
posal of allegations of fraud . Imputations of fraud  
should be disposed of at the hearing, and should  
not be left open to be disposed of by the master on  
the taking of accounts . LALLUBHAI VALLABHAI v.  
KAVASJI NANASHAI . 6 Bom. O. C. 209

2. Proof of fraud—Presumption.  
Fraud and dishonesty are not to be presumed on  
conjecture, however probable . IMDAD ALI v.  
KOOTHY BEGUM

6 W. R. P. C. 24: 3 Moo. L. A. 1

3. It is often the case  
that fraud cannot be established by positive proofs,  
and on the other hand it is not to be presumed from  
circumstances of mere suspicion. It is generally  
shown by such circumstantial evidence as over-  
comes the natural presumption of honesty and fair  
dealing, and satisfies a reasonable mind that such



**FRAUD—contd.****1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—contd.**

presumption has been displaced. **MATHURA PAN DAY v. RAM RUCHA TEWARI.**

**3 B. L. R. A. C. 108; 11 W. R. 462**

4. — *Suit to set aside bonds.* Mere speculation and probability will not in law support a finding of fraud. Where a party puts forward a charge of collusion with a view to defraud, it is incumbent on him to support it by evidence to a certain reasonable extent, e.g., where a party admits that an instrument which on the face of it appears to deal with the property in question

was not intended to be operative according to its purport. **RAJ NARAIN v. ROWSHUN MULL.**

**22 W. R. 124**

**KUBEEROODIN v. JOGUL SHARA 25 W. R. 133**

5. — *Allegation of fraud in pleadings—Plaint, form and contents of.* Where fraud is charged against the defendant, the plaintiff must set forth particulars of the fraud which he alleges. **CHANVIRAPA v. DANAVA.**

**I. L. R. 19 Bom. 593**

6. — *Proof of allegation of fraud.* A plaintiff who charges another with fraud must himself prove the fraud, and he is not relieved from this obligation because the defendant has himself told an untrue story. **MAHOMED GOLAB v. MAHOMED SULLIMAN.**

**I. L. R. 21 Calc. 612**

7. — *Allegation of fraud and collusion.* Where a party alleges the fraud or collusion of the opposite party as a ground of relief, general allegations of it will not be sufficient, but the instances upon which such allegations are founded must be stated, as it is unreasonable to require the opposite party to meet a general charge of that nature without giving him a hint of the facts from which it is to be inferred. **JOOSNA PERSHAN SOOKOOL v. JOYKAM LALL MAHTO.**

**2 C. L. R. 26**

8. — *Charge of fraud—Alteration in nature of fraud charged.* It is a well-known rule that a charge of fraud must be substantially proved as laid, and that when one kind of fraud is charged, another kind cannot, on failure of proof, be substituted for it. In a suit by the Official Assignee to recover a sum which it was alleged had been improperly and fraudulently paid away from the estate of an insolvent, the plaintiff as presented alleged the fraudulent concealment of the payment from the Assignee. Afterwards when all the

payment being a fraud upon the Court. *Held*, that the amendment at the stage when it was

**FRAUD—contd.****1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—contd.**

made was not permissible. The High Court having decreed the claim on a finding of fraud different from either of the above:—*Held*, that on this ground alone the judgment might have been reversed. **Montesquieu v. Sondys, 18 Ves. Jun. 302, followed.** **ABDUL HOSSAIN ZENIAL v. TURNER**  
**I. L. R. 11 Bom. 620**  
**L. R. 14 I. A. 111**

9. — *General allegations of fraud—Plaint, amendment of—Evidence of fraud—Objection taken for first time in special appeal.* Where a plaintiff seeks relief on the ground of fraud, and the plaint contains general allegations, but no specific instances of the alleged fraud, it ought to be amended to state—

The Court of first instance, without going into evidence, rejected the plaintiff's claim on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother. In second appeal, the respondent objected that the plaint was defective. The plaintiff's pleader asked for leave to amend it by specifying certain instances of the alleged fraud. *Held*, that the amendment could not then be allowed, and the suit must fail. When fraud is charged, the evidence must be confined to the allegations. **KRISHNAJI v. WAMANJI.**  
**I. L. R. 18 Bom. 144**

10. — *Oral evidence.* Oral evidence of witnesses deposing in general terms is not sufficient to establish fraud on the part of a former patnidar in converting mal lands of the patni in exons of 100 bigas into rent-free lands, so as to entitle the present patnidar to resume them as *malid lakhiraj*. **SHIBSODDUREE DEBIA v. MAHOMED ALI.**  
**W. R. 1634, 137**

11. — *Suit by minor to recover share of consideration paid for lease.* Suit for the recovery of a minor's share of the consideration paid for a *maurasi* lease granted by the minor's co-proprietors on their own behalf and as his guardians, in order to raise money required for the expenses of the joint estate, which lease was cancelled (on the suit of the minor when he came of age), so far as his share was concerned. *Held*, that the plaintiff was not entitled to recover without proof of fraud, and that the evidence tendered by the plaintiff (namely, the record of the case instituted by the minor for the cancellation of the lease) was not admissible to prove the allegation of fraud. **DURGHA CHURN BHATTACHARYEE v. SHOSHNEE BROODHUN MITTER.**  
**5 W. R. S. C. C. Ref. 23**

12. — *Fraudulent transaction—Decree obtained after compromise of appeal.* A

FRAUD—*contd.*1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—*contd.*

decree of an Appellate Court obtained after a compromise and an agreement not to prosecute the appeal was held to be an adjudication obtained not only with great impropriety, but in effect by fraud.

RAJMOHUN GOSSAIN v. GODRMOHUN GOSSAIN  
4 W. R. P. C. 47; 8 Moo. L. A. 61

13. ———— *Non-payment of debt.* The mere non-payment of a debt does not necessarily prove collusion between the debtor and his vendor to defraud the creditor. Fraud must not be presumed without good and probable grounds.

KISHENDUN SURMAH v. RAMDUN CHATTERJEE  
6 W. R. 235

14. ———— *Benami transaction—Taking benami lease.* The mere taking a benami lease, unaccompanied by any other circumstance of suspicion, does not per se constitute fraud.

MUNNOOLALL v. REXT BHODUN SINGH . . . 6 W. R. 283

15. ———— *Sale for arrears of rent—Benami purchase—Act VIII of 1835.* Plaintiff sued for possession on a declaration of his lifetime right to a portion of a talukh, for which his mother obtained an istamee pottah. Afterwards the original superior tenure having been sold for arrears of rent under Act VIII of 1835, the father of defendant No. 1 purchased those rights and interests in the name of the defendant, and then obtained from the zamindar a pottah and settlement of the talukh as one coming under the provisions of Regulation VIII of 1819. He then fell into arrears, the talukh was sold under the Regulation last cited, and he purchased it benami. Held, that the legal inference from these facts was that the conduct of the father of the defendant No. 1 was fraudulent.

SOOBUL CHUNDRA PAUL v. ARTUR ALI . . . 11 W. R. 32

16. ———— *Purchaser obtaining assent of beneficial as well as ostensible owner to make his title good.* There is no fraud in a purchaser securing the assent both of the ostensible and beneficial owners to his purchase, so as to acquire a good title.

KALEE MOHUN PAUL v. BHOLA NATH CHAKRADAR . . . 7 W. R. 138

17. ———— *Over-valuation of salt—Proof of fraud.* A valuation of salt, based on the loss which the owner may possibly incur on account of the bonds in respect of the salt passed by him to the Government, though greatly in excess of the real value of the salt, is not such an over-valuation as amounts to proof of fraud.

HARIDAS PURSHOTAM v. GAMBLE . . . 12 Bom. 23

18. ———— *Presumption of fraud—Property left to endowment instead of for the support of the widows of the family.* The defendants having pleaded that certain Government paper, in which plaintiff claimed a share, had been appropriated, by a memorandum of agreement, to the service of an idol, and the agreement was substantiated by very strong evidence and shown

FRAUD—*contd.*1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—*contd.*

to have been acted upon by all the parties for years, the Privy Council held that it could not be set aside, as a colourable transaction having no validity, merely upon the suggestion that the amount set aside was exorbitant, and that there might possibly have been an intention to defraud widows and others.

RADHA MONDH MUNDUL v. JADOOMONZER DASSEE . . . 23 W. R. 369

19. ———— *Vendor and purchaser—Omission of purchaser to take possession—Sale by him to another—Effect of want of possession.* A sold certain land to B by a sale-deed dated 15th July 1871. The deed was optionally registrable and was not registered. A continued in possession after the date of the sale. A sold the same land to the plaintiff by a deed of sale dated 1st February 1872. The deed was registered, its registration being compulsory. It was unaccompanied with possession. In 1882 B obtained possession of the land from the sons of A and sold it to the defendant by a sale-deed dated 14th October 1882. This deed was registered and accompanied with possession. In 1893 the plaintiff sued for possession of the land in dispute. Held, that the defendant's vendors, by merely omitting to take possession of the land on his purchase, was not guilty of any positive fraud or of any concealment or negligence so gross as to amount to fraud that would entitle the plaintiff to relief against him.

SHYRAM v. SARA . . . I. L. R. 13 Bom. 229

20. ———— *Constructive fraud—Mortgagor and Mortgagee.* Mere silence on the part of a prior mortgagee on hearing that the mortgagor is mortgaging the property a second time is not such conduct as will amount to

amount to such conduct, where his knowledge of the contents of the deed is not shown. Where a prior mortgagee, however, attested the execution of the deed mortgaging the property a second time, and being aware of the contents of the deed kept silence, and thus led the second mortgagee to think that the property was not encumbered and to advance his money on the security of it, which the second mortgagee would not have done had he been aware of the existence of the prior mortgage, such silence was held to be conduct which amounted to constructive fraud on the part of the prior mortgagee, and deprive him of his right to priority.

SALAMAT ALI v. BUDH SINGH . . . I. L. R. 1 All. 303

21. ———— *Fiduciary relationship—Onus of proof of fraud—Accounts, proof of falsity of.* It is only in cases where one person stands in a fiduciary relation to another that the law requires the former to exercise extreme good faith in all his dealings with the latter, and

**FRAUD—contd.****1. WHAT CONSTITUTES FRAUD, AND PROOF OF FRAUD—concld.**

scrutinizes those dealings with more than ordinary care and caution. In the absence of any special confidence reposed by one person in another, it lies on him who alleges fraud to prove it. Where accounts are impeached on the ground of fraud, two or three instances of particular items which can be taken as false and fraudulent must be brought to the notice of the Court before it can be called upon to order the accounts to be re-opened from the first. *Williamson v. Barbour*, 1 L. R. 9 Ch. D. 529, followed. *Boo Jinatboo v. Sha Nagarvalar Kanor*

I. L. R. 11 Bom 78

22. ————— *Abuse of influence.* The obtaining of property or of any benefit, through the undue and unconscientious abuse of influence by a person in whom trust and confidence are placed, is a fraud of the gravest character. *Mizon v. Payne*, 8 Ch. App. 887, followed. *Nunda Lal Bose v. Nistarini Dassee* (1902)

7 C. W. N. 353

23. ————— Judgment obtained by perjury may be set aside on the ground of fraud. A suit will lie to set aside a judgment on the ground that it was obtained by fraud committed by the defendant upon the Court by committing deliberate perjury and by suppressing evidence. The law on this point is the same in India as in England. *Venkatappa Naick v. Subba Naick* (1903)

I L. R. 29 Mad 179

**2 ALLEGING OR PLEADING FRAUD**

1. ————— Pleading fraud—*Defrauded parties* A party cannot allege or plead his own fraud, nor can his representatives, nor a private purchaser from him, do so unless they are themselves the defrauded parties, and seek relief from the fraud. *Luckee Narain Chuckerbutty v. Taramone Dossee*

3 W. R. 92

*Purikeet Sahoo v. Radha Kishen Sahoo*

3 W. R. 221

*Rowshun Beere v. Kureem Buxh*

4 W. R. 12

*Browanee Pershad v. Oheedun*

5 W. R. 177

2. ————— Fraud of ancestor—*Estoppel* —*Party pleading fraud of ancestor.* The plaintiff

violates a well-known principle of law which does not allow a party to set up the fraud of the ancestor through whom he claims. *Ghureera Hossein Chowdhury v. Usee Moonissa Knatoon*

1 May 528

3. ————— Succession to property—*Rectification of deeds made fraudulently by*

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd.**

*predecessor.* A party cannot plead the fraud of the property of the Court fraudulently that these documents should be treated as void in law. *Gopal Narain alias Joodoo Narain v. Oungka Preshad Sahee*

19 W. R. 270

4. ————— Son suing to regain property alienated fraudulently by father. A son cannot obtain a decree when suing as heir to regain property, alleging his father's fraud as the cause of action. *Bhuggorutty Dossee v. Kishen Nath Boy*

3 W. R. 30

*Kalinath Kur v. Doyal Kristo Der*

13 W. R. 87

5. ————— Pleading fraud of self or as representative. A party claiming through another is not at liberty to plead that other's fraud as against a defendant in possession who claims under the fraudulent conveyance. *Fureedoonissa v. Remouet*

4 W. R. 37

6. ————— Person alleging his own fraud—*Benami holding.* Where property is held benami, and the ostensible owner assents to its being disposed of to the prejudice of the real owner, the latter cannot be allowed to object, the fraud being a consequence of his own act. *Brojo Nath Ohoose v. Kotlash Chunder Banerjee*

9 W. R. 593

7. ————— Sale without consideration—

1867, conveyed a portion of the property to Y, who claimed to be the prior purchaser for valuable consideration without notice. By deed dated 15th September 1867, M conveyed the property to the respondents, who were in receipt of rents at the time when X and Y instituted suits to recover possession of the property and to set aside the deed, the ticcadar and M being also made defendants. *Held*, that the conveyance by the native lady to her mooktear without consideration could not be upheld, for to uphold it would be a denial of justice and contrary to sound policy, even if the grantor as plaintiff sued the mooktear

8. ————— Fraud on creditors—*Right of widow to articles of property excluded from husband's schedule of insolvency—Right of Official Assignee* A widow, as administratrix of her husband's estate, sued to recover certain articles of moveable property belonging to that estate, which had been wrongfully appropriated by her son. Defendant

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd**

pleaded that, if the articles belonged to his father's estate, they had been fraudulently kept out of the father's schedule when the latter had passed through the Insolvent Court, and that the widow could not claim the property, as she would thereby be taking advantage of her husband's fraud. *Held*, that, as the Official Assignee refused to make any claim to the property in dispute, no third party was competent to set up a claim. The creditors had their remedy against the Official Assignee. The right of ownership was still vested in the plaintiff, notwithstanding the alleged fraud. *MANLY v. MANLY* 14 W. R. 138

**8.** ———— *Conveyance of property for fraudulent purpose, plea of* Where a mother conveyed property to a daughter, and the property was afterwards attached in execution of a decree against the daughter. — *Held*, that the mother could not obtain a reconveyance of the property on the ground that the conveyance to the daughter was for the purpose of defrauding the mother's creditors, and that the onus was on the mother to prove that the decree against the daughter was a fraudulent contrivance to deprive the mother of possession of the property. *KESHUB CHUNDER SIN v. VYASMOHEE DASSIA* 7 W. R. 118

**10.** ———— *Husband and wife—Fraud on creditors.* Where a wife had colluded with her husband to buy up a decree under

him. — *Held*, that, as the wife was a partner in the fraud, it gave her no advantage, and that the husband's claim should be recognized, also because it exposed the fraud and afforded the only means of doing justice to the other judgment-debtors. *SUFEEGOOLLA SIRCAR v. BEGUM DIBEE* 5 W. R. 219

**11.** ———— *Avoidance of fraudulent deed—Deed of gift—Res judicata—Estoppel.* A deed of gift, valid and operative between the parties thereto, cannot be avoided because in another suit between different parties it has been held to be fraudulent as against creditors. *Quare*: Whether a donor can avoid his own deed on the ground of his own fraud. *RAMANUJIA NARAIN v. MARASUNDOR KUNWA* 12 B. L. R. C. 433

**12.** ———— *Joint fraud—Defendant pleading joint fraud—Voidable acts.* A defendant may plead the joint fraud of himself and the plaintiff as a bar to an action upon a contract which the plaintiff seeks to enforce by suit. The distinction between acts voidable by statute and at common law dismissed. *SESHAIYA v. KANDAIYA* 2 Mad. 249

*SOOKHNA MEDREE v. GUNDOORAM MUNDLE* 12 W. R. 264

**FRAUD—contd****2. ALLEGING OR PLEADING FRAUD—contd.**

**13.** ———— *Admitted fraud, suit on—Satisfying protection from fraud admitted by parties.* A suit founded on an admission of fraud and seeking protection from the consequences of that fraud cannot be maintained. *ALOOKSOODERY GOORTHU v. MOHO LAL ROY* 8 W. R. 287

**14.** ———— *Avoidance of deed fraudulently made.* A person who has deliberately executed a deed by which his own property is bound is not at liberty to set up as a plea for evading obligation that he did so for the purpose of defrauding other people, but is bound by such deed. *KYLAH CHENDER MITTER v. DRUS MOHEE DASSIA* 15 W. R. 273

**15.** ———— *Avoidance of deed fraudulently made—Possession.* But where there was no transfer of possession under the deed, there is a locus penitentia and he is entitled to relief, the property being prejudicially affected by other acts. *LALL MAHOMED v. FERHUTOONISSA* 15 W. R. 312

**16.** ———— *Setting up one's own fraud to invalidate deed.* A party cannot set up his own fraud to invalidate a deed executed by him. *NATH SANOI v. JEROME SANOI* 2 Hay 499

**17.** ———— *Fraud of person through whom party claims.* Where the agreement which formed the basis of a suit was found to have been entered into by the plaintiff and the defendant's ancestors in furtherance of a fraud, it was held that the defendant was at liberty to show what the real circumstances were under which the agreement was entered into, even though it disclosed the fraud of his own ancestor. *GOLAM KODDSEZ CHOWDHRY v. JOKOORUNISSA KHATOON* 19 W. R. 238

*See SREENATH ROY v. BINDOO BASHINEE DEBIA* 20 W. R. 112

**18.** ———— *Pleading one's own fraud—Admission—Estoppel.* An act done by a party with a view to defeating a claim made against him does not estop him from disputing afterwards the validity of that act. Nor does a statement made by persons in a suit and intended as a

*Bindoo Bashinee Dabee, 20 W. R. 112; Dykunt Nath Sen v. Gaboola Siddar, 21 W. R. 39; Debia Chowdhraim v. Dimola Soondaree Debia, 21 W. R. 422. MUKIM MULLICK v. RAMJAN SIEDAR* 9 C. L. R. 64

**19.** ———— *Fraudulent execution of document—Showing real nature of transaction.* Where a person who has executed a document (e.g., a Labuliat) for his own advantage under false pretences is sued upon it, he is not precluded from showing the real nature of the transaction. *ASHRUF SIEDAR v. BRUBO SOONDUREE* 25 W. R. 40

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd.**

20. ——— Sham transaction—*Fraudulent conveyance—Suit for possession by purchaser of land—Defence that the sale to plaintiff was a sham transaction to defraud creditors.* The plaintiff sued for possession of certain land, which he alleged he had purchased from the defendant under a registered sale-deed, dated 10th November 1876. The defendant pleaded that the deed was a sham deed and without consideration, and had been executed by him merely to save the land from his

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd.**

*C* and the attachment was raised. The plaintiffs then filed this suit under s. 283 of the Civil Procedure Code (Act XIV of 1882) to establish their right to attach the house as the property of their judgment-debtor. The plaintiffs (the respondents) contended that the transfer of the house by *C* to the defendant was fraudulent, the defendant

if the house had validly passed to *C*, it could not afterwards be attached for *F*'s debt. The plaintiffs (respondents) on the other hand argued that the defendant ought not to be allowed to set up *C*'s title; that the transfer by *C* to him was fraudulent, and that he ought not to be allowed to benefit by his own fraud. *Held*, that the defendant was entitled to set up *C*'s title as a defence.

*See the same facts, but in the case of a title suit*

in question is the property of the judgment-debtor. The onus of proof is upon him. He can have no right to attach property which is proved either

*I. L. R. 11 Bom. 424*

23. ——— Suit under Civil Procedure Code, 1882, s. 283—*Right of defendant interested in taking defence to plead that decree*

24. ——— Collusive decree—*Evidence Act (I of 1872), s. 41—Fraud and collusion—Decree obtained by fraud and collusion between mortgagor and mortgagee, effect of, on property in hands of purchaser subsequent to decree.* A mortgagor certain property to *B*, who instituted a suit on his mortgage and obtained a decree therein. Subsequently to such decree, *A* sold the property to a

21. ——— Right to plead fraud—*Collusive decree—Execution—Suit to declare property liable to attachment in execution of a decree—Flea that the decree was collusive—Civil Procedure Code (Act XIV of 1882), s. 283.* *A* obtained a money-decree against *B*, and in execution attached property in the possession of *C*, who claimed to have purchased it for value from *B* previously to the date of the decree. The attachment was removed on the motion of *C*. *A* then brought a suit against *C*, under s. 283 of the Code of Civil Procedure (Act XIV of 1882), to have it declared that the property was liable to attachment and sale under the decree. *C* contended that the decree sought to be executed was a collusive one. *Held*, that *C* could not be allowed to impeach the decree between *A* and *B*. *GULIBAI v. JAGANNATH GATVANKAR*. I. L. R. 10 Bom. 659

22. ——— Civil Procedure Code (Act XIV of 1882), s. 283—*Suit to establish right to attach—Onus of proof—Right of defendant in such suit to set up the title of a third person where defendant's own title derived from such persons is tainted with fraud.* *F* owned a house in Surat. On the 21st August 1882, he was adjudged a bankrupt by the Supreme Court of the Straits Settlements, within whose jurisdiction he was then carrying on business as a merchant. On the 20th February 1884, he executed a conveyance of the house to *C*, the trustee in bankruptcy, for the benefit of his scheduled creditors, of whom the defendant was one. The defendant held a mortgage on the house for advances made by him to *F*. *C* had an agent in India, one *N*, with whom the defendant was a partner in business. On the 20th November 1884, the plaintiffs obtained a decree for Rs. 78,000 against *F* and another person and in execution of this decree, they attached the house in question as the property of *F*. Prior to the attachment, the defendant, in consideration of the mortgage-debt due to him, had obtained a transfer of the house from *C* with possession. No further consideration was paid by him at the time of the transfer. On the attachment being levied by the plaintiffs, the defendant claimed the house as purchaser from

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd.**

third party, *C*. *B* having attempted to execute his decree against the property in the hands of *C*, the latter instituted a suit against *A* and *B* for the purpose of having it declared that the property was

*B* contended that *C*, having purchased subsequently to the decree, was absolutely bound by it. *Held*, that, having regard to the terms of a 41 of the

**NILMONY MOOKHOPADHYA v. AIMUNNA BIBE**  
**I. L. R. 12 Calc. 156**

**25.** ——— *Collusion between parties—Defendant subsequently pleading his own fraud.* *A* obtained a decree against *B* in execution of which he was put in possession of certain land by proclamation, the land being in the possession of tenants. *A* subsequently sued *B* and the tenants to recover possession of the same land. *B* pleaded that the decree obtained by *A* was the result of collusion between himself and *A* in fraud of *B*'s creditors. *Held*, that it was not open to *B* to raise this plea. **VENKATRAMANNA v. VIRAMMA**  
**I. L. R. 10 Mad. 17**

*See CHENNAIRAPPA BIN. VIRABHADRAPPA v. PUTTAPPA BIN. SHIVASAPPA*  
**I. L. R. 11 Bom. 708**

**26.** ——— *Debtor and creditor—Sham sale-deed to defeat creditors—Collusive decree—Suit to declare title of fraudulent transferor in possession—Right of suit.* *A* executed a sale-

upholding the title of *B*, who then applied to be registered as owner in the place of *A*. *A*, who remained in possession throughout, resisted the application, and now sued *B*, for a declaration that he was entitled to remain on the register as owner. It was alleged and proved that the apparent sale-deed was a sham, and had been executed for the purpose of defrauding the plaintiff. The plaintiff has consented to both he and should be dismissed. **YARAMATI KRISHNAYYA v. CHUNDRU PAPPAYYA**  
**I. L. R. 20 Mad. 328**

**27.** ——— *Fraudulent conveyance—Conveyance by plaintiff to defeat creditors—Subsequent suit by plaintiff to recover possession.* When property has been conveyed by the owner to another person with the object of defrauding his (the owner's) creditors, and the fraud

**FRAUD—contd.**

**2. ALLEGING OR PLEADING FRAUD—contd.**  
has been carried out, the owner cannot succeed in a suit to recover possession. **HONAPA v. NARSAPA**  
**I. L. R. 23 Bom. 400**

**28.** ——— *Suit to set aside collusive decree—Right of suit.* The plaintiff was a Hindu who, in order to prevent his undivided son from obtaining his share of the family property,

them collusively, the present plaintiff supplying the necessary funds. The son then sued for his share of the property, and having with the aid of his father (who had meanwhile lost his confidence in the defendant) secured the execution of the decree.

refused to surrender to him his share. The plaintiff accordingly sued to recover his share of the property and for a declaration that the collusive decree against him and the subsequent proceedings in execution thereof were not binding on him. *Held*, that it is not competent to a party to a collusive decree to seek to have it set aside, and that the plaintiff accordingly was not entitled to relief. **VARADARAJULU NAIDU v. SRINIVASULU NAIDU**  
**I. L. R. 20 Mad. 333**

**29.** ——— *Fraudulent decree—Power*

**30.** ——— *Evidence Act (I of 1872), ss. 40 and 41—Evidence of a previous judgment inter partes—Relevant fact—Competency of any party against whom such judgment obtained to prove in a suit between the same parties that it*

obtained by fraud. **RAJIB PANDA v. LAKHAN SENDER MAHAPATRA**  
**I. L. R. 27 Calc. 11**  
**3 C. W. N. 660**

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd.***See SRIRANGAMMAL v. SANDAMMAL***I. L. R. 23 Mad. 216**

**31. ——— Allegations of fraud—Particulars constituting fraud should be given—Issue in cases of fraud—Practice** It is an elementary rule of law that where fraud is set up, particulars of it must be given and it must be based upon a specification of the acts

complied with, the party relying on a case of fraud, shall not be allowed to raise that case in the form of an issue. It is generally advisable, indeed, when framing an issue on the point of fraud, to set forth in the issue itself a brief statement of the fraud alleged, or at least to refer to the passage in the

**32. ——— Auction sale—Combination of bidders—Cause of action—Pleadings—Fraud—Specific allegations, want of** Allegations of fraud must be specifically pleaded, general allegations, however strong may be the words, being insufficient to amount to an averment of fraud of which any Court ought to take notice *Wallingsford v. Mutual Society*, 5 A. C. 635, per Selborne, L. C., at p. 697; *Ganga Narain Gupta v. Tilakram Choudhuri*, 1 L. R. 15 Cal. 533, followed. The fact that a combination amongst bidders at an auction sale has been formed to bid at the auction does not, of itself give rise to an action at the

**33. ——— Appeal** A question of fraud cannot be allowed to be raised in the appellate stage when it was not alleged in the written statement and no issue was raised regarding it. *PENDIT PHAIRAO RAJ v. GOUKARAS PERSHAD TEWARI* (1902) **8 C. W. N. 787**

**34. ——— Voidable contract—Defendant entitled to plead fraud—Lapse of time—Undue influence—Contract Act (IX of 1872), s. 16** Fraud does not make a transaction void, but only voidable at the instance of the person defrauded. The plaintiff sued in 1900 to recover from the defendant the amount due for interest on a mortgage-bond dated the 15th April 1893 by sale of the mortgaged property. The defendant contended that he did not execute the bond with free consent and that it was obtained

**FRAUD—contd.****2. ALLEGING OR PLEADING FRAUD—contd.**

from him under pressure of religious considerations

*not enough a suit to set aside the transaction.*  
**RANONATH SAKHARAM v. GOVIND NARSING** (1904)  
**I. L. R. 28 Bom. 639**

**35. ——— Benami sale—Purchaser from benamidar—Attachment in execution of a money decree against the original owner—Raising of the attachment at the instance of the purchaser from benamidar—Suit by the purchaser to recover possession—Original owner setting up his own fraud** H, the owner of certain property, executed a benami sale-deed and the benamidar sold the property to the plaintiffs' father. The property was afterwards attached in execution of a money decree against H, but the attachment was raised at the instance of the plaintiffs' father. Subsequently the plaintiffs brought a suit for the recovery of possession from H. H pleaded his own fraud as an effective answer to the claim. Held, allowing the plaintiffs' claim, that the defendant H could not set up his fraud to a claim of immovable property conveyed by him to the benamidar *SMDINOAPPA v. HINASA* (1907) **I. L. R. 31 Bom. 405**

**3. EFFECT OF FRAUD.**

**1. ——— Fraudulent Conveyance—Fraudulent joint conveyance where one party really has an interest in the property** A declaration of title cannot be granted to the purchaser under a kotala from two parties where the conveyance

**2. ——— Mortgage-bond—Subsequent substitution of property as security—Purchaser, right of** L executed a bond in favour of S, in which he mortgaged, amongst other property, a village, called Chand Khara, as security for the payment of certain money. Subsequently he sold

FRAUD—*contd.*3. EFFECT OF FRAUD—*contd.*

Khera in the bond, and S was entitled, notwithstanding A might have purchased the latter property in good faith, to the enforcement of the lien created thereon by the bond. *SUBBARAJ ALI KHAN v. LACHMAN DAS* . . . I. L. R. 2 All. 554

3. ——— Contract of tenancy—*Misrepresentation—Kabuliat*. Three plots of land were let to A under one kabuliat. A relinquished two plots, but admitted being in possession of one, alleging that the kabuliat had been obtained by fraud and misrepresentation. *Held*, that, as

SHAIKH v. KOYLASH CHUNDER BOSE

I L. R. 6 Calc. 116

S.C. KOYLASH CHUNDER BOSE v. ANARULLAH SHEIKH . . . 6 C L. R. 467

4. ——— Fraudulent and collusive decree—*Judgments in rem—Judgments inter partes—Evidence Act, 1872, s. 41*. Where a decree in a suit has been obtained by means of the fraud of one party against the other, it is binding on parties and privies and on persons represented by the parties so long as it remains in force, but it may be impeached for fraud and may be set aside if the fraud is proved. In the case of judgments *in rem* the same rule holds good with regard to persons who are strangers to the suit. Where a decree has been obtained by the fraud and collusion of both the parties to the suit, it is binding upon the parties. It is also binding upon the privies of the parties, except probably where the collusive fraud has been on a provision of the law enacted for the benefit of such privies. But persons represented by, but not claiming through, the parties to the suit may, in any subsequent proceeding, whether as plaintiff or defendant, treat the previous judgment so obtained by fraud and collusion as a mere nullity, provided the fraud and collusion be clearly established. The same rule applies with regard to strangers where the previous judgment is a judgment *in rem*. *Quere*. As to the proper construction of s. 44 of the Evidence Act (I of 1872) *AMBEDKHOR HUBISKHOR v. VULLESKHOR CASSUMKHOR* . . . I. L. R. 6 Bom. 703

5. ——— Sale in execution of decree—*Cancellation of sale—Power of Court to refuse to confirm sale*. The purchaser at a sale by public auction did, by the exercise of fraud and collusion with the agent of the execution creditor (though without the creditor's personal knowledge), succeed in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held*, that the Court which ordered the sale had jurisdiction to refuse to confirm the sale on the ground of the fraud practised by the agent of the execution creditor and the purchaser. *Held* by *KERAN, J.*, that the party defrauded ought not to be

FRAUD—*contd.*3. EFFECT OF FRAUD—*contd.*

referred to bring a regular suit. The question of the validity of the sale was not in question in the petition. *AYYAR, J.*, on petition the auction was held, and the purchaser was a party to it, but it was doubtful whether fraud was a ground of relief on petition when it was a remote cause of the sale. *SUBBARAJ RAU v. SRINIVASA RAU* . . . I. L. R. 2 Mad. 264

See *RAMAYYAR v. RAMAYYAR*

I. L. R. 21 Mad 356

6. ——— Construction 1341 of 17th June 1842—*Purchase of decree*. The plaintiff purchased lands which had been pledged to the defendant on a bond, and subsequently, in order to prevent their being taken in execution of a decree obtained by the defendant for the amount of the bond, the plaintiff purchased the decree from the defendant, who notwithstanding took out execution against the lands and sold them as though the decree had never been sold. In a suit by the plaintiff to recover possession of the lands and for reversal of the execution-sale;—*Held* it was no defence that the plaintiff had not notified this purchase of the decree to the Court in compliance with Construction 1341 of the 17th June 1842. *SITARAM SAHU v. MOHAM MANDAR*

B L. R. Sup. Vol. 345; 3 W. R. 90

7. ——— Collusive transactions—*Benami transaction for purpose of defrauding creditors—Deed of conveyance not in real purchasers' name—Collusive suit by nominee against real owner—Decree obtained by fraud—Subsequent suit by real owner against nominee for possession—Right of party to fraud to set fraudulent decree aside—Collusive transaction when held binding, and when set aside—Limitation Act, 1877, art. 93—Suit to set aside decree on ground of fraud*. In 1874 the plaintiff P bought a house from G, but caused the conveyance to be executed by O, in the defendant G's name. This was done with the object of protecting the property against the claims of the plaintiff's creditors. The plaintiff occupied the house, ostensibly as tenant to the defendant for a nominal rent. In 1880 the defendant brought a suit against the plaintiff to recover possession of the house, and obtained

question, and of his right to retain possession,

favour, though it was a collusive decree. The plaintiff could not get the judgment set aside which the



**FRAUD—contd.****3. EFFECT OF FRAUD—contd.**

defendant had obtained against him by his own contrivance. The plaintiff alleged that the defendant held in trust for him, the object of that trust

and would be enforced, when the original relations of the parties had become merged in the decree obtained by the defendant against the plaintiff. The general principle is that where a defendant has suffered a judgment to pass against him, the matter is then placed beyond his control. *Held*, also, upon the general principle of *res judicata*, that the plaintiff was estopped from raising the question of fraud in the present suit, which he might and ought to have urged in the former litigation. *Held*, further, that the suit, if regarded as one for setting aside a decree obtained by fraud, was barred by limitation, such fraud as there was being as well known to the plaintiff in 1880 as in 1883, when the present suit was filed. A party to a collusive decree is bound by it except possibly when some other interest is concerned that can be made good only through him. *Achmedbhoy Habibhoy v. Vullerbhoy Cassumbhoy*, 1. L. R. 6 Bom. 703, and *Venkataramana v. Piramma*, 1. L. R. 10 Mad 17, followed. *Paran Singh v. Lalji Mal*, 1. L. R. 1 All. 403, dissented from. A decree fraudulently obtained may be challenged by a third party who stands to suffer by it either in the same or in any other Court; but, as between the parties themselves to a collusive decree, neither of them can escape its consequences. Where an illegal purpose has been effected by a transfer of property, the transferee is not to be treated as a trustee holding it for the benefit of the transferor. Where a collusive transaction has merely proceeded to the length of sham deeds passed between the parties, or even of false declarations made by them in litigation for their common benefit, the Courts may displace the apparent by the real ownership. In cases in which the transaction was still inchoate, or the grantor still retained a *locus penitentis*, the formal act has been relieved against by reference to the real intention of the parties. The violation or infringement of the law had not in such cases been completed and a suspensive condition was annexed to the initial acts of which Courts of Equity could take advantage; but, apart from this, a man cannot confine the operation of his deed within the limits of an intended fraud. The purpose having been once answered, especially, by defeat of a third person's rights asserted in Court, a claim for reconvoyance would be properly dismissed. *CHESVIRAPPA BEN VEDHADRAPPA v. PUTTAPPA BHA SHIVRASAPPA*. 1. L. R. 11 Bom. 708

**8.** ——— *Right of suit—Suit to set aside decree on ground of fraud and collusion. Decree . . . . .*  
*plaint plaintiff property . . . . .*  
*attached . . . . .*

**FRAUD—contd.****3. EFFECT OF FRAUD—contd.**

to have the attachments set aside, but these suits were dismissed. He now sued to have set aside the decrees dismissing these suits, alleging that his father's agent, defendant No. 2, had colluded with the decree-holder, defendant No. 1, and given false evidence, and that the decrees had been obtained thereby. *Held*, that, the plaintiff disclosed a good cause of action. *KRISHNABHUPATI v. RAMANURTI*

I. L. R. 18 Mad. 198

**9.** ——— *Debtor and creditor—Collusive decree—Fraud on creditors—Fraudulent purpose carried out—Suit by legal representative of the fraudulent transferor and judgment-debtor to set aside conveyance and restrain execution of decree. A, with the intention of defeating and defrauding his creditors, made and delivered . . . . .*

fraction of the decree, and it appeared that certain

set aside, and to have the defendant restrained by injunction from executing the decree. *Held* (by *Subramania Aiyar, J.*), (i) that the plaintiff was not entitled to relief in respect of the promissory note and the decree, although she was not personally a party to the fraud, inasmuch as she

plaintiff was in no better position than he would have been. *Quare* . . . Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud. *RANGAMMAL v. VENKATACHARI* . . . . . I. L. R. 20 Mad. 323

**10.** ——— *Money advanced on hundi—Fraudulent misrepresentation—Suit before due date of hundi—Right of suit. The defendants obtained advances of money on hundis by making untrue representations, knowing them to be untrue and knowing that without them they could not have got the money. Held, that the plaintiffs were entitled to rescind the contract and claim immediate repayment before the due date of the hundis. There is no reason why the principle that fraud vitiates all agreements should not be applied to debts evidenced by hundis, promissory*

**FRAUD—contd.****3. EFFECT OF FRAUD—contd.**

notes, or other negotiable instruments, if the facts show that the loans were contracted on the faith of fraudulent misrepresentations made by a debtor to a creditor. *DABOOLALL v. JOY LALL*

I. L. R. 24 Calc. 533

11. ——— **Fraudulent decree—Power of Court to treat as a nullity the decree of another Court obtained by fraud—Heir of a party to a fraud not bound by the act of his ancestor** Where by means of a fraud practised on the Court the owner of considerable property, both moveable and immovable, caused a decree to be passed against himself as defendant in a collusive suit upholding a fictitious *waqf-namah*, by which it was intended to tie up the property in perpetuity for the benefit of the direct descendants of the *waqf* to the exclusion of his collateral heirs, it was held, on suit by such heirs to recover possession of their share by inheritance of the property so dealt with, (i) that a Court which was otherwise competent to entertain the suit had jurisdiction, on the finding that it had been obtained by means of fraud, to treat the previous decree as a nullity, (ii) that the plaintiffs were not prevented from setting up the plea that the previous decree had been obtained by fraud by the fact that the person, who practised such fraud, was their predecessor

*see, I. L. R.*

*Fin. 479.*

*I. L. R.*

*Fuleedhoy*

*idham v.*

*Philips, 2 Ambler 763; and William v. Lloyd, 5 Bing. N. C. 741, referred to BARKAT-UN-NISSA v. FAZL HAQ (1904) I. L. R. 26 All. 272*

**4 JURISDICTION.**

I. ——— **Decree of superior Court if can be declared void by inferior Court.** A Court of inferior jurisdiction is competent to declare a decree of a superior Court to be a nullity on the ground of fraud, if otherwise it has jurisdiction to entertain the suit. *Aushootch Chandra v. Ta a Pratanra Roy, I. L. R. 10 Calc. 612; Kedar Nath Mukerjee v. Prosonna Kumar Chatterjee, 5 C. W. N. 539; Nunda Lal Bose v. Nistarini Dassi, 7 C. W. N. 353, I. L. R. 30 Calc. 369, referred to SATHAKRAM MAITI v. NANDO RAM MAITI (1906) I. L. R. 26 All. 272*

2. ——— **Suit to set aside a decree on the ground of fraud—No other relief claimed—Jurisdiction.** Save under special circumstances, a suit to set aside a decree obtained by fraud, in which no other relief whatever is claimed, cannot be maintained in any district outside the

**FRAUD—contd.****4. JURISDICTION—contd.**

*I. L. R. 24 Calc. 546; Kedar Nath Mukerjee v. Prosonna Kumar Chatterjee, 5 C. W. N. 539; Behari Lal v. Palhe Ram, I. L. R. 25 All. 43; Nistarini Dassi v. Nundo Lal Bose, I. L. R. 26 Calc. 993, and Eibeeman v. Abdool Aziz, 4 C. L. R. 366, referred to. UMRAO SINGH v. HARDEO (1907) I. L. R. 29 All. 419*

**FRAUDULENT CONVEYANCE.****See FRAUDULENT TRANSFER.**

1. ——— **Fraud on creditors—Transferee, rights of—"Good faith"—Sale by debtor with intent to defeat or delay creditor—Fraudulent intent of vendor shared in by purchaser—Fraudulent preference—Sale in consideration of existing debt—Sale of entire estate of debtor—Transfer of Property Act (IV of 1882), s. 53—Practice—Frame of suit—Appeal.** A suit under s. 53 of the Transfer of Property Act to obtain a declaration that a conveyance is voidable at the instance of the creditors of the transferor must be brought by or on behalf of all the creditors, and the suit unless so framed would not be maintainable. *Burjorji Dorabji Patil v. Dhundai, I. L. R. 16 Bom. 1; Isvar Timappa Hegde v. Devar Venkappa, I. L. R. 27 Bom. 146; Chatterput Singh v. Maharnj Bahadur, I. L. R. 32 Calc. 198, and Reese River Silver Mining Co v. Atwell, L. R. 7 Eq. 347, referred to.* But a suit cannot be dismissed on this ground, if the objection is taken for the first time in appeal. In order to establish the validity of a conveyance impeached as a fraud upon creditors, consideration and good faith must both be proved. If the transfer is for valuable consideration and is made with a full intention that the property should be parted with, and not as a cloak for retaining a benefit to the grantor, it will be valid as against a creditor, though the object of the

aids and assists in executing it, the transfer cannot be regarded as one made in good faith. In the absence of a law of bankruptcy, a preferential transfer of property to one creditor in satisfaction of an existing debt due to him is not fraudulent as to other creditors, although the debtor in making the transfer intended to defeat the claims, and the transferee had knowledge of such intention, if the only purpose of the latter is to secure his own

**FRAUDULENT CONVEYANCE—*concl'd.***

2. Conveyance to defraud creditors cannot be impeached, if creditors have been defrauded or if conveyance held valid by decree though collusively obtained. A party, who conveys property to another for no consideration to shield such property from the claims of creditors, cannot set up the fraudulent nature of the transaction when creditors have been defrauded thereby. Even where no creditors have been defrauded, if, in a suit to which the vendor and vendee are parties, the bond fides of the transaction is alleged and upheld, the vendor cannot, in a subsequent suit, get rid of the effect of the decree collusively obtained as between himself and the vendee, when such decree had been obtained in a proceeding intended to carry out the fraud. Where the former collusive decree had proceeded on the footing that the consideration had been paid, the purchaser, in the subsequent suit, is entitled to obtain possession without payment of the purchase money, even though it is shown that it was not paid, as the effect of compelling the purchaser to pay will be to enable the vendor to get rid of the effect of the former collusive decree, which neither party can be permitted to do. *Rangammal v. Venkatachari, 1 L. R. 18 Mad. 373*, referred to. *Yaramati Krishnayya v. Chunduru Papayya, 1 L. R. 20 Mad. 326*, referred to. *Per ABUD RAHIM, J.*—It is a clear and well established principle of law that, when the decree of a Court has been passed upholding a certain transaction between the parties to a suit, neither the plaintiff nor the defendant will be allowed afterwards to say that the transaction was in fact fraudulent or conveyance

And so also, when two persons have combined to defraud a third person and succeeded in their effort without obtaining the decree of a Court, the Court will not permit one of the parties to such fraud to show that the transaction between him and the other party to the fraud was not really what it purported to be and that it does not therefore bind him. In the first case the decree is regarded as a subsisting and effectual decree so that the question covered by it is treated as *res judicata*.

### FRAUDULENT DECREE

**See FRAUD**

1. *Decree declared void as against one of the parties.*  
*Effect of.* A brought a suit for partition against B and C, and obtained a decree by consent, based upon the award of certain arbitrators. C subsequently brought a suit for a declaration that the award and the decree were fraudulent and void as

**FRAUDULENT DECREE—concl.**

against her. The suit was decreed in her favour. On an application for the execution of the decree by *A* against *B*, objection was taken by the latter on the ground that inasmuch as the decree was declared to be fraudulent and void as against *C*, it was not susceptible of execution. *Hdd*, that, as the decree was declared fraudulent and void as against *C* only, it was a subsisting decree between *A* and *B*, and was susceptible of execution. *Bhujari Govind Kulkarni v. Rakhmadi*, *I. L. R. 10 Bom. 338*, and *Natesa Ayyar v. Annasami Ayyar*, *I. L. R. 25 Mad. 426*, referred to. PASUPATI

NATH ROSE v. NAXDO LAL ROSE (1903)

### FRAUDULENT PREFERENCE.

*See* DEBTOR AND CREDITOR.

*See FRAUD*

*See* FRAUDELENT CONVEYANCE.

I. L. R. 34 Cal. 899

See INSOLVENCY—VOLUNTARY CONVEY-  
ANCES AND OTHER ASSIGNMENTS BY  
DEBTOR.

**FRAUDULENT TRANSACTION.**

See CHEATING . I. L. R. 36 Cal. 573

*See FRAUD.*

**FRAUDULENT TRANSFER.**

See *DEXAMER* , 10 C. W. N. 650

See BENAMT DEEDS.

I. L. R. 33 Cal. 967

See FRAUDULENT CONVEYANCE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 53. I. L. R. 34 Cal. 989

1. ————— 13 Elizabeth, c 5  
and the Transfer of Property Act, 1<sup>st</sup> of 1882, s. 53—  
Transfer, though for valuable consideration void if  
made to defeat creditors—Such transfer not valid even  
in part. S. 53 of the Transfer of Property Act does  
not apply to transfers of moveable property. A

Act and under 13 ENACTED, U. S. AND CANADIAN  
... .. reported by ...  
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injunction. *L. Wayne & Co., v. C. O. L. R. 30 Mad.*  
to and followed *Ramasamia Pillai v. Adinarayana*  
*Pillai, I. L. R. 20 Mad. 465,* distinguished. *CIN-*  
*DABARAM CHETTIAR V SANI AIYAR (1906)*  
*I. L. R. 30 Mad. 6*



**FULL BENCH RULING—concl'd.**

to proceed with the execution of the decree, and that the judgment-debtor was not entitled to refer to the order of the High Court, dated 13th September 1890, to show that it was inoperative. *BHOODHONA ALUMBABI KOEB v. JOORAJ SINGH*

11 C. L. R. 277

**FUNERAL EXPENSES.]**

See *MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS* . I. L. R. 25 All. 266

Liability for—

See *HINDU LAW—JOINT FAMILY.*

I L. R. 32 Mad 191

**FURLOUGH.**

See *MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL* . I. L. R. 2 Calc 117

**FURTHER INQUIRY.**

See *COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL*

I L. R. 28 Calc. 102

See *CRIMINAL PROCEDURE CODE, s. 437.*

See *NOISANCE UNDER CRIMINAL PROCEDURE CODES* I L. R. 24 Calc. 395  
I L. R. 25 Calc 425

See *REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.*

reasons for directing further inquiry to be given—

See *CRIMINAL PROCEDURE CODE, s. 437.*  
13 C. W. N. 76

refusal to order—

See *COMPLAINT* . I. L. R. 36 Calc. 415

See *CRIMINAL PROCEDURE CODE, s. 201.*  
13 C. W. N. 193

1. Security for good behaviour  
—*District Magistrate, power of.* A District Magistrate has no power under the law to order a 'further' inquiry in a proceeding under s. 110 of the Code of Criminal Procedure after setting aside, on appeal, an order passed by a Subordinate Magistrate directing the accused to furnish security for good behaviour. *DAYANATH TALUQDAR v. EMPEROE* (1905) . I L. R. 33 Calc. 8

2. Notice to accused—*Criminal*  
—*Notice to the*  
The power  
Code  
separately  
is not illegal

**FURTHER INQUIRY—concl'd.**

to make an order directing further enquiry under s. 437, Criminal Procedure Code; without notice to the accused, it is always desirable that notice should be given. The ordinary rule is that no order should be passed against an accused without notice to him. A question may be very clear to a Court directing further inquiry, but still it ought to give an accused already discharged an opportunity to be heard. *JOY GOPAL BANERJEE v. EMPEROE* (1906)

11 C. W. N. 173

3. *Criminal Procedure Code (Act V of 1893), ss. 203, 437—Transfer by District Magistrate of case remanded for further inquiry—Rioting—Cross-cases—Dismissal—Construction of order for further inquiry—Rule on District*

entitled to be heard. Where a Sessions Judge  
cases was dismissed under s. 203; *Held*, that the

cases was dismissed under s. 203; *Held*, that the

11 C. W. N. 510

**"FURTHER OR OTHER RELIEF."**

*Religious or Charitable Trusts—Civil Procedure Code (Act XIV of 1882), s. 539. Held by BEAMAN, J.* The expression "such further or other relief" in the section means such further or other relief as, from the nature of the introductory words and the explanatory cases, appears to the Court to be appropriate to such a suit, e.g., removing fraudulent trustees, restraining a breach of trust, and so forth. *SRI DINDRA MANEKJI PETIT v. SRI JAMSETJI JINDEHAL* (1909) . I. L. R. 33. Bom. 509

**FUTURE INTEREST.**

See *DECREE* . I. L. R. 35 Calc. 221

## FUTURE MAINTENANCE.

Decree for—*Limitation Act* (XV of 1877), *Sch. II, Art. 79, cl. 6*—Decree directing maintenance from date of plaint is a decree within cl. 6—*Res judicata*—Erroneous decision on question of law no bar. A decree directing payment of future maintenance from the date of plaint, till death of recipient at a certain rate, is a decree for payment on that date in every subsequent year and the period of limitation for the execution of such a decree is that prescribed by Art. 179 (6) of *Sch. II* of the *Limitation Act*. An erroneous decision on a question of law in a previous application for execution of such a decree does not operate as a bar in a subsequent application to recover arrears which accrued subsequently. *Kareri v. Ventamma, I. L. R. 14 Mad. 396*, followed. *AITAMMA v. NARAINA BHATTA* (1907).  
I L R 30 Mad 504

## G

## GAMBLING.

See *BOMBAY PREVENTION OF GAMBLING ACT* (IV OF 1837).

See *CONTRACT—WAGERING CONTRACTS*.

See *CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY*.

I L R 7 Mad. 301

See *GAMBLING ACTS*.

See *NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE*.

I L R 14 Mad. 384

articles used for purpose of—

See *MADRAS POLICE ACT, 1833, s. 42*.

I L R 19 Mad. 209

suit to recover notes lost by—

See *THOVER* . . . 6 B. L. R. 581

were arrested was a common gaming house. A person is "found gaming" within the meaning of s. 57 of Act XIII of 1838 who, having been seen gaming by an inspector of police, is shortly afterwards, in a place adjoining the room in which he was seen gaming apprehended by police constables acting under the direction of such inspector. *REGU. v. NANA MOROJI. In re MADHAV MORAR*  
8 Bom. Cr. 1

2. Common gaming-house—*Hire of instruments of gambling*. Common gaming

GAMBLING—*contd.*

3. Lottery tickets—*Act III of 1867, ss. 1 and 4*. Lottery tickets, by reference to which it is to be decided whether the holder or purchaser wins the whole or any part of any stakes, are instruments of gaming within ss. 1 and 4 of Act III of 1867, and they are instruments of gaming of a nature similar to cards. *ANONYMOUS*  
12 W. R. Cr. 34

4. Public gaming-house. *Gim-*  
it is  
common  
QUEEN  
3 N. W. 1

QUEEN v. SEJJAD ALI . . . 3 N. W. 134

5. *Art III of 1867*.

KHYROO . . . 3 N. W. 289

6. Right to enter or search house—*Act III of 1867, s. 5*. To authorize an entry or search of a house under s. 3 of Act III of 1867, there must be credible information before the Magistrate or police-officer who may take action under such section that the house is a common

QUEEN v. SURROOKH . . . 2 N. W. 478

7. Cowries—*Act III of 1867, s. 6*. Instrument of gaming. Held, that cowries are not "instruments of gaming" within the meaning of s. 6 of Act III of 1867. *QUEEN EMPRESS v. BRAWANI* . . . I L R 18 ALL 23

8. Evidence of house being a common gaming house—*Instruments of gaming—Cowries*. Held, that the mere finding of cowries in a house searched in pursuance of a warrant issued under Act III of 1867 would not raise the presumption that the house was used as a common gaming house; but evidence that cowries were used in that house as instruments whereby to carry on gaming would bring the house within s. 6 of the Act. *Queen Empress v. BRAWANI, I. L. R. 18 ALL 23*, referred to. *QUEEN EMPRESS v. BULU MISHRA* . . . I L R 18 ALL 311

9. Beng. Act II of 1867—*Publication as to notification of*. The notification which the Government is empowered to issue under s. 2

which extended the Act to a town with specification of limits to which it was intended to be applied was published only once, and a subsequent notification

**GAMBLING—contd.**

published three times extended the Act to the town without specifying the limits to which the Act was to apply, it was held that the subsequent notifications were not sufficient, but that did not prevent the operation of the Act in places which are shown to be undoubtedly within the town according to its ordinary designation. *In the matter of the petition of BANEE MADHUS KOONDOR* . . . 21 W. R. Cr. 23

Coins and cowries are not necessarily implements of gambling but they become "instruments of gaming," within the meaning of the Gambling Act (Ben Act II of 1867), if they are found to be used for that purpose. A house cannot be considered as exclusively private in its character which is used for the purposes of gaming by a large party of people, of different social position and standing, who would not ordinarily be friends or guests of the owner. S. 6 of the Gambling Act raises a presumption that a house in which such articles or instruments are found is a common gaming-house within the meaning of the Act. *AURIT SINGH v. KING-EMPEROR* (1901) 5 C. W. N. 503

**11. — Unauthorized entry and arrest in gaming-house—Evidence—Presumption.** Where a police-officer, unauthorized by a Magistrate or District Superintendent of Police,

*NAZIR KHAN v. PROLADH DUTTA*

I. L. R. 4 Calc. 659

**12. — Right to enter and search gaming-house.** A deputy inspector of police is not authorized to enter and search an alleged gaming-house, unless he receives authority so to do from a Magistrate or District Superintendent of Police. Where such an unauthorized entry and subsequent arrest of persons in a gaming-house takes place, there being no other evidence of an offence under s. 5 of Act II of 1867, a Magistrate has no evidence before him on which he can convict. The evidence required cannot be presumed under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by s. 5. *SREERAM CHINDRA LERKAN v. BIPINDAS*

I. L. R. 4 Calc. 710

**13. — Common gaming-house—Courtesies—Instruments of gaming.** Cowries may be treated as instruments of gaming where they are used as counters or as a means to carry on gaming. The finding of cowries in a house upon search made under a warrant will, under s. 6 of the Gambling Act (Bengal Act II of 1867), raise a rebuttable presumption that the house is used as a common gaming-house. *QUEEN-EMPEROR v. MAXWELL HAN* . . .

I. L. R. 25 Calc. 432

**GAMBLING—contd.**

**14. — Gambling Act (Ben. Act II of 1867), s. 11—Ground enclosed by high wall forming a thakurbari, whether a "place" within the section—Place, meaning of—Public place—Confiscation of money for which game is played.** The word "place," as used in s. 11 of the Gambling Act (Ben. Act II of 1867), cannot but refer to a public place, and is used *ejusdem generis* with the other words in the section, public market, fair, street, thoroughfare; and the place must be of the same character as a public market, fair, street or thoroughfare. A thakurbari surrounded by a high compound wall is not a public place as contemplated by the section. When a conviction under s. 11 of Ben Act II of 1867 is set aside, the order for confiscation of the money for which the game was played must necessarily fall. *КЛУДИ ШЕКИ v. KING-EMPEROR* (1901) . . . 6 C. W. N. 33

**15. — Bombay Act III of 1866—Entry under illegal search-warrant.** Conviction of keeping a common gaming-house upheld where portion of the evidence against the accused consisted of instruments of gaming found in such a

*NARAYAN SUNDAR* . . . 5 Bom. Cr. 1

**16. — Coin—Instrument of gaming.** A coin is not an instrument of gaming within the meaning of s. 11 of Bombay Act III of 1866. An instrument of gaming means an implement devised or intended for that purpose. *EMRESS v. VITHAL BHAIKHAND*

I. L. R. 6 Bom. 19

**17. — Coin—Bombay Act IV of 1887 and I of 1890, s. 12—Instrument of gaming—Meaning of the expression.** A coin is not an "instrument of gaming" within the meaning of s. 12 of Bombay Act IV of 1887 as amended by Bombay Act I of 1890. The expression "instru-

for  
2. 6

I. L. R. 10 Bom. 263

**18. — Public nuisance—Common gaming-house—Nuisance—Penal Code, s. 263.** A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house and all persons who game therein, are guilty of a public nuisance within the meaning of s. 263 of the Penal Code. *REG. v. HAT NAQI*

7 Bom. Cr. 74

**19. — Wagering business—Bom. Act IV of 1837, ss. 3, 4, 5 and 7—Instruments of gaming—Books and telegrams—Game—Procedure—Police officer investigating offence not to conduct prosecution—Criminal Procedure Code (Act V of 1893), ss. 495 (cl. 4) and 537.** The accused was partner in a shop at Surat, in which he ostensibly

**GAMBLING—contd.**

carried on the business of cloth selling, but in which he also actually carried on a *satta*, or wagering business.

from Calcutta. The firm kept books in which the wagers were recorded. The accused was convicted and sentenced under ss. 4 and 5 of Bombay Act IV of 1887. *Held* by CANDY and FULTON, JJ. (confirming the conviction under s. 4), that the books kept by the firm for the purpose of recording the wagers were "instruments of gaming" within the definition of s. 3 of Bombay Act IV of 1887. *Held* by CANDY, J., that the telegrams received and used for the purpose of determining the result of the bets were also within the definition. *Held*, also, (setting aside the conviction under s. 5), that the wagering with which the accused was charged was not a "game," and the presumptions under s. 7 and cl. 2 of s. 5 of the Act did not apply. A police Inspector, who has taken part in the investigation into an offence, is not qualified to conduct the prosecution of the person charged with that offence (Criminal Procedure Code, Act V of 1893, s. 495, cl. 4). **EMPEROR v. TRIBHUVANDAS BRAJBHUKANDAS** (1902) I. L. R. 26 Bom. 533

20. ——— **Power of seizing money—Bom. Act IV of 1887, s. 8—Power of seizing money found therein—Interpretation** The power of seizing money found in a gaming-house, under s. 8 of Bombay Act IV of 1887, does not extend to money found on the persons of those who may at the time be in such gaming house. **EMPEROR v. WALLI MUSSAJI** (1902) I. L. R. 26 Bom. 641

21. ——— **Betting on rainfall—Bombay Acts IV of 1887 and I of 1890, s. 3—"Common gaming-house"—"Instrument of gaming"—"Used"—Meaning of these words in s. 3 of the Act** The accused rented a place near a public road at Bombay at Rs 250 a month. There they erected a shed containing eleven *pedhis* or stalls. In the centre of the shed they put up, in a prominent position, a clock for keeping accurate time. The

**GAMBLING—contd.**

stances, the accused were charged before the Court

wagering must be in the place itself, either kept

surrounding fore be kept or use the Act of the Act, as amended by Act I of 1890, must be taken in its ordinary sense, as meaning actually used. Any article which is in fact used as a means of wagering comes within the definition of "an instrument of gaming," even though it may not have been specially devised or intended for that purpose. *Held per TELANG, J.*, that neither the stalls nor the books in which the bets were registered nor the money staked and deposited with the stall-keeper, were instruments of gaming or wagering. **QUEEN-EMPEROR v. KANJI BHAIJI** I. L. R. 17 Bom. 184

22. ——— **Rain-betting—Bombay Act IV of 1887, ss. 3, 4—Common gaming-house—What constitutes gaming.** The accused kept a shed where large numbers of people assembled for the purpose of betting on the quantity of rain which

that Bombay Act IV of 1887 did not apply to betting. The shed in question was undoubtedly a common betting place, and the instruments used

sary. In the present case there was no contest, no

I. L. R. 13 Bom. 681

23. ——— **Presumption—Bombay Act IV of 1887, ss. 4, 5 and 7—Proof of keeping or of**



**GAMBLING—contd.**

*gaming in a common gaming-house—Presumption—Evidence.* A number of persons were found by the police in a closed room in the house—

*Act 11 of 1887. Held*, confirming the conviction, that under s. 7 of the Act the facts found were evidence (until the contrary was shown) that the room was used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming. *QUEEN-EMPEROR v Bai Vaju*. I. L. R. 22 Bom. 745

24. ——— Public nuisance—Penal Code (XIV of 1860), ss. 268, 290—Gambling, whether an

25. ——— Single page of paper used for registering wagers—*Bombay Prevention of Gambling Act (Bombay Act IV of 1887)*, ss. 3, 4 (a)—Instrument of gaming. The expression "instruments of gaming" as defined in s. 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) includes a single page of paper used for registering wagers. *EMPEROR v. LAKHANSI* (1905). I. L. R. 29 Bom. 264

26. ——— Gambling in a boat—*Bombay Prevention of Gambling Act (Bombay Act IV of 1887)*, ss. 3, 4, 12—Gambling in a *machhwa*—Public place—*Bombay Harbour*. The accused, fourteen in number, chartered a *machhwa* (boat), and having got it anchored in the Bombay Harbour a mile away from the land, carried on gambling there. For this they were convicted of an offence under s. 12 of the Bombay Prevention

of many different meanings, must necessarily, in each instance in which it is used by the Legislature, be construed with reference to the intention to be inferred from the context. Thus in s. 12 of the Bombay Prevention of Gambling Act (Bom. Act IV of 1887) or in s. 3 of 30 and 37 Vict., c. 38, in connection with such words as roads, streets, and thoroughfares, it has a very different meaning from that which it bears in s. 4 of the Act, and from that given to it in connection with s. 3 of 16 and 17 Vict., c. 119, by judicial decisions. The mischief aimed at in s. 4 of the Act is a mischief clearly distinct from that aimed at in s. 12 of the Act. In the former, the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection known as a place where gambling

**GAMBLING—contd.**

is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. In the latter, the offence is not that the individual members are making a profit at all, but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed—if his inclinations be that way—to join in or follow the had example openly placed in his way. In the one case comparative privacy for

instruction to the public view, where there is voluntary publicity. *EMPEROR v. JESUR ALI* (1905). I. L. R. 29 Bom. 386

27. ——— Gambling in *jamaikhana*—*Gambling Act (Bombay Act IV of 1887)*, ss. 4, 5, 7—Common gaming house—*Jamaikhana* of the *Borah* community. The accused were found playing for money with cards in a building ordinarily used as a *jamaikhana*, but accessible to such members of the *Borah* community as have no place to live in and are too poor to afford the rent of a room. This place was frequented by the petitioners and others and instruments of gaming were found there, when the accused were arrested. The

which under s. 7 of the Act might be drawn, that this place was used as a common gaming house, unless the contrary was made to appear by the evidence before him; there was, therefore, no ground to interfere in revision with the convictions under s. 5 of the Act. *Held*, further, that no presumption arose under s. 7 of the Act that the place was "kept" by any person as a common gaming house; the conviction under s. 4 was therefore wrong. In order to constitute an offence, under s. 4 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), of keeping a common gaming house, it is

in question for the purpose of gaming there. *EMPEROR v. WALIA MUSAJI* (1904). I. L. R. 29 Bom. 226

28. ——— Gambling in a railway carriage—*Bombay Prevention of Gambling Act (Bombay Act IV of 1887)*, s. 12—Through special train—Public place—*Railway track*—Public having no right of access except passengers. The accused were convicted under s. 12 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) as persons found playing for money in a railway carriage forming part

**GAMBLING—*contd.***

of a through special train running between Poona and Boinbay, while the train stopped for engine purposes only at the Reversing Station (on the Bore Ghauts between Karjat and Khandola Stations) of the Great Indian Peninsula Railway. *Held*, reversing the conviction, that a railway carriage forming part of a through special train is not a public place under s. 12 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887). *Per JENKINS, C.J.*—The word "place," in s. 12 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), is, I think, qualified by the word "public" and having regard to its context and its position in that context, it must, in my opinion, mean a place of the same general character as a road or thoroughfare . . . I am unable to regard the railway carriage, in which the accused

Prevention of Gambling Act (Bombay Act IV of 1887) applies to all the three nouns—street, place or thoroughfare, and it is clear that the railway line certainly cannot be described as a "public street or

**I. L. R. 30 Bom 348**

29. ——— Gambling in business premises, at night—*Gambling Act (Beng. II of 1867), s. 4—Common gambling house.* Where the premises of Messrs. John King & Co. were used, during the night, when they were deserted for business purposes, for the purpose of gambling for months together, to the profit of the durwans left in

**11 C. W. N. 972**

30. ——— Arrest without warrant—*Bombay Prevention of Gambling Act (Bom. Act IV of 1887), ss. 4, 5, 6, 7—Keeping a common gaming-house—Presumption under s. 7 of the Act—Criminal Procedure Code (Act V of 1898), ss. 65, 105.* The complainant, an Abkari Sub-Inspector, having come to know that gambling was then actually going on in the house of the accused, communicated the information to the District Magistrate, whom he met on the road. The District Magistrate desired the complainant to go and stand before the house and ordered him to enter the house and

**GAMBLING—*contd.***

the District Magistrate was not examined as a witness. The trying Magistrate convicted the accused

the Magistrate erred in applying to the accused the presumption arising under s. 7 of the Act. The presumption under s. 7 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) arises only where there has been an arrest and a search under s. 6 of the Act. As a First Class Magistrate has, under s. 6 of the Act, power to give authority under a special warrant to a police officer of the class designated in the section to make the arrest and the search, the Legislature must be presumed to have intended that the Magistrate, First Class, should have the authority to make the arrest and the search himself, if necessary. Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the person to whom and the conditions under which such warrant may be issued, can apply for the purposes of s. 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in s. 6 of the Act and no other. But the special provision in s. 6 would still be subject to the general provisions of ss. 65 and 105 of the Code. When a Magistrate, First Class, or other officer mentioned in s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) himself acts under its provisions, instead of acting through an officer of the particular class prescribed therein under a special warrant, he must act strictly in compliance with those provisions. The first condition necessary to make an arrest and seizure, under the section, legal so as to bring in the operation of s. 7 is that where the Magistrate is acting on information that there is a common gambling-house

the section instead of issuing a special warrant,

Prevention of 1887) he must place" with is found necessary. S. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) must be construed strictly because s. 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. *Imperial v. Subbahlatta, Unrep. Cr. Cas 825: Cr. Rd. 63 of 1895, followed. EX-FERIO FERNAN (1907), 1 I. L. R. 31 Bom. 438*

**GAMBLING ACT (XXI OF 1848).**

See CONTRACT—WAGERING CONTRACTS.

See TEZI MANDI CHITTIES.

8 B. L. R. 412, 415 note

**GAMBLING ACT (BENGAL ACT II OF 1867).**

See GAMBLING.

s. 4—

See GAMBLING . 11 C. W. N. 972

ss. 4, 5 and 6—Common gaming house—Evidence—“Credible information.” Held, that when a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming house notwithstanding that the warrant, under which the search is conducted, is defective, though the finding of such articles may not be evidence to the extent mentioned in s 6 of Bengal Act II of 1867. Held, also, that the words “credible information” as used in s 5 of Act II of 1867, have not the same meaning as “credible evidence.” The “credible information” there mentioned need not be in writing. *EMPEROR v. ABDUS SAMAD* (1905)

I. L. R. 28 All. 310

1. — s. 11—Gambling in osara or vrandah—Public place. The accused were Act of here the ah, which s opening between part of a building, which was the private property of certain individuals and was used during the day as a shop; but not so in the night. The gambling in question took place after midnight. Held, setting aside the convictions, that the osara was not a public place within the meaning of s 11 of the Gambling Act. *DURGA PRASAD KALWAR v. EMPEROR* (1904).

I. L. R. 31 Calc. 810  
s.c. 8 C. W. N. 592

2. — Sham horse-racing machine—Instrument of gaming—Compound of house—Public place. The accused played a game of sham horse-racing known as “little horses” by means of a machine. Which horse won was a pure matter of chance. The public staked their money on any of the horses before the

of the Sanjoy Pura consisting of an open space of land without any fence situated one cubit from this bazar. There was no evidence that the owner ever gave or refused permission to any one to come on his compound or that any one asked his permission to do so, or that any one was prevented from doing so by him. Held, the accused was rightly convicted under s. 11 of the Bengal Gambling Act,

**GAMBLING ACT (BENGAL ACT II OF 1867)—concl'd.**

s. 11—concl'd.

II of 1867. The difference between gaming and betting discussed. *The Queen v. Wellard*, I. R. 14 Q. B. D. 63; *Turnbull v. Appleton*, 45 J. P. 469; *Queen-Empress v. Srilal*, I. L. R. 17 All. 166; *Khudi Sheikh v. The King-Emperor*, 6 C. W. N. 33; *Queen-Empress v. Narottamdas Matram*, I. L. R. 13 Bom. 681, referred to. *HARI SINGH v. JADU NANDAN SINGH* (1904)

I. L. R. 31 Calc. 542  
s.c. 8 C. W. N. 458**GAMBLING ACT (III OF 1867)**

See GAMBLING.

ss. 5 and 6—Warrant for search of suspected house—“Credible information”—Procedure—Endorsement of warrant by officer to whom it was issued. Warrants issued under Act III of 1867 are governed by those provisions of the Code of Criminal Procedure, which provide for the issue and execution of warrants in general: there is,

I. L. R. 20 All. 200

s. 13—Gaming in public place—Seizure of money as well as instruments of gaming not authorized. Held, that, where persons are found gaming in a public place under circumstances to which s 13 of Act III of 1867 is applicable, although instruments of gaming, etc., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested. *Sant Ram Sahai v. Queen-Empress*, *Punj. Rec. J. Cr. p. 60*, followed. *EMPEROR v. TOTA* (1904)

I. L. R. 26 All. 270

**GAMING HOUSE.**See GAMBLING . 5 C. W. N. 503  
I. L. R. 29 Bom. 226See MAORAS POLICE ACT, s. 1888, 42.  
I. L. R. 19 Mad. 209See MADRAS TOWNS NOISANCES ACT,  
s 73 . I. L. R. 18 Mad. 48**GANJAM AND VIZAGAPATAM AGENCY COURTS ACT (XXIV of 1839).**See HIGH COURT, JURISDICTION OF—  
MAORAS—CIVIL. I. L. R. 28 Mad. 286See HIGH COURT, JURISDICTION OF—  
MAORAS—CRIMINAL. I. L. R. 14 Mad. 121See LIMITATION ACT, 1877, s 12.  
I. L. R. 14 Mad. 385

# GANJAM AND VIZAGAPATAM AGENCY COURTS ACT (XXIV GF 1839)—*concl'd.*

See REVISION—CIVIL CASES.

I. L. R. 16 Mad. 220

See RULES MADE UNDER ACTS—ACT XXIV OF 1839 . I. L. R. 24 Mad. 345

See TRANSFER OF CIVIL CASE—GENERAL CASES . I. L. R. 13 Mad. 320

See VALUATION OF SUIT—APPEALS

I. L. R. 22 Mad. 162

# GANJAM AND VIZAGAPATAM AGENCY RULES.

*Limitation Act (XI of 1877), Sch. II, Art. 4, does not apply when act complained of is a nullity—Ganjam and Vizagapatam Agency Rules, Act XXI of 1839, rule 20—High Court may interfere when Agent decides wrongly on question of limitation. An erroneous decision by an Agent acting under the Ganjam and Vizagapatam Agency Rules, on a question of limitation, is a 'special ground' which will authorise an interference by the High Court under rule 20 of such Rules. Art. 14, Sch. II of the Limitation Act, does not apply to an act done by a Government officer, when such act purports to be done in pursuance of an order, but, in fact, owing to a mistake is not so done. Such an act is a nullity which need not be set aside. MAHARAJA OF VIZIANAGRAM v. SATRUCHEELA RAJU (1906)*

I. L. R. 30 Mad. 260

# GARHWAL.

See KUMAON AND GARHWAL.

# GAYAWAL PRIESTS.

See ADOPTION . . . 11 C. W. N. 147

# GAZETTE, GOVERNMENT.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—GOVERNMENT GAZETTE . . . W. R. 1884, 50

See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE . . . 7 B. L. R. 63

# GENERAL AVERAGE.

See SHIPPING LAW.

I. L. R. 17 Calc. 382; I. L. R. 16 I. A. 240

# GENERAL CLAUSES ACT, 1887 (I GF 1887).

s. 3, c. (13).

See VALUATION OF SUIT—SUITS—PARTITION . . . I. L. R. 24 All. 381

# GENERAL CLAUSES ACT (X GF 1867).

s. 3 (27).

See NEPAL . . . 7 C. W. N. 635

# GENERAL CLAUSES ACT (X OF 1897)—*concl'd*

s. 3 (33).

See MARINE INSURANCE

I. L. R. 36 Calc. 516

13 C. W. N. 425

s. 3, cl. (52)—*Signature—Thumb impression—Criminal Procedure Code (Act V of 1898), s. 164* A thumb mark affixed to a confession by an accused able to write his name is not a signature within the meaning of s. 3, cl. 52 of the General Clauses Act or s. 164 of the Criminal Procedure Code. *SIDANANDA PAL v. EMPEROR (1905)*

I. L. R. 32 Calc. 550

s. 8 and s. 24 ("order")—

See PETROLEUM ACT (VIII of 1899), ss.

1 (3), 11 AND 15 . . . 7 C. W. N. 656

# GENERAL CLAUSES ACT (BEN. ACT I GF 1899).

s. 7.

See MANILATDARS' COURTS ACT (BOMBAY ACT III of 1870)

I. L. R. 32 Bom. 337

s. 8.

See CALCUTTA MUNICIPAL ACT, 1899, ss. 391 AND 449 . . . 7 C. W. N. 374

s. 8 (c).

See CALCUTTA MUNICIPAL ACT, 1899, s. 449 . . . 7 C. W. N. 554

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 310A . . . 12 C. W. N. 434

# GENERAL CLAUSES ACT (MADRAS).

See MADRAS GENERAL CLAUSES ACT.

# GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868).

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS

I. L. R. 14 All. 30

s. 1—"Include." The word "include" in cl. (13) and other clauses of s. 1 of Act I of 1868 is intended to be enumerative, not exhaustive. *EMPRESS v. RAMANJIYYA* . . . I. L. R. 2 Mad. 5

s. 2.

See STAMP ACT, 1879, SCH. I, ART. 5.

I. L. R. 13 Bom. 87

cl. (5).

See HAT . . . I. L. R. 36 Calc. 665

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

I. L. R. 9 Calc. 535

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

I. L. R. 22 Calc. 33

See TRANSFER OF PROPERTY ACT, s. 107. I. L. R. 22 Calc. 752

# GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*contd.*

s. 2—*contd.*

cls. (5), (8).

See TRANSFER OF PROPERTY ACT.

I. L. R. 13 All. 432

cl. (18).

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R. 9 All. 240

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY

16 W. R. Cr. 3

I. L. R. 9 All. 240

s. 3.

See FISHERY, RIGHT OF.

I. L. R. 20 Calc. 446

See LIMITATION ACT, 1877, ART. 132

I. L. R. 9 Bom. 233

cl. (1).

See LIMITATION ACT, 1877, ART. 177.

I. L. R. 15 All. 14

Stamp Act, 1862 and 1869, s. 2, and Sch 3—Repeal by Act XII of 1870, effect of. By force of s. 3, cl. (1), of Act I of 1868, the mere repealing of s. 2 and Sch 3 of Act XVIII of 1869 by Act XIV of 1870 did not *per se* revive the repealed portions of Act X of 1862. ANONYMOUS . . . 7 Mad. Ap. 9

cl. (2).

See LIMITATION ACT, 1877, s. 7.

I. L. R. 13 Mad. 135

s. 5.

See CANTONMENT MAGISTRATE.

I. L. R. 8 Mad. 350

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

7 Bom. Cr. 78

s. 6.

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON . I. L. R. 1 All. 666

I. L. R. 3 Calc. 662, 727

4 C. L. R. 16

I. L. R. 5 Calc. 259; 4 C. L. R. 23

I. L. R. 2 All. 765

See BENGAL TENANCY ACT, ss. 20, 21.

I. L. R. 14 Calc. 553

I. L. R. 15 Calc. 376

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

I. L. R. 16 All. 259

See COMPANY—FORMATION AND REGISTRATION . . . I. L. R. 11 All. 349

See COSTS—SPECIAL CASES—SMALL CAUSE COURT SUITS.

I. L. R. 24 Calc. 399

I. L. R. 21 Bom. 779

# GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*contd.*

s. 6—*contd.*

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

I. L. R. 2 Bom. 148

I. L. R. 3 Bom. 214, 217

I. L. R. 4 Bom. 163

I. L. R. 18 Calc. 323

I. L. R. 21 Calc. 940

I. L. R. 22 Calc. 767

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS ON LAND . . . I. L. R. 13 Mad. 503

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—LAW APPLICABLE TO APPLICATION FOR EXECUTION.

11 Bom. 111, 116 note

I. L. R. 9 Calc. 446, 644

I. L. R. 7 Bom. 459

I. L. R. 11 Calc. 55

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE

I. L. R. 15 Calc. 357

See OFFENCE COMMITTED BEFORE PENAL CODE CAME INTO OPERATION

I. L. R. 2 Calc. 225

I. L. R. 1 All. 599

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

I. L. R. 15 Calc. 107

See TRANSFER OF PROPERTY ACT, s. 2.

I. L. R. 6 All. 262

I. L. R. 11 Calc. 562

I. L. R. 12 Calc. 436, 505

I. L. R. 15 Calc. 357

1. Proceedings. meaning of—Service of notice of foreclosure The proceedings referred to in s. 6 of the General Clauses Consolidation Act (1 of 1868) are not necessarily judicial proceedings, but ministerial Proceedings, as, e.g., the service of notice of foreclosure. UNESH CHANDER v. CHUNCHUN OJHA I. L. R. 15 Calc. 357

2. Proceedings—Procedure—Civil Procedure Code, 1877-82, s. 3—Proceedings in execution of decree commenced before Act X of 1877. S. 6 of Act I of 1868 covers proceedings taken in execution of decrees which have been commenced before the coming into force of the Civil Procedure Code, 1877-82, as of Act I of 1868. The word "proceedings" as used in s. 6 of Act I of 1868 has its full meaning from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word "procedure" in s. 3, Act X of 1877, has not the same meaning as the word "proceedings" in the aforementioned section. RUNJIT SINGH v. MEHERRANS KOER I. L. R. 3 Calc. 662; 2 C. L. R. 391

# GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*contd.*

s. 6—*contd.*

BURRUT HOSSEIN : MAJIDDOONISSA

3 C. L. R. 208

NADIR HOSSEIN : BISSA CHAND BISSARAT

3 C. L. R. 437

3. *Pending proceedings—Effect of repeal.* An appeal having been filed on the 10th April 1879, a memorandum of objections under s. 561 of the Civil Procedure Code was filed by the respondent on the 18th September 1879 before the actual hearing which took place in July 1880. *Held*, that the memorandum under s. 561 of the Code as amended by s. 80 of Act XII of 1879 ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. On an application for review:—*Held per MACLEAY, J.*, distinguishing the case of *Ratanji Kullianji*, 1 L. R. 2 Bom. 148, that nothing having been done and no proceeding having been commenced by the respondent up to 31st May 1879, under the Procedure Code as it existed prior to that date, the filing of the memorandum was governed by the present Code as amended, and it was therefore admissible. *Held per MITTEN, J.*, that the appeal, having been filed before Act XII of 1879 was passed, was a proceeding within the meaning of s. 6 of the General Clauses Act, I of 1868, and that the new Act therefore did not affect the appeal. *RAM GOBIND JEOONER v. DENO BUNNIE SRI CHENNAI MOHAPATTER*, 9 C. L. R. 281

4. *Criminal Procedure Code, 1882, s. 558—Change of procedure—Effect on pending trial.* S was tried by a Sessions Court in December 1882 on charges some of which were triable by assessors, others by jury. Before the trial was concluded, the Code of Criminal Procedure, 1882, came into force. By s. 269 of that Act, all such charges are to be tried by jury. By s. 558 of the same Act, the provisions of that Act are to be applied, as far as may be, to all cases pending in any Criminal Court on 1st January 1883. *Held*, that, by virtue of s. 6 of the General Clauses Act, 1868, the trial must be conducted under the rules of procedure in force at the commencement of the trial. *SRINIVASACHARI v. QUEEN*, 1 L. R. 6 Mad. 386

5. *Deccan Agriculturists' Relief Act Amending Act, XXII of 1882—Decree, execution of—Attachment—Sale—Proceeding—Deccan Agriculturists' Relief Act, 1879—Effect of repeal.* On the 7th of September 1870, the appli-

# GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*contd.*

s. 6—*contd.*

the above application was pending—Act XVII of 1879 was amended by Act XXII of 1882 so as to prohibit the sale of the immovable property of agriculturists in execution of a decree, even though such decree was passed before the date of the Act. *Held*, notwithstanding the provision of s. 6 of the General Clauses Act, I of 1868, and the attachment

I. L. R. 8 Bom. 340

6. *Limitation Act,*

consolidation Act, 1868, s. 6. *GOBIND LAKSHMAN v. NARAYAN MARESHWAR*, 11 Bom. 111

*BALKRISHNA v. GANESH*, 11 Bom. 118 note

7. *Limitation Acts, 1871 and 1877—Effect of repeal.* Under s. 6 of Act I of 1868, the repeal of Act IX of 1871 by Act XV of 1877 did not affect any proceedings commenced before the repealing Act came into force. *In re Ratanji Kallanji*, 1 L. R. 2 Bom. 148, followed. *BEHARY LALL v. GOBERDHAN LALL*, 1 L. R. 8 Calc. 446; 12 C. L. R. 431

8. *Registration Acts—Effect of repeal of Act* By s. 6 of the General Clauses Act, a suit is to be governed by the Registration Law in force at the institution of the suit, and not by that which may be in force when it comes on for hearing. *OGHRA SINOR v. ABLAKHI KOOR*, 1 L. R. 4 Calc. 538; 3 C. L. R. 434

8. *Repeal of Registration Act VIII of 1871 by III of 1877—Proceedings.*

DULLAH

10. *Stamp Act, X of 1862, s. 3—Offence under Stamp Act, 1862.* By s. 6 of Act I of 1868, an offence committed under s. 3 of Act X of 1862, whilst that enactment was in force, is still an offence, and may be tried under that enactment. *ANONYMOUS*, 7 Mad. Ap. 9

11. *Effect of repeal—Proceedings—Bengal Rent Act (VIII of 1855), s. 5.* The words "any proceedings commenced before the repealing Act shall have come into operation" in s. 6 of the General Clauses Act (I of 1868) include an

landlord and tenant a decree was passed by the lower Appellate Court on the 28th of July 1885 Under

# GENERAL CLAUSES CONSOLIDATION ACT (I of 1889)—concll.

o. 6—concll.

the provisions of the Act then in force, namely, Bengal Act VIII of 1869, s. 102, a second appeal to the High Court was prohibited. That Act was repealed by Act VIII of 1885, which came into force on the 1st of November 1885, this latter Act allowing an appeal to the High Court in suits similar to the one in question. A second appeal to the High Court in that suit was filed on the 18th of November 1895 *Held*, that no appeal lay.

*MURROSUNDARI DABI v BROJONARI DAS MANJI*  
I. L. R. 13 Calc. 88

12. ———— *Bengal Tenancy Act (VIII of 1885), s. 170—Decree for rent under Bengal Act VIII of 1869—Attachment under decree obtained under Rent Law of 1869, subsequently to the passing of Act VIII of 1885—General Clauses Consolidation Act (I of 1885), s. 6* Before the Bengal Tenancy Act of 1885 came into operation, a decree for rent was obtained under Bengal Act VIII of 1869. After the Bengal Tenancy Act of 1885 had become law, the tenancy in respect of which the rent had become due was attached in execution of such decree. A claim was subsequently put in to the attached property by a third person, which claim was disallowed as being forbidden by s. 170 of the Bengal Tenancy Act of 1885. *Held*, that the provisions of the Bengal Tenancy Act of 1885 were applicable to the proceedings in execution, the term "proceedings" in s. 6 of Act I of 1868 not including proceedings in execution after decree. *See NABAIN DUTT v. NARENDRA KRISHNA*  
I. L. R. 18 Calc. 267

# GENERAL CLAUSES CONSOLIDATION ACT (I OF 1887).

s. 3, cl. (13).

*See VALUATION OF SUIT—APPEALS*

I. L. R. 13 All 320

I. L. R. 15 All 363

s. 7.

*See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION.*

I. L. R. 22 Calc. 178

# GENERAL COMMITTEE.

power of—

*See HIGH COURT, JURISDICTION OF.*

I. L. R. 34 Calc. 30

# GENERAL POWER OF ATTORNEY.

*See CIVIL PROCEDURE CODE, 1882, s. 37*

I. L. R. 20 All 135

# GENERAL REPUTE.

*See CRIMINAL PROCEDURE CODE, s. 110*

I. L. R. 31 Calc. 783

13 C. W. N. 244

*See SECURITY FOR GOOD BEHAVIOUR.*

I. L. R. 35 Calc. 243

# GENERAL RULES OF RAILWAY COMPANY.

*See RAILWAY COMPANY.*

I. L. R. 38 Calc. 819

# GHAT.

*See BURNING GHAT.*

I. L. R. 33 Calc. 1290

# GHATWALI TENURE.

*See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.*

I. L. R. 28 Calc. 483

*See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.*

5 C. W. N. 185

*See RIGHT OF OCCUPANCY.*

I. L. R. 33 Calc. 830

1. ———— *Nature of tenure—Perpetual tenure. Ghatwali tenures are perpetual holdings subject to condition of service. LEELANUND SINGH v MONORUNJAN SINGH* . 5 W. R. 101

2. ———— *Chakran tenure—Grant of ghatwali tenure. In the absence of long usage, a ghatwali grant confers a mere chakran holding or interest. In re SIKH SINGH*  
2 Ind. Jur. N. S. 149

3. ———— *Ghatwals of Khurruckpore—Perpetual hereditary tenure. The ghatwals of Khurruckpore hold a perpetual hereditary tenure at a fixed jamma payable in money and service, and cannot be evicted by the zamindar except for misconduct. MONORUNJAN SINGH v. LEELANUND SINGH* . 3 W. R. 84

4. ———— *Right of resumption when service not required. In the absence of express words to the contrary, ghatwali lands held under a lease which neither confirms nor recognizes the pre-existing status of the ghatwals, nor confers on them any right other than that of holding the lands at a fixed rate as long as ghatwali service is required from them, are resumable by the zamindar when that service is no longer required. LEELANUND SINGH v. SARWAN SINGH* . 5 W. R. 292

5. ———— *Right to hold*

6. ———— *Succession to ghatwals*

8 W. R. 60

6. ———— *Succession to ghatwals*

*tenure. KUSTOORA KODHAREE v. MONOHUR DEO. GOVERNMENT v. MONOHUR DEO* . 19 W. R. 1884, 39

GHATWALI TENURE—*contd.*

7. — *Descent of ghatwali estate—Females.* A ghatwali estate is not necessarily held by males to the exclusion of females. DOORGA PERSHAD SINGH v. DOORGA KOORARE. 28 W. R. 154

8. — *Services dispensed with.* Although in custom the ghatwali tenure descended from father to son, no succession was legal or valid till confirmed by the zamindar and reported by him to the Government authorities. Where Government has dispensed with the services of the ghatwals, the zamindar is under no obligation to continue to appoint, and may, on a vacancy occurring, settle the tenure as he pleases. MAHARAJ MOHARRAM PATASU KUMARI. 1 B. L. R. A. C. 120; 10 W. R. 179

9. — *Power of Commissioner of Revenue—Disqualification.* A Commissioner of Revenue is not competent to exercise the power of appointment or removal of ghatwals. 1 B. L. R. A. C. 120; 10 W. R. 179

10. — *Right of succession to ghatwali tenure in Beerbhoom—Beng. Reg. XXIX of 1814, s. 2—"Descendants," meaning of—Impartible property—Separate property—Hindu law, Mitakshara Ghatwali tenures in*

would be inconsistent with the tenor of the

deceased ghatwal, who may therefore be one of his heirs. *Lall Dharee Roy v. Brojo Lall Singh*, 10 W. R. 401, and *Kustoree Koomaree v. Monohur Das*, W. R. Case Number (1864) 39, referred to.

GHATWALI TENURE—*contd.*

in the proper sense of the term CHHATRADHARI SINGH v. SARASWATI KUMARI. I. L. R. 23 Cal. 150

11. — *Suit for khas possession of ghatwali lands—Lands in seasonally settled estate.* A suit for this possession by Government will not lie in respect of ghatwali lands admittedly included in a seasonally-settled estate. GADHAR BANERJEE v. GOVERNMENT. 6 W. R. 326

12. — *Ghatwal becoming defaulter—Beng. Reg. XXIX of 1814—Transfer of tenure.* When a ghatwal becomes a defaulter, it is in the power of the authorities, according to Regulation XXIX of 1814, to transfer his tenure, and that power is not put an end to by the money being offered before the tenure is actually made over to another person. CHITTO NARAIN SINGH TRAKAI v. ASSISTANT COMMISSIONER OF SOUTH PROVEDANS. 14 W. R. 203

13. — *Resumption and assessment—Beng. Reg. I of 1793, s. 8, cl. 4.* The ghatwali lands in the zamindari of Khurruk-pore are not liable to resumption and re-assessment under cl. 4, s. 8, Regulation I of 1793, relating to thannah or police establishments. LELLAND SINGH v. GOVERNMENT OF BENGAL. 4 W. R. P. C. 77; 6 Moo. I. A. 101

14. — *Resumption of service tenure.* In 1775 a rent free sanad was

tenure that could be resumed, and the subject of service tenures was explained. FORBES v. MIR MAHOMED TAKI. 5 B. L. R. 529

14 W. R. P. C. 28

13 Moo. I. A. 438

15. — *Terms implying hereditary tenure—Construction of grant.* Suit for resumption of a ghatwali tenure. Held, that the

and most precise definition, such as *istemrari* and *maurasi*, with the addition of *nuslan bad nuslan* (from generation to generation), would be necessary to support the appeal. SONA v. LELLAND SINGH. 5 W. R. 290

16. — *Assessment of rent—Evidence of grant—Former dismissal of suit for rent.* Long possession (presumably from the Decennial Settlement) and gradual cultivation by a ghatwal on payment of a quit-rent (and not merely possession



GHATWALI TENURE—*contd.*

without cultivation) are evidence of an implied grant which protects the ghatwal from enhancement or assessment on the land so cultivated. An adjudication by a competent Court made sixty years ago dismissing the landlord's claim to rent from the ghatwal is evidence of the highest value of the

6 W. R. 10

17. — *Suit to assess ghatwal—Act X of 1859, ss. 3 and 15* Where it was admitted that the ghatwal defendant's tenure dated from a time anterior to the Decennial Settlement, and before the creation of the zamindari, the defendant is protected, whether under s. 3 or under s. 15, Act X of 1859, from any fresh assessment. *ERSKINE v. GOVERNMENT* . 8 W. R. 232

18. — *Enhancement of rent—Hereditary tenure—Services, cessation of—Act XI of 1859, s. 37.* The plaintiff, an auction-purchaser of a zamindari at a sale for arrears of revenue, sued in 1863 to eject the defendants from certain mouzabs included in the zamindari, and which were held by the defendants under a ghatwali tenure, on the ground that the service for which the grant was

granted was discontinued. The defendants claimed a permanent Settlement; and that he and his ancestors had enjoyed uninterrupted possession in direct succession from a period prior to the Permanent Settlement.

eject the defendants. *Per PEACOCK, G.J.*—The case falls within, and is protected by, s. 37 of Act XI of 1859. *Per LEBOR and JACKSON, JJ.*—S. 37 of Act XI of 1859 does not apply to the case. *Quare*: Is the zamindar entitled to enhance the rent of a ghatwal in lieu of service? *KOOLDEEP NARAIN SINGH v. MOHAMED SINGH*

B. L. R. Sup. Vol. 559 : 6 W. R. 109

*Held*, on appeal to the Privy Council, that a purchaser at an auction sale cannot, where lands are held under an hereditary ghatwali tenure originally created before the Decennial Settlement and at a fixed rent, resume those lands on the suggestion that the ghatwali services are no longer required. The omission of words of inheritance does not show conclusively that a new grant was made. *See* *above* shown father that

RAIN SINGH v. GOVERNMENT OF INDIA

11 B. L. R. 71  
14 Moo. I. A. 247GHATWALI TENURE—*contd.*

19. — *Grants prior to Permanent Settlement—Beng. Reg. VIII of 1793, s. 51, cl. 1—Enhancement of rent, suit for.* Where grants of land had been made prior to the Permanent Settlement on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the services on the part of the zamindar;—*Held*, in a suit

services were no longer required. The ghatwals are dependent talukdars within the meaning of Regulation VIII of 1793, and are protected from enhancement by cl. 1 of s. 51 of that Regulation. *LEELA-MUND SINGH v. MUKERJUN SINGH*

I. L. R. 3 Calc. 251

20. — *Resumption—Purchaser at auction-sale, rights of—Beng. Reg. XLIV of 1793—Enhancement of rent—Refund of revenue.* Where, prior to the Permanent Settlement grants of land had been made on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the performance of the ghatwali services on the part of the zamindar;—*Held*, in

Government  
SINGH.

L. R. I. A. Sup Vol. 104

21. — *Resumption—Compensation—Ghatwali tenure, resumption, the profits*

**GHATWALI TENURE—contd.**

that, inasmuch as the ghatwals rendered no service during the period of settlement, the moiety of the jumma retained by them was ample compensation for any loss they might have sustained, and the zamindar was entitled to receive the whole of the moiety taken by Government, partly as quit-rent due to him and partly as compensation for loss of the ghatwals' services during the continuance of the settlement.

LEELASUND SINGH v. GOVERNMENT

3 B. L. R. A. C. 114

22. — **Acquisition of land—Compensation.** Where land forming part of a ghatwali tenure in the district of Beerbhoom was taken up for public purposes:—*Held*, that neither the zamindar nor the under-tenants of the ghatwal could claim a proportionate share in the compensation-money payable for such land. The money so obtained carries with it all the incidents of the original ghatwali tenure, and the ghatwal for the time being is entitled only to the interest accruing therefrom during his lifetime. RAM CHUNDER SINGH v. JONER JUMMA KHAN

14 B. L. R. Ap. 7: 23 W. R. 376

23. — **Dismissal of ghatwal—Jurisdiction of Civil Court.** The Civil Courts cannot dismiss a ghatwal.

NARAIN SINGH v. SREE KISHEN SEIN

1 W. R. 321

24. — **Misconduct of ghatwal—Forfeiture of tenure on dismissal.** The dismissal of a ghatwal will carry with it the forfeiture of his tenure. SECRETARY OF STATE v. PORAN SINGH

1 L. R. 5 Calc. 740

25. — **Arrears of rent, liability of successor for—Service tenure.** A, the holder of a service tenure, subject to a quit-rent to the zamindar, died, leaving his rent for the last three years unpaid. B, his son, succeeded him in the tenure. *Held*, that the zamindar could not sue B as A's successor in the tenure for A's arrears of rent. NILMOONEE SINGH v. MADHUR SINGH

1 B. L. R. A. C. 195

See NILMOONEE SINGH v. BUKRONATH SINGH

10 W. R. 255

26. — **Debts of deceased holder, liability for.** The tenants of a ghatwali tenure are not liable for the debts of the former deceased holder of the tenure. BINODE RAM SEIN v. DEPUTY COMMISSIONER OF THE SOUTHERN PROVINCES

6 W. R. 129: s.c. on review 7 W. R. 178

27. — **Power of alienation—Transfer of tenure.** A ghatwal cannot give a pottah of his tenure binding a subsequent ghatwal. The rights and interests of each ghatwal in his tenure last only for his life. JAGESWAR SIKHAR v. NIDAI KARMAKAR

1 B. L. R. S. N. 7

**GHATWALI TENURE—contd.**

28. — **Req. XXIX of 1814—Alienation by ghatwal in Beerbhoom—Ejectment by Court of Wards.** A ghatwal of Beerbhoom granted a lease to A. After A and his heirs had been in possession of the lands under the lease for sixty years, a surbarakar appointed by the Court of Wards for the estate of the heir of A's lessor, then a minor, entered upon the lands, and ejected the person then in possession under the lease. *Held*, that, notwithstanding the ghatwals of Beerbhoom (under the provisions of the Reg. XXIX of 1814) had not the power

tenant without legal process. RUSGOLALL DEO v. DEPUTY COMMISSIONER OF BEERBHOOM. DEPUTY COMMISSIONER OF BEERBHOOM v. RUSGOLALL DEO

Marsh 117: W. R. F. B. 34  
1 Ind. Jur. O. S. 34: 1 May 200

29. — **Ghatwals of Beerbhoom, leases granted by.** Permanent leases granted by the ghatwals of Beerbhoom prior to the Permanent Settlement, for the performance of

creation of such under-tenures is not beyond the powers of the ghatwals. MUKURARI DEO v. KUSTOORA KOONWAREE

5 W. R. 315

30. — **Power creating incumbrances.** A ghatwal in the district of Beer-

ance of certain police duties. These tenures are

31. — **Mokurari lease—Power of ghatwal to grant mokurari leases—Jungleburn leases.**

MARHOON . . . . . 10 W. R. 310

32. — **Sale of attachment in execution of decree.** Ghatwali tenures are not liable either to sale or attachment in execution of decrees. The surplus proceeds of such a tenure collected during the lifetime of the judgment-debtor are liable to be taken in execution as being personal property, but profits accumulated after the death of the judgment-debtor are not so liable. KUSTOORA KOONWAREE v. BINODERAN SEIN

4 W. R. Mis. 4

33. — **Liability to attachment in execution of decree—Execution for rents due to ghatwal during his lifetime.** After deduction of all necessary outgoings from the total

**GHATWALI TENURE—contd.**

rents due to a ghatwal, the residue, being his own absolute property, may be attached in execution of a personal decrees against him. *Bally Dobey v. Ganai Deo*, I. L. R. 9 Calc. 388, distinguished. *Kustooru Kumari v. Benoderam Sen*, 4 W. R. M. 5, approved. *RAJKESHWAR DFO v. BUNSHIDHUR MARI*, I. L. R. 23 Calc. 873

34. *Ghatwals of Khurruckpore.* The lands of the ghatwals of Khurruckpore.

35. *Sale of rights and interest in ghatwali tenure.* The proprietor K of the ghatwali talukh in Bhagulpore sold one man-

Held, that the zamindar, by granting a fresh ghatwalis sanad, appointed the grantee to the office of ghatwal, and disallowed the sale made by K to G. *LALLA GOOMAN SINGH v. GRANT*

11 W. R. 292

36. *Nature of such tenure—Sale of tenure—Misdescription in proclamation of sale—Beng. Reg. XXXIV of 1814.*

retained by the jagir mehal was

simple heritable property. Per *AINSLIE, J.* (dissenting)—The fact that the Government could dismiss a ghatwal and so cut off the descent does not destroy the generally hereditary character of the holding, or make such lands, when included in the Permanent Settlement, police lands

**GHATWALI TENURE—contd.**

resumable by Government under cl 4, s 8 of Regulation I of 1793. Per *WHITE, J.*—Where a tenure is held under services

an important fact that the tenure is a service one is laid, and is such a misdescription of the tenure as would vitiate a sale held under such a proclamation. *BURKOWATH SINGH v. NIRMAL SINGH*

I. L. R. 5 Calc. 389; 4 C. L. R. 583

Held, on appeal to the Privy Council, that, whether the jagir was a ghatwali tenure or not within the meaning of the

nature of the tenure had not been

Per

by the

and

the

revenue which was previously due to the Government, and in respect of which he was assessed, and did not become entitled to the services in respect whereof the one-third of the rent or revenue was allowed as compensation to the jagirdar. That this jaghir, though hereditary, was not subject to the ordinary rules of

decree against the father and son

I. L. R. 9 Calc. 187

I. L. R. 9 I. A. 104

37. *Execution of decree*

—Attachment—*Shukmi ghatwali tenure.* A shukmi ghatwali tenure, held under the superior ghatwal, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder. *BALLY DOBEY v. GANAI DEO*

I. L. R. 9 Calc. 388

38. *Ghatwali tenures in Khurruckpore—Transferability of ghatwali tenures—Mitakshara law inapplicable to ghatwali tenure—Family custom inapplicable to ghatwali tenure.*

A ghatwali tenure in Khurruckpore is transferable if the zamindar assents and accepts the transfer. Such assent and acceptance may be pre-

**GHATWALI TENURE—contd.**

to sale in execution of a decree against the previous ghatwali and purchased by the defendants, the

ghatwali tenure the Court must have regard to the nature of the tenure itself and to the rules of law laid down in regard to such tenures, and not to any particular school of law or the customs of any particular family; and that a ghatwali, being created for specific purpose, has its own particular incidents, and cannot be subject to any system of law affecting only a particular class or family.

ANUNDO RAI v. KALI PRASAD SINGH

I. L. R. 10 Calc. 677

39. ——— *Ghatwali tenures in Bhagulpore—Ghatwali's right of alienation—*

inheritance as against the ghatwali's son:—*Held*, in

power of alienation not being limited to the life-interest of the ghatwali for the time being, but forming part of this right and title to the ghatwali

KALI PRASAD v. ANAND ROY

I. L. R. 15 Calc. 471  
L. R. 15 I. A. 18

40. ——— Perpetual lease—*Ghatwali, right of, to grant perpetual lease—Bengal Tenancy Act (VIII of 1885), ss. 5, 181—Tenure—Holding—Contract.* As a general principle, a ghatwali is not competent to grant a lease in perpetuity, and his successor is not bound to recognize such an encumbrance. *Grant and the Court of Wards v. Bungshee Deo*, 15 W. R. 38, followed. A lease in perpetuity, granted to the plaintiff by defendant No. 7 who is a ghatwali jointly with the predecessors of the other ghatwali defendants, is inoperative even against defendant No. 7, as the lease is one and indivisible. *Held*, also, on the construction of the lease and findings of the lower Appellate Court, that the lease created a tenure and not a *rayati* holding. *NARAIN MULLICK v. BADI ROY* (1901)

I. L. R. 29 Calc. 227 : S.C. 8 C. W. N. 94

**GHATWALI TENURE—contd.**

41. ——— Heritability—*Ghatwali tenure in Baidura—Permanent right—Dissolved.* A ghatwali tenure existed from before the grant of the Dewani to the East India Company and for many generations descended from father to son; it was held upon payment of a quit-rent and the performance of ghatwali services; such quit rent was paid at a fixed amount from time long antecedent to the Permanent Settlement and was recognized at the time of the Settlement, when the lands were included within the *mal* lands of the zamindari and the revenue was assessed upon the footing that the quit rent was fixed in perpetuity. *Held*, that the tenure was not merely heritable, but also permanent, and the holder was bound to perform the services; and that a tenure of this description could not be determined or resumed by the zamindar or the Government on the ground that the services were no longer necessary or had been dispensed with. *Koodoob NARAIN Singh v. Mahadeo Singh*, B. L. R. Sup. Vol. 559 : 6 W. R. 192, followed. If it be one of the incidents of a ghatwali tenure, either under the original grant or engrafted on it

not amount to the dismissal of his father, and that

ROY (1905) 9 C. W. N. 663

**GIFT.**

See BENAMI 10 C. W. N. 570

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

I. L. R. 2 All. 433  
I. L. R. 6 All. 313

See CONTRACT ACT, s. 25

I. L. R. 2 All. 891

See HINDU LAW—

ADOPTION—WHO MAY OR MAY NOT ADOPT. I. L. R. 28 Bom. 491

GIFT.

INHERITANCE—SPECIAL HEIRS—MALES—HUSBAND, HEIRS OF.

I. L. R. 28 Calc. 311  
I. L. R. 33 Calc. 23, 947  
18 C. W. N. 1

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY DEED, GIFT, OR WILL.

I. L. R. 1 Calc. 104  
I. L. R. 5 Calc. 684  
I. L. R. 8 Calc. 357  
I. L. R. 10 All. 495

**GIFT—contd.**

See HINDU LAW—WIDOW—POWER OF  
WIDOW—POWER OF DISPOSITION OR  
ALIENATION . 5 W. R. P. C. 131

2 Moo. I. A. 331  
I. L. R. 7 Bom. 491  
I. L. R. 1 Mad. 307  
I. L. R. 10 All. 407  
I. L. R. 14 All. 377

See HINDU LAW—WILL—CONSTRUCTION  
OF WILLS . I. L. R. 38 Calc. 75

See LIFE ESTATE . 5 C. W. N. 589

See MAHOMEDAN LAW—

ENDOWMENT I. L. R. 30 Calc. 686

GIFT . 10 C. W. N. 207  
L. R. 34 I. A. 167

See MALABAR LAW—GIFT.

See PARSIS . I. L. R. 5 Bom. 506  
I. L. R. 6 Bom. 151

I. L. R. 22 Bom. 355

See PRACTICE . I. L. R. 20 Bom. 133

See SALE IN EXECUTION OF DECREE—  
SETTING ASIDE SALE—GENERAL CASES.

I. L. R. 26 Mad. 385

See STAMP ACT, 1879, SCH. I, ART. 36.

I. L. R. 12 Mad. 89

I. L. R. 7 Bom. 194

See SUCCESSION ACT.

I. L. R. 30 Bom. 500

See TITLE . I. L. R. 38 Calc. 311

See TRANSFER OF PROPERTY ACT.

10 C. W. N. 717

See TRANSFER OF PROPERTY ACT, s. 123.

I. L. R. 34 Calc. 653

I. L. R. 32 Bom. 441

See TRUST . 8 C. W. N. 918

See UNDUE INFLUENCE

I. L. R. 33 Calc. 773

See WAFF . I. L. R. 31 Bom. 250

See WILL—CONSTRUCTION.

6 C. W. N. 321

I. L. R. 26 Bom. 319

I. L. R. 32 Bom. 214

— for maintenance—

See CONTRACT—CONSTRUCTION OF CON-  
TRACTS . L. R. 26 I. A. 196

— registration of, after death of  
donor—

See REGISTRATION ACT, 1877, s. 17

I. L. R. 25 Mad. 672

— to a class—

See HINDU LAW—WILL—CONSTRUCTION  
OF WILLS—PERPETUITIES, TRUSTS, BE-  
QUESTS TO A CLASS, AND REMOTENESS.

See TRUST . I. L. R. 26 Bom. 449

**GIFT—contd.**

— to a class—contd.

See WILL—CONSTRUCTION.

I. L. R. 4 Calc. 304, 370

— to daughter by proprietor of  
Betia Raj.

See TITLE . I. L. R. 38 Calc. 311

— to unborn persons—

See MAHOMEDAN LAW.

I. L. R. 38 Calc. 431

— validity of—

See MAHOMEDAN LAW—GIFT.

L. R. 34 I. A. 167

— void for remoteness.

See HINDU LAW—WILL—CONSTRUCTION  
OF WILLS—PERPETUITIES, TRUSTS, BE-  
QUESTS TO A CLASS, AND REMOTENESS.

1. — Subsequent condition at-  
tached to gift—*Your condition* To a gift divest-  
ing the donor of all his interest in certain  
property, a condition cannot afterwards be  
attached. Where a gift completed by transfer  
rested on a valid consideration at the time  
when it was made:—*Held*, that, even assuming  
that a condition could be afterwards imported  
into the transaction, and that condition an im-

wards in a petition to the Collector for "dakhil

Affirming the decision of the High Court in  
LACHMI NARAIN v. WILAYATI BEGAN

I. L. R. 2 All. 433

2. — Construction of gift as to  
quantity of estate given—*Gift when operative  
without delivery of possession—Hindu law.* The  
rule as to the construction of the language in which  
a gift is made, independently of the "transfer of  
Property Act," Act IV of 1882 (which may or may  
not have been expressed so as to lay down, in favour

**GIFT—contd.**

... and may provide for your own support.

life only. *Held*, also, that, consistently with the authorities in the Hindu law, a gift, where the donor supports it, the person who disputes it claiming adversely to both donor and donee, is not invalid for the mere reason that the donor has not delivered possession; and that where a donee or vendee is, under the terms of the gift or sale, entitled to possession, there is no reason why such a transfer should

not of such a nature as would make the gift effectual to it to be contrary to public policy), should not operate to give the donee or vendee a right to obtain possession. **KALIDAS MULLICK v. KANHAYA LAL PUNDIT** I. L. R. 11 Cal. 121 L. R. 11 I. A. 218

3. ———— **Gift of land in consideration of performance of services—Failure to perform services—Obligation to restore land—Revocable gift.** Plaintiff's father and defendant entered

alleging that defendant had failed to perform the services. Defendant denied failure to perform, and pleaded that the contract was not revocable. *Held*, in special appeal reversing the decisions of the lower

services on the one side was the presupposition of the continuous existence of the gift on the other, or whether there was a mere gift with the charge upon it, the primary intent being to give; that this was a question of construction; and that in the present case, taking the agreement and counterpart together, there was clearly a covenant for the hereditary performance of the services. **KACHUR SERRA v. BENGAL SANTAPPAIA** 7 Mad. 167

4. ———— **Gift of Government promissory notes—Necessity of endorsement—Intention.** The plaintiffs, *M* and *R*, were Parsis, and were married in the year 1851. The defendant was the widow of *B* *M* who was the father of the plaintiff *B*. The plaintiffs asked to recover from the defendant certain Government promissory notes which they alleged had been presented by *B*, to *M* at her marriage for her sole and separate use. They alleged that the said notes, then of the nominal value of

from *J*, and draw the interest thereon for *M*; that *B* died in 1864, and that after his death the defendant, who was his widow and executrix,

**GIFT—contd.**

used to draw the interest for *M*; that in 1869 she obtained possession of the said notes, and had ever since continued in possession thereof, informing the plaintiffs that she was duly keeping them and collecting the interest for *M*; that the plaintiffs had been living with the defendant until shortly before the present suit, and, having then separated from her, had called upon her to hand over the notes and the accumulated interest, which she refused to do. The defendant denied that her husband *B* had presented *M* with Government notes for her separate use. She alleged that the notes which had been deposited by *B* with *J* were her own separate property, and not *M*'s; that she and her husband had dealt from time to time with them, and that no interest was ever paid to the plaintiffs, or either of them, or for their benefit. She further stated that some of the notes which had been deposited with *J* had been disposed of by *B* in his lifetime with her consent; that in 1869 she obtained the remaining notes from *J* and sold them, and applied the proceeds to her own benefit. At the hearing, it was proved that on the occasion of the plaintiff's marriage presents were made to *M* both by her own family and by that of the bridegroom *B*. Two accounts were then opened in the books of the firm of *J* *N* & Co., of which *M*'s grandfather *J* was a partner, one of which showed her acquisitions from her own family and the other her acquisitions from the family of her husband. The latter account contained an entry (under date August 1854) to the effect that the father-in-law of *M* had bought two Government notes for Rs. 500 in *M*'s name, and had obtained the interest on them, which was duly credited to her. Other documents were produced, proved to be in the handwriting of *B* and *J*, in which the said Government notes were alluded to as the property of *M* and as having been purchased with her money. In 1864 *B* died without having endorsed the notes over to *M* or to any one in her behalf, and they remained in his name in the hands of *J* until 1869, when the defendant got possession of them. *Held*, that, the notes not having been endorsed to *M*, there was no valid gift of them to her by *B*. *It* *B* intended to bestow the notes as a gift only, without any intention that his purpose should be effected otherwise than by a substitution of ownership, his purpose remained unfulfilled, and the Court could not fulfil it for him. Without endorsement, or something equivalent, a gift of Government stock cannot be completed. Where a particular form of transfer is prescribed by law, a transfer in another form is as inefficient *inter vivos* as in a will. *Held*, further, that having regard to the

be made to the separate use of a married woman or of a woman about to be married. **MEHRA v. PERAZBAT** I. L. R. 5 Bom. 266

5. ———— **Transfer by gift—Failure to prove alleged inequitable advantage taken by donee**

GIFT—*contd.*

over donor—*Contract Act (IX of 1872), s. 16 and 17.* The heir to a share in an ancestral estate, out of possession and at a time when he expected that his right would be contested by another claimant, made a gift of his title to his brother's son, providing that he, the donor, should have nothing to do with the cost of getting possession. After the donee had obtained possession, the donor sued to have the gift set aside. The gift, having been maintained in the first Court, was set aside by the Appellate Court on the ground that, it having been made without consideration and imprudently as regarded the donor's interests, he had had no opportunity to obtain any advice from an independent person, but had only had that advice which came from, or was given on behalf of, the

should enforce. The defendant was not asking the Court to enforce the deed; and the reason why the

donor's statement that he had confidence, which was not sufficient proof of it. Whether a gift made as this had been should be set aside, as being inequitable between the parties, would depend on the

6. ——— Gift of land—*Transfer of property Act (IV of 1882), s. 123*—Retraction by donor prior to registration—Effect of registration

AYYAN V GOPALA AYYAN I. L. R. 19 Mad. 433

7. ——— Onerous gift to an infant—*Transfer of Property Act (IV of 1882), s. 127*—Acceptance. Land was given by the defendant to the wife of the plaintiff burdened with an obligation. She accepted the gift, and died in infancy leaving the plaintiff, her heir. The plaintiff now sued to make good his title to the land against the donor. Held, that the gift was complete as against the do-

GIFT—*contd.*

nor, and that the plaintiff was entitled to a decree. SUBRAMANIAM AYYAR v. SITHA LAKSHMI

I. L. R. 20 Mad. 147

8. ——— Registration of gift of immoveable property after the death of the donor—*Transfer of Property Act (IV of 1882), s. 122, 123*—Validity of gift. A gift of immoveable property duly made by means of a registered deed is not invalid, merely because registration of the deed of gift may have taken place after the death of the donor. *Harsar v. Ram Lal, I. L. R. 11 All. 319*, referred to. *NAND KISHORE LAL v. SURAJ PRASAD* I. L. R. 20 All. 392

9. ——— Construction of document—Clause in deed of gift, excluding claims of the donor or his heirs or representatives. A Hindu transferred to his daughter a portion of his immoveable property, by an instrument which purported to be a deed of gift, the consideration of which was the dutiful behaviour of the donee towards the donor. The deed in particular contained a clause absolutely excluding all claims which might be made in the future by the donor or by his heirs and representatives to the property, the subject of the deed. Held, that the deed conveyed to the donee a heritable estate with the power of alienation. *Kanhia v. Mahin Lal, I. L. R. 10 All. 425*, and *Ram Narain Singh v. Peary Bhughad, I. L. R. 9 Cal. 830*, referred to. *THAKUR SINGH v. NOKHE SINGH (1901)*

I. L. R. 23 All. 309

10. ——— Relinquishment—*Mahomedan Law*—Possession, transfer of, by the donor—Relinquishment of a share by a Mahomedan in the property of the deceased—Valuable consideration—*Transfer of Property Act (IV of 1882), s. 53*—Fraudulent transfer—Good faith. To facilitate the action of the Collector in obtaining the certificate of guardianship to the property of a Mahomedan minor, under the Guardians and Wards Act (VIII of 1890), M, the uncle of the minor, relinquished in favour of the minor the share to which he was entitled in the property of his deceased brother, the father of the minor girl. The certificate was duly obtained by the Collector. The plaintiff, a judgment-creditor of M, then sued the minor for a declaration that M's

not been accompanied and perfected by possession and that it was void against M's creditors under s. 53 of the Transfer of Property Act (IV of 1882), because it had been made with intent to defeat, delay or defraud them. Held, that the relinquishment by M of his share in the property of his brother was not a gratuitous transaction, but was supported by

**GIFT—concld.**

quish his share to the minor: the relinquishment was not a mere gift, but was supported by consideration, which the law regards as valuable and that, therefore, the rule of Mahomedan Law, which

I. L. R. 26 Bom. 428

11. ——— **Law of Native State—Law of British India—Difference—Burden of proof—Trustee—Cestui que trust—Confidential relation.** It lies on him, who asserts it, to prove that the law of the Native State differs from the Law in British India, and in the absence of such proof it must be held that no difference exists except possibly so far as the law in British India rests on specific Acts of the Legislature. Persons standing in a confidential relation towards others cannot entitle themselves to hold benefits, which those others may have conferred upon them, unless they can shew to the satisfaction of the Court that the person, by whom the benefits have been conferred, had competent and independent advice in conferring them. This applies to the case of a trustee and cestui que trust. *Vaughton v. Noble*, 30 Beav. 34, 39, and *Liles v. Terry*, 2 Q. B. 679 at page 686, followed. *RAGHUNATH L. VARJIVANDAS* (1900) I. L. R. 30 Bom. 578

12. ——— **Registration—Deed of gift of immovable property after death of the donor—Representative of deceased donor—Transfer of Property Act (IV of 1882), s. 4, 123—Registration Act (III of 1877), s. 35.** Where the widow of a deceased person, who had executed a deed of

execution and so to render the registration of the deed proper and effectual. *Palran v. Kunhammed*, I. L. R. 23 Mad 580, referred to S. 123 of the Transfer of Property Act is, by virtue of s. 4 of the Act, to be read as supplemental to the Indian Registration Act, and the expression "registered instrument," in s. 123 means an instrument registered in accordance with the provisions of the Indian Registration Act, and not necessarily one registered by the donor himself. *Nand Kishore Lal v. Suraj Prasad*, I. L. R. 20 All. 392, approved Where "in favour of his

leath on her  
held, that

meaning of s. 123 of the Transfer of Property Act. *BHARATOSH BANERJEE v. SOLEMAN* (1906).

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**GOCHAR LAND, IF "COMMON LAND."**

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38, 417, 432 (1883), s. 171.

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**GOODS SOLD.**

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See LIMITATION ACT, 1877, s. 62.

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**GOODS SOLD AND DELIVERED.**

1. ——— **Action for—Principal and agent—Delivery by, and payment to, unauthorized agent.** The defendant through a broker purchased from the plaintiffs certain goods, to be paid for by cash on delivery and before removal. Both the defendant and his broker knew that the plaintiffs had



**GOODS SOLD AND DELIVERED—concl'd.**

without a special order from the plaintiffs. A por-

delivery clerk had embezzled the money so paid to him. *Held*, that they were entitled to recover the

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Distinction between an ordinary contract for sale of goods and a contract to pay an existing debt in specific articles pointed out. *DARABHAI NARSI v. SALEMAN DASSI*, 5 Bom. A. C. 127

**GOONDAISH LANDS.**

Meaning of goondaish. Goondaish lands are lands which in some way or other have been taken up by the holders of the lands measured at the time of the Government survey as something which they had right to annex to the surveyed lands. *ASSANULLAH v. SAFAER ALI*

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Nature of tenure, Transferability of—*Onus probandi*. The onus lies upon a

that gorabandi rights are more extensive than rights

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See PENAL CODE, s. 21.

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right of, in navigable river.

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See FOREST ACT, §§ 73 AND 76.

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sanction of—*contd.*

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

I. L. R. 17 Bom. 299

I. L. R. 19 Bom. 90

I. L. R. 20 Bom. 505

See HINDU LAW—ADOPTION—REQUISITE FOR ADOPTION—SANCTION.

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See DIGNAM TENURE.

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See JURISDICTION OF CIVIL COURT—CUSTOMARY PAYMENTS.

I. L. R. 16 Bom. 849

See PARTIES—PARTIAL TO SUITS—GOVERNMENT

Wrongful dismissal of Public servant, suit against Government for—*Contract of service—Public servant—Payment of monthly wages.* A suit for wrongful dismissal by one of its servants will lie against the Government. In a suit by a subordinate officer in the Public Works Department for wrongful dismissal against the Government, in which it was admitted that there was no time of service fixed, and in which the plaintiff put in a memorandum of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government;—*Held*, that the hiring was indefinite; and that,

**GOVERNMENT—*contd.***

is a monthly hiring. **HUGHES v. SECRETARY OF STATE FOR INDIA IN COUNCIL**. 7 B. L. R. 689

**GOVERNMENT CURRENCY NOTE**

See **ATTEMPT TO COMMIT OFFENCE**  
I. L. R. 16 Calc. 310

theft of—

See **CONTRACT ACT**, s. 76.  
I. L. R. 3 Calc. 379  
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See **CRIMINAL PROCEDURE CODE**, s. 520  
(1872, s. 419) I. L. R. 3 Calc. 379  
I. C. L. R. 339

**Forgery of currency note—Notice—Delay** A person who receives a forged currency note in payment is not (in order to entitle himself to be paid a second time) upon discovering the forgery, bound to give immediate notice of it to the person from whom he receives the forged note, the rule relating to forged acceptances on bills of

a good defence in an action brought upon the original consideration **MATHEWS v. GRUDNARIAL PATECHAND**. 7 Bom. O. C. 1

**GOVERNMENT OFFICERS, ACTS OF.**

See **SECRETARY OF STATE**.  
I. L. R. 27 Bom. 189

1. **Protection of officers acting bona fide—Illegal collection of revenue—Action of trespass.** If a party bona fide, and not absurdly,

2. **Binding, effect of—Construction of sanad—Benj. Reg VII of 1822, s. 6, cl. 3.** Where by a sanad, a grant was made of certain mouzahs, specified as containing an estimated number of bighas, a recognition by the revenue authorities and Civil Courts of the grantee being

FORE. 4 B. L. R. P. C. 36: 13 W. R. P. C. 31

3. **Special Commissioner—**

**GOVERNMENT OFFICERS, ACTS OF—*contd.***

ment raised no question as to the propriety of the decree, or of the making over of the bulk of the property under it, held to bind the Government as to the right of the decree-holder to the property. **SECRETARY OF STATE v. KHANZADI**

5 B. L. R. P. C. 312

4. **Ratification by Government—Excess of authority.** The acts of a Government

5. **Settlement of Noabad lands in Chittagong—Evidence of settlement by Government—Acceptance of *labuhat* by Government—Ratification—Acts of Government officers as**

and (ii) that, at any rate, a *labuhat* executed in

settlement of 1800 was a temporary one; and (2) that the *labuhat* was never accepted by the Government, but that, on the contrary, the Government

has been in existence before 1800, and the settle-

merely an offer on the part of the talukhdar for the time being and was not binding on the Government, its terms not having been accepted either by the Government or by any duly authorized officer thereof; that both by law and by the special instructions issued for the guidance of settlement officers, no settlement could be binding on the Government unless confirmed by the Governor-General in Council. There being no proof given by either party as to whether the *istahar* above-mentioned was or not duly published:—**Held**, that the publication of the *istahar* must be presumed, having regard to the presumption in favour of the due performance of official acts. **Held**, also, that, even assuming that the officers of the Government

**GOVERNMENT OFFICERS, ACTS OF**  
—*contd.*

Induced by their act and conduct a belief in the talukhdar that the talukhat had been accepted by the Government, or that a permanent settlement had been sanctioned by the Government, that did

settled and unoccupied waste land, not being the property of any private owner, must belong to the State, *PROSUDU COOMAN ROY v. SECRETARY OF STATE* . . . I. L. R. 26 Calc. 793  
3 O. W. N. 685

**GOVERNMENT PLEADER.**

Officer prosecuting case, duty of — *Discrepancies of witnesses for prosecution.* It is the duty of the Government pleader or other officer who conducts the prosecution before the Court of Session to point out to the Court any glaring discrepancy between the evidence being given by a witness before the Court of Session and that previously recorded by the committing officer. *QUEEN v. OONESHIA MOONDA* . . . 20 W. R. Cr. 38

**GOVERNMENT PROMISSORY NOTE.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

I. C. W. N. 170

See CONTRACT—WAGERING CONTRACTS.  
I. L. R. 17 Mad. 480, 496  
I. L. R. 18 Mad. 306

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT . . . I. L. R. 2 All. 758

See GIFT . . . I. L. R. 5 Bom. 289

See GOVERNMENT SECURITIES

See LACHES . . . 16 W. R. 58

— at their nominal value—

See PRIVY COUNCIL APPEAL.

I. L. R. 36 Calc. 653

1. — Renewal of note—Loss of negotiability by note becoming covered with endorsements—"Allonge." In a suit by a Hindu widow

ment to insist on the production of the promissory note when the interest due on it was applied for, and

**GOVERNMENT PROMISSORY NOTE**  
—*contd.*

to endorse the payment of such interest on the back of the note; that the note of which renewal was

as to granting or refusing renewal, and had, on objection made by the reversioners, exercised that discretion in refusing to renew the note. The lower Court dismissed the suit on the ground that the plaintiff had failed to show any legal right to renewal against the Government. *Hill*, on appeal, that the practice of insisting on endorsement of payments of interest on the note as a preliminary to receipt of interest thereon having rendered it practically un-negotiable, the Government were bound to renew the note. *MOONSHIJI DANI v. SECRETARY OF STATE* . . . 13 B. L. R. 359; 22 W. R. 106

2. — Theft of note—Purchaser, rights of—*Tide.* In the month of October 1878, a Government promissory note for B10,000 was sent from the A. Treasury to the Public Debt Office for encasement. The note was duly received at the office, and its receipt was entered in the proper book. The business of the Public Debt Office is carried on by certain officers of the B Bank. The note was stolen from the office, and endorsed over by the thief to a person who sold it to C for full value. The note bore two blank endorsements prior to that of the thief. In the same month C applied to the B Bank for a loan, which the Bank agreed to make upon the security of C's promissory note, and the deposit of Government notes. The form of application for the loan specified by their numbers the notes which were to be deposited. One of these was the stolen note. Before finally agreeing to the advance, the officers of the Bank in charge of the Loan Department sent the application, showing the numbers of the notes to the Public Debt Office, and received it back with a memorandum upon it to the effect that the notes were not stopped. On the 23rd October the loan was made, and the securities were given. Shortly afterwards, the theft was discovered and the note was stopped. In November the Bank, at the request of C, sent the note to the Public Debt Office for payment of interest, and the note was detained by the Superintendent. The Bank then required C to repay the amount of his loan. This he refused to do unless all his securities were handed over to him. In a suit

Bank is as much a Government office as if it were carried on separately under the management of Government officers. The note was therefore stolen whilst virtually in the hands of the Government,

# GOVERNMENT PROMISSORY NOTE

—*contd.*

and was, when detained by the Superintendent of

or power to take it in their private capacity out of the hands of the Public Debt Office. When an instrument, such as the note in question, has been stolen, the person from whom it was stolen has a

Debt Office before *C* had any title to it. The Bank, therefore, as agents for the Government, on behalf of the true owner, from whom and on whose behalf they received it, had *prima facie* a better title than the thief or any one claiming through him, and *C*, in order to rebut that *prima facie* case, would have to show that he was a *bona fide* holder for value. In order to do so, he would have to prove that the note at the time when it was stolen, was a negotiable instrument, and thus he had failed to do, as he had not proved that the endorsements prior to that of the thief were genuine. *BANK OF BENGAL v. MENDES*

I. L. R. 5 Calc. 654; 5 C. L. R. 566

3. — Government promissory notes bearing a forged endorsement—*Title of holder*—Government promissory notes surrendered for renewal—*Title to renewed notes*—*English Bills of Exchange Act (5 & 6 Vict. c. 61)*—*Negotiable Instruments Act (XXVI of 1881)*—*Holder in due course*. The plaintiff, as administrator of Purmanand Cooverji, a deceased Hindu, sued to recover from the defendants (thirty-one in all) certain shares, debentures, and Government promissory notes which he alleged belonged to the estate of the deceased, but which the first four defendants had stolen and by means of forged endorsements sold them to the other defendants and received the purchase-money. Those of the defendants who had purchased the Government promissory notes, contended that as innocent purchasers for value they were entitled to retain them. *Held*, that the plaintiff was entitled to recover all the shares, debentures, and Government promissory notes from the defendants. Some of the Government promissory notes on which the forged endorsements had been made had been surrendered for renewal and fresh promissory notes issued in their place. *Held*, that the plaintiff was entitled to recover the renewed notes from the holders. *HUSSRAJ PURMANAND v. RUTTONJI WALJI*

I. L. R. 24 Bom. 65

4. — Right of Hindu widow with certificate to negotiate notes. A Hindu widow holding a certificate under Act XXVII of 1860 to collect debts due to the estate of her deceased son, who had been allowed to draw

# GOVERNMENT PROMISSORY NOTE

—*contd.*

interest on certain Government promissory notes, which, though entered in the certificate, stood apparently in the name of her late husband, having applied for authority to negotiate those promissory notes:—*Held*, that she was bound to show how she got possession of those notes. *In the matter of the petition of BYDIA SOONDUREE DOSSEE*

15 W. R. 267

# GOVERNMENT REVENUE.

*See* REVENUE.

*See* HINDU LAW—LEGAL NECESSITY.

I. L. R. 36 Calc. 753

# GOVERNMENT SECURITIES.

*See* GOVERNMENT PROMISSORY NOTES.

— deposit of—

*See* LIMITATION ACT, 1877, SEC. 11  
ART. 145 . . . 7 C. W. N. 476

— sale of—

*See* EVIDENCE—PAROL EVIDENCE—VARY-  
ING OR CONTRADICTING WRITTEN  
INSTRUMENTS . I. L. R. 9 Calc. 791

# GOVERNMENT SOLICITOR.

*See* COSTS—TAXATION OF COSTS

I. L. R. 15 Mad. 405

*See* MADRAS MUNICIPAL ACT, 1884, s. 103

I. L. R. 23 Mad. 529

— person appointed by, to act as  
prosecutor in Police Courts.

*See* PUBLIC SERVANT.

I. L. R. 3 Calc. 497

# GOVERNOR GENERAL IN COUNCIL

— consent of—

*See* JURISDICTION OF CIVIL COURT—  
FOREIGN AND NATIVE RULERS.

I. L. R. 21 Bom. 351

— Statutes affecting the Crown or  
Governor General as representing it—  
*Exemption of Governor General from General Statutes*  
The rule of construction according to which the  
Crown is not affected by a statute unless expressly  
named in it applies to India; and the Viceroy and  
Governor General as representing the Crown there-  
fore enjoys a like exemption. *SECRETARY OF  
STATE FOR INDIA v. MATHURABHAI*

I. L. R. 14 Bom. 213

## GOVERNOR OF BOMBAY IN COUNCIL.

1. — Powers of Legislature—*Jurisdiction of Courts in municipal—Course of legislation* The Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the Courts in the municipal established by the local Legislature, and such Acts are not void because their indirect effect may be to increase or

Elphinstone Code was passed, reviewed. PREM-SHANKAR RAGHUNATHJI v. GOVERNMENT OF BOMBAY . . . 8 Bom. A. C. 195

2. — Power to make laws—*Laws affecting authority of High Court* The Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the High Court in dealing with them when made. COLLECTOR OF THANA v. BHASKAR MAHADEV SHETH . . . I. L. R. 8 Bom. 294

## GOVERNOR OF MADRAS IN COUNCIL.

1. — Power of, to pass Act affecting Imperial statute. It is beyond the power of the local Legislative Council to pass an Act in any way affecting the provisions of a statute of the Imperial Parliament. ABDO SALT & Co v. ARNOTT. ABDO SALT & Co. v. DALE . . . 2 Mad. 439

2. — Jurisdiction—*Court of Agent of Governor—Appeal to Governor in Council—Dismissal of suit on ground of political expediency—Legality—Res judicata—Jurisdiction, want of—Consent of parties—Act XXIV of 1839, ss. 2, 3, 4—Rules XXI and XXII.* A suit instituted in the

The plaintiff thereafter instituted a fresh suit in the

a bad example encourage and a multitude of suits for the same cause of action. *Held*, by the Judicial Committee, that the legal right to bring a suit and to have it determined by the proper Court created for the purpose of determining such suits cannot be barred upon considerations of policy or expediency. *Held*, also, that the former decision of a Court adjudged by the High Court to be without jurisdiction cannot be treated as *res judicata*, and the plaintiff was entitled to have his suit tried on the

GOVERNOR OF MADRAS IN COUNCIL—*contd.*

merits by the Agent's Court. SRI VIKRAMA DEO MAHARAJULUGARU MAHARAJA OF JAYPORE v. GUNAPERAM DEENABANDHU PATNAICK (1905)

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10 C. W. N. 17, 425

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*See* PENSIONS ACTS, 1849 AND 1871.

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*See* REGISTRATION ACT (III of 1877), ss. 17, 49 . . . I. L. R. 27 Mad. 30

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*See* REGISTRATION ACT, s. 90.

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*See* RESUMPTION—EFFECT OF RESUMPTION . . . I. L. R. 26 Mad. 338

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I. L. R. 4 Bom. 643

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*See* SUCCESSION . . . I. L. R. 30 I. A. 180

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## construction of—

See HINDU LAW—ENDOWMENT—ALIEN-  
ATION OF ENDOWED PROPERTY.

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I. L. R. 15 Mad. 101

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See SANAD.

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I. L. R. 14 Bom. 82

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## in lieu of maintenance.

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## 1. CONSTRUCTION OF GRANTS.

## 1. ——— Grant of freehold—Hindu law

—Words of inheritance. By the Hindu law, no words of inheritance are necessary to pass the freehold interest in land to the heirs. ANUNDOMOHEY DOSSEE v. DOB

4 W. R. P. C. 51

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2. ——— Omission of words of inheritance—Stipulation for retention rent-free. A

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

zamindar, on giving up a four-anna share which he had theretofore held, but had mortgaged, stipulated for the retention of the holding in aut rent-free for

in such cases, and no inference is to be drawn from their absence. GUNOA DEEN v. LUCHMUN PERSHAD . 1 N. W. 147; Ed. 1873, 229

3. ——— Proof of hereditary nature of grant. The absence of words of inheritance in a deed of grant of land is not of itself conclusive to show that such grant was not intended to be in perpetuity; but the hereditary character of the tenure may be inferred from evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son. GYAN SINGH v. PEETUN SINGH

1 N. W. Part 6, 73; Ed. 1873, 185

## 4. ——— Hereditary tenure—Transfer

of tenure granted—Regs. XIII of 1793 and

XXXVII of 1793. Grants which are hereditary

"nustan bad nustan butnun bad butnun" are

declared transferable by gift, sale, or otherwise,

under the terms of s. 15, Regulation XIII of 1793,

and s. 15, Regulation XXXVII of 1793 Held,

the benefit of

grantee's son

her claim upon

help them, and

it could only

accrue in regular succession. BITHOL BHAT v.

LALLA RAY KISHORE . 2 Agra 284

## 5. ——— Mafce birt tenure.

Whatever the words "mafee birt tenure" may

have imported originally, the *prima facie* meaning of

the words has come to be an hereditary tenure.

MAHENDRA SINGH v. JOKHA SINGH

19 W. R. P. C. 211

## 6. ——— Meaning of

"talukh." Where the word "talukh" occurs in a

document

it is to be construed as

10 W. R. P. C. 200

KRISHNO CHUNDER GOOPTO v. SUDDER ALI

22 W. R. 326

Authenticity in document etc.

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

be shown by reference to another grant signed by the same officer, from which it appeared that the "year 37" meant the 37th year of the Rajas of P., and that it corresponded with 1156 B.S. **EQUITABLE COAL COMPANY v. GONESH CHUNDER BANERJEE** 3 C. L. R. 279

8. ——— **Inam-i altamgha grant**—Grants for religious and charitable purposes or for rendering military services. A grant in *inam-i-altamgha* to N and his children, "and their descendants in lineal succession, for generation after generation, in perpetuity and for ever," which was unburdened with any condition as to prospective service, and free from any religious, charitable, or other trust, held to confer an alienable estate. Grants of land revenue for religious and charitable purposes or for the future condition of civil or military service of the estate considered and to some extent classified; and the enactments and authorities, historical and legal, relating to the question of their alienability, mentioned. **KRISHNARAY GANESH v. BASORAY** 4 Bom. A. C. 1

9. ——— **Inam—Share in profits of grant**—Rule as to *altamgha* grants—Mahomedan law. Certain Mahomedans hypothecated to the plaintiff, to secure repayment of a debt, their interest in lands which had been enfranchised as a personal *inam*, a claim that the lands constituted the endowment of certain mosques having been rejected at the *inam* enquiry. In a suit against the executors of the mortgage and their heirs and representatives to recover the principal together with interest up to date:—**Held**, that, under the circumstances of the case, the rule as to the equality of the shares of males and females in the subject of an *altamgha* grant was inapplicable. **BADI BIBI SAHIBAL v. SAMI PHILAI** I. L. R. 18 Mad. 257

10. ——— **Grant for service performed**—Construction of grant of villages "as jaghir"—Bengal Regulation XXXVII of 1793, s. 15—**Sand—Alienation—Sale**. On the 22nd of September 1830, A granted to B, "as jaghir,"

hundred and ninety-two, one quarter, and ninety-six reas. The revenue of the said villages hereafter, whether more or less, to be collected by the said B and his heirs from the 5th of June 1830, and A such *javazims* or *haks* as are at present settled on those villages are to be disbursed by the said A B in the same manner as heretofore." **Held**, having regard to the language of the grant and to the object with which it was made, viz., to reward

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

the past services of the grantee, that the introduction of the words "as jaghir" was not intended to control the right of alienation inherent in the operative terms of the grant. **DOSIRAI v. ISHVARDAJ JAGJIVANDAS** I. L. R. 9 Bom. 561

*Held* that the phrase "as jaghir" did not affect the alienability of the grant.

there is nothing to control the ordinary meaning of the words, he takes an absolute interest. That jaghirs are to be considered life tenures only, unless otherwise expressed in the grant, is laid down in Bengal Regulation XXXVII of 1793, s. 15. It is the law also in Bombay and other parts of India. **DOSIRAI v. ISHVARDAJ JAGJIVANDAS**

I. L. R. 15 Bom. 222  
L. R. 18 I. A. 22

11. ——— **Grant for an indefinite period**—Interest of grantor in property—Duration of grant—Rules of construction. The rule of construction that a grant made to a man for an indefinite term mures only for the life of the grantee and passes no interest to his heirs, does not apply in cases where the term can be definitely ascertained by reference to the interest which the grantor himself has in the property, and which the grant purports to convey. **LEKHRAJ ROY v. KUNYA SHAM** I. L. R. 3 Calc. 210; I. L. R. 4 I. A. 223

12. ——— **Grant for particular purpose—Building—Forfeiture**. A received from B the use of his ground rent-free, which he thus habituated by A and his heirs for several years, until it was destroyed by fire, when the heirs commenced to build a new house upon a portion of the ground, having leased another portion of it for building

habited by A and his heirs for several years, until it was destroyed by fire, when the heirs commenced to build a new house upon a portion of the ground, having leased another portion of it for building

3 Bom. A. C. 63

13. ——— **Grant to one of members of joint family—Subjection of, to rights of other members**. In a suit for division of a village between members of the same family, the defendant alleged that a former division relied upon by the plaintiff was merely nominal, and never intended to be carried out; and also that the village was in 1836 granted to his father for his sole use, and both

grant to defendant was not a new grant, and was



GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

subject to the rights of the other members of the family. **NATTAN VENKATARATNUM alias BALAKONDA VENKATA NARAYANA ROW v. NATTAM RAMAIA alias BALAKONDA RAMA ROW**

2 Mad. 470

14. ——— Limited grant—*Prescriptive right of inamdars to recover from shilatri lands the revenue formerly paid by latter to Government.* Government, by an indenture, dated 25th January 1819, conveyed to A and B and their heirs and assigns certain villages in the Island of Salsette with the exception of such spots of shilatri tenure as might be therein or on any part thereof which could only become the property of A and B on their purchasing the same from the proprietors. Since 1819 the holders of these shilatri lands had paid to the grantees and their heirs assessment (or rent) at a fixed rate which before the grant they used to pay to Government. In a suit brought by an heir of A and B in 1868 to recover an enhanced rent or assessment levied on these lands:—*Held*, that, though the

revenue passed under the indenture of 1819 to the grantees in the deed **DADABAI JAHNORJI v. RAMJI BIV BHAT** 11 Bom. 162

15. ——— Grant of mortgaged villages—*Provision for grant of others in case of redemption—Implied confirmation of father's grant by son* In 1846 A granted a pottah of a certain village, which had been mortgaged to him, to his illegitimate son B, promising, in the event of the mortgagor redeeming the estate, to make over to B, in lieu of the village granted, other villages yielding an equal revenue, and in 1847 confirmed the grant

and ousted B. *Held*, by the Privy Council, that

16. ——— Implied grant when intention to grant is not completed—*Intention to give further deed of grant.* Where a piece of land is held partly by a permanent lease and partly by an *amalmah*, granted almost simultaneously and intended eventually to be changed for a lease, and thereupon the whole piece of land is thrown into one compound and occupied, and new buildings are

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

erected thereupon with the consent of the lessor, and there is no failure on the part of the lessee to comply with the terms of the grant:—*Held*, that the permanent grant was to be impliedly extended to the entire premises in question, notwithstanding

17. ——— Grant by zamindar—*Mad. Reg. XXV, 1802, s. 3—Inam—Tenancy not determinable at will of grantor's successor.* Regulation XXV of 1802, s. 3, imposes restrictions on alienations only to secure the interests of the public revenue, and under it the zamindar has no power to disturb grants otherwise valid made by his predecessor or titles to inams acquired by prescription. An inam, existing under a grant made in 1811, became in 1863 the subject of arrangement between the zamindar, who had succeeded the grantor in the zamindari, and the inamdars. This resulted in what was either a confirmation of the original grant on terms more favourable to the zamindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. Subsequently the son and successor of the grantor of 1863 claimed to have determined the tenancy by a notice to quit. *Held*, that it was not determinable by such notice. **MAHARAJA OF VIZIANAGRAM v. SURYANARAYANA** . . . I. L. R. 9 Mad. 307 L. R. 13 I. A. 32

18. ——— Grant from Government—*Mad. Reg. IV of 1831—Ancient and permanent tenures.* Regulation IV of 1831, Madras Code, which must be strictly construed, applies only to suits brought to try the validity of grants emanating from, or confirmed or affected by, the direct act and order of the Governor in Council. A written order under that law is not necessary in a suit brought by a person who claims to hold under an ancient and permanent tenure in existence before the Devany. **BRETT v. ELLAIRA**

12 W. R. 33; 13 Moo. I. A. 104

19. ——— Grant in saranjam—*Jaghir—Grant of revenue—Grant of soil—Pensions Act, XXIII of 1871—Evidence—Burden of proof—Impartibility—Primogeniture.* The grant in jaghir or saranjam is very rarely a grant of the soil, and the burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. It is for the Government to determine how saranjams are to be held and inherited, and in cases where the Civil Courts have jurisdiction over claims relating to saranjams, in consequence of the non-applicability of the Pensions Act, XXIII of 1871, or otherwise they would be bound to determine such claims according to the rules, general or special, laid down by the British Government. In the absence of such rules, the Courts would be guided by the law applicable to

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

impartible property. *See* *Simle*. That a *saranjam* is impartible, and on the death of the eldest son descends to his son in preference to his surviving brother. *RAM CHANDRA MASTRI v. VENKATRAO MASTRI*. I. L. R. 6 Bom. 598

20. — *Saranjam—Descent of—Impartibility of—Suit for possession of—Joint management of saranjam—Manager of saranjam—Trustee of profits—Account of management.* A *saranjam* is ordinarily impartible, and descends entire to the eldest representative of the past holder. In 1885 plaintiff brought this suit to recover possession of certain *saranjam* villages from the defendant. His beneficial right to a third share of the rents and profits of the villages was admitted by the defendant. The point in dispute was the possession and management. The defendant contended (i) that the plaintiff never was entitled to the exclusive possession and management; (ii) that he (the defendant) had for years been in actual possession

possession and management was an interest in immovable property within the meaning of Art. 144 of Sec. 11 of the Limitation Act, XV of 1877; that the defendant had enjoyed that interest adversely to the plaintiff's rights, at all events since January 1866, at which date the plaintiff, who had been in correspondence with Government with reference to his claim against the defendant, was referred by Government to the Civil Courts, and that the plaintiff's claim was therefore barred by limitation. *Held*, also, that it was not open to the plaintiff to ask to be placed in possession and management of the villages jointly with the defendant. If the condition of the tenure requires sole management by one person, that condition must be held to pass with the tenure, even though the tenure has passed out of the hands of the lawful holders by adverse possession. The general rule, that persons beneficially entitled to shares in an estate are entitled to partition of

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

21. — *Sanad—Construction of—Sanad—Endowment for charitable purposes.* A *sanad*, after reciting that certain villages had been held by *C* as *inam* "on account of the worship, jubilees and feeling of Brahmans in honour of the Shri (or the Deity)," proceeded to "confirm the *inam* as before," directing that "it be continued to *C* and his sons and grandsons from generation to generation as it had been continued to the Shri from former times." *Held*, that this was a grant to the religious foundation, and not to *C* and his descendants for their own benefit. *GANESH DHARMIDHAN MAHARAJE v. KENDRAV GOVIND KULOAYKAR*. I. L. R. 15 Bom. 625

22. — *Grant of zamindari lands—Hereditary mokurari tenure—Death of grantee without heirs—Escheat.* Lands belonging to a zamindari granted by the zamindar under an absolute hereditary mokurari tenure do not, on the death of the grantee without heirs, revert to the zamindar; nor does the zamindar, under such circumstances, take by escheat a tenure subordinate to and carved out of his zamindari. Where there is a failure of heirs, the Crown, by the general prerogative, will take the property by escheat, subject to any trusts or charges affecting it; and

I. L. R. 1 Calc. 391; 25 W. R. 239  
L. R. 3 I. A. 82

23. — *Grant by landlord—Omission to reserve right of re-entry or reversion.*

I. L. R. 1 Calc. 391, referred to. *NIL MADHAB SIKDAR v. NARATTAM SIKDAR*. I. L. R. 17 Calc. 626

24. — *Rent due to zamindar—Maganam in hands of separate persons—Apportionment of rent—Mad. Reg. XXV of 1802, s. 9.* The rent due to a zamindar from the grantees of a *maganam* or division of the zamindari is not a charge upon the *maganam*. It is a debt due to the zamindar, and nothing more. When the zamindar instituted the suit for rent, the *maganam* was in the possession of third parties, who had become owners of different portions of it by purchase.

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

were jointly and severally liable for the rent fixed upon the whole *moginam*. ZAMINDAR OF RAMNAD v. RAMAMANY AMMAL. I. L. R. 2 Mad. 234

25. — Grant of rent-free zamindari land—*Beng. Reg XIX of 1793*. Regulation XIX of 1793 refers to grants to hold land free of

v. COURT OF WARDS. 12 W. R. 251

26. — Unsettled palayam held on service tenure—*Commutation of service for quit rent—Enfranchisement—Inam pottah issued to Hindu widow by Government—Effect of acknowledging her absolute title to estate*. The palayam of

and of the reversionary interest of the Crown, imposed a quit-rent, and an inam pottah was issued to K by the Inam Commissioner by which her title to the estate was acknowledged by the Government of Madras, and the estate was confirmed to her as her absolute property subject to the quit-rent. *Held*, that the effect of the inam pottah was not to confer on K any new estate, but merely as between the Crown and the owners of the estate to release the reversionary right of the Crown. NARAYANA t. CHENGALAMMA. I. L. R. 10 Mad. 1

27. — Grant of profits of vatan deshmukhi in perpetuity—*Hereditary gomastahs—How far such grant valid after the death of*

their heirs hereditary vatan gomastahs, and granted, by way of remuneration for their services, in 1201 and a quantity of grain out of the annual vatan income in perpetuity. In consideration of certain sums obtained from the defendants, Y mortgaged the vatan property to the defendants, who subsequently sued Y upon the mortgage. The suit was

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

entitled to the allowance under the sanad, and for an injunction restraining the defendants from the execution of the decree against the vatan. The defendants contended, *inter alia*, that the sanad

entitled to the declaratory decree and to the injunction prayed for. Although the management of the vatan was vested by the sanad in the defendants and their heirs in perpetuity under the title of gomastahs, nevertheless the remuneration attached to the office by Y was in derogation of his successor's rights, and was therefore, at any rate in the absence of proof of custom, invalid against them. *Held*, also, that, having regard to the terms of the sanad, it was in the power of the original grantor or any of his successors to determine the office and the remuneration at any time after the vatan services ceased in 1864. KRISNAJI v. VITHALRAV

• I. L. R. 12 Bom. 60

28. — Proprietary right of khot to khoti vatani land—*Right of such khot to forest land and to timber and wood growing thereon—Government, right of, to appropriate forest preserves, assessed or unassessed land—Construction of such khoti grants*. The plaintiff sued the defendant, alleging that the village of mouzsh Ambedu, in the Ratnagiri District, was his khoti vatani village in which his proprietary right extended

*inter alia*, that the khot derived his rights from the yearly *kabulats* passed by him, that his right to cultivate did not extend to cultivating the jungle land, and that his position was no better than that of a *patel*. The joint Judge who tried the suit held that under the settlement of 1783 the plaintiff as khot was entitled to the jungle-produce, except timber; that in virtue of Dnlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of Rs 600 as damages. On appeal by the defendant to the High Court:—*Held*, that the application of the general rules of construction of grants to a subject by the State requires that language of such general import

brother, who filed objections, but his objections were overruled, and execution was ordered to issue. The plaintiffs brought this suit in 1883 for a declaration that the defendants were no longer

GRANT—*contd.*I. CONSTRUCTION OF GRANTS—*contd.*

... .. to be found in the khot's sample.

... ..

*Kolaba*, 3 Bom. A. C. 132, and *Ramchandra Nar-sinha v. Collector of Ratnagiri*, 7 Bom. A. C. 41, that a permanent relationship was created between the Government and the khot which could not be interfered with as long as the settlement of 1788 was in force, except with the khot's consent, and therefore that in 1855, when the pahan of 1788 was in force, the Government could not withdraw the thikan in question from the plaintiff's cultivation. *Held*, also, that, in the absence of evidence to show that the right to the jungle produce was

right to cut timber in forest and uncultivated land, whether by virtue of his khotship or Dunlop's proclamation. COLLECTOR OF RATNAGIRI v. ANTAJI LAKSHMAN. I. L. R. 12 Bom. 534

29. ——— Right to cut trees—*Khot's khasgi land in the Ratnagiri District—Dunlop's proclamation—Crown grant—Right to rescind* Defendants were khots of the village of Ojbarkhol in the Ratnagiri District, of which a certain plot (Survey No. 52) was their khoti khasgi land. In 1824 they cut down a large number of teak trees growing on this land. Thereupon the Secretary of State for India in Council sued to recover their value alleging that they were the property of Government. Defendants pleaded that they were the absolute owners of the trees, and relied, in support of their title, on a proclamation issued by Government in 1824, known as Mr. Dunlop's

or he whose trees may hereafter grow, may make such use of them as he pleases. Government will not offer the slightest obstruction." *Held*, that this proclamation was not a mere promise, but an actual grant or gift of the teak trees to the persons on whose lands they were then actually growing, or might thereafter grow, and that the gift could not be revoked. *Held*, also, that by reason of this pro-

GRANT—*contd.*I. CONSTRUCTION OF GRANTS—*contd.*

clamation Government had no right to the teak trees growing on the land in question. SECRETARY OF STATE FOR INDIA v. SITARAM SHYAM.

I. L. R. 23 Bom. 518

30. ——— Managing hot's right to create tenancies—*Maphi istara lands—Suti lands—Sanad, construction of—Fraud*. In 1832 the British Government granted to the plaintiff's father, Mahomed Ibrahim Makba, the village of Ransai on khoti tenure by a sanad which provided, *inter alia*, as follows:—(i) That the whole of the land waste in the year 1830-31 was granted as inam. (ii) That exclusive of this inam land, all the rest

Government a fixed sum of Rs 219 2 as. 33 rs. Clause 7th provided that the khot should allow the lands, which had been granted on *maphi istara* tenure to certain kowlars before the date of the sanad, to continue in their possession; that he should every year recover from them the Government dues and pay the same over to Government in addition to the amount stipulated with him on account of the khotship. Clause 9th provided that the holders of the *suti* lands in the village were the owners of those lands. Should a new survey be made and a new assessment settled, the same should be settled by Government for the holders of the *suti* lands agreeably thereto. From 1845 to 1871 the management of the khoti village was entrusted to the defendant as a *maktadar*, or lessee, under two *kabulats* passed by him—one in 1845 to Mahomed Ibrahim Makba, the grantee of the khoti village, and the other in 1858 to the grantee's heirs and legal representatives. By clause 5th of the *kabuliat* of 1858 the defendant agreed to carry on the

cultivation and into prosperous state the waste, culturable, and unculturable land of the aforesaid village. I will take the proceeds of the same during the years of my contract. After the expiry of the years of the contract you are to take the assessment of the fields according to the practice of the village. I have nothing to do with the same. I will not let (the village) nor lease to any body for a longer period than for the period of the contract. If I let it, I will make good the damage you may suffer." In 1859 some of the *maphi istara* lands were sold by the Collector for arrears of assessment, and bought in by Government. The defendant applied to the Collector to have the lands transferred to him, and the Collector transferred them to his name. Shortly afterwards the defendant acquired some more lands, which were held on *suti* tenure in the village. He either purchased them or took them up on the

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

tenants abandoning them. In 1861, when the survey was introduced into the village, he got his title to these lands recognized by the Superintendent of Survey. In 1871 the defendant's management of the village ceased. But he refused to deliver up to the plaintiff either the *maphi istara* or the *suti* lands which he had acquired during his management. The plaintiff therefore

acquired and held them in trust for the plaintiff.

refused to accept suitably, the defendant denied that he had acted in fraud of the plaintiff's rights in acquiring the lands in dispute on his own account. *Held*, on the construction of the sanad, that, the plaintiff being the khot of the whole of the village exclusive of the land granted in insani, the *maphi istara* lands were included in the khoti grant; that the khot's interest in them, whatever might be the extent of it, was not separable from the khoti estate; and that the khot had a reversionary interest in the *maphi istara* lands as well as in the *suti* lands which had been abandoned by their former occupants.

that period the defendant was the maktadar or tenant of the plaintiff's khotship; and though a certain confidence was necessarily reposed in him in connection with a tenancy of this nature, and

clause 7th of the Kabuliata of 1859, the defendant was at liberty either to take up waste lands himself or put in tenants; if he put in tenants on leases, the special advantages of any leases were to expire with

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

his own lease. But the plaintiff's title to the lands in suit, acquired by the defendant, could therefore, without the intervention of the Collector, have taken up the *maphi istara* lands in suit and become himself the tenant; and he could have also acquired the *suti* lands from former *sutidars*, or taken them up, if waste, without the intervention of the Survey Superintendent. The circumstance that when acquiring the lands he needlessly invoked the assistance of the revenue authorities, would not invalidate his title if it could not be impugned on other grounds. *Held*, further, that the defendant was not guilty of fraud, as there was no evidence to show that he had acted in a surreptitious or secret manner in acquiring the lands in suit. On the contrary, his action in applying to the revenue authorities was a sign of his good faith rather than of any fraudulent intent. The plaintiff was therefore not entitled to oust the defendant from the lands in suit. *FAZI ISMAIL v. MAHOMED ISMAIL*. I. L. R. 12 Bom. 585

31. — Invalidation of grant, or covenant by grantor, in favour of person unborn upon a condition which may never arise—*Restraint upon grantor's own power of alienating—Hindu law.* The purpose of a grant was to oblige the grantor and his successors in a raj estate to give in some way or other maintenance to all the descendants of four persons living at the date of the grant, by declaring that, on the failure of the raja of the day at any future time to maintain such descendants, the latter were to have an immediate right to four of the raj villages. This might be regarded as

raj estate, in favour of non-existing covenantees, to give the villages to them in the event specified. *Held*, that in either view it was equally ineffectual. *Held*, also, that the High Court had correctly con-

being in possession of villages granted to them by the raja, other than those claimed, more than sufficient for their maintenance. *CHANDI CHURK BARTIA v. SHIDHESWARI DEBI*. I. L. R. 16 Calc. 71. I. L. R. 15 I. A. 149

32. — Revenue-free grant—Settlement in favour of daughter purporting to render other lands than the lands settled liable in the hands of the settlor and his heirs for the revenue of the settled lands—*Beng. Reg. XXXI of 1803, s. 6—Mahomedan law of inheritance.* One B in 1843 settled certain lands on his daughter P, and covenanted that he and his heirs would pay the land

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

revenue due on the estate so assigned along with the land revenue for their own estate. The deed of settlement then went on to provide that, if at any time the heirs of the settlor, or whoever might be in possession of the rest of his estate, should demand from *B*, or the person in possession of the lands assigned to her, the revenue assessed on those lands, then *B* and her heirs would be entitled to claim and take possession of the legal share in the settlor's estate to which she would be entitled under the Mohammedan law of inheritance. *Held*, that, as regards a person who had acquired a portion of the settled property partly by private sale and partly by sale at auction, the settlement contravened the provisions of s. 6 of Regulation No. XXXI of 1803, and the heirs of the settlor could not be compelled to pay the land revenue due on the portion of the settled lands acquired by the said purchaser, nor had the purchaser any right under the deed of settlement to a proportionate part of the inheritance which would have come to Rahmat-un-nissa from her father. **SABIB ALI v. SUBHAN ALI** I. L. R. 21 All. 12

33. ——— Grant of portion of impartible zamindari—Absolute grant—Creation of separate estate in favour of grantee as between him and grantor—Restriction in instrument contravening Hindu law of inheritance. In a suit for the redemption of a portion of an impartible zamindari, the grantor's son, who was the plaintiff, claimed that the grant was an absolute grant, and that the grantee was to have a separate estate in the portion granted. The grant was made in favour of the grantee as between him and the grantor, and the grant was not subject to any restriction in the instrument. The grant was made in favour of the grantee as between him and the grantor, and the grant was not subject to any restriction in the instrument. The grant was made in favour of the grantee as between him and the grantor, and the grant was not subject to any restriction in the instrument.

case of failure of self-begotten male issue in the grantee's line, the immovable property of the grantee should be put in possession of the grantor's line. On the death of the first grantee, the property passed into the possession of his two sons, and, on the death of the elder son, it came into the possession of the younger son. On his death without male issue, the estate passed into the possession of his widow defendant in the present suit. The plaintiff contended that the grant made to respondent's father-in-law was a maintenance grant; that under its terms the estate reverted to his father (now deceased) on the death of respondent's husband, when there was a failure of male heirs in his branch; and that, notwithstanding the grant, the members of the two branches did not fail to be co-parceners, and that consequently the right of survivorship of the plaintiff attached to the exclusion of the defendant. *Held*, that, on the construction of the instrument of grant, the estate became, by virtue of that instrument, the separate and absolute property of respondent's branch of the family, and that the provision in that instrument purporting to create a special right of reversion in case of failure of male issue contravened the principle laid down in the case of *Tagore v. Tagore*, 9 B. L. R. 377. L. R. I. A. Sup. Vol. 47, and was inoperative. **VENKATA**

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

**KUMARA MADIPATI SURYA RAU v. CHITLAYANUR GARU** I. L. R. 17 Mad. 160

34. ——— Grant of land—Presumption as to boundaries where grant is described as bounded by a river or a road—Meaning of "river." If land adjoining a high way or river is granted, the half of the road or the half of the river is presumed to be included in the grant.

and thus though the measurement of the property which is granted can be satisfied without including half the road or half the bed of the river, and

tion cannot be departed from, merely because it is shown that it would have been to the interest of the grant or to retain half the bed of the river. This rule of construction is applicable whether the

*Sydney*, 12 Mco. P. C. 473, followed. **BALBH SINGH v. SECRETARY OF STATE FOR INDIA**

I. L. R. 22 All. 96

35. ——— Construction of a grant for maintenance—Use of the words "proprietors" and "for ever"—Grant for life not extended thereby. An Oodh talukhdar, who had inherited an impartible estate descending to a single heir, made a grant of villages for the maintenance of a member of the joint family to which they both belonged. Documentary evidence bearing on the duration of the grant consisted of a *bat-dawa*, or deed of relinquishment of claim, executed by the grantee, and of petitions by the grantor for the entry of change of names in the revenue record, with such entry. And relevant facts and circumstances were in evidence. *Held*, that the purpose of the grant, which was for the maintenance of the grantee, was *prima facie* an indication that the grant was intended to be only for his life; and that its true construction was not extended by the use of the words "proprietor" and "for ever" in the documents. On the evidence, the District

I. L. R. 23 All. 194  
s. C. L. R. 28 I. A. 1

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

36. ————— Grant, whether for maintenance only or for an estate of inheritance—Intention as shown by documents—Partition by grantees on assumption that grant conferred on hereditary estate. On a question as to whether a

permanent tenure The Judicial Committee (reversing the decision of the High Court), held, on the construction of the documents evidencing

S. C. M. A. S. U. I. A. I.

37. ————— Deeds, interpretation of—Grant by way of lease—"Istemrari mokurari"—Grant for life—Tenure, permanent and hereditary—Grant for maintenance—Impartible Raj—Declaratory suit—Bengal Tenancy Act (VIII of 1885), s. 106, 107, 109—Limitation Act (XV of 1877), Sch II, Art 14—Civil Procedure Code (Act XIV of 1882), s. 375—Registration Act (III of 1877), s. 17, 49. A grant was made of certain villages by the proprietor of an impartible Raj to his wife, in istemrari mokurari, at a fixed annual rent, the deed containing the following covenant, "I, the declarant, or my representatives, have and shall have no claims, right or dispute thereto, except the aforesaid reserve rent." Held, (1) that the use of the words istemrari mokurari in the lease was not sufficient to

manent and hereditary tenure, but might fairly be

38. ————— Construction of deed of gift—Words of inheritance—Al aulad—Male descendants—Custom—Khairat Bishanpur—Chota Nagpur—Bengal Act I of 1879, s. 124. In a deed of gift of "made to Nagpur I al aulad

But the deed contained no words importing a right of alienation. Held, that, although the words al

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

be interpreted to mean lineal male descendants only. *Hiranath Koer v. Babu Ram Narayan Singh*, 16 W. R. 375; 9 B. L. R. 274; *Indur Chunder Doogur v. Luchmee Bibee*, 15 W. R. 501; and *Mani Vikrama*

I. L. R. 31 Calc. 561

39. ————— Zamindary estate—Compromise amongst creditors—Sale thereunder—Purchase by Government and resettlement upon debtor and creditors, effect of—Portion given absolutely to kinsmen in lieu of maintenance—Grant whether by zamindar or Government—Hindu law, *Mirakshara*—Succession. N, a Hindu zamindar of Madras, owed considerable sums to creditors and also to Government for arrears of revenue. By a compromise effected between N and the creditors (the Government being represented by the Collector), N's estate was sold and purchased by Government. Portions of the estate so purchased were then settled on the different creditors of N in satisfaction of their debts and the remainder given back to N. One such portion T was given absolutely to S and V, two kinsmen of N, to whom N owed a large sum on account of arrears of maintenance, in satisfaction of all claims for maintenance past as well as future. A similar grant of estate O was made by another zamindar, a cousin of N, and for similar reasons to S and V. S and V subsequently partitioned the above joint properties, and estate T fell to S. S died and his widow who succeeded also died and estate T was claimed by S's daughter's son on the one hand and persons claiming either under N or V on the other. Held (reversing the decree of the High Court), that the latter had no interest in estate T, in which S had acquired an absolute title, that title having originated in a grant from Government and not from N, who at the time of which to ma

PARATHASARA

BAHADUR (1)

contrary to *Ala-ul-Haq v. The Crown* Grants Act (XV of 1892), s. 124.

Before the annexation of Oudh and the promulgation of confiscation, a taluk was held by a person with whom subsequently a summary settlement was made and who in 1859 obtained a *sanad* purporting in terms to be a grant of the taluk to him

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

and his heirs. No particular mode of inheritance was indicated in this *sanad*. After his death the person who succeeded him as his heir accepted. In 1861, another *sanad*, which imposed a rule of descent different from that laid down by law. *Held*, that it was competent for the latter, who became absolutely entitled by inheritance to everything that passed under the earlier grant, to surrender it in consideration of a re-grant of the same estate on new terms. *Held*, further, that all doubts regarding the validity of the second grant have been removed by the provisions of s. 3 of the Crown Grants Act. *Quare*. Whether after peace has been established in a newly acquired territory a Government can by an executive act create a line of inheritance different from that laid down by law. A legatee, who succeeded as such before the passing of the Oudh Estates Act, is not a legatee within its meaning. *Thakurain Balraj Kunwar v. Rao Jagatpal Singh*, 3 C. W. N. 699: s.c. 31 I. A. 112, followed. The Judicial Committee allowed the appeal on 2 cases in respect

taken by surprise. *RAJ INDRA BAHADUR SINGH v. RANI RAJCHANDAN KUNWAR* (1903)

9 C. W. N. 1099

41. ————— *Mahomedan law*  
—*Transfer of possession—Costs*. On the 6th day

deed of gift, A took exclusive possession of the house on her own and on her children's behalf. On the 7th day of July 1901, J returned to the house and

able property belonging to her remained in the house, the subject of the gift. On the 18th of October, 1903, J died intestate. Upon S, the sole surviving daughter of J, filing a suit, claiming that the alleged gift was invalid under Mahomedan Law:—*Held*, the execution of a deed of gift of immovable property accompanied by a temporary abandonment of possession by the donor in favour of the transferee and the attornment of tenants to the transferee is a sufficient delivery of seisin to make the gift valid under the Mahomedan law. The fact that during the abandonment of possession, a portion of the donor's moveable property remains on the premises, and that the donor, after a temporary absence, continues to reside in the same, does not render the transfer of possession inoperative. *Shaik Ibrahim v. Shaik Sulman*, 1. L. R. 9 Bom. 146, followed. It was within the discretion of the

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

lower Court to allow separate costs to the last defendant and her minor children. But only one set of costs was allowed in the appeal. *KHAYEN SULTAN v. RUKHIA SULTAN* (1905)

I. L. R. 29 Bom. 408

43. ————— *Grant, construction of—Holdings, which an Inamdar acquires by purchase from a ladim occupant or by lapse of prior occupancies distinguished from the rights, which he obtains directly from the grant itself*. A grant which purports to be a grant only of the Royal share of the revenue given in commutation of cash theretofore payable as a palanquin allowance, must be construed strictly in favour of the Crown, and is *prima facie* a grant only of the revenue. *BALVANT RAMCHANDRA v. SECRETARY OF STATE* (1905)

I. L. R. 29 Bom. 480

43. ————— *Re-grant after confiscation—Exception of Malahs in re-grant—Construction of exception—Title by adverse possession—Estoppel—Malahs treated erroneously by Court of Wards as part of zamindari and acquiescence by officers of Government—Evidence Act (I of 1872), s. 115*. Prior to 1799 the zamindari of Parlakimedi included certain tracts of forest land called *Malahs*, which were held by *Bissooyes* or local chiefs on service tenures in respect of which they paid to the zamindar a sum as *kattubadi* or quit-rent; their duties being, *inter alia*, to keep up an establishment of guards at certain thanas for police purposes. Besides the *Malahs* they held other lands which they occupied and cultivated

under the Government's name as *thanas*.

zamindari for ever." This restoration was made in 1803, after the death of the rebellious zamindar, to his son. What was excepted from that re-grant and from the assessment that formed the condition of the re-grant was variously described as "the lands held by the *Bissooyes*," "the possessions of the *Bissooyes*," and "all lands or *rasmums* or fees heretofore appropriated to the support of police establishments." In a suit against the Government by the zamindar of Parlakimedi in 1894, claiming proprietary right in, and possession of, the *Malahs* as appertaining to the zamindari:—*Held*, that the proper construction of the exception was that it included the *Malahs*, and not only the lands occupied and cultivated by the *Bissooyes*, the *Malahs* therefore did not pass under the re-grant, but remained the property of Government as they had done since the forfeiture. In 1923 the Government transferred the *Bissooyes*, who





GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

*Law of State for India in Council, I. L. R. 25 Cal. 194; s.c. L. R. 24 I. A. 177, distinguished.* The following English cases are authorities on the question of the principle of valuation of land subject to restrictions to use. *Hilcott v. Archbishop of Canterbury*, 10 C. B. 327; *Stirling v. Metropolitan Board of Works*, L. R. 6 Q. B. 37; *City and South Railway Co. v. St. Mary, Woolnoth*, 13 T. L. R. 612; *s.c. 19 T. L. R. 363*. The following English cases were referred to where the question raised was as to the principle upon which compensation, when awarded for land subject to restriction as to use, had to be apportioned amongst persons interested in the property: *Campbell v. Mayor and Corporation of Liverpool*, L. R. 9 Eq. 579; *Ex parte Rector of Liverpool*, L. R. 11 Eq. 15; and *Ex parte Rector of St. Martin's, Birmingham*, L. E. 11 Eq. 23. Under a 30 of the Bengal Municipal Act the term 'ghat' does not include a burning ground. *Chairman of the Naitahy Municipality v. Kishory Lal Goswami*, I. L. R. 13 Cal. 171; *Mothu Sudan Kundu v. Promoda Nath Roy*, I. L. R. 20 Cal. 732, referred to. **CHAIRMAN OF THE HOWRAH MUNICIPALITY v. KHETRA KRISHNA MITTER** (1906)

I. L. R. 33 Cal. 1290  
s.c. 10 C. W. N. 1044

40. — Absolute grant to widow—*Mention of a person as heir of grantee confers no interest on such person.* Where a deed of grant to a widow recites that she has no other heirs than her daughter and that the lands shall belong to such daughter at her death, the grant is not to be construed as a grant to the widow and her daughter. The grant is absolute and to the widow alone, the daughter taking no interest under it. **RENOBANT NAIKEN v. GANDAMMAL** (1905)

I. L. R. 29 Mad. 300

47. — Grant of village "with wells, tanks, and waters," effect of—*Irrigation works, rights of Government in—Proprietary right not proved by contribution of customary labour.* A grant of village "with all wells, tanks, and waters" within the boundaries will not pass to the grantee an artificial water-course then existing, which irrigated the village granted and other lands. Subsequent contribution of labour by the grantee for clearing the channel will not be evidence of proprietary right as such labour is customary and may be enforced under Madras Act I of 1858. The ruling power in India had from the earliest times the conservation and control of works of irrigation, and Government has accordingly the right to carry out repairs and improvements in the irrigation works belonging to it, provided that in doing so it does not diminish materially the supply of water to which others may be entitled. **ANMALAYANA PANDARA SANNATHI v. THE SECRETARY OF STATE FOR INDIA** (1905)

I. L. R. 28 Mad. 539

48. — Regulation XIX of 1793—Act XI of 1859—Sale—Encumbrance—

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

*Liability to pay rent.* Some years before the acquisition of the Dewani by the East India Company, the zamindar made rent-free grant of village P to one D. Since then D, and after him his heirs, continued in possession of the village, until the institution of this suit. After

assessments, based on the actual value, which assessment was accepted by the zamindar, and he and his heirs continued to pay the assessed amount. In the year 1900 the zamindar made default in payment of the revenue for the September kist, and the village was sold under the provisions of Act XI of 1859. The purchaser instituted a suit for recovery of possession or for assessment of rent and mesne profits. *Held*, that the right created under the grant was an encumbrance, which existed from before the time of the Permanent Settlement; but the plaintiff could not be affected by the laches of the defaulter or his predecessors: he was entitled to hold the estate in the same condition as it was at the time of the Permanent Settlement, when the revenue was assessed at sica R80 and to recover that amount with cesses from the defendants. *Held further* that—

rent is not enforceable according to the law now in force, as the land must be considered to be commuted on a tenancy existing from before the time of

*Moo. Id. Moo. Ari Lal v. BUOWANI SARAI* (1908) I. L. R. 35 Cal. 931

49. — Grant by Government of the revenue of a village as a unit of assessment—*Cultivation by grantee of uncultivated or unassessed land—Grantee can do so and profit thereby.* *Held*, that when Government grants the revenue of a village considered as a unit of assessment, and in course of time the grantee is able to bring under cultivation land which had previously been uncultivated or even unassessed, it is open to him under the grant to do so and to profit by the new cultivation. **BALVANT RAM-CHANDRA v. SECRETARY OF STATE** (1904)

I. L. R. 32 Bom. 432

50. — Grant of land in Secun-

*of contract of founders subsequent to acquisition of land.* In a suit, in which the parties were the members of the Parsi community at Secunderabad, the plaintiffs claimed the exclusive right to certain land in the cantonment, on which stood a Parsi Tower of Silence, as descendants and

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

arrangement conferred no proprietary right in the land on the grantee who incurred thereby

any proprietary right in the land. Below had concurred in holding that the plaintiff had not proved the acquisition of a title against the Government by adverse possession for 60 years,

Wards erroneously treated the Mahals, as a unit, belonged to the zamindari, worked the forests in the Mahals and constructed roads through them at the expense of the zamindar; and the officers of Government under the same mistake acquiesced in that possession and encouraged such an expenditure of zamindari funds upon the Mahals as seemed good in the public interest. *Held* (affirming the decision of the High Court), that there was in that

L. L. R. 20 Mac. 150  
s.c. 9 C. W. N. 553

## 44. ——— Khorposh grant—Injunction

—Minerals, working of—Suit by Khorposhdar—Specific Relief Act (I of 1877), s. 52—Injunction, relief by, when to be granted—Sound discretion—Presumption as to title conveyed—Life grant—Underground rights—Right to rents—Reversion—Jungle-buri lease—Right of lessee to minerals. In the absence of direct evidence of its terms and failing proof of territorial or family custom to the contrary, a Khorposh grant cannot be presumed to be for the lifetime of

rights in favour of one G and subsequent to the grant he conveyed the underground rights to one C, who meanwhile had purchased the surface rights from the grantor in title of G. *Held*, that in

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

minerals. His rights being limited to the receipt of the rents reserved under the lease to G and such other rights, if any, as might be incident to the reversion acquired under the grant, he might possibly be entitled to damages upon proof of injury to his reversion or that his security for the rent would be impaired. But there was no case for granting an injunction. S. 52 of the Specific Relief Act places the grant of an injunction in the sound discretion of the Court. No injunction ought, in the exercise of sound discretion, to be granted where far more injury would be inflicted thereby on the defendant than any advantage to the plaintiff. A lease under a fungle.

## 45. ——— Dedication of land for public use—Land acquired for a public purpose—

public with owner's knowledge—Meaning of term 'ghat'—Bengal Municipal Act (Bengal Act III of 1881), ss. 30, 37, 98, 254, 256, 347, 348. An exclusive and continuous user by the public with the owner's knowledge and acquiescence for the prescription period will raise the presumption of a grant or dedication to the public. *Bessemer v. Jenkins*, 58 Am. Sp. Rep. 26; *Kennedy v. Cumberland*, 57 Am. Rep. 346; and *Boyce v. Kalbaugh*, 23 Am. Rep. 164, referred to. Where a dedication is implied only, the question may arise whether the dedication was of the entire ownership of the land or merely of the right of user. *Osgood v. Hayward*, 1 Fed. Rep. 161; *Bushnell v. Scott*, 91 Am. Dec. 555, referred to. To constitute a valid dedication it is not essential that the legal title should pass from the owner. *New Orleans v. United States*, 10 Peters 662, 712, referred to. It is not consistent with an effectual dedication that the owner should continue to make any and all uses of the land, which do not interfere with the uses for which it is dedicated. *State v. Trask*, 27 Am. Dec. 554; *The Vestry of St. Mary, Newington, v. Jacobs*, L. R. 7 P. B. 47; *Jaggamoni Dasi v. Nilmoni Ghosal*, 1 L. R. 9 Cal. 75, referred to. One of the essential elements of a dedication to the public is that the land be for ever

*Dawes v. Hawkins*, 8 U. S. N. S. 410, *San Francisco v. Gannan*, 42 Calif. 541, referred to. Land dedicated for cemeteries, if subsequently abandoned, will revert to the dedicator or his heirs. *Campbell v. City of Kansas*, 10 L. R. A. 593; *New Ark v. Watson*, 91 L. R. A. 843; *Board of Commissioners v. Young*, 8 C. C. A. 27; L. C. 69, Fed. Rep. 98; *Board of Education v. Edson*, 98 Am. Dec. 114; *Quinn v. Leathem*, App. Cas. 495, 506, referred to. *Manmatha Nath Miller v. Secre-*

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

*Army of State for India in Council, I. L. R. 25 Calc. 194; s.c. L. R. 21 I. A. 177, distinguished.*  
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Archbishop of  
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46. ——— Absolute grant to widow—*Mention of a person as heir of grantee confers no interest on such person.* Where a deed of grant to a widow recites that she has no other heirs than her daughter and that the lands shall belong to such daughter at her death, the grant is not to be construed as making her a beneficiary.

I. L. R. 20 Mad. 300

47. ——— Grant of village "with wells, tanks, and waters," effect of—*Irrigation works, rights of Government in—Proprietary right not proved by contribution of customary labour.* A grant of village "with all wells, tanks, and waters" within the boundaries will not pass to the grantee an artificial water-course then existing, which irrigated the village granted and other lands. Subsequent contribution of labour by the grantee for clearing the channel will not be evidence of proprietary right as such labour is customary and may be enforced under Madras Act I of 1858. The ruling power in India had from the earliest times the conservation and control of works of irrigation, and Government has accordingly the right to carry out repairs and improvements in the irrigation works belonging to it, provided that in doing so it does not diminish materially the supply of water to which others may be entitled. ANBALAVANA PANDARA SANKATHI v. THE SECRETARY OF STATE FOR INDIA (1905)

I. L. R. 28 Mad. 539

48. ——— Regulation XIX of 1793—Act XI of 1859—Sale—Encumbrance—

GRANT—*contd.*1. CONSTRUCTION OF GRANTS—*contd.*

*Liability to pay rent.* Some years before the acquisition of the Dewani by the East India Company, the zamindar made rent-free grant of village P to one D. Since then D, and after him his heirs, continued to occupy the

ment was accepted by the zamindar, and he and his heirs continued to pay the assessed amount. In the year 1900 the zamindar made default in payment of the revenue for the September *kist*, and the village was sold under the provisions of Act XI of 1859. The purchaser instituted a suit for recovery of possession or for assessment of rent and mesne profits. *Held*, that the right created under the grant was an encumbrance, which existed from before the time of the Permanent Settlement; but the plaintiff could not be affected by the laches of the defaulter or his predecessors; he was entitled to hold the estate in the same condition as it was at the time of the Permanent Settlement, when the revenue was assessed at *sicca* Rs 50 and to recover that amount with cesses from the defendants.

rent is not enhanceable according to the law now in force, as the land must be considered to be comprised in a tenure existing from before the time of the Permanent Settlement. *Murryhur Mokhopadhyay v. Madhub Chunder Baboo, 14 Moo. I. A. 152, referred to.* BRINDARAN BEHARI LAL v. BHOWANI SAHAI (1903) I. L. R. 35 Calc. 931

49. ——— Grant by Government of the revenue of a village as a unit of assessment—*Cultivation by grantee of uncultivated or unassessed land—Grantee can do so and profit thereby.* *Held*, that when Government grants the revenue of a village considered as a unit of assessment, and in course of time the grantee is able to bring under cultivation land which had previously been uncultivated or even unassessed, it is open to him under the grant to derive a profit by it.

50. ——— Grant of land in Secun-

to certain land in the cantonment, on which stood a Parsi Tower of Silence, as descendants and

GRANT—*contd.*I. CONSTRUCTION OF GRANTS—*contd.*

representatives in title of the original founders, by whom they alleged the Tower had been erected after the land had, on the application of the founders, been granted to them in 1837 by the Hyderabad Government. The defence was that the grant relied on by the plaintiffs was a forgery, and that

evidence supported the plaintiff's title. The document, on which they relied (which was held to be genuine), was issued by an Officer of the Hyderabad State, and purported to express a transaction, by which the State had assented to the grant of the land to the two founders by name, and directed possession of it to be delivered to them. That relied on by the defendants (which had also been applied for and obtained by the founders) was a document issued by order of the Military authorities, who could not be held empowered to alienate in perpetuity land forming part of the Cantonment for a purpose wholly inconsistent with military requirements. It was, moreover, not a grant, but a document giving permission to use the land, already conveyed, for the particular purpose of a Tower of Silence and to enclose the land, matters obviously within the discretion of the Commanding Officer as possibly affecting the convenient occupation of the cantonment. The effect of the two documents was to show a good title in the founders and not in the Parsi community. That view was confirmed by the fact that the founders admittedly enclosed the land and erected a Tower of Silence on it at their own expense; that they erected a Fire Temple in connexion with it on land acquired by private purchase, and that the evidence showed that the possession, management and control of the Tower of Silence and of the land, on which it stood,

erection of the Tower (the events of which were more important than those in later years when the circumstances of the parties had somewhat changed) the priests referred such difficulties and questions as arose for the orders of the founders and obeyed those orders. *PRADHAN JIVANJI v. SHAPURJI DADULJI CHIKOLY* (1909).

I. L. R. 35 Calc. 478

S.C. I. L. R. 35 I. A. 79

13 C. W. N. 466

51. ———— **Forfeiture—Inheritance—** Whether the words of inheritance contained in the grant created an absolute estate in favour of the grantee—**Re-entry, right of—** Breach of restriction against voluntary alienation, effect of. A by a deed granted a *mitras tuluv* to his daughter B. The demise was to her for life, on her death to her son, if she adopted one, for life; on his death "to his sons, grandsons, etc.," by right of inheritance in the

GRANT—*contd.*I. CONSTRUCTION OF GRANTS—*contd.*

male line: without any power of disposing of the property at will, by gift, sale, etc. If the grantee

or your adopted son or grandson, etc. If it be attached or sold, the grant will at once become null and void, and the property will come into *khos* possession of me or my representatives." B adopted a son C and subsequently made a gift of the land to him by a deed. Upon a suit by the grantor's son against B and C for recovery of possession of the land on the ground that the conveyance operated

forfeiture, the plaintiff was not entitled to a decree for *khos* possession. *DHARAM KANTA LAMRU v. SING SUNDARI DEVI* (1908)

I. L. R. 35 Calc. 1069

## 2. POWER TO GRANT.

1. ———— **Grant of rent-free tenure**  
— *Jaghirs—Power before Permanent Settlement.*  
A zamindar had no power before the Permanent

U. W. II. 121

S.C. on appeal to Privy Council 18 W. R. 321

2. ———— **Grant of land rent-free—**  
*Beng. Reg. XIX of 1793, s. 10—Reg. XLI of 1795, s. 10—Act XVIII of 1873, ss. 30, 95—Act XIX of 1873, s. 79.* The plaintiff in this suit claimed the possession of certain land in virtue of a grant thereof

Regulations and Acts did not arise, as the grant, on the facts found by the Court below, was not one within the terms of those Regulations. *JAGANNATH PANDAY v. PRASAD SINGH*

I. L. R. 2 All. 545

3. ———— *Beng. Reg. XIX of 1793, s. 10—Act XVIII of 1873, ss. 30, 95 (c)—Act XIX of 1873, ss. 79, 241 (h).* The plaintiffs in this suit, zamindars of a certain village, sued for the

**GRANT—contd.****2. POWER TO GRANT—contd.**

possession of certain land in such village, alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successor continued to perform the duties of village watchman, and the defendant had ceased to perform those duties and was holding as a trespasser. The defendants set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, and that he held it as a proprietor. *Held*, that such assignment was not a grant within the meaning of Regulation XIX of 1793. **PURAN MAL v. PADMA** . I. L. R. 2 All. 733

**4. ——— Reg. XIX of 1793, s. 10—Grant for public purposes—Rent—**

dissenting), that such a grant was valid. It was not within the meaning of Regulation XIX of 1893, s. 10 "Rent to the zamindar" and "Revenue of Government" distinguished. **PILLERUDDIN v. MADHUSUDAN PAL CHOWDHURY**

**B. L. R. Sup. Vol. 75: 2 W. R. 15**

**Overruling HUREENARAIN GOSSAIN v. SHUMSHOONATH MUNDEL** . 1 W. R. 6

**5. ——— Beng. Reg. XIX of 1793, s. 10—Resumption—Rent—Revenue. Held, per PEACOCK, C.J., and L. S. JACKSON and MACFARSON, JJ (BAYLEY, NORMAN, and SETON-KARR, JJ, dissenting), that the words "exempt from revenue" in s. 10, Regulation XIX of 1793, refer only to grants free from the payment of revenue to Government, and do not include grants or leases by a zamindar exempt from the payment of rent. Therefore a rent-free grant made by a zamindar, and *a fortiori* one by a mourasi ijaradar, of a specified portion of land after a Permanent Settlement of the estate to which it belongs, is valid as against the grantor and his heirs or against a purchaser of the estate by private sale, and is not liable to be resumed under that section. *Held, per* BAYLEY, NORMAN, and SETON-KARR, JJ, *contra*. **MAHOMED AKIL v. ASADUNNISSA BIBI. MUTTYLALL SEN GWYAL V. DESDEKAR ROY****

**B. L. R. Sup. Vol. 774: 9 W. R. 1**

**6. ——— Effect of grant against**

ment of rent, but not free from payment of revenue. *Held*, that a zamindar was competent to make such grant, and his act is binding on the auction-purchaser, whose right is only to receive the revenue

**GRANT—contd.****2. POWER TO GRANT—contd.**

rate from the grantee. **ANNUD OOLLAN v. MITHOON LALL** . . . . . 3 Agrs. 186

**7. ——— Grant for public purposes—Liability to assessment of rent. A grant for a road used annually for the Rath Jatra is valid and not assessable, with rent, the grant being for a public purpose. **HUREENARAIN GOSSAIN v. SHUMSHOONATH MUNDEL** . . . . . 1 W. R. 8**

**8. ——— Tank granted subsequent to 1790. A tank granted subsequently to 1790 is liable to assessment in the absence of any**

**CHUNDER KANT CHICKERBUTTY v. BUNKOO BEHAREE CHUNDER** . . . . . 3 W. R. 177

**9. ——— Supply of water to villagers from wells to be dug—Building temples—Power to resume and assess grant. Where the manager of a coal company had allowed persons to settle on the lands of the company, on conditions about which a dispute arose, and the company sought to assess the land with rent, and the tenants claimed to hold it rent-free—*Held*, by the High Court, that the grant was not valid.**

assess the plot. **BENGAL COAL COMPANY v. HORDYAL MARWARIE** . . . . . 25 W. R. 245

original grant, is that such grant was hereditary. The allowance having been continued by the British Government to the plaintiff's grandfather, for the same reason for which a village (admitted to be held on hereditary tenure) had been continued, and having been paid to the plaintiff's grandfather up to his decease and afterwards, as a matter of course, to the plaintiff's father, it was held that the enjoyment of the plaintiff's grandfather and father was proprietary enjoyment; and as this enjoyment had continued uninterruptedly for more than thirty years, that, under

GRANT—*contd.*2. POWER TO GRANT—*contd.*

Regulation V of 1827, s. 1, a statutory and infeasible title to the allowance had been acquired. **DESAI KALYANRAYA HUKAMATRAYA v. GOVERNMENT OF BOMBAY** 5 Bom. A. C. 1

11. ——— Hereditary charitable grant—Allowance for temple—Bom. Reg. V of 1827, s. 1. Where a charitable grant in connection with a temple was proved to have been enjoyed by the incumbent and those under whom he held in regular succession for more than thirty years, it was held that the grantee had acquired a right of property in it under Regulation V of 1827, s. 1. **PER WARDEN, J.**

12. ——— Grant by widow for religious benefit of husband—Power of successors to resume grant. Where two widows of a zamindar granted a small portion of the zamindari to

**MINARAYANA v. DASU** 1. L. R. 11 Mau. 200

13. ——— Invalidity of grant or covenant by grantor, in favour of persons unborn, upon a condition which may never arise—Restraint upon grantor's own power of alienating—Hindu law. A Hindu owner cannot make a conditional grant of a future interest in pro-

estate to give in some way or other maintenance to

condition, which might prevent its ever taking effect; or it might be regarded as a covenant intended to run with the Raj estate, in favour of non-existing cotenantees, to give the villages to them in the event specified. **Held**, that in either view it was equally ineffectual. **CHANDI CHURN BARUA v. SINDHESWARI DEBI** 1. L. R. 16 Calc. 71

14. ——— Grant of building-sites by Tahsildar—Darkhast rules—Appeal to Divisional

GRANT—*contd.*2. POWER TO GRANT—*concl.*

officer—Failure to reverse grant—Validity of grant. By the darkhast rules, as amended in 1894, an appeal is provided to a Divisional officer from the orders of a Tahsildar in respect of grants of building-sites. A Tahsildar passed an order granting an application for a building-site and an appeal was preferred therefrom to the Sub-Collector (the Divisional officer). This officer apparently referred the appeal to the Collector, who passed an order annulling the grant. The Collector's order was sent to the Divisional officer, who communicated it to the Tahsildar. On a suit being instituted by the applicant for a declaration of his title to the land—**Held**, that he had acquired a good title. The appeal lay to the Sub-Collector.

Collector has a revisional power similar to that given to him by the regulations in matters dealt with therein, and that the Collector's order on appeal to the Sub-Collector ought to be regarded as an order made by the Collector in the legal exercise of his revisional powers. The result was that the order of the Tahsildar granting the title had not been legally set aside, and the plaintiff had acquired a good title by virtue of the grant duly made by the Tahsildar. **SAPPANI ASANI v. COLLECTOR OF COIMBATORE (1903)** 1. L. R. 26 Mad. 742

## 3. GRANTS FOR MAINTENANCE

1. ——— Nature of tenure—*Resumap-*

circumstances the defendant's tenancy was a mere tenancy-at-will which the plaintiff's predecessors or had a right to determine at any time. **GOVERNMENT v. LALL MOHUN NAUTH** 2 May 1920

2. ——— Grant by Raja of Pachete—Duration and effect of such grants. A grant by

estate of inheritance and as such inalienable. **ANUNDAL SING DEO v. DHEERAJ GURMOOD NARAYAN DEO** 5 Moo. I. A 82

3. ——— Duration of maintenance grant—Power of zamindar to resume grant for maintenance—Possession of successors of grantee.

GRANT—*contd.*3. GRANTS FOR MAINTENANCE—*contd.*

Land held as a maintenance grant is resumable by the zamindar at the death of the grantees, whether it

rent to the zamindar cannot be regarded as holding adversely to him. *WOODYADITTO DEB v. MAKOOND NARAIN ADITTO DEB*. 22 W. R. 225

4. ———— *Charge on zamindari*. A maintenance grant, claimed to be hereditary, held to be for life only. *Lekraj Roy v. Kunhya Singh*, 1. L. R. 3 Cal. 210, quoted. A

ISHAN CHUNDER THAKUR . . . 3 C. L. R. 417

5. ———— *Value of land enhanced by irrigation*. Where a zamindar granted to his mother, in lieu of maintenance, two villages, the income of which, upon the introduction of irrigation, was greatly enhanced without any expenditure or labour on the part of the grantee:—*Held*, in a suit by the grantee for damages against particu-

the terms of the grant, but was no ground for dispossessing the grantee. *BHAVANAMMA v. RAMASAIT* . . . 1. L. R. 4 Mad. 193

8. ———— *Presumption of nature of grant from long undisturbed possession*.

intended to be absolute. *SALUR ZAMINDAR v. PEDDA PAKIR RAJU* . . . 1. L. R. 4 Mad. 371

7. ———— *Busuana property, nature of*.—Grant for maintenance—Power of grantee to alienate—*Kulachar of Darbhanga Raj* Busuana property granted to accordance with the *kulachar*

GRANT—*contd.*3. GRANTS FOR MAINTENANCE—*contd.*

1. L. R. 32 Cal. 888  
s.c. 9 C. W. N. 587

## 4. POWER OF ALIENATION BY GRANTEE.

1. ———— *Survivorship—Rights of widow*.—Grant by Government for maintenance of family. The lands of three brothers having been confiscated, the Government afterwards assigned revenue-paying lands for the benefit, in certain proportions, of the minor son of the eldest brother, also of the widow, minor son, and daughter of the youngest brother (both these brothers being then deceased); and the second brother, who survived, was put into possession of a proportionate part of the property. *Held*, by the Privy Council, that the widow of his son and sole owner of 1 her benefit; by her, could not to set aside at the instance of the second brother, who failed to show, on the above state of things, that the estate was heritable property of the son, as whose uncle and heir he claimed. *NARPAT SINGH v. MAHOMED ALI HUSSAIN KHAN*  
1. L. R. 11 Cal. 1

2. ———— *Alienation by zamindar—Validity of, against his successor*. A grant of a

3. ———— *Charge in favour of stranger—Perpetual annuity*. A zamindar has no more power to charge a perpetual annuity in favour of a stranger on the income of the zamindari than he has to alienate the corpus. *NARAYANNA DEVI v. HARISCHANDANA DEVI* . . . 1 Mad. 455

See *SUBBARAYULU NAYAK v. RAMA RENDI*  
1 Mad. 141

4. ———— *Grant by holder of appanage—Lease for mining purposes*. Though the holder of a younger brother's appanage has no power of complete and absolute alienation of property, of which he has only a limited tenure for

being in their nature such as to require a long time



GRANT—*contd.*4. POWER OF ALIENATION BY GRANTEE  
—*contd.*

for profitable working GORDON, STUART &amp; Co. v. IKAITNEE SCOLAS KOWAREE. W. R. 1864, 370

5. ——— Grant by zamindar of estate for maintenance—*Pottah "dauami" made to a lessee by the grantee in excess of his estate to what extent effectual, from circumstances—Suit for possession—Limitation Act (XV of 1877), Sch. II, Art. 91—Suit for declaratory decree—Specific Relief Act (I of 1877), s. 39—Adverse possession.* A grant of a village for maintenance was made by a zamindar to his nephew, operating only for life. The grantee survived the grantor, and by ikramama acknowledged the succeeding zamindar to be entitled to the village. The grantee had, however, already executed a pottah, described therein as permanent, to a lessee. The latter obtained possession of the village.

could not have the effect of confirming it in its entirety, which, according to the construction of the Limitation Act (XV of 1877), s. 39, would have been the case.

acceptance of rent had confirmed the permanency of the lease, preclude the claim for legal rights, even supposing that admission to have been made. The matter in contest was as to the circumstances under which the lessee was allowed to remain in possession and their legal effect. And on the evidence, the lessee had been allowed to remain as a mokurari tenant for his life. (ii) The suit for possession was not barred under article 91 of the Limitation Act (XV of 1877) on the ground that a decree declaratory of title to have the pottah cancelled might have been sued for in the lessee's lifetime.

BENI PERSHAD KOERI v. DUDHYNATH ROY  
I. L. R. 27 Cal. 158  
I. R. 28 I. A. 216  
4 C. W. N. 274

6. ——— Grant from person with only temporary interest—*Failure to prove right of occupancy.* In a suit to recover possession of debutter land where plaintiff relied upon a mouzari pottah which had been granted by, or with

GRANT—*contd.*4. POWER OF ALIENATION BY GRANTEE  
—*contd.*

the permission of, a poojaree no longer in office, the principal defendant claiming under a lease from the existing poojaree:—*Held*, that plaintiff could not succeed, in the absence of evidence of a right of occupancy, under s. 6, Act X of 1839, and his title was bad as based upon a grant from a person who had only a limited or temporary interest in the land. (GOOROO PERSHAD ROY v. RAM LOCHAN PAURAY. 13 W. R. 241)

7. ——— Grant by military authorities of cantonment land—*Resumption by Government.* Where Government had permitted the military authorities to use certain land for cantonment purposes, which land was subsequently re-

nary right of Government as a landlord to demand rent. RANCHAND v. COLLECTOR OF MISRAPORE  
3 Agta 7

## 5 RESUMPTION OR REVOCATION OF GRANTS.

1. ——— Mokurari grant in perpetuity—*Right of resumption in grantor.* A mokurari tenure granted in perpetuity cannot be resumed by the grantor, even if the grantee dies without leaving heirs. HIMWUT BAHADUR v. SOONER KOOER. 15 W. R. 549

2. ——— Grant of mokurari pottah—*Power to resume on death of grantor.* A mokurari pottah granted by a Raja of Tippurah to a member of his family is, by recognized custom, resumable on the death of the grantor. ROOF MOONJURER KOOEREE v. BEER CHUNDER JOEBHAJ. 9 W. R. 308

3. ——— Amaram grant—*Right to resume—Arrears of assessment, liability for.* An Amaram grant, being a grant of land to a member of the family of the grantor, is resumable on the death of the grantor. If the grantee or his heirs are bound to discharge, are liable to be sued for such arrears of assessment. UNIDY RAJAH RAO VENKATAPERUNAL RAUZE v. PENMASAMY VENKATADRY NAIDOO. 4 W. R. P. C. 121 : 7 Moo. I. A. 126

Ser NARASAYYA v. VENKATAGIRI RAJAH  
I. L. R. 23 Mad. 262

4. ——— Annual allowance for palki huq—*Allowance attached to hereditary office—Right of Government to resume.* An annual allowance for palki huq (palanquin allowance) to the holder of the hereditary office of Dewai of Broach held under a jaghir grant charged by former native Governments in the land revenues of that pergunnah

GRANT—*contd.*5. RESUMPTION OR REVOCATION OF GRANTS—*contd.*

is incident to the tenure of Desai and is not resumable by Government. **GOVERNMENT OF BOMBAY v. DESAI KALLANRAI HAKOONUTRAI**

14 Moo. L. A. 551

5. ——— Grant by Government by proclamation—*Revocation of, by proclamation*—*Consent—Resumption, power of.* Government cannot, by issuing a subsequent proclamation, resume a grant made by a previous proclamation, inasmuch as it cannot, any more than a private person, without the consent of the donee, revoke a gift actually made. **COLLECTOR OF RATNAGIRI v. VYANKATRAY NARAYAN SURVE**

8 Bom. A. C. 1

See **SECRETARY OF STATE FOR INDIA v. SIVARAM SHIVRAM**, L. L. R. 23 Bom. 518

6. ——— Construction of gift—*Tribal custom—Evidence of intention* In view of the circumstances under which an oral lease of villages at a favourable rate of rent, and of indefinite duration, was made by the proprietor, a talukhdar, in

GRANT—*contd.*5. RESUMPTION OR REVOCATION OF GRANTS—*contd.*

The allowances were paid till the death of the plaintiffs' father on the 26th December 1850, when the Collector of Thana stopped them. On the 23rd December 1870, the plaintiffs sued to establish their right to the grant and to recover six years' arrears of the allowances. *Held*, that the grant was irrevocable.

or variability ceased to the extent of the grant from the moment of its being made to a Hindu temple.

derogate from the durability of the grant. The Hindu law implies the religious penalty for resumption, albeit not expressed in the sanad. A pension or other periodical payment or allowances granted in permanence is nibandha, whether secured on land or not. *Quare* Whether a private individual as well as a royal personage may create a nibandha. **COLLECTOR OF THANA v. HARI SIVARAM**

I. L. R. 6 Bom. 546

8. ——— Madras Regulation IV of 1831—*Madras Act IV of 1862—Resumption of sanad—East India Company's jaghir—Act of State—Mekaral lands—Miras rights, evidence of—Secondary evidence of lost grant by Government.* In a suit to declare the plaintiff's title to a shrotrium village which was included in the jaghir granted in 1743 by the Nawab of the Carnate to the East India Company, it appeared that the village in question had been previously granted by the Nawab free of assessment to the Kazi of Madras as an endowment for his office, and afterwards to the son of the first grantee personally, without conditions of service. In 1779 the British Government confirmed the village in perpetuity to the second grantee on account of the office of Kazi which he filled, and to his direct heirs who should be fit for that office. In 1803, on failure of the direct heirs, the grant was

which was resumption, the Kazi transferred the

7. ——— Effect of resumption and settlement on lakhiraj tenures. After resumption and settlement, a lakhiraj estate becomes, to all intents and purposes, a separate zamindari held from Government.

8. ——— Grant by Hindu sovereign to Hindu temple—*Nibandha—Antastha sadilvar—Kherij jumabundi parbhare paks—Religious penalty for resumption* The Peishwa, by a sanad dated 1790, granted to an ancestor of the plaintiffs, for the support of a Hindu temple, an annual cash allowance of Rs350 out of the "Antastha sadilvar," and three khands of rice out of the "Kherij jumabundi parbhare," to be levied from certain mehals and forts mentioned in the sanad.

**GRANT—*concl.*****5. RESUMPTION OR REVOCATION OF GRANTS—*concl.***

village to the plaintiff under a deed of perpetual lease and placed him in possession. But in 1873

lands, which had formerly been allotted to the village watchman as inam, had been granted to the Kazi in 1802-3; they were cultivated by raiyats who paid varam to the inamdar. The order of resumption in 1873 had no reference to these lands, but in 1877 Government issued pottahs to the raiyats. *Held*, (i) that the grant of 1779, the original document not having been reproduced by the plaintiff, was sufficiently proved by a translation produced from official custody and certified by the Collector in 1838 to be correct and attested by the Persian translator

must have been aware of the nature of the tenure and of the contents of the grant of 1770 and the cancellation of the inam title-deed, the Government

that the plaintiff was entitled to possession of the

**TARY OF STATE FOR INDIA**

I. L. R. 14 Mad. 431

**GRANTOR.**

*See* ESTOPPEL I. L. R. 33 Calc. 915

**GRATIFICATION.**

illegal—

*See* ILLEGAL GRATIFICATION.

officer to give—

*See* PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL I. L. R. 17 All. 498  
I. L. R. 22 I. A. 183

**GRATUITY.**

*See* ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION I. L. R. 6 All. 173, 634

*See* RIGHT OF SUIT—OFFICE OR EMOLUMENT 1 Bom. Ap. 18  
6 Bom. A. C. 250  
I. L. R. 2 Bom. 470

**GRAVE-YARD**

*See* MAHOMEDAN LAW—CUSTOM, I. L. R. 28 Bom. 198

**GRAVE-YARD—*concl.***

*See* RIGHT OF SUIT—CHARITIES AND TRUSTS I. L. R. 21 All. 187

prohibiting use of—

*See* CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 381 I. L. R. 25 Calc. 492  
2 C. W. N. 145

trespass on—

*See* RELIGION, OFFENCES RELATING TO, I. L. R. 18 All. 396

**GRAZING.**

*See* PASTURAGE, RIGHT TO.

**GRIEVOUS HURT.**

*See* HURT—GRIEVOUS HURT.

*See* PENAL CODE, ss. 304 AND 325, I. L. R. 29 All. 282  
8 C. W. N. 344  
I. L. R. 30 All. 586

*See* REVISION—CRIMINAL CASES—COMMITMENTS I. L. R. 16 Bom. 580

*See* RIOTING 3 N. W. 174  
I. L. R. 24 Calc. 888  
1 C. W. N. 423

*See* SENTENCE—CUMULATIVE SENTENCES

*Penal Code (Art XLV of 1860), ss. 304 and 325—Assault by three persons armed with knives—Intention—Culpable homicide—Grievous hurt. Three persons attacked a person and one of the assailants struck the person at evidence left the assailants one of which*

(1907) I. L. R. 20 All. 204

**GROUND OF APPEAL.**

*See* APPEAL—GROUND OF APPEAL 1 N. W. 193  
I. L. R. 15 Mad. 503  
I. L. R. 19 I. A. 179

*See* CIVIL PROCEDURE CODE, 1882, s. 574, 13 C. W. N. 143

*See* SPECIAL OR SECOND APPEAL—GROUND OF APPEAL

of second appeal—

*See* CIVIL PROCEDURE CODE, 1882, ss. 214, 574 13 C. W. N. 105, 143

**GUARANTEE.**

*See* PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS; 6 C. W. N. 429

SUITS RESPECTING PARTNERSHIP, I. L. R. 25 Bom. 608

GUARANTEE—*contd.*

See PRINCIPAL AND ADEPT—LIABILITY OF PRINCIPAL . 6 C. W. N. 429

See RES JUDICATA—CAUSES OF ACTION—CONTINUING GUARANTEE.

I. L. R. 27 Bom. 418

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R. 15 Bom. 585

1. ——— Contract of—*Statute of Frauds* (29 Car. II), c. 3, s. 4—21 Geo. III, c. 70, s. 17. A contract of guarantee is a "matter of contract and dealing" within the terms of s. 17 of 21 Geo. III, c. 70, and therefore such a contract made by a Hindu is not affected by s. 4 of the Statute of Frauds. *JAGADAMBA DAS v. GNON*

5 B. L. R. 639

2. ——— Appropriation of payments—*Guarantee on advance to limited company*. In consideration that the plaintiffs would advance a certain sum to a limited company, two of the directors agreed that the plaintiffs should repay themselves the amount "from the first moneys received by them on account of the said company, and each of them agreed to hold himself personally responsible for the payment of half the amount of any deficiency of the amount realized by the plaintiffs in the manner above described. At this time the plaintiffs were the bankers of the company, and were regularly paying and receiving money for

due to themselves from the company. In an action against the executrix of one of the directors:—*Held*, upholding the decision of the Court below, that the plaintiffs, as between themselves and the guarantors, were bound to appropriate the first receipts to the payment of the guaranteed debt, and that, as they had not done this, the guarantee was discharged. *NICHOLLAS v. WILSON*

I. L. R. 4 Cal. 560; 3 C. L. R. 361

3. ——— Custom—*Trade custom in Benares—Payments made by arathdars—Ratification*

memorandum thereof, is sent by the stranger

except the last and largest, under which he had

to pay the vendors the amount of the loss occasioned by C's failure to pay and take delivery. In a suit

GUARANTEE—*contd.*

by S & M against C to recover the amount so paid:—*Held*, that, if the plaintiffs were cognizant of and allowed their names to be used in the last transaction, as was shown to have been the case in previous transactions, they were, according to the custom, liable to the vendors, and consequently entitled to recover over from the defendant what they had paid; and that, even if there was no actual authority given at the time of the transaction, still as

they were thereby authorized, if they thought fit, to make the subsequent payment which they did on behalf of the defendant, or (in other words) to ratify the use which the defendant had made of their name, and were not deprived of their right to do so by their having for a time repudiated liability. *SITH SAMUEL MULL v. CHOGA LALL*

I. L. R. 5 Cal. 421

I. L. R. 6 I. A. 238

4. ——— Condition precedent—*Charter-party—Damages, measure of*. The defendants, M G & Co., entered into a contract of guarantee with the plaintiffs, P and C N O & Co., which was contained in the following letter:—"In consideration of your paying us on account of C, the owner of the ship *Caroline*, chartered by you to load at Rangoon with timber, as per charter-party executed by him and your good selves, dated this day, the sum of Rs. 21,500, to be paid in advance and in part freight of the said vessel payable as follows:—Rs. 18,000 at Calcutta and Rs. 3,500 at Bombay for the disbursement of the vessel there:—I hereby guarantee and engage to hold you harmless against all losses, damages, and compensation arising from the non-performance of any acts, covenants, or agreements to be done, observed, or performed by or on the part of the said C in terms of the said charter-party:—I further agree to allow you interest at 12 per cent per annum on the said sum of Rs. 21,500 from the date of the said payment to the date of the said payment."

voyage from Rangoon to Bombay, as per charter-party executed between ourselves and the said C N O & Co., the said guarantee dated this day, the said M G & Co. engage ourselves to make good the said sum of Rs. 21,500 on bond on the British Consulate at Calcutta, to be executed in Moulmein by the said C N O & Co. Y B of Rangoon, for the said C N O & Co. the said C N O & Co. claim on the said bond the said sum of Rs. 21,500, and the said party was of even tenor with the said one part and the said other part.

GUARANTEE—*contd.*

It was thereby agreed that the ship *Caroline*, "being tight, strong, and staunch, and in every way fitted for the voyage, and now at Bombay, shall with all convenient despatch proceed to the port of Rangoon in British Burma or so near thereto as shall be determined."

... and deliver the same on being paid freight in the manner below at and after the rate," etc., "the act of God, etc., excepted." The freight to be paid as follows:—"R18,000 in Calcutta on the signing of this charter-party, R3,500 the the to

immediately upon the disbursements being satisfied;

Bomb  
reaseor

the rate of 10 per cent per annum. The charterers to have the option of...

... on behalf of A B, and the of this indebted be un-

out. In an action by the plaintiffs against the defendants on the guarantee:—*Held*, that the covenant to transfer the mortgage of the *Moulmein* was independent, and not a condition precedent to the plaintiff's right of action. *Held*, also, on the facts, that the representation in the charter-party that the *Caroline* was, while lying at Bombay, "tight, strong, and staunch," etc., amounted to a contract that the ship should be so, and the defendants' guarantee covered it. *Held*, also, that the defendants, not being parties to the charter-party and not having bound themselves to any assessment of damages, were not called on to pay the penalty specified in the last clause of the charter-party, but that the damages against them must be the actual damages which the plaintiffs on N B's behalf suffered—that the balance reduce A the date

GUARANTEE—*contd.*

claimed a less sum than these damages would amount to, and therefore the plaintiff's claim was decreed in full. *PRESTON V. DRUMMOND* 1 Ind. Jur. N. S. 412

5. ——— Surety, discharge of—*Disclosure—Material fact—Contract Act, s. 142.* M was declared the bankrupt...

and M became indebted to Government in that amount. On the re-sale, M was again declared purchaser, and being unable to furnish the necessary...

... was not discharged by reason of the fact that the indebtedness of M was not disclosed to him by the Collector. *SECRETARY OF STATE FOR INDIA V. NILANAKH PILLAI* I. L. R. 8 Mad. 408

6. ——— Intention of parties—*Bond file endeavour to perform engagement—Penalty.* When a third person voluntarily consents to incur...

been a bond file endeavour on the part of the respondent fairly to perform his engagement, and there having been a disposition on the part of the appellant to throw obstacles in the way of the performance, consequent dismissed.

7. ——— Unascertained amount—*Pro-*

8. ——— Effect of guarantor signing voucher as surety. Where a surety for the payment of the price of goods sold to another person signs as voucher for them, that fact does not alter his position as surety or make him primarily responsible for them. *AGUILAR V. WOONESH CHANDER SIAW* 22 W. R. 200

9. ——— Recommendation to lend money—*Liability to repay.* A mere recommendation by one party to another to lend money to a third party does not operate as a guarantee nor render the first party liable to repay the loan. *JUDOOAT ISHAR NARAIN ROY CHOWDHURY V. NITANEE DASSEE* 24 W. R. 446

GUARANTEE—*contd.*10. ——— Construction of contract  
guaranteeing an employer against loss by the mis-  
conduct of a person employed as agent of the guar-  
antor;—*Held*, that the loss, to be recoverable in a  
suit against the guarantor, must be shown to have  
arisen from misconduct on the part of the agent in  
connection with the business of the agency, and to  
be within the scope of the agreement. The Lhezan-  
chi of a district treasury guaranteed the Govern-  
ment against loss arising from the misconduct of

proceeds appear to correspond in his accounts with  
the value of the stamps issued to him; but, under  
cover of the above payment, he misappropriated  
certain revenue stamps. *Held*, that although the

caused by the forgery, were brought within the  
scope of the agreement by the fact of such mis-  
appropriation and false accounting. **SEE KISHEN**  
**v. SECRETARY OF STATE FOR INDIA**

I. L. R. 12 Calc. 143

I. L. R. 13 I. A. 143

11. ——— Guarantee on condition of  
not taking criminal proceedings—*Consi-  
deration—Compounding felony*. S gave to the  
creditors of H a guarantee for the payment of the  
debts due to them by H. As a consideration for  
this guarantee, the creditors were to abstain from  
taking criminal proceedings against H for fifteen  
days, and by implication were to abstain from tak-  
ing such proceedings altogether if the said debts  
were paid within that time. *Held*, that such a  
guarantee could not be enforced by the creditor.  
A man, to whom a civil debt is due, may take  
security for that debt from his debtor, even though  
the debt arises out of a criminal offence, and  
he threatens to prosecute for that offence, provided  
he does not, in consideration of such securities,

12. ——— Guarantee for rent—*Lease*

—*Indemnity—Liability—Continuing guarantee—  
Death of agent*. Contract Act 1872, s. 128, s. 129

GUARANTEE—*contd.*

by one S, the father of the plaintiff. S on his part  
required a guarantee or indemnity against any rent  
which might not be paid by B, and which he might  
under his proposed guarantee become liable to pay.  
The defendant's father, G, accordingly gave a gua-

from him the rent due and certain costs and ex-  
penses. S then died, and the plaintiff, as his re-  
presentative, brought this action against defendant,  
the legal representative of G, to recover the amount  
of the decree and costs which S had to pay. The  
Court of first instance decreed the whole claim with

ing guarantee within the meaning of s. 151 of the  
Indian Contract Act, still, having regard to the ob-  
ject for which the two guarantees were given, it

*Held*, further, that neither G if he were alive, nor on  
his death the defendant as his representative, could  
be made liable for costs and expenses which S had

to GOPAT SINGH v. BHAWANI PRASAD

I. L. R. 10 All. 531

13. ——— Revocation of guarantee—  
Contract Act (IX of 1872), s. 260—*Surety—Liability  
of surety to a firm which has undergone change in its  
constitution—Cause of action—Surety bond*. The  
defendants B and R, on December 6th, 1895,  
executed a security bond, the condition of which

to the same. In early 1900, there being a change  
in the constitution of the firm, it came to be  
styled and designated as "N. Mookerjee and Son."  
Defaultations on the part of B were discovered  
between January 1897 and May 1900, &c., while

**GUARANTEE—concl'd.**

*B* was in the service of "N. Mookerjee and Son," a

cause of action was shown to exist against the defendants—having been taken:—*Held*, that, there

**GUARDIAN.**

I. L. R. 28 Calc. 597

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|---|------|
|   | Col. |
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See ACT XL OF 1859 (BENGAL MINORS ACT).

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See CIVIL PROCEDURE CODE, 1882, s. 440.  
I. L. R. 31 Bom. 413

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE  
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See GUARDIAN AD LITEM.

See GUARDIAN AND MINOR.

See GUARDIAN AND WARD.

See GUARDIANS AND WARDS ACT (VIII OF 1890).

See GUARDIANS AND WARDS ACT, s. 41.  
I. L. R. 33 Bom. 418

See HINDU LAW—GUARDIAN.

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I. L. R. 26 Bom. 221

**GUARDIAN—cont'd.**

See LIMITATION ACT, 1877, s. 20.  
I. L. R. 28 All. 596

See LUNATIC

See MAHOMEDAN LAW—GUARDIAN.

See MAJORITY ACT.  
I. L. R. 31 Bom. 60

See MINOR.

See SUCCESSION CERTIFICATE ACT, ss. 6, 7 AND 9 . . . I. L. R. 25 Bom. 523

**ad litem—**

See CIVIL PROCEDURE CODE, 1882, s. 108  
I. L. R. 24 All. 383

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE

18 W. R. P. C. 22  
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See MINOR—REPRESENTATION OF MINOR IN SUITS.

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES I. L. R. 27 Bom. 23

See PARSII MARRIAGE AND DIVORCE ACT, s. 30 . . . I. L. R. 18 Bom. 366

See PRACTICE—CIVIL CASES—INTERROGATORIES . . . I. L. R. 10 Bom. 167

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**appointed under Guardians and Wards Act—**

See MINOR . . . 13 C. W. N. 643

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7 C. W. N. 90

**continuance of parent's guardianship—**

See KIDNAPPING I. L. R. 24 Mad. 284

GUARDIAN—*contd.*

## contract made by—

- See SPECIFIC PERFORMANCE—SPECIAL CASES . . . I. L. R. 12 Calc. 162  
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## discharge or death of—

- See MINOR . . . I. L. R. 36 Calc. 768

## negligence of—

- See LIMITATION ACT, s. 3.  
 I. L. R. 20 Bom. 104

## non-appearance of—

- See CIVIL PROCEDURE CODE, 1882, s. 168.  
 5 C. W. N. 58

## possession by—

- See ADVERSE POSSESSION.  
 I. L. R. 30 Mad. 145

## powers of—

- See LIMITATION ACT, 1877, s. 20.  
 I. L. R. 29 Calc. 647

## power of, to bind minor—

- See GUARDIAN AND WARD.  
 I. L. R. 34 Calc. 892

## removal of—

- See APPEAL—ACTS—ACT XL OF 1858  
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 1 C. W. N. 693  
 See GUARDIAN AND WARD ACT, s. 39.  
 I. L. R. 18 Bom. 375

## 1. APPOINTMENT.

1. Application to appoint guardian—Minor—Act IX of 1861, ss. 1 and 6—Previous application which had been refused. A Court

NEHALO V. NAWAL . . . I. L. R. 1 All. 428

2. Infant—Power of High Court—Application by petition without suit. On an application made on petition without suit for

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

for enquiry as to the proper person to be appointed guardian In the matter of BITTAH  
 I. L. R. 2 Calc. 357

3. Power of Court to appoint guardian of person and estate of a minor. The power of the Court of Chancery to appoint guardians to infants, whether such infants have property or not, is possessed by the High Court. *Re JAGANNATH RAMSI* . . . I. L. R. 19 Bom. 96

4. Inherent power of High Court to appoint guardian—Guardians and Wards Act (VIII of 1890)—Appointment of Hindu father as guardian. The High Court has the power, irrespective of the provisions of the Act, to appoint

matter of the petition of JAIMAM LUXMON  
 I. L. R. 16 Bom. 634

5. Guardianship of female minor—Mahomedan Law—Beng. Reg. X of 1793, s. 21—Act XL of 1858, s. 27—Act IX of 1861. The effect of s. 21 of Regulation X of 1793 and of s. 27 of Act XL of 1858 is that no person other than a female shall in any case be entrusted with the guardianship of a female minor. *Held*, therefore, where a Mahomedan mother had by marrying a stranger forfeited her right to the guardianship of

the fact that the proceeding in which the right is sought to be established is under Act IX of 1861 does not affect the rule. *PUZZEEN V. KASH*  
 I. L. R. 10 Calc. 15

6. Female minor,

7. Certificate of guardianship—Act XL of 1858, s. 7—Minor. The grant of a

I. L. R. 13 All. 78



GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

8. ——— Guardianship of estate of minor paying revenue to Government—*Mad. Reg. V of 1884, s. 20—Mad. Reg. X of 1831, s. 3—Minor—Estate paying revenue to Government—Jurisdiction of District Court* A District Court has no jurisdiction under s. 20 of Regulation V of 1884 and s. 3 of Regulation X of 1831 to appoint a guardian of the estate of a minor when the estate pays revenue to Government. *Ex parte SRINAMANTAN* . . . I. L. R. 6 Mad. 187

9. ——— Guardianship of children of deceased husband—*Act XV of 1856, s. 3—Remarriage of Hindu widow.* On the re-marriage of a Hindu widow, if neither she nor any other person has been expressly constituted by the will or the testamentary disposition of the deceased husband the guardian of the child, and part of his property of his . . .

husband should . . .

10. ——— Guardianship of minor co-shares—*Act XL of 1858—Guardian and minor—Relation of manager of joint estate to co-shares under age* A co-sharer in ancestral family estate under the Mitakshara law, the co-proprietors being minors, though he may have power to manage the estate, is not in consequence the guardian of such minors for the purpose of binding them by the execution of a bond charging the estate; nor is the eldest male member of the family, being of full age, guardian of such minors for the purpose of defending suits brought against them for money advanced in respect of the estate, unless he has obtained a certificate of administration under Act XL of 1858, s. 3. That Act shows that he is not guardian of the minors, the care of whose persons and property (unless taken under the protection of the Court of Wards by s. 2) is subject to the jurisdiction of the Civil Courts. *BRUNNAPRASAD v. KESHPERSAD SIKH* . . . I. L. R. 8 Calc. 656; 11 C. L. R. 220; I. R. 9 I. A. 27

11. ——— Guardians and Wards Act (VIII of 1890)—*Minor, a member of joint Mitakshara family and having no separate property—Act XL of 1858.* Under the Guardians and Wards Act, 1890, a guardian cannot be appointed of the property of a minor, who is a member of a joint Hindu family governed by the Mitakshara law, and possessed of no separate estate. Difference between the Guardians and Wards Act, 1890, and Act XL of 1858 stated. *Dariprasad v. Keshopersad Singh*, I. L. R. 8 Calc. 656. I. R. 9 I. A. 27, explained. *Narasimha Ramchandra v. Venkay Krishna*, I. L. R. 8 Bom. 395, and *Ayyappa v. Rama Subba Ayyar*, 11 Mon. I. A. 75, referred to. *SILAK KUAN v. MOHANNADA SARKAR* . . . I. L. R. 10 Calc. 301

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

12. ——— Guardians and Wards Act (VIII of 1890)—*Minor co-parcener in a joint Hindu family governed by the Mitakshara law—Hindu law—Guardian of person of minor.* Under Act VIII of 1890, a guardian cannot be appointed to the property of a minor who is a member of a joint Hindu family governed by the Mitakshara law and possessed of no separate property. A guardian of the person of such a minor may be appointed under the Act. *VINDRAKSHAZA v. NILGANGAVI* . . . I. L. R. 19 Bom. 309

13. ——— Appointment of guardian of property of minor—*Minor who is a member of a joint Hindu family.* It is not competent to a Court under Act VIII of 1890 to appoint a guardian of the property of a minor who is a member of a joint Hindu family. *Varupakshappa v. Nilganga*, I. L. R. 19 Bom. 309, and *Sham Kuar v. Mohannada Sahay*, I. L. R. 19 Calc. 301, referred to. *JHABHU SINGH v. GANGA BHAIAN* . . . I. L. R. 17 All. 529

14. ——— Guardians and Wards Act (VIII of 1890), s. 34—*Guardian to the property of a minor who is a member of a joint Hindu family.* It is not competent to a Court to appoint a guardian to the property of a minor when such minor is a member of a joint Hindu family and has no other property than his share in the joint family estate. *Jhabhu Singh v. Ganga Bhaian*, I. L. R. 17 All. 529, and *Gurja v. Mohar Singh*, All Weekly Notes (1896) 30, referred to. *RAMPY PRASAD v. DURJAN KAN* . . . I. L. R. 20 All. 400

15. ——— Rival claimants—*Guardians and Wards Act (VIII of 1890), s. 17—Relation—ship.* In appointing a guardian of a minor under Act VIII of 1890, the main question for the Court to determine is what is for the welfare of the minor; in determining this question, the Court should consider all the facts and circumstances that the interests of the minor will be better looked after. Before Act VIII of 1890 was passed, no relation other than the father or mother had an absolute right to the custody of a Hindu minor. The law now gives no such absolute right. *Krishna Kishore Neogi v. Kudu Moye Das*, 2 I. L. R. 633; referred to. *BAIKUND KORA v. CHANALA KORA* . . . 2 C. W. N. 191

16. ——— Appointment of guardian by will—*Application for certificate of guardianship—Guardian and Wards Act (VIII of 1890), ss. 7, cl. (3), 13, and 43—Procedure.* When a person alleges that he has been appointed guardian of a minor under a will, no one else can be appointed guardian under s. 7 (3) of Act VIII of 1890 until it is found, after due investigation, that there is no valid will. The procedure under Act VIII of 1890 is not intended to be summary. *SHANT v. HARIFA BEGAM* . . . I. L. R. 17 Bom. 680

17. ——— Testamentary appointment of a guardian—*Guardians and Wards Act (VIII*

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

of 1890), ss. 7, 8. A Hindu mother has no authority to appoint a guardian for her son by will; it is accordingly the duty of the Court, on an application under Guardians and Wards Act, 1890, for the appointment of a guardian for the son of a Hindu widow who had purported to make such an appointment, to inquire, under s. 7, as to the necessity for an appointment being made and itself to appoint a fit and proper person. *VENKATYA GARU v. VENKATA NATASINGHULU*

I. L. R. 2 Mad. 401

18. ——— Testamentary guardians—*Minor residing out of the jurisdiction of the Court—Letters Patent, High Court, cl. 17—Guardians and Wards Act (VIII of 1890), ss. 4, 7, 9.* Case in which the Court refused, on a summary proceeding under cl. 17 of the Charter, to appoint a guardian of the person and property of an infant who was not a European British subject, and who was living outside the limits of the ordinary original civil jurisdiction of the Court, there being testamentary guardians in existence, and no application or suit filed to remove them. On these two last grounds the Court also refused to appoint a guardian of the infant's property under Act VIII of 1890. *In the matter of SUSH CHUNDER SINGH*

I. L. R. 21 Cal. 206

19. ——— Minor residing in England—*Jurisdiction of High Court.* Where a mother residing at Poona, the widow of a deceased European inhabitant of Poona, sought to be appointed guardian of her children, two

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land, and to have certain payments made to her out of the estate of their deceased father on their account, and to have certain powers over their persons given to her, and to have the costs of the

or appoint-  
Courts than  
III of 1890).  
High Court—  
High Court  
1. 17—Costs.

S. 14 of the Guardians and Wards Act (VIII of 1890) does not apply to the High Court in the exercise of its original civil jurisdiction; and the term "report" in cl. (2) of that section refers, not to a judicial reference, but to a ministerial act. *Proceedings had been taken for the appointment of*

that a Judge of the Original Side of the High Court should hear and determine the matter. *Held*, that

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

such direction was in order, and that the Judge who determined the matter had jurisdiction to do so. *It is also stated that although a writ may be granted, it is not*

of the minor. *In the matter of FAKARUDDIN MAHOMED CHOWDHRY. HAFIZ AHMEDUDDIN AHMED v. GARTH*, I. L. R. 28 Cal. 133  
3 C. W. N. 91

21. ——— Guardian ad litem—*Court in which suit is proceeding.* Guardians ad litem should always be appointed by the Court in which the litigation is pending. *ANONYMOUS*

5 Mad. Ap. 8

22. ——— Appointment of mother where there is not male relative suitable. In the absence of a competent and unobjectionable male relative, ready and willing to act as guardian ad litem of an infant, the mother of the infant may be appointed such guardian, if there be no objection to her on any ground but that of her sex. *In the matter of DANAPPA SIN SUBRAY*

1 Bom. 134

23. ——— Appointment by Judge in default of relative—*Act XL of 1858—Civil Procedure Code, 1852, s. 443.* If no friend or

24. ——— Next friend—*Uncle—Nephew—Mahomedan law.* The rule of Mahomedan law that an uncle cannot be the guardian of the property of a minor does not prevent an uncle from representing his infant nephew under the Code of Civil Procedure as next friend in a suit. *ABDUL BARI v. RASB BEHARI PAL*

6 C. L. R. 413

25. ——— Suit against person not appointed guardian by Court. Neither the Code of Civil Procedure nor the proviso of s. 3 of Act XL of 1853 gives a plaintiff any power to institute a suit against a person named by himself as guardian ad litem on behalf of a minor, nor when he has done so do they give to the Court the power of transferring, by a mere order made *ex parte*, such an irregular proceeding into a suit against the minor. *GURU CHURN CHUCKERBUTTY v. KALI KISEN TAGORE*, I. L. R. 11 Cal. 402

26. ——— Minors' Act, XX of 1861—*Act XV of 1880, s. 3—Appointment of guardian ad litem—Civil Procedure Code, 1877, ss. 456, 458—Costs.* Where no administrator of

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) for the purpose of defending a suit

... guardian *ad litem* of the minor's estate. Neither Act XX of 1864 nor the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) empowers any Court to appoint a person against his or her will to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 453 of the Civil Procedure Code (Act X of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. (b), of Act XV of 1850, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohun Ishwar v. Haku Rupa*, I. L. R. 3 Bom. 638, is superseded by Act XV of 1880, s. 3, cl. (b), in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X of 1877, as amended by Act XII of 1879.

JADOW MULJI v. CHAGAN RAICHAND

I. L. R. 5 Bom. 308

27. ————— Change of guardian on application of court. —————

person. JWALA DEVI v. PIRBHU

I. L. R. 14 All. 35

28. ————— Husband and wife—Suit for divorce under Parsi Marriage Act (XV of 1865), s. 30—Minor—Age of majority. In a suit by a husband for divorce under s. 30 of the

I. L. R. 18 Bom. 308

29. ————— Appeal by a person other than guardian. Two defendants in a suit, being minors, were represented by a properly appointed guardian *ad litem*. Upon a decree being passed in favour of the plaintiff, an appeal was filed on behalf of the minors, by their mother, without any order obtained by her constituting her guardian and without any previous removal of the property appointed guardian *ad litem*. Held, (i) that the ap-

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

I. L. R. 22 Mad. 187

30. ————— Nazir of Court—Minors' Act, XX of 1864—Bombay Civil Courts Act, XIV of 1869 and X of 1876—Officer of Government—Collector—Public Curator under Act XIX of 1841. The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of s. 32 of Act XIV of 1869, as amended by s. 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit in his official capacity. The only officers of Government whom Act XX of 1864 contemplates as guardians of the estate of a minor in their official capacity are the Collector of the district and the public curator, appointed as such under Act XIX of 1841. A Subordinate Judge who, under s. 456 of the Civil Procedure Code (Act X of 1877, as amended by s. 73 of Act XII of 1879), appoints the nazir or any other officer of his Court

WAR P. HAKU RUPA I. L. R. 2 Bom. 500

31. ————— Minor, suit

been appointed guardian *ad litem*, to put himself in communication with the natural guardians and other friends, but the Court may refuse to go on

ed to pay?—Held, that the Court, in the exercise of its power, cannot the appointment of the nazir as guardian *ad litem* under s. 453 of the Civil Procedure Code (Act XIV of 1879) NARAYANAS RAMDAS v. SURESH HUSSEIN I. L. R. 12 Bom. 553

32. ————— Certificate of administration of minor's estate—Minors' Act (XX of 1864)—Default in appearance as indicating consent—Procedure. An order for the issue of a certificate of administration to any particular individual under Act XX of 1864 ought not to be made until it is ascertained whether that individual is willing to

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

take it. Where an order for the issue of a certificate of administration was made on default of the mother of the infant to appear and show cause why the certificate should not be issued to her:—*Held*, that such default in appearance ought not to be

nominee of the suing creditor of the infant. *BANAJI v. MARUTI* . . . I. L. R. 5 Bom. 310

33. ——— Power of appointing guardian.—Guardian appointed of property of a minor who was a member of a joint Hindu family, the property being joint property.—Sanction given for sale of family property in which minor had a share. Jurisdiction of High Court. Under its general jurisdiction, and apart from the Guardians and Wards Act (VIII of 1890), the High Court has power to appoint a guardian of the property of a minor who is a member of joint Hindu family and where the property is joint property.

property in which the minor was interested. *Held*, under the special circumstances of the case, that the sanction should be given. *In re MANJUL HIRGOVAN* (1900) . . . I. L. R. 25 Bom. 353

34. ——— Guardian and Wards Act (VIII of 1890), s. 10—Guardian and minor.—Discretion of Court as to appointment of guardian. In this case the High Court set aside

happier with her maternal grandmother with whom she had been living since the age of 6, than with her father. *BINDO v. SHAM LAL* (1906)

I. L. R. 23 All. 210

35. ——— Minor—Guardian and Wards Act (VIII of 1890), s. 7—Sonthal Parganas.—Power of the District Judge to appoint the Deputy Commissioner as guardian when holding simultaneously the offices of District Judge and De-

even though the application would be to himself in his capacity as a District Judge; and the District Judge is not precluded from appointing the Deputy Commissioner as guardian to the minor, even though he himself may hold the latter office. *KRISHNABAI KUMARI v. SATYANARAIN SINON* (1907)

I. L. R. 34 Cal. 569

36. ——— Attainment of majority.—Guardian and Wards Act (VIII of 1890), s. 52—

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

*Indian Majority Act (IX of 1875), s. 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s. 440. Where a guardian has once been appointed under the provisions of Act No. VIII of 1890, the attainment of majority by the*  
twenty  
dian a;  
before

Bom. 281,

v. Champa

stinguihed.

I. L. R. 29 All. 672

37. ——— Testamentary guardian.—Guardian of minor "appointed by an authority competent in this behalf," meaning of "Powers of a

tary guardian, it is not by virtue of any statute; for s. 17 of the Indian Succession Act does not apply to the will of a Hindu. If, therefore, the power exist it must be under Hindu Law as distinct from statute. It would not be in accordance with the ordinary use of language to speak of a father, whose power (if any) rests on the General Hindu Law as "an authority competent in that behalf." It is clear that s. 410 of the Civil Procedure Code does not apply to all guardians, for it would be impossible to suggest that it applies to natural guardians. *BUDIMLAL v. MORARI* (1907)

I. L. R. 31 Bom. 413

## 2. DUTIES AND POWERS OF GUARDIANS.

1. ——— Filing accounts of estates.—Payment of debts barred by lapse of time. Guar-

3 W. R. 01

2. ——— Accounts and inventory.—Minors' Act (XX of 1861), ss. 6 and 16. The person appointed administrator to a minor's estate under s. 6 of the Bombay Minors' Act (XX of 1861) is not liable to furnish an inventory and accounts under s. 16 of the Act. *VALLABHDAS HIRACHAND v. GOKALDAS TEJIBAI* . . . 3 Bom. A. C. 89

3. ——— Property of minor in hands of Court.—Brother's right to receive and apply

Court to delay the expenses of the *Kurnobeth* and marriage of the ward. *MONEMOTTONATH DEY v. ACHSHOOTOSH DEY* . . . 1 Ind. Jur. N. S. 24

GUARDIAN—*contd.*I. APPOINTMENT—*contd.*

the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) for the purpose of defending a suit against the minor. Act XX of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX of 1864 nor the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) empowers any Court to appoint a person against his or her will to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. (b), of Act XV of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohun Ishwar v. Haku Rupa*, I. L. R. 3 Bom. 638, is superseded by Act XV of 1880, s. 3, cl. (b), in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X of 1877, as amended by Act XII of 1879.

JADOW MITAL v. CHAGAN RAICHAND

I. L. R. 6 Bom. 306

27. — *Change of guardian on application of word—Guardians and Wards Act (VIII of 1890), s. 10* Where a guardian *ad litem* has once been appointed, his appointment endures for the whole of the life in the course of which it has been made, unless and until it is revoked by the Court, but if the person to whom such guardian is appointed prays for his removal and for the substitution of a guardian named by the applicant, the Court will appoint the guardian so named in the absence of any special and valid objection to such person. *JWALA DIXI v. PIRABHO*

I. L. R. 14 All. 35

28. — *Husband and wife—Suit for divorce under Parsi Marriage Act (XV of 1865), s. 30—Minor—Age of majority.* In a suit by a husband for divorce under s. 30 of the Parsi Marriage Act (XV of 1865), the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian of the defendant for the suit must be appointed. *SORABJI CAWANJI POLISHVALA v. BUCHOOBAI*

I. L. R. 18 Bom. 306

29. — *Appral by a person other than guardian* Two defendants in a suit, being minors, were represented by a properly appointed guardian *ad litem*. Upon a decree being passed in favour of the plaintiff, an appeal was filed on behalf of the minors, by their mother, without any order obtained by her constituting her guardian and without any previous removal of the properly appointed guardian *ad litem*. Held, (i) that the ap-

GUARDIAN—*contd.*I. APPOINTMENT—*contd.*

peal could not be heard; and (ii) that the appointment of guardian in a Court of first instance endures not only for the term of the proceeding in that Court, but also for purposes of appeal. *VENKAT CHAN DRASEKHARA RAO v. AILAKARAJANMA MAHARANI*

I. L. R. 22 Mad. 187

30. — *Nazir of Court—Minors' Act, XX of 1864—Bombay Civil Courts Act, XIV of 1869 and X of 1876—Officer of Government—Collector—Public Curator under Act XIX of 1841.* The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of s. 32 of Act XIV of 1869, as amended by s. 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit.

31. — *Minor, appointed as guardian under Act XIX of 1841.* A subordinate Judge who, under s. 456 of the Civil Procedure Code (Act X of 1877, as amended by s. 77 of 1880), is appointed guardian of the estate of a minor, is not an officer of Government within the meaning of s. 32 of Act XIV of 1869, as amended by s. 15 of Act X of 1876.

I. L. R. 4 Bom. 638

32. — *Minor reading in a Native State at a distance from the nazir of the Court who was appointed guardian ad litem* A plaintiff to pay a fee for the purpose of enabling the nazir, who has been appointed guardian *ad litem*, to put himself in communication with the natural guardians and other friends, but the Court must see that the fee is paid.

33. — *Minor reading in a Native State at a distance from the nazir of the Court who was appointed guardian ad litem* A plaintiff to pay a fee for the purpose of enabling the nazir, who has been appointed guardian *ad litem*, to put himself in communication with the natural guardians and other friends, but the Court must see that the fee is paid.

I. L. R. 12 Bom. 553

34. — *Certificate of administration of minor's estate—Minors' Act (XX of 1864)—Defect in appearance as indicating consent—Procedure.* An order for the issue of a certificate of administration to any particular individual under Act XX of 1864 ought not to be made until it is ascertained whether that individual is willing to

**GUARDIAN—contd.****I. APPOINTMENT—contd.**

take it. Where an order for the issue of a certificate of administration was made on default of the mother of the infant to appear and show cause why the certificate should not be issued to her:—*Held*, that such default in appearance ought not to be

name some officer of his Court or some respectable nominee of the ailing creditor of the infant. *BABAJI v. MARUTI* I. L. R. 5 Bom. 310

33. ——— Power of appointing guardians—Guardian appointed of property of a minor who was a member of a joint Hindu family, the property being joint property—Sanction given for sale of family property in which minor had a share—Jurisdiction of High Court Under its general jurisdiction, and apart from the Guardians and Wards Act (VIII of 1890), the High Court has

who sought to be appointed guardian, also sought the sanction of the Court for a sale of the family property in which the minor was interested. *Held*, under the special circumstances of the case, that the sanction should be given. *In re MANJUL HUROOVAN* (1900) I. L. R. 25 Bom. 353

34. ——— Guardian and Wards Act (VIII of 1890), s. 10—Guardian and minor—Direction of Court as to appointment of guardian—In this case the High Court set aside the appointment of the father as guardian of his own daughter, aged 10 years, upon the grounds chiefly that the father had married again and that under the circumstances the child was likely to be happier with her maternal grandmother with whom she had been living since the age of 5, than with her father. *BIRDO v. SHAM LAL* (1906)

I. L. R. 29 All. 210

35. ——— Minor—Guardian and Wards Act (VIII of 1890), s. 7—Sonthol Parganas—Power of the District Judge to appoint the Deputy Commissioner as guardian when holding simultaneously the offices of District Judge and Deputy Commissioner—The Deputy Commissioner of

I. L. R. 34 Calc. 569

36. ——— Attainment of majority—Guardian and Wards Act (VIII of 1890), s. 52—

**GUARDIAN—contd.****I. APPOINTMENT—contd.**

*Indian Majority Act (IX of 1875), s. 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s. 410. Where a guardian has once been appointed under the provisions of*

before that time *SHANKAR, Anananddas Javooji v. Harivallabhdas Bhaidas*, I. L. R. 21 Bom. 281, followed. *Patenari Partap Narain Singh v. Champa Lal*, All. Weekly Notes (1891) 118, distinguished. *SABHO LAL v. MURJIDHAR* (1907)

I. L. R. 29 All. 672

37. ——— Testamentary guardian—Guardian of minor "appointed by an authority competent in this behalf," meaning of—Powers of a Hindu father to appoint a testamentary guardian to his minor son—*Indian Succession Act*, s. 47, not applicable to the will of a Hindu. Assuming that a Hindu father has power to appoint a testamentary guardian, it is not by virtue of any statute; for s. 47 of the *Indian Succession Act* does not apply to the will of a Hindu. If, therefore, the power exist it must be under Hindu Law as distinct from statute. It would not be in accordance with the ordinary use of language to speak of a father, whose power (if any) rests on the General Hindu Law as "an authority competent in that behalf." It is clear that s. 410 of the *Civil Procedure Code* does not apply to all guardians, for it would be impossible to suggest that it applies to natural guardians. *BODUNAL v. MORARJI* (1907)

I. L. R. 31 Bom. 413

**2 DUTIES AND POWERS OF GUARDIANS.**

1. ——— Filing accounts of estates—Payment of debts barred by lapse of time—Guardian appointed by Court—

3 W. R. 61

2. ——— Accounts and inventory—Minors' Act (XX of 1864), ss. 6 and 16. The person appointed administrator to a minor's estate under s. 6 of the *Bombay Minors' Act* (XX of 1864) is not liable to furnish an inventory and accounts under s. 16 of the Act. *VALLABHDAS BHACHAND v. GOKALDAS TEJRAV* 3 Bom. A. C. 89

3. ——— Property of minor in hands of Court—Brother's right to receive and apply funds. Where the Court has taken the property of a minor into its own hands, the guardian appointed by the Court, and not the brother, is the right party to receive and apply the money granted by the Court to defray the expenses of the *karnaboli* and marriage of the ward. *MONEMOTONATH DEY v. ATSHOOROSH DEY* 1 Ind. Jur. N. S. 24

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 447 of the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) for the purpose of defending a suit against the minor. Act XX of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX of 1864 nor the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) empowers any Court to appoint a person against his or her will to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. (b), of Act XV of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohun Lohwar v. Haku Rupa*, 1 L. R. 4 Bom. 638, is superseded by Act XV of 1880, s. 3, cl. (b), in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X of 1877, as amended by Act XII of 1879. *JADOW MULLA v. CHHAOGAN RAICHAND*

I. L. R. 5 Bom. 306

27. ————— *Change of guardian on application of word—Guardians and Wards Act (VIII of 1890), s. 10. Where a guardian of a minor is appointed, the Court may, on application of the guardian, order that the guardian shall be removed and another person appointed in his stead.*

I. L. R. 14 All. 35

28. ————— *Husband and wife—Suit for divorce under Parsi Marriage Act (XV of 1865), s. 30—Minor—Age of majority. In a suit by a husband for divorce under s. 30 of the*

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

and also for purposes of appeal. *VENKATA CHANDRASEKHARA RAO v. ALAKARAJAWA MAHARANI*

I. L. R. 22 Mad. 187

30. ————— *Nazir of Court—Minors' Act, XX of 1864—Bombay Civil Courts Act, XIV of 1869 and X of 1876—Officer of Government—Collector—Public Curator under Act XIX of 1841. The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of s. 32 of Act XIV of 1869, as amended by s. 15 of Act X of 1876. An officer of Government, in order to come within those enactments,*

*WAR v. HAKU RUPA* I. L. R. 4 Bom. 638

31. ————— *Minor, suit*

a fee for the purpose of enabling the nazir, who has been appointed guardian *ad litem*, to put himself in communication with the natural guardians and the Court may refuse to grant

*HUSSEIN* I. L. R. 13 All. 35

32. ————— *Certificate of administration of minor's estate—Minors' Act (XX of 1864)—Default in appearance at indicating consent—Procedure. An order for the issue of a certificate of administration to any particular individual under Act XX of 1864 ought not to be made until it is ascertained whether that individual is willing to*

**GUARDIAN—contd.****I. APPOINTMENT—contd.**

take it. Where an order for the issue of a certificate of administration was made on default of the mother of the infant to appear and show cause why the certificate should not be issued to her:—*Held*, that such default was no bar to the issue of the certificate.

33. ——— **Power of appointing guardians—Guardian appointed of property of a minor who was a member of a joint Hindu family, the property being joint property—Sanction given for sale of family property in which minor had a share—Jurisdiction of High Court.** Under its general jurisdiction, and apart from the Guardians and Wards Act (VIII of 1890), the High Court has power to appoint a guardian of the property of a minor who is a member of joint Hindu family and where the minor's property is an undivided share in the family property.

HUGGOVAN (1900) . I. L. R. 25 Bom. 353

34. ——— **Guardian and Wards Act (VIII of 1890), s. 10—Guardian and minor—Discretion of Court as to appointment of guardian.** In this case the High Court set aside the appointment of the father as guardian of his own daughter, aged 10 years, upon the grounds chiefly that the father had married again and that under the circumstances the child was likely to be happier with her maternal grandmother with whom she had been living since the age of 5, than with her father. *BINDO v. SHAM LAL* (1906)

I. L. R. 29 All. 210

35. ——— **Minor—Guardian and Wards Act (VIII of 1890), s. 7—Sonthal Parganas—Power of the District Judge to appoint the Deputy Commissioner as guardian when holding simultaneously the offices of District Judge and Deputy Commissioner.** The Deputy Commissioner of the Sonthal Parganas, being in the position of the Collector, is not incompetent to apply, so much, for the appointment of a guardian of a minor under the Act.

Wards Act, to himself in

I. L. R. 34 Calc. 569

36. ——— **Attainment of majority—Guardian and Wards Act (VIII of 1890), s. 52—**

**GUARDIAN—contd.****I. APPOINTMENT—contd.**

**Indian Majority Act (IX of 1875), s. 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s. 410.** Where a guardian has once been appointed under the provisions of Act No. VIII of 1890, the attainment of majority by the ward is postponed until he reaches the age of twenty-one years notwithstanding that the guardian appointed by the Court may be discharged before that time arrives. *Gordhondas Jadwey v. Harivalubhdas Bhaydas*, I. L. R. 21 Bom. 281, followed. *Patarsi Parlat Naram Singh v. Champa Lal*, All. Weekly Notes (1891), 118, distinguished. *SADHO LAL v. MURLIDHAR* (1907)

I. L. R. 29 All. 672

37. ——— **Testamentary guardian—Guardian of minor "appointed by an authority competent in this behalf," meaning of—Powers of a Hindu father to appoint a testamentary guardian to his minor son—Indian Succession Act, s. 47, not applicable to the will of a Hindu.** Assuming that a Hindu father has power to appoint a testamentary guardian, it is not by virtue of any statute; for s. 47 of the Indian Succession Act does not apply to the will of a Hindu. If, therefore, the

Law as "an authority competent in that behalf" it is clear that s. 410 of the Civil Procedure Code does not apply to all guardians, for it would be impossible to suggest that it applies to natural guardians. *BUDHILAL v. MORARJI* (1907)

I. L. R. 31 Bom. 413

**2 DUTIES AND POWERS OF GUARDIANS.**

38. ——— **Accounts and inventory—Minors' Act (XX of 1861), ss. 6 and 16.** The person appointed administrator to a minor's estate under s. 6 of the Bombay Minors' Act (XX of 1861) is not liable to furnish an inventory and accounts under s. 16 of the Act. *VALLABHDAS HIRACHAND v. GOKALDAS TEJIRAM* . 3 Bom. A. C. 89

39. ——— **Property of minor in hands of Court—Brother's right to receive and apply funds.** Where the Court has taken the property of a minor into its own hands, the guardian appointed by the Court, and not the brother, is the right party to receive and apply the money granted by the Court to defray the expenses of the *karnobeth* and marriage of the ward. *MOHENDRANATH DEY v. ARUSHOOTOSH DEY* . 1 Ind. Jur. N. S. 24



GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) for the purpose of defending a suit against the minor. Act XX of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX of 1864 nor the Civil Procedure Code (Act X of 1877, as amended by Act XII of 1879) empowers any Court to appoint a person against his or her will to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S 458 of the Civil Procedure Code (Act X of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S 3, cl. (b), of Act XV of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohun Jahnar v. Haku Rupa*, 1 L R 4 Bom. 632, is superseded by Act XV of 1880, s. 3, cl. (b), in so far as that decision affected officers of the Court appointed guardians *ad litem* under s 456 of Act X of 1877, as amended by Act XII of 1879.

JADW MULJI v. CHIRAGAN RAICHAND  
I. L. R. 5 Bom. 306

27. — *Change of guardian on application of ward—Guardians and Wards Act (VIII of 1890), s. 20.* Where a guardian *ad litem* has once been appointed, his appointment endures for the whole of the *lis* in the course of which it has been made, unless and until it is revoked by the Court, but if the person to whom such guardian is appointed prays for his removal and for the substitution of a guardian named by the applicant, the Court will appoint the guardian so named in the absence of any special and valid objection to such person. *JWALA DEVI v. PRABHU*

I. L. R. 14 All. 35

28. — *Husband and wife—Suit for divorce under Parsi Marriage Act (XV of 1865), s. 30—Minor—Age of majority.* In a suit by a husband for divorce under s. 30 of the Parsi Marriage Act (XV of 1865), the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian of the defendant for the suit must be appointed. *SORABJI CAWASHI POLISHVALA v. BUCHOOBAI*

I. L. R. 18 Bom. 366

29. — *Appeal by a person other than guardian.* Two defendants in a suit, being minors, were represented by a properly appointed guardian *ad litem*. Upon a decree being passed in favour of the plaintiff, an appeal was filed on behalf of the minors, by their mother, without any order obtained by her constituting her guardian and without any previous removal of the properly appointed guardian *ad litem*. Held, (i) that the ap-

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

peal could not be heard; and (ii) that the appointment of guardian in a Court of first instance entitles not only for the term of the proceeding in that Court, but also for purposes of appeal. *VENKATA CHANDRASEKHARA RAO v. ALAKARAJANNA MAHARANI*  
I. L. R. 22 Mad. 187

30. — *Nazir of Court—Minors' Act, XX of 1864—Bombay Civil Courts Act, XIV of 1863 and X of 1876—Officer of Government—Collector—Public Curator under Act XIX of 1841.* The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of s 32 of Act XIV of 1863, as amended by s. 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit.

31. — *Public Curator.* The Collector of the district and the public curator, appointed as such under Act XIX of 1841. A Subordinate Judge who, under s 456 of the Civil Procedure Code (Act X of 1877, as amended by s. 73 of Act XII of 1879), appoints the nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court, has no jurisdiction to hear it and pass a decree against that officer as guardian *ad litem* of the minor. *Trimbak Nimbar v. Shivaram*, I. L. R. 4 Bom. 642 note, followed. *MOHAN ISHWAR v. HAKE RUPA*. I. L. R. 4 Bom. 636

32. — *Minor.* A plaintiff to pay a fee for the purpose of enabling the nazir, who has been appointed guardian *ad litem*, to put himself in communication with the natural guardians and other friends, but the Court—

33. — *Certificate of administration of minor's estate—Minors' Act (XX of 1864)—Default in appearance as indicating consent—Provision.* An order for the issue of a certificate of administration to any particular individual under Act XX of 1864 ought not to be made until it is ascertained whether that individual is willing to

34. — *Minors' Act (XX of 1864)—Certificate of administration of minor's estate—Minors' Act (XX of 1864)—Default in appearance as indicating consent—Provision.* An order for the issue of a certificate of administration to any particular individual under Act XX of 1864 ought not to be made until it is ascertained whether that individual is willing to

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

take it. Where an order for the issue of a certificate of administration was made on default of the mother of the infant to appear and show cause why the certificate should not be issued in her:—*Held*, that such default in appearance ought not to be

nominee of the suing creditor of the infant. *BABAJI v. MARUTI* . . . I. L. R. 6 Bom. 310

33. ——— Power of appointing guardians—Guardian appointed of property of a minor who was a member of a joint Hindu family, the property being joint property.—Sanction given for sale of family property in which minor had a share. Jurisdiction of High Court. Under its general jurisdiction, and apart from the Guardians and Wards Act (VIII of 1890), the High Court has power to appoint a guardian of the property of a minor who is a member of joint Hindu family and

property in which the minor was interested. *Held*, under the special circumstances of the case, that the sanction should be given. *In re MANJUL HUNGWAN* (1900) . . . I. L. R. 25 Bom 353

34. ——— Guardian and Wards Act (VIII of 1890), s. 10—Guardian and minor—Discretion of Court as to appointment of guardian. In this case the High Court set aside the appointment of the father as guardian of his own daughter, aged 10 years, upon the grounds chiefly that the father had married again and that under the circumstances the child was likely to be happier with her maternal grandmother with whom she had been living since the age of 5, than with her father. *BINDO v. SHAM LAL* (1906)

I. L. R. 29 All. 210

35. ——— Minor—Guardian and Wards Act (VIII of 1890), s. 7—Sonthal Parganas—Power of the District Judge to appoint the Deputy Commissioner as guardian when holding simultaneously the offices of District Judge and Deputy Commissioner. The Deputy Commissioner of the Sonthal Parganas, being in the position of the Collector, is not incompetent to apply, as such, for the appointment of a guardian to a minor under the provisions of the Guardian and Wards Act,

I. L. R. 34 Calc. 569

36. ——— Attainment of majority—Guardian and Wards Act (VIII of 1890), s. 52—

GUARDIAN—*contd.*1. APPOINTMENT—*contd.*

Indian Majority Act (IX of 1875), s. 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s. 410. Where a guardian has once been appointed under the provisions of Act No. VIII of 1890, the attainment of majority by the ward is postponed until he reaches the age of twenty-one years notwithstanding that the guardian appointed by the Court may be discharged before that time arrives. *Gordhadas Jadouji v.*

I. L. R. 29 All. 672

37. ——— Testamentary guardian—Guardian of minor "appointed by an authority competent in this behalf," meaning of—Powers of a Hindu father to appoint a testamentary guardian to his minor son—Indian Succession Act, s. 47, not applicable to the will of a Hindu. Assuming that a Hindu father has power to appoint a testamentary guardian, it is not by virtue of any statute; for s. 47 of the Indian Succession Act does not apply to the will of a Hindu. If, therefore, the power exist it must be under Hindu Law as distinct from statute. It would not be in accordance with the ordinary use of language to speak of a father, whose power (if any) rests on the General Hindu Law as "an authority competent in that behalf." It is clear that s. 410 of the Civil Procedure Code does not apply to all guardians, for it would be impossible to suggest that it applies to natural guardians. *BUDHILAL v. MORARJI* (1907)

I. L. R. 31 Bom. 413

## 2 DUTIES AND POWERS OF GUARDIANS.

I. L. R. 29 All. 210

38. ——— Accounts and inventory—Minors' Act (XX of 1861), ss. 6 and 16. The person appointed administrator to a minor's estate under s. 6 of the Bombay Minors' Act (XX of 1861) is not liable to furnish an inventory and accounts under s. 16 of the Act. *VALLABHDAS HIRACHAND v. GOKALDAS TEJIRAM* . . . 3 Bom. A. C. 89

Court to defray the expenses of the *karnobedi* and marriage of the ward. *MOHOMOTFOYATH DEY v. ARSHOOTOSH DEY* . . . 1 Ind. Jur. N. S. 24

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

## 4. ——— Testamentary guardian—

for the purpose of having them educated. *Held,*

NATCHIAR *alias* PARIWATHA VURTHANI NATCHIAR.  
8 Mad. 94

5. ——— Arrangements for minor's education—Collector as guardian—Act XL of 1858, s. 12. A Collector appointed guardian under s. 12, Act XL of 1858, has power to make arrangements for a minor's education, and is not so far amenable to the jurisdiction of the Civil Courts. *RAMENDRA BRUTTACHARY v. COLLECTOR OF RAJSHAHY.* 14 W. R. 113

6. ——— Acts of guardian as representative of minor in suit—Admissions in suit by or against minor. It is incumbent upon a Court which is called upon to try an issue between a person of mature years and an infant, to take care

admission is made by some one competent to bind the infant, and fully informed upon the facts of the matter in litigation. *ABDUL HYE v. BANEF PESHAD.* 21 W. R. 223

7. ——— Improper conduct of suit brought against minor—Fraud—Suppression of facts in favour of minor. B, "for self and as guardian of C, a minor" was defendant in a suit for debt brought by A. In that suit, a part payment of the debt by B to A on account of C

set aside, as against a purchaser with notice, on the ground of fraud. *GRISH CHUNDER MOOKERJEE v. MILLER.* 3 C. L. R. 17

8. ——— Decree against minor, set aside—Suit to set aside on obtaining majority, ground for—Procedure. Where a decree has been made against an infant duly represented by his guardian, and the infant on attaining his majority seeks to set that decree aside by a separate suit, he can succeed only on proof of fraud or collusion on the part of his guardian. If the infant desires to have the decree set aside because any available good ground of defense was not put forward at the hearing by his guardian, he should apply for a review. If the decree were an *ex parte*

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

one, the procedure adopted should be that given in the Civil Procedure Code for setting aside *ex parte* decrees. *RAHIMBAR DYAL SAHU v. BHUKYA LAL MISSE.* I. L. R. 12 Cal. 69

9. ——— Sale under decree in suit where minor is not properly represented. A sale under a decree in a suit in which the minor was not properly represented is not valid. *JUNGEE LALL v. SHAM LALL MISSE.* 20 W. R. 120

10. ——— Power of lawful guardian to set aside decree obtained by unauthorized guardian. *Held,* that a decree obtained against a minor and his property represented by an unauthorized guardian may be set aside by a lawful

11. ——— Acts of guardian how far binding on minor—Payment before certificate granted. *Held,* that the act of the guardian was binding on the minor, unless it be proved that it was an unreasonable one, and that the payment by the debtor before any certificate was obtained was not an invalid payment. *MOJEE RAM SAHOO v. KHULELOOLAH.* 2 Agra 338

12. ——— Power of guardian to sell minor's property—Guardian not appointed under special Act. *Quere* Whether a guardian appointed by the Court (except under some special Act) has any authority to sell the property of his ward unless the express sanction of the Court is given. *Re JAGANNATH RAMJI.* I. L. R. 19 Bom. 93

13. ——— Insolvency of guardian to

of which the maximum period was twenty years, they were not to be paid. A widow, as guardian of her infant son, the heir of talukdari estate in the above district, validly transferred villages, part thereof; and in the deed of transfer, to which her

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

and the estate was then placed under management within Act VI of 1862. During the period of management the Government claimed and enforced payment of revenue upon the villages. *Held*, that there was no personal liability on the part of the talukhdar created by the above; also that, if the charge on the estate had been validly made, it fell, at all events, within the terms of s. 12 of Act VI of 1862, absolving estates from liability for debts incurred not only before, but during the period of management. *WAGHELA RAJASINGJI v. MASUDJI*

I. L. R. 11 Bom. 551  
L. R. 14 I. A. 89

14. ——— Power of dealing with property of minor—*Brother managing family—Power of, to act for minor* A brother acting as manager of the family property and for the benefit of the minors, although he has not obtained a certificate of guardianship under Act XL of 1858, may make a temporary alienation of the family property for necessary purposes and for the benefit of the minors. *LALLA SEETUL PERSHAD v. CHAND KHAN*

2 N. W. 428

15. ——— Sale by guardian without certificate—*Invalidity of sale—Refund of purchase-money* A sale made by a guardian without the sanction of the Court, required by Act XL of 1858, s. 18, is made without power, and is therefore invalid, even if the purchaser has acted honestly and paid a fair price. In such a case, where possession was ordered to be restored with mesne profits, it was made contingent on repayment to the purchaser of so much of the purchase-money as had been applied to the benefit of the minor's estate. *SURUT CHUNDER CHATTERJEE v. ASHOOTOSH CHATTERJEE*

24 W. R. 46

16. ——— Sale by guardian—*De facto and de jure guardian—Transaction beneficial to minor* Where a deed of sale was executed by a *de facto* guardian of certain minors, and the consideration money was duly applied for the benefit of the property, and the transaction was found to be a necessary one and beneficial to the minors, the mere fact that the manager was not *de jure* guardian is not sufficient to invalidate the transaction. *GUNOA PERSHAD v. PHOOL SINGH*

10 B. L. R. 368 note : 10 W. R. 106

17. ——— Alienation by *de facto* guardian without certificate under Act XX of 1864. Alienations for family purposes of the ancestral estate by a Hindu widow (the mother of a minor son), though she was not appointed an administratrix under Act XX of 1864, upheld as made by a *de facto* manager. *BAI AMRIT v. BAI MANIK*

12 Bom. 79

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

18. ——— Powers of *de facto* guardian to grant lease. A *de facto* guardian has not in that capacity larger powers than one appointed under Act XL of 1858, and is therefore not competent to grant a lease for ten years without an order of Court previously obtained. *KHETTON NATH DASS v. BAI JADOO BHUTACHANJEE*

24 W. R. 49

19. ——— Powers of *de facto* guardian—*Minor—Act XL of 1858*. No

guardian duly appointed under Act XL of 1858, with reference to which Act his powers must be determined. *ABHASJI BEOM v. RAJROOR KOOSWAR*

I. L. R. 4 Cal. 33 : 2 C. L. R. 249

20. ——— Alienation by guardian without certificate—*Return of property to ward* An alienation by the natural guardian of a ward's immoveable estate made without having obtained a certificate under the Minor's Act is invalid. The Court, while declaring such an alienation invalid, will, under special circumstances, order the ward to repay the amount of the purchase-money paid to the guardian, before setting aside the sale and directing the alienated property to be made over to the ward. *BAI KESAR v. BAI GANOA*

8 Bom. A. C. 81

See MUTHOORA DASS v. KANOO BEHARIE  
SINGH

21 W. R. 287

21. ——— Compromise by

3 L. W. 110

22. ——— Transaction by guardian without sanction of Court—*Act XL of 1858, s. 18*. A suit to recover possession of the plaintiff's share of certain ancestral property, which had been pledged by her mother as guardian and other relatives during her minority for a sum of money lent on a bond, on which the obligee afterwards

minor was represented under which the property

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was sold. *AHFUTOONISSA v GOLUCK CHUNDER SEN*. 22 W. R. 77

23. — Act XL of 1858, s. 18—*Sale without sanction of Court—Transaction for benefit of minor's estate.* In order to save certain property from sale in execution of a decree obtained upon a mortgage executed by the father of three brothers, of whom one was a minor, the other two brothers, one of whom had, under Act XL of 1858, obtained a certificate of guardianship to the minor brother, executed a mortgage of certain other property in order to raise money and pay off the decree-holder. Upon the latter mortgage the mortgagee obtained a decree and sold the properties covered thereby. No sanction had been obtained by the guardian to encumber the minor's estate. *Held*, on the authority of *Ahfutoonissa v Goluck Chunder Sen*, 22 W. R. 77, that the transaction having been a proper one, the minor was not entitled to have the sale set aside on the ground that sanction had not been obtained under s. 18 of Act XL of 1858 to the mortgage. *TIL KEOR v. ROY AND KISHORE*. 10 C. L. R. 547

24. — *Power of guardian to mortgage minor's property—Act XL of 1858, s. 18—Guardians and Wards Act (VIII of 1890), s. 30, read with s. 2, retrospective effect of—Mortgage without sanction of Court.* A mortgage of a minor's property, made by his guardian, holding a certificate under Act XL of 1858, without obtaining sanction of Court as required by s. 18 of the Act, is absolutely null and void. S. 2 of the Guardians and Wards Act (VIII of 1890) does not give retrospective effect to s. 30, which therefore does not apply to a mortgage executed before the Act came into operation, so as to destroy its void character and render it merely voidable. *LALA RUNDO PRASAD v. BHARATH ALI*. I. L. R. 25 Calc. 809

25. — Act XL of 1858, s. 18—*Mortgage by certificated guardian without sanction of District Court—Mortgage money applied partly to benefit of minor's estate—Suit by minor to set aside the mortgage—Contract Act (IX of 1872).*

one chooses to take a mortgage or a lease for a term exceeding five years under these circumstances, the transaction is on the basis of no certificate having been granted. In a suit brought by the guardian of a Mahomedan minor for a declaration that a mortgage-deed executed by the minor's

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mother was null and void to the extent of the minor's share and for partition and possession of such share, it was found that a considerable proportion of the moneys received by the mortgagee had been applied for the benefit of the minor's

share, but segregated the parties to the position in which they would have been if no certificate had been granted, i. e., that of a transaction by a Mahomedan mother affecting to mortgage the property of her minor son, with whose estate she had no power to interfere. *Held*, that this fell within the class of cases in which it has been decided that if a person sells or mortgages another's property having no legal or equitable right to do so, and that other benefits by the transaction, the latter cannot have it set aside without making restitution to the person whose money has been applied for the benefit of the estate. *Held*, that, even if mortgages executed by a certificated guardian without the sanction required by s. 18 of the Bengal Minors Act were void, the section did not make them illegal; and, with reference to a 63 of the Contract Act, the plaintiff could not obtain a decree for a declaration that the mortgage was void.

expended on his maintenance, education, or marriage. *Mauji Ram v. Tara Singh*, 1 L. R. 3 All 852, distinguished. *Shurrit Chunder v. Rikissen Mookerjee*, 15 B. L. R. 350; *Pana Ali v. Sadik Hossein*, 7 N. W. 231; *Sahar Ram v. Mahomed Abdul Rahman*, 6 N. W. 268; *Hamir Singh v. Zulkar, I. L. R. 1 All. 57*, and *Gudwara Khan v. Nauday Khan*, All. Weekly Notes (1881), 16, referred to. *GIBRAJ BAKSH v. RAMDAS*. I. L. R. 8 All 340

26. — *Validity of lease—Act XL of 1858, s. 18—Lease granted by guardian of minor's property for term exceeding five years without sanction of Court, effect of.* A lease granted by a guardian of minor's property who has obtained a certificate under Act XL of 1858 for a term exceeding five years without the sanction required by s. 18 of that Act is invalid. *BHUPENDRO NARAYAN DEB v. NEWBY CHAND MONDUL*. I. L. R. 15 Calc. 627

27. — *Guardians and Wards Act (VIII of 1890), ss. 29, 30—Mortgage by guardians on estate of minor—Previous permission of the Court—Contract Act (IX of 1872), s. 61—Transfer of Property Act (IV of 1882), s. 35. Guard-*

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

ians duly appointed under the Guardians and Wards Act, 1890, having mortgaged property belonging to a minor to enable them to discharge debts binding on his estate, the mortgagee sued to recover the amount of principal and interest due. The necessity had been urgent, the terms of the deed fair, and the money had been duly applied; but the guardians had not obtained the sanction of the Court as directed by s. 29 of the Guardians and Wards Act, 1890. On its being contended that the mortgage was invalid and incapable of being enforced:—*Held*, that a mortgage so executed was not void, but only voidable; and that the defendant was entitled to avoid the mortgage, but only on the condition of restoring any benefit received by him thereunder to the person from whom it had been received. The fact that the person who had received the benefit was the defendant, did not alter his position. **SINAYA PILLAI v. MUXISAMI ARYAN**  
I. L. R. 22 Mad. 289

28. — *Act XX of 1864, s. 18—Sanction of alienation of minor's property—Civil Procedure Code (Act X of 1877), s. 462—Compromise on behalf of a minor—Mortgage—Assignment of mortgage by guardian of minor—Suit on mortgage by assignee—Proof of assignment—*

S. 18 of the Act applies only to assignments which have been granted under that Act. An assignment of a mortgage, therefore, by a widow acting as natural guardian of her minor son, but who has not obtained a certificate under the Act, is not invalid, because effected without the sanction of the Court. Where a widow acting as natural guardian of her minor son assigned a mortgage which had been executed to her deceased husband for a consideration, a part of which was a sum due under a decree, to the assignee. *Held*, that the assignment was valid.

stance that the compromise was voidable would not affect the validity of the assignment.

it was due, and that, as such adjustment had not been sanctioned by the Court, it was invalid.

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they dismissed the suit. On appeal to the High Court:—*Held*, that, although in ordinary cases it is the rule that, where an assignee sues on his assignment and proves it, an adverse party cannot take the objection that there was no consideration, yet that, under the peculiar circumstances of this case,

the assignment had subsequently taken, the confirmation of the decree which formed part of the consideration not having been certified to the Court.

assignment was on behalf of a minor, and the person acting as his guardian had not admitted it, and it might be that even her admission would not be binding on him, since he was not a party to the suit. It was necessary that the point should be so tried and determined as to bind the minor, and to do that it was essential that he should be made a party to the suit. The Court, therefore, reversed the decree of the lower Courts and remanded the case. **MANISHANKAR PRANJIVAN v. BAI BULI**  
I. L. R. 12 Bom. 886

29. — *Certificated guardian—Mortgage by such guardian without Court's permission—Validity of such mortgage—Sanction under Civil Procedure Code (Act XIV of 1882), s. 305—Guardians and Wards Act (VIII of 1890), ss. 29 and 30—Bombay Minors Act (Bombay Act XX of 1864). A was the owner of the property in dispute.*

Court to be guardian of the person and property of the minor under Act XX of 1864. In September 1890, P mortgaged the same property to plaintiff with the sanction of the Subordinate Judge's Court obtained under s. 305 of the Code of Civil Procedure (Act XIV of 1882). In 1895 the plaintiff as second

affected thereby. **DATTARAM v. GANORAM**  
I. L. R. 23 Bom. 287

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

30. — *Act XL of 1858, s. 15—Power of guardian of minor to mortgage minor's property—Rate of interest.* A guardian, to

which the money was to be raised was not specified. On a question whether, there being no proof of the necessity or expediency of agreeing to pay interest at a rate so high as eighteen per cent, the agreement to pay at this rate was rightly set aside by the High Court, which decreed interest of twelve per cent:—*Held*, that the proper construction of the order, and the one most favourable to the lender regarding the rate of interest, was that the guardian was authorized to borrow only at a reasonable rate of interest, and that consequently the decree of the High Court was right. *GANGAPERSHAD SAHU v. MAHARANI BIRI*

L. L. R. 11 Calc. 379: L. R. 12 I. A. 47

31. — *Minor, Interest of, not represented—Partition of joint property in which minor was interested.* In a suit between co-proprietors, plaintiffs sought to recover exclusive possession of a mouzah which they claimed to have derived in a partition made some years before, and to have enjoyed it under the terms of that partition until they were dispossessed from it by defendant No. 1, one D N, who, on the other hand, denied that he had more than a 4-anna share, alleging that plaintiffs were not entitled to the whole mouzah, and that the partition had been fraudulent and had been effected while he was a minor. It appeared that no formalities had been observed in coming to the partition, and no record preserved of the proceedings except a list representing the result arrived at; that the division was effected simply on reference to a thakbust map, on average rental per bigha taken as the basis thereof and a number of bighas allotted in proportion to each individual's share. None of the ordinary precautions were taken for the protection of the interest of minors. *Held*, that the partition was not made in such way, and under such circumstances as to be in itself obligatory on the minor, who had the option of

plaintiffs as to lead them naturally to suppose that he had done so. *KALEE SUNKUR SANNYAL v. DEBENDRONATH SANNYAL* . . . 23 W. R. 68

32. — *Refusal of Court to sanction compromise on behalf of minor.* The acts of guardians on behalf of minors must show the strictest good faith, and I must be based on considerations of actual necessity and advantage, not on calculations of possible benefit. In this case the

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Court refused to sanction a compromise effected between the guardian and the widow by which the minor received immediate possession of half the property as consideration for the surrender of the reversion of the other moiety, no interest or advantage to him being shown in the arrangement. *BODH MULL v. GOURKEE SUNKUR* . . . 8 W. R. 16

33. — *Power of, to alienate minor's lands in perpetuity.* A guardian cannot grant his ward's lands in perpetuity except on clear proof of benefit to the minor. *ODDORRO CHUNDER KOONDOL v. PROSUNNO KOOMAR BHUTACHARJEE* [ . . . ] 2 W. R. 325

34. — *Power of compromise—Onus of proof.* Where it is alleged that a deed of compromise was beneficial to a minor in a transaction involving a surrender of the minor's title in a large estate for a very inadequate maintenance and her waiver of the rights of appeal and

35. — *Power of mother to compromise.* A mother as guardian has no power to make a compromise on behalf of a minor daughter, unless the compromise is beneficial to the daughter's interests. *ROUSHAN JAHAN v. ENAET HOSSEIN* . . . W. R. 1884, 83

37. — *Test of validity of transaction.* The test of the validity of a transaction effected by a guardian is whether it was beneficial to the minor. *LALLA BOODYULL v. LALLA GOURKEE SUNKUR* . . . 4 W. R. 71

38. — *Power of binding*

39. — *Mother—Power to bind sons.* A mother can bind her sons acting in good faith as their guardian. *MAKEUL ALI v. MASNAD BIBEK* . . . 3 B. L. R. A. C. 54: 11 W. R. 398

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*40. \_\_\_\_\_ *Relinquishment*

In the same case on review, LOCH, J., held that the judgment of the High Court on special appeal must be revised as being *ultra vires*, for that the question of injury to the minor was not urged in

High Court on special appeal was justified, but he was willing to remand the case to the Judge below to find the fact whether or not the relinquishment by the guardian was made in good faith for the interests of the minor. *MATHURANATH DUTT v KEDARNATH MOOKERJEE*. 2 B. L. R. A. C. 128

41. \_\_\_\_\_ *Suit on account stated—Limitation Act, 1877, Art. 61 Transaction for benefit of minor.* A suit upon an account stated against a minor cannot succeed unless it be shown that the act of the guardian in the matter of the settlement of the account is beneficial to the interests of the minor. *AJUDDIN HOSSAIN v LLOYD*. 13 C. L. R. 112

42. \_\_\_\_\_ *Pre-emption,*

I. L. R. 3 All. 437

43. \_\_\_\_\_ *Setting aside award made on behalf of minor sons.* An arbitration award as to division of property left to minor sons alleged to give effect to the wishes of a father regarding a partial division of his property after his death was set aside, so far as it affected those sons, on proof that the partition was injurious to them. *RAMNARAIN PORAMANICK v SREENUTTY DOSSEE*. 1 W. R. 280

44. \_\_\_\_\_ *Acts of guardian as sole proprietor.* Any act done by the widow and any decree given against her as sole proprietor of the lands, and not as guardian, would not, if she

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were found to have been holding actually as guardian, bind the minors. *BAHURARI v SOOKEA BIRRE*. 13 W. R. 63

45. \_\_\_\_\_ *Sale of expectancy by, on behalf of minor. Quare: Whether a mere expectancy can be the subject of a sale, and if so, of a sale by a guardian, acting or purporting to act on behalf of an infant.* *DOOLI CHAND v BIRJ BROOKUN LAL AWASTI*. 6 C. L. R. 526

46. \_\_\_\_\_ *Power to bind infant—Division of property—Fraud.* A division of

ground that the division did not bind the plaintiff. *Held*, that there being no proof of fraud, nor that

47. \_\_\_\_\_ *Suit for partition*

of the minor property being from whom it is sought to recover it. *KAMAKSHI ANIMAL v CHIDDAMBARA REDDI*. 3 Mad. 94

*CHOKALINGAM PILLAI v SVAMINATH PILLAI*. 1 Mad. 105

*PARVATHI v MANJAYA KARANATHA*. 5 Mad. 103

48. \_\_\_\_\_ *Power to bind*

49. \_\_\_\_\_ *Sale by guardian—Compromise—Onus probandi.* A suit by the plaintiff's guardians for the plaintiff's mother's share in certain dower resulted in a decree for



GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

or at least that the money reached the plaintiff's hands when he came of age. **ABDOOL ALI v. MOJIBER ALI CHOWDHRY**. 18 W. R. P. C. 22

50. *Suit on bond*

from the evidence being that the bond was given

1 W. R. P. C. 22

51. *Necessity for borrowing—Mortgage by de facto guardian or manager without de jure title.* Under the Hindu law, the right of a *bond fide* incumbrancer who has taken from a *de facto* guardian or manager a charge on lands created honestly for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto* with the *de jure* title. Under the Hindu law, the power of a manager for an infant heir to charge an ancestral estate is a limited and qualified one, to be exercised in a case of need, or for the benefit of the estate. Where the charge is one that a prudent owner would make in order to benefit the estate, the *bond fide* lender is not affected by the precedent mismanagement of the estate. The lender is bound to enquire into the necessities for

his charge, and he is not bound to see to the application of the money. The mere creation of a charge by a manager, securing a proper debt, cannot be viewed as improvident management; and a *bond fide* creditor should not suffer when he has acted honestly and with due caution, but is himself deceived. **HUNDONAN PERSHAD PANDAY v. MUNDRAM KUNWARER**.

6 Moo. I. A. 393: 18 W. R. 81 note

52. *De facto manager—Sale by a de facto manager of minor's property for legal necessity and for his benefit, whether valid.* A *de facto* manager of an infant's estate has, in case of necessity or for the benefit of the minor, power to sell his property. **HUNDONAN PERSHAD PANDAY v. MUNDRAM KUNWARER**, 6 Moo. I. A. 393, and **Gunga Pershad v. Phool Singh**, 10 W. R. 336: 10 G. L. R. 324 note, referred to. **MORAYNOD MONDUL v. NARAYAN M. SIDI**.

I. L. R. 26 Cal. 820  
3 C. W. N. 770

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

53. *Alienation made*

viz., that the estate is not exempted from liability unless the alienations were illegal or made for an immoral purpose. **SANJOOGEE KOOPER v. HUR PERSHAD**. 24 W. R. 274

54. *Bond fide purchaser, what constitutes.* In a sale by a guardian of a minor without necessity, the purchaser cannot be said to have acted *bond fide* unless his belief that the sale was necessary had been arrived at after due care and attention. **SHEO PERSHAD RAM v. THAKOOR PERSHAD GOUR PERSHAD NARAIN v. SHEO PERSHAD RAM**. 5 W. R. 103

55. *Purchaser from guardian.* Where a purchaser of immoveable pro-

**VADALI RAMAKRISHNAMA v. MANDA APPAIA**  
2 Mad. 407

**MOOTHORA DOSS v. KANGOO BEHAREE SINGH**  
21 W. R. 287

56. *Suit to set aside sale—Proof of necessity for sale.* In a suit to set aside sales made by a minor's guardians, on the ground that the sales were not justified by any recognized legal necessity, the onus is on the defendant to prove the necessity. Nature of proof sufficient to discharge such onus explained. **LOOLOO SINGH v. RAJENDR LANA**. 8 W. R. 364

57. *Sale by guardians—Onus of proof—Purchaser.* Held, that the onus of proving that a sale by his guardians of a minor's property was necessary and for his benefit lies upon the purchaser, and that adequacy of price

58. *Onus of proof—Purchaser.* Where the plaintiff was a minor, and his interest could not *prima facie* be alienated. Held, that the onus of proving that due enquiries were made as to the necessities for the loan, and that it was incurred by the manager for the benefit of

**RAM PERSHAD**. 2 Aggr. 141

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

59. *Transaction by guardian—Responsibility of lender to guardian of a minor.* A lender to the manager of a minor's estate is bound to satisfy himself that the loan is for the benefit of the estate. *LALLAN BUNSEEDHUR v. BINDEREER DUTT SINGH* 1 Ind. Jur. N. S. 165

60. *Though the lender of money borrowed by the guardian of a minor for the payment of a family debt is bound to*

condition precedent to the validity of his charge, and he is not, under such circumstances, bound to see to the application of his money. *MAHA BEEN PERSHAD SINGH v. DUNREEM OPADHYA* W. R. 1864, 166

*RADEA KISHORE MOOREJEE v. MIRTOKJOY GOW* 7 W. R. 23

61. *Sale by guardian—Purchaser—Grounds for reversal of sale.* Although purchasers are not bound to look to the application of the purchase-money or to enquire whether there were goods sufficient to redeem the mortgage and so to obviate the necessity of a sale of a minor's property, yet the purchaser not proving necessity or not satisfying himself of the existence of necessity and the unwillingness of the minor's mother to dispose of the property in his minority, are sufficient legal grounds for reversal of the sale. *GOMAIN SINGH v. PRANATH GOOPTO* 1 W. R. 14

62. *Alienation of minor's property by intervention of Court—Suit to set aside alienation—Purchaser of minor's property.* An alienation of property during the owner's minority is open to be questioned when the minor comes of age, even if it was effected partly through the intervention of a Civil Court, e.g., under a decree on foreclosure proceedings. A party justifying a

there was a necessity for the alienation, and that the mortgagee had authority to give a good title as the minor's agent. *BUZRUNG SAKOI SINGH v. MAUTORA CHOWDHRAIN* 22 W. R. 119

63. *Sale of minor's property by guardian—Proof of legal necessity for sale.* The mother and guardian of two minors borrowed Rs. 1,000 ostensibly for their marriage expenses. The lender of the money obtained an

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

the minors subsequently brought a suit against the

the decree against the minors was such as would bind their interests. *LOOTY HOSSEIN v. DUNSTON LALL SAHOO* 23 W. R. 424

64. *Guardian and minor—Sale of minor's property—Legal necessity.* Where a guardian conveyed the property of her minor son by a deed of sale in which she did not in terms describe herself as his guardian:—*Held*, that the omission was immaterial, since it clearly appeared from the deed that it was the minor's property which formed the subject of sale. *Hunooman Perhad v. Baboor Munraj Koonveree*, 6 Moo.

market value, by a sala-deed reciting that the object of the sale was the minor's maintenance and marriage. It was found that the sale was obtained by the vendee by taking advantage of the guardian's poverty, and that there was nothing to show that in purchasing the property he had satisfied

circumstances of the minor did not by themselves constitute a sufficient legal necessity for such an alienation. Under the Hindu law, the maintenance or marriage of a minor may be a legitimista cause for the alienation of his property by the guardian, but cannot justify a Court of equity in upholding a bargain obviously imprudent and reckless. The best test is whether the alienation would have been reasonably and prudently made by the minor himself had he been of full age. *Held*, further, that, upon such an alienation being set aside in consequence of a suit brought by the minor, the vendee was entitled to be recouped by the plaintiff to the extent of any portion of the purchase money, which had been appropriated to the latter's benefit. *Paran Chandra Pal v. Kurumanayji Dasi*, 7 B. L. R. 90, *Bai Kinar v. Bai Ganga*, 8 Bom. A. C. 31; *Kuturji v. Mah Haridas*, 1 L. R. 3 Bom. 234; and *Gadappa Desai v. Apaji Jivanrao*, 1 L. R. 3 Bom. 237, referred to *MAKUNDI v. SARASWATHI* 1 L. R. 8 All. 417

65. *Enhancement of rent, effect of—Acts of mother and guardian how far binding on minor son—Kabuliat given by widow in possession to bind her son and successor to pay enhanced rent decreed against her.* A patnidar ob-

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

tained decrees for the enhancement of the rent of holdings, in the possession of the widow, of a deceased tenant, one decree being in respect of land formerly held by the latter and the other in respect of a holding purchased by the widow on behalf of her minor son by the deceased whilst the enhancement suits were pending. The widow also signed *kabuhats* relating to both tenancies, agreeing, as mother of the minor, to pay the enhanced rent. *Held*, that, as the *patnidar* was entitled to sue for enhancement, and it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be, and was, a proper arrangement, the son, on his attaining full age and entering into possession of the tenancies, was bound by the *kabuhats*. *WATSON & CO. v. SHANLALL MITTER*. I. L. R. 15 Cal. 8 L. R. 14 I. A. 178

68. ————— *Sale by guardian for minor—Necessity—Bona fides.* When neither want of enquiry nor *mala fides* is shown, the existence of legal necessity must be presumed, and the acts of the guardian considered to be the acts of the minor. *Quære*: Whether the same rule strictly applies to the relation of the head of a family and his descendants holding vested rights in his estate, in regard to alienations by the head of the family to which the descendants did not expressly consent. *SEETUL PERSHAD SINGH v. GOVIND LAL SINGH*

I. W. R. 283

67. ————— *Sale of minor's*

to advance money for that purpose and to resist certain claims brought by *M* against the minor's estate. In February 1851, *M* having obtained judgment against the estate for Rs26,986, and taken out execution thereon, the estate was advertised for sale on the 20th of that month. To prevent the sale, *L* advanced the amount of the judgment-debt, and on the 19th of that month commenced a suit against the guardian, in which he claimed the Rs26,986, the amount advanced by him, and the Rs27,000 agreed to be paid him by the *ikramamah*, and the further sum of Rs1,354 alleged to have been paid by him for the proceedings against *M*, making together Rs55,341. On the following day the guardian filed a confession

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

paid, *L* in 1853 took out execution on the judgment and under the execution put up the estate for sale, and became the purchaser himself. On the minor attaining his majority, he brought a suit to set aside the sale, impeaching the transaction as fraudulent and collusively obtained by *L* from his late guardian. The Courts in India set aside the sale on the ground of fraud, and decreed the restitution of the estate, with mesne profits and damages, subject to the repayment by way of reduction of the Rs26,986 at 5 per cent. Upon appeal such decree was affirmed by the Judicial Committee, *first*, on the ground that the transaction was fraudulent and collusive and prejudicial to the estate of the minor, there being no evidence to show the necessity for the guardian obtaining the pecuniary assistance sought, or to justify her submitting to *L*'s extraordinary terms contained in the *ikramamah*, by allowing, without consideration, his doubtful claim

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advanced by him at the rate of 6 per cent. contracted for in the *ikramamah* in lieu of 5 per cent. awarded by the Sudder Court. Such a modification of the decree of the Court below *held* not sufficient to deprive the respondent of his costs of appeal. The case of *Ali Hossain v. Dadal Khan*, 8 D. A. N. W. P., 1863, 19th May, where it was *held* that there is no difference to be made between an in-

68. ————— *Hindu law—Joint family—Release obtained from person just come of age.* The plaintiff as a joint member of the

of the plaintiff. The plaintiff alleged that *L* and his brother *J* were joint end had carried on

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the release must be set aside. The defendant stood in the relation of a guardian to the plaintiff. Releases executed immediately after a ward comes of age are looked upon with suspicion. The circum-

that absolute fairness and good faith required by

89. ————— *Loan by guardian for marriage expenses of minor—Legal necessity.* The marriage of a Hindu minor is a legitimate cause of expense in regard to which his guardian can

70. ————— *Sale by guardian—Onus of proof of bond fides of purchaser.* Purchasers from a guardian must show that they acted bond fide. *RUNDOO PANDEY v. BAGESH ALI* 3 N. W. 2

71. ————— *Decree—Legal necessity.* The existence of a decree, which may at any time be executed against ancestral property, is a clear necessity for contracting a loan, and ample justification to any one coming forward to lend money on the mortgage of the property. *PURME SUR OSHA v. GOOLBEE* 11 W. R. 449

72. ————— *Sale by guardian on behalf of minor—Repayment of purchase-money before minor allowed to recover estate.* The sale by S's mother of his share, during his minority, in the estate of his deceased father was rightly held to be invalid; but his claim to recover possession of the share from the purchasers, who had redeemed a mortgage existing on the estate created by his father, without tendering payment of his share of the mortgage debt, was properly dismissed. *PAKA ALI v. SADIK HOSSEIN* 7 N. W. 201

73. ————— *Sale by guardian*

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

AGGOORE HURRIHUR CHURN v. GUNGA PERIAD OPADHYA . . . . . W. R. 1864, 208

SIRDAR DYAL SINGH v. RAN BUDDEN SINGH 17 W. R. 454

MOTHOORA DOSS v. KANGO BEHAREE SINGH 21 W. R. 287

74. ————— *Court of Wards—Collector—Warrant—Application of the Land Acquisition Act, 1870, to the land of a minor—Insufficiency of compliance with the other requirements of the Act, without actual compensation to the minor's estate—Recovery of land by minor on coming of age.*

tion Act, 1870, if there had been due compliance with the provisions of the Act, as regards compensation to the minor's estate. Where, however, com-

75. ————— *Power to refer to arbitration—Natural guardian—Reference by arbi-*

showed that a natural guardian had power to submit to arbitration on behalf of a minor, and referred the case to the Registrar to enquire and report whether the submission and the award thereon were for the benefit of the minors. *ROMON KISSEN SETH v. HURROLOLL SETH* 1 L. R. 19 Calc. 334

76. ————— *Guardian's power*

disapproved. *SORHANADRI APFA RAU v. SHI. RAMULU* 1 L. R. 17 Mad. 221

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

KAILASA PADIACHI v. PONNUEANNU ACHI  
I. L. R. 18 Mad. 458

77. — *Acknowledgment by guardian of minor—Guardians and Wards Act (VIII of 1890), ss 27 and 29—Act XL of 1858—Guardian, powers of.* An acknowledgment of a debt by the guardian of a minor appointed under the Guardians and Wards Act, does not bind the minor, and is not such an acknowledgment under s 19 of the Limitation Act as would give a new period of limitation against the minor. CHHATO RAY v. BILTO ALI. I. L. R. 28 Cal. 51

See also AZUDDIN HOSSEIN v. LLOYD  
13 C. L. R. 112

78. — *Power of guardian to bind his ward by personal covenants—Act XX of 1864, ss 18 and 29—Guardian's authority to contract debts for the marriage of his ward without the sanction of the Court—Debts contracted for pilgrimage expenses—Guardian's power to acknowledge debts—Limitation Act (XV of 1877), s 19.* A minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his estate. Act XX of 1864 gives no power to a guardian or administrator to bind his ward by personal covenants. A guardian appointed under Act XX of 1864 can pledge the ward's property as a security for the ward's debts. Under s 29 of Act XX of 1864, a guardian cannot contract a debt for the marriage of his ward without the sanction of the Court. Debts contracted by the guardian of a minor for a pilgrimage not undertaken in the discharge of an urgent spiritual duty, when it was obligatory on him to perform, are not necessary for which the minor would be held liable. A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s 19 of the Limitation Act (XV of 1877). *Robb-honadri Appa Rao v. Sriramulu*, I. L. R. 17 Mad 221, dissented from. *RAMMAISINGH v. VADILAL VAKHATCHAND*. I. L. R. 20 Bom. 81

79. — *Liability of minor for debt incurred by guardian on his behalf—Ancient trade carried for benefit of minor by the minor's natural guardian.* Under Hindu law, where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral trade is carried on under the superintendence of the minor's natural guardian, for the benefit of herself (she having a claim for maintenance) and the said minor, the minor will be bound by all acts of the guardian necessarily incidental to or flowing out of the carrying on of the trade. *HANPETHAB SAMRA THIRAT v. FOOLBAI*. I. L. R. 20 Bom. 767

GUARDIAN—*contd.*2. DUTIES AND POWERS OF GUARDIANS—*contd.*

80. — *Guardian and minor—Pre-emption—Refusal of guardian on behalf of minor to claim pre-emption—Minor bound by such refusal.* The guardian of a minor is competent to exercise on behalf of the minor the right of pre-emption, and is bound by such refusal. *Unnudur Singh v. Durga Singh*, I. L. R. 3 All. 437, referred to. *UNRAO SINGH v. DALUP SINGH* (1901). I. L. R. 23 All. 129

81. — *Mahomedan Law—Sale of minor's property by de facto guardian for the benefit of the minor.* The de facto guardian of a minor Mahomedan girl sold certain property, which had belonged to the minor's deceased father, partly in order to pay the debts of the deceased and partly in order to pay Government revenue payable on account of the estate left by the deceased. Held, that the sale being for the benefit of the minor and made by the minor's de facto guardian was binding on her and must be upheld. *Hassan Ali v. Mehdi Hassan*, I. L. R. 1 All. 533, followed. *Hamir Singh v. Musammal Zakia*, I. L. R. 1 All. 57, distinguished. *MAJIDAN v. RAU NARAJAN* (1904). I. L. R. 26 All. 22

82. — *Minor—Account, suit for—Guardian's power to bind minor—Advances made to guardian for minor's benefit—Principal and agent—Advances made by agent to guardian of principal.* A guardian cannot bind his minor ward by a personal covenant. But where a minor comes to Court to have an account taken as between himself and his agent, and it is found that the guardian has advanced money to the minor in taking the account. *Waghela Rajnaraj v. Sheikh Musluin*, I. L. R. 11 Bom. 551, distinguished. *SURENDRA NATH SARKAR v. ATUL CHANDRA ROY* (1907). I. L. R. 34 Cal. 892

83. — *Transfer of Property Act (IV of 1882), s. 41—Transfer by ostensible owner—Owners of property transferred—Minor—Guardian incapable of assenting to apparent ownership of transferor.* Held, that the guardian of a minor owner of immovable property is incapable of consenting, even though such consent be express, to a third person holding himself out as owner of the minor's property, so as to enable a transferee from such person to claim the benefit of s. 41 of the Transfer of Property Act, 1882. *DAMBAR SINGH v. JAWITRI KUNWAR* (1907). I. L. R. 29 All. 292

## 3. RATIFICATION.

1. — *Sale by guardian—Acquiescence after minor comes of age.* The conveyance

**GUARDIAN—contd.****3. RATIFICATION—contd.**

of property while the owner is a minor is not necessarily inoperative; if the sale is effected by the guardian and acquiesced in by the minor when he comes of age, it may be valid notwithstanding **KUMUROODIN v. BHADHOO** 11 W. R. 134

**2. ——— Delay of minor on coming of age in repudiating act of guardian.** *Minor delay in repudiating act of guardian after attainment of age*

**CHUNDER CHOWDHRY**

10 B. L. R. 324; 18 W. R. 404

**3. ——— Contract by guardian—Delay of minor on coming of age in repudiating contract.** Long delay in repudiating a contract by

**DOORGACHURN SILAHIA v. RAMNARAIN DOSS**

10 B. L. R. 327 note; 18 W. R. 172

**4. ——— Act of guardian after majority of minor—Person remaining minor as far as public are concerned—Acquiescence—Evidence of necessity for loan.** Where a party after attaining full age allowed his mother to give him out to the world as a minor, and as his guardian to mortgage his ancestral property, and permitted

valuable consideration **PURNESHWER OSHA v. GOOL-BEE** 11 W. R. 448

**5. ——— Mode of ratification—Suit to set aside sale made by mother as guardian—Minor acting for mother in former suit.** In a suit to set aside a sale effected by plaintiff's mother dur-

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quiesced in and ratified the sale **KERULKURSTO DASS v. RAMCOONAR SHAH** 9 W. R. 671

**8. ——— Transaction prejudicial to estate—Formal ratification, necessity of.** The guardian of a minor as manager of the minor's estate is bound in duty to abstain from entering into any arrangement beneficial to himself and detrimental to the estate; and if any such arrangement has been entered into, it is incumbent on him immediately after the minor comes of age to

**GUARDIAN—contd.****3. RATIFICATION—contd.**

obtain from him not an accidental, but a distinct formal ratification. **PROSENNO COOMAR GHUTTUCK v. WOOMA CHURN MOOKERJEE** 20 W. R. 274

**7. ——— Duty of minor—Compromise, suit to set aside—Proof of fraud.** It is not incumbent upon a guardian to contest every claim made against the infant's estate. The Judicial Committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. **LEKRAJ ROY v. MAH-TARCHUND** 10 B. L. R. 35

14 Moo. I. A. 393; 17 W. R. 117

was granted by their guardians during their minority, they thereby ratify the lease and cannot afterwards repudiate it. **RAM CHUNDER SIRCAR v. PHAN GOBIND BOSENBUR** 25 W. R. 71

**9. ——— Apparent acquiescence—Compromise by mother for minor sons.** The transactions into which guardians enter on behalf of their wards must secure to the latter some demon-

been awarded by a judicial decision, it was held that the compromise was not binding on the minors. Apparent acquiescence in such a compromise by one of the minors after arriving at majority, though evidence against him, is not evidence of a conclusive character when not continued for any considerable time. **DHARMAJI VAMAN v. GURRAY SIMINIBAS** 10 Bom. 311

**10. ——— Ratification by acquiescence—Minor, contract by.** A sued in 1885 to recover certain estates from B, alleging claim under his adoption which took place in 1865. In 1875 A, being still a minor, relinquished by deed his claim to the estates for R12,000, but now alleged that he thought he was relinquishing it only in favour of the defendant's predecessor in title who died in 1883, having been in possession of the estates since 1867. The plaintiff attained his majority in 1879. Held that whether the compromise was

he failed to ascertain it when he attained his majority in 1878. His conduct of acquiescence, moreover, in the deed of relinquishment amounted to

GUARDIAN—*contd.*3. RATIFICATION—*concl.*

ratification of it. VENKATACHALAM v. MAHALAKSHMANIA . . . I. L. R. 10 Mad. 272

## 4. DISQUALIFIED PROPRIETORS.

1. ——— Suits by, and against, disqualified proprietors—Act XIX of 1873 (N. W. P. Land Revenue Act), s. 205—Act VIII of 1879, s. 23. Under s. 205 of Act XIX of 1873, as amended by s. 23 of Act VIII of 1879, a disqualified proprietor whose name was on the Court's list . . .

Collector of the district in which the suit is brought, where a guardian has not been appointed, whether or not the suit has for its object to set aside an act done by the ward before the date when his property came under the charge of the Court of Wards. SURE DIAL CHAUBEY v. COLLECTOR OF GORAKHPUR . . . I. L. R. 5 All. 364

2. ——— Contract entered into by disqualified proprietor whilst his property was under the charge of the Court of Wards—N. W. P. Land Revenue Act (XIX of 1873), s. 205B—Court of Wards, s. 205 of Act No. XIX of 1873 does not cease to have effect when property to which it might apply is released from the custody of the Court of Wards. Such property cannot at any time be taken in execution of a decree obtained on a contract entered into by a ward of the Court at a time when his property was under the superintendence of the Court. HIMANCHAL SINGH v. JHAMMAN LAL . . . I. L. R. 22 All. 364

3. ——— Power to enter into contracts—Act VIII of 1879, ss. 23, 24—N. W. P. Land Revenue Act (Act XIX of 1873), s. 205. A suit was brought against a . . .

Collector's status in the suit—namely, as representative *ad litem* of the defendant—was sufficiently described . . .

Collector's status in the suit—namely, as representative *ad litem* of the defendant—was sufficiently described . . .

I. L. R. 5 All. 457

GUARDIAN—*contd.*4. DISQUALIFIED PROPRIETORS—*concl.*

4. ——— Act XIX of 1873 (N. W. P. Land-revenue Act), s. 205B—Attachment of property of disqualified proprietor—Profits accruing after the release of the corpus by the Court of Wards. Held, that the prohibition contained in the second paragraph of s. 205B of Act XIX of 1873 does not apply to the rents and profits of property which may accrue after the release of the corpus from the superintendence of the Court of Wards. HIMANCHAL SINGH v. JHAMMAN LAL, I. L. R. 22 All. 364, referred to JHAMMAN LAL v. HIMANCHAL SINGH (1901) . . . I. L. R. 24 All. 136

## 5 LIABILITY OF GUARDIANS.

1. ——— Act of guardian in proper management of minor's estate. Where an act done by a guardian is one arising naturally out of the management of the minor's estate, and especially where it is contended in by other co-sharers of the same property, the liability for such act attaches not to the guardian, but to the estate. GIREWAR SINGH v. MEDDUN LAL DASS 18 W. R. 252

2. ——— Guardian *ad litem*—Costs, liability for. Where a guardian *ad litem* . . . infant had been . . . ting exco . . . upset for the eviden . . . was to his knowledge duly executed by the testatrix in sound state of mind. Held, that he was liable for the costs of the suit. GOKULAN HOGSEEN NOOR MAHOMED v. FATMAHAT I. L. R. 8 Bom. 391

3. ——— Liability of widow as guardian—Personal liability and as representing heirs of husband. A widow defending a suit as guardian of her minor son cannot be made liable in her own person as well as representing the heirs of her husband. BROJO MOHUN MOUDINAR v. ROODRO NATH SURNIAH MOUDINAR 15 W. R. 192

4. ——— Retaining attorney for minor—Liability of minor for costs—Fruity of contract. If a guardian or next friend . . . infant retain . . . contract is an infant upon v for costs. Re GHOSH . . .

5. ——— Liability of guardian for torts—Torts committed by minor. Guardians of a minor cannot be held personally liable for torts committed by such minor. LUCHMAN DAS v. NARAYAN . . . 3 N. W. 191

6. ——— Right to suit for torts to minor—Suit by father for personal injury to son. A father, as guardian of his minor son, can sue to recover damages for personal injuries received by the son. MODHOO SOODEN v. KANMOOLLAL BISWAS 8 W. R. 327

GUARDIAN—*conclld.*5. LIABILITY OF GUARDIANS—*conclld.*

7. ——— Liability of guardian on security bond—*Act XL of 1858—Suit on*

the Judge on her behalf. Subsequently a certificate was taken from her, and was granted to A. who brought a suit on the minor's behalf against B's sureties for the value of the property intrusted to B. The security bonds in question were not assigned by the Judge to A. *Held*, that, inasmuch as the plaintiff was seeking to enforce contracts which were never made with him or any other person in the character of legal representative of

the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1858 to furnish security; and whether, where he has done so and security-bonds have been given to him, he can assign them in the manner provided in s 257 of the Succession Act, 1865 *AMAR NATH v. THAKUR DAS*

I. L. R. 5 All. 248

8. ——— Liability of guardian for malversation—*Suit on behalf of son to get rid of guardian.* A mother brought a suit on behalf of her minor son to recover from her step-son, the managing member of the family, the minor's share in the family property. *Held*, that the only ground upon which such a suit could be maintained was that of malversation. The Court might relieve the minor from his brother's authority and appoint another guardian, but a case requiring relief must be made out *ALIMENAMMAL v. ARUNACHELLAM PILLAI*

3 Mad. 69

9. ——— Liability of guardian to render account—*Guardian and ward—Guardian—Suit for account against guardian—Guardian and Wards Act (VIII of 1890), s 41, cl 4* Where a new guardian appointed under the Guardians and Wards Act had not inspected the account submitted by the previous guardian, the latter having failed to pay the process fee for service on the former of notice to inspect them, and the Court had made no order under s 41 (4) of the Act discharging the previous guardian: *Held*, that a suit for account would be against the previous guardian

## GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE, 1882, s. 440.

I. L. R. 31 All. 7

See CIVIL PROCEDURE CODE, 1882, ss.

413, 457 I. L. R. 28 All. 137

I. L. R. 29 Mad. 58

I. L. R. 29 All. 290

1. ——— *Guardian ad litem*  
—*Procedure—Appointment of guardian ad litem invalid—Effect of invalidity on decree passed against minor defendant.* The provisions of s. 443 of the Code of Civil Procedure as to the appointment of a guardian ad litem for a minor defendant are imperative and where those provisions are not substantially complied with, the minor is not properly represented, and any decree, which may be passed against him, is a nullity. *Khirajmal v. Daim, L. R. 32 I. A. 26*, followed. *Walia v. Banke Behari Prasad Singh, I. L. R. 30 Cal. 1021*, distinguished. *HANUMAN PRASAD v. MUHAMMAD ISHAQ (1905)*

I. L. R. 28 All. 137

2. ——— *Investment by guardians of minor's property—Principles governing investment by guardians—Indian Trusts Act (II of 1882), s 20.* Guardians are in a fiduciary position and the Court should be guided by the rules embodied in the Trusts Act in sanctioning changes in the investment of a minor's property. The duty of guardians is primarily to preserve and not to add to the property of the minor. Where it was sought to invest monies belonging to a minor in the purchase of lands deriving their income from buildings erected thereon, *Held*,

3. ——— *Civil Procedure Code, s. 411—Duty of Court as regards appointment of a guardian ad litem.* Where the defendant or

tistinguished. *RANCHANDRA DAS v. JOTI PRASAD (1907)*

I. L. R. 29 All. 875

4. ——— *Civil Procedure Code, s 437—Appointment of married woman whose husband is alive.* In no case can a married woman

discharge a liability as guardian ad litem, unless appointed by the Court. *KUNDAN LAL v. GAJADHAR LAL (1907)*

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I. L. R. 29 All. 728

FATIMA v. SAJJAD HOSAIN (1906)

I. L. R. 34 Calc. 211



GUARDIAN AD LITEM—*contd.*

5. ————— *Shia Mahomedan lady—Inherent power of Civil Court. The power*

was held that the appointment must be presumed to be valid and that a sale in execution of the decree obtained in such a suit was binding on the minors *MUZAFFAR ALI KHAN v. PARBATTI* (1907)  
I. L. R. 29 All 840

6. ————— *Appointment of guardian ad litem other than certificated guardian*  
*Held*, that the appointment, apparently by an oversight, of a guardian ad litem to a minor defendant of a person other than the certificated guardian amounted to no more than an irregularity and would not of itself violate either a decree passed in a suit or a sale consequent upon such decree *DANWAR SINGH v. PIREND SINGH* (1907)  
I. L. R. 28 All 280

7. ————— *Appeal—Guardian ad litem not made a party by appellant—Limitation.*  
Where a guardian ad litem of a defendant respondent was not made a party to an appeal filed by the plaintiff, until after the period of limitation for filing such appeal had expired, it was held that the appeal was not for this reason time-barred. *Khem Karam v. Har Dayal*, I. L. R. 3 All 37, followed. *RUP CHAND v. DASODHA* (1907)  
I. L. R. 30 All 55

8. ————— *Civil Procedure Code (Act XIV of 1882), s. 417—Necessity of formal discharge from the duties of guardian ad litem—Suit to set aside a decree. Held*, that no suit will lie to set aside a decree, where fraud is neither alleged nor proved and no specific relief is asked for save and except the setting aside of the decree. *Umrao Singh v. Hardeo*, I. L. R. 29 All 413, referred to. *Held*, also, that where the same person is both certificated guardian and guardian ad litem to minor plaintiffs, the fact that one of such plaintiffs has come of age and been appointed certificated guardian of the persons and property of the others would not relieve the original guardian of her duties as guardian ad litem. To do this requires a special order under s. 447 of the Code of Civil Procedure. *BAVARI PRASAD v. RAM NARAIN* (1907)  
I. L. R. 30 All 105

## GUARDIAN AND MINOR.

See CIVIL PROCEDURE CODE, 1882, ss 402, 506 . I. L. R. 28 All 35

See GUARDIAN

See GUARDIAN AND WARD.

See GUARDIANS AND WARDS ACT.

See HINDU LAW . 10 C. W. N. 1

See LIMITATION ACT, 1877, s. 8.

I. L. R. 31 All 150

GUARDIAN AND MINOR—*contd.*

1. ————— *Contract for sale by guardian of minor—Subsequent sale to third party—Sanction of District Judge—Sale, void or voidable—Specific performance*  
A certificated guardian of certain minors contracted to sell their property to the plaintiff for a consideration of Rs 217, of which Rs 30 was to be paid in cash and the balance of Rs 187 was to redeem a mortgage upon the property executed by the late father of the minors in favour of the plaintiff. The guardian undertook to obtain the sanction of the District Judge to the transaction. She afterwards fraudulently conveyed the property by registered deed to her relative, the defendant No 1, who was fully aware of the previous contract with the plaintiff. *Held*, that the sale to the plaintiff was not *ipso facto* void, but only voidable at the instance of any person affected thereby. That the plaintiff became entitled to obtain specific performance when, by finding that the sale to him was for the minor's benefit, the District Judge in effect sanctioned the sale. *ETWARIA v. CHANDRA NATH MUKERJEE* (1903) . 10 C. W. N. 763

2. ————— *Guardian and minor—Arbitration—Authority of guardian to agree to a reference to arbitration on behalf of a minor. See s. 462 of the Code of Civil Procedure does not apply to proceedings under Chapter XXXVII of the Code. A minor party therefore will be bound by the consent of his guardian to refer the matters in dispute to arbitration, if there is no fraud or gross negligence, although the Court has not under the provisions of s. 462 sanctioned the agreement to refer* *Sheo Nath Saran v. Sukh Lal Singh*, I. L. R. 27 Cal 229, and *Chengal Reddi v. Venkata Reddi*, I. L. R. 12 Mad 483, followed. *HARDEO SINGH v. GADTA SHANKAR* (1903) . I. L. R. 28 All 35

3. ————— *Arbitration—Appointment of guardian not to be settled by arbitration*  
The appointment of a guardian to a minor not being a matter of private right as between parties, is not a question which can be settled by reference to arbitration *MAHADEO PRASAD v. BINDLASHI PRASAD* (1903) . I. L. R. 30 All 137

4. ————— *Bond by guardian—Liability of minor—Bond keeping alive debt incurred for necessities when binds minor's estate—Personal liability of minor—Limitation*  
The general proposition that a guardian of a minor cannot bind his ward personally by a simple contract debt, by a covenant or by any promise to pay money or damages, is subject to the modification that the promise will not bind the minor, unless it has been made merely to keep alive a debt, for which the ward's property was liable. *Indur Chander Singh v. Radhakishore Ghose*, I. L. R. 19 Cal 507, I. L. R. 19 A. 98, *Subramanya Ayyar v. Arumuga Chetty*, I. L. R. 26 Mad 330, referred to. Where the promise is to pay money, which has been expended on necessities, the estate of the minor may be liable,

**GUARDIAN AND MINOR—concl'd.**

not on the promise, but because the money has been supplied. *Sundararaja Ayyangar v. Pattanathasami Tewar*, 1 L. R. 17 Mad 396, referred to. It is established law that a guardian cannot land his ward's estate, except by a document purporting to bind it. *Maharana Shri Ramulasingh v. Vakilul Vakhat Chand*, 1 L. R. 20 Bom 61, followed. When a third person enters into dealings with the guardian of a minor, and advances money for necessities for the minor or for the benefit of the estate, and takes a bond for the debt from the guardian, the responsibility rests on him to take care that the bond is so drawn as to render the estate of the minor liable in law for the debt. *Bhawal Singh v. Balj Nath Peetar Narain Singh* (1907) . . . I. L. R. 35 Cal. 320  
s.c. 12 C. W. N. 256

5. *Minor bound by bond of guardian for existing liability binding on minor—Civil Procedure Code (Act XIV of 1859), s. 622—Material irregularity* A bond executed by the guardian of a minor as such but which contains only a personal covenant by the guardian to pay and does not charge the minor's estate, will nevertheless be binding on the minor, if it is executed for a pre-existing debt, which is binding on him. A mistaken view of law by the lower Court is no ground for the interference of the High Court under s. 622 of the Code of Civil Procedure. But where the case has not been properly heard by the lower Court and the mistake of law was probably the result of such defective trial, the High Court will interfere on the ground that the lower Court had acted with material irregularity within the meaning of the section. *Dutrasami Reddi v. Muthiah Reddi* (1908)  
I. L. R. 31 Mad. 456

6. *Hindu Law—Joint Hindu family—Minor co-parceners—Guardian of the family property appointed by the Court—Guardianship ceases, when one of the co-parceners attains majority—Guardianship goes to the adult co-parcener* Where a joint Hindu family consists of co-parceners, who are all minor, the co-parceners forming one group, the Court has jurisdiction to appoint a guardian of the property of that group. . . . when, subsequently the age of person appointed by the Court is property to the adult co-parceners, notwithstanding the fact that other co-parceners are minors. *Virupakshappa v. Nilqangam*, 1 L. R. 19 Bom 309, applied. *Bindaji v. Mathurabai*, 1 L. R. 30 Bom 152, followed. *Ranchandra v. Krishnarao* (1908)  
I. L. R. 32 Bom. 259

**GUARDIAN AND WARD.**

See GUARDIAN.

See GUARDIAN AND MINOR.

See GUARDIAN AND WARD Act (VIII of 1890), s. 10 . . . I. L. R. 29 All. 210

**GUARDIAN AND WARD—concl'd.**

1. *Contract—Specific performance—Specific performance of contract not favourable to minor refused* The certificated guardian of a minor, finding that it was necessary that some of the minor's property should be sold, applied for permission to the District Judge, who sanctioned the sale for a price of Rs. 725. Subsequently the guardian discovered that this was an inadequate price, and having received an offer of Rs. 25 for the property, went again to the District Judge for sanction to the second contract, obtained sanction and sold the property for Rs. 25. *Held*, that the former contract being to the detriment of the minor could not be specifically enforced. *Chittar Mal v. Jagannath Prasad* (1906) . . . I. L. R. 29 All. 213

2. *Limitation Act (XV of 1877), s. 28, Sch II, Art 41—Sale in Art 41 not confined to transfer of absolute ownership only—Finding in previous suit of the invalidity of a sale does not dispense with the necessity of suing to set aside such sale* The term 'sale' in Art 44 of Sch II of the Limitation Act is not confined to an assignment of absolute ownership only but means an assignment for a price of the ward's interest whatever that may be. Art 44 will therefore apply to a suit by the ward to set aside an assignment by his guardian of his right as mortgage. *Gunnambhanda Pandara Sannadhi v. Velu Pandarava*, 1 L. R. 23 Mad 279, referred to and followed. A suit by a ward to recover properties improperly alienated by the guardian will be governed by Art. 44 and the period of limitation will not be that prescribed for a suit for possession of immovable property. The fact that in a previous suit by the alienee against the ward, to recover some properties which had not passed to his possession under the transfer, the alienation was found invalid will not relieve the ward from the consequences of his failure to have the transfer set aside within the period allowed by law with regard to properties which had passed to the possession of the alienee. When at the time such previous suit was brought, the ward's right to such property had been extinguished under s. 28 of the Limitation Act, the decision will not have the effect of reviving the extinguished right. *Lakshmi Dasa v. Roop Laxmi*, 1 L. R. 30 Mad. 169, distinguished. *Madhoga Latchman v. Palla Mekkalinga* (1907)  
I. L. R. 30 Mad. 393

3. *Guardian—Liability of guardian to render account—Suit for account against guardian—Guardian and Wards Act (VIII of 1890), s. 41, cl 1* Where a new guardian appointed under the Guardian and Wards Act had not inspected the accounts submitted by the previous guardian, the latter having failed to pay the process fee for service on the former of notice to inspect them, and the Court had made no order under s. 41 (f) of the Act discharging the previous guardian. *Held*, that a suit for account would be against the previous guardian. A guardian is bound to render account in respect of

**GUARDIAN AND WARD—*concl'd.***

All the properties of which he took possession as Guardian under order of the Court, and for the purpose of taking the accounts an inquiry must be made as to what those properties are. *KANIZ FATIMA v. SAJJAD HOSAIN* (1906)

I. L. R. 34 Cal. 211

4. ——— *Guardian and Wards Act, s 52—Act No. IX of 1875 (Indian Majority Act), s 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s 440.* Where a guardian has once been appointed under the provisions of Act VIII of 1890, the attainment of majority by the ward is postponed until he reaches the age of twenty-one

*Notes (1891) 118, distinguished. SADR LAL v. MURLIDHAR* (1907) . . . I. L. R. 29 All 872

**GUARDIANS AND WARDS ACT (VIII OF 1890).**

See APPEAL—ACTS—GUARDIANS AND WARDS ACT

See ARBITRATION . . . 8 C. W. N. 37

See BOMBAY CIVIL COURTS ACT, s. 16.  
I. L. R. 16 Bom. 277

See CUSTODY OF CHILDREN.  
I. L. R. 10 Bom. 307

See GUARDIAN.

See GUARDIAN AND MINOR

See GUARDIAN AND WARD.

See MINOR—CUSTODY OF MINORS  
I. L. R. 25 Bom. 574

See PROBATE—EFFECT OF PROBATE.  
I. L. R. 16 Bom. 832

See SUCCESSION CERTIFICATE ACT, s. 6,  
CL. (d) . . . I. L. R. 28 Bom. 344

s. 1, cl. (2)—*Scheduled Districts Act (XIV of 1874)—Agency rules—Superintendence of High Court—Civil Procedure Code, 1882, s 622.* A petition of appeal was presented to the Gover-

that the Guardians and Wards Act, 1890, is in force in the agency tracts, although no notification to that effect had been made under the Scheduled Districts Act; (ii) that the High Court had jurisdiction to set aside the *ex parte* order. *CHALLAPATI VARAHANAMMA* I. L. R. 16 Mad. 227

a. 7.

See GUARDIAN . . . I. L. R. 34 Cal. 569

**GUARDIANS AND WARDS ACT (VIII OF 1890)—*cont'd.***

ss. 7, 11, 13, and 46—*District Judge—Application for appointment of guardian—Reference to a Subordinate Judge to record evidence and submit report—Decision based upon the report—Procedure—Irregularity—Practice—Minor—Guardian* A District Judge, upon receiving an application for the appointment of guardians to the persons and property of minors, fixed a day for hearing the same before the Subordinate Judge, and directed that Court to take evidence and report on the case. The Subordinate Judge recorded the whole evidence and submitted a report, upon the strength of which the District Judge disposed of the application. *Held*, that the procedure adopted by the District Judge was illegal and vitiated the whole inquiry. *Ganesh v. Kusaba*, I. L. R. 23 Bom. 698, followed. *NARAYAN SHUBHAR DHARNE v. RAMCHANDRA KANDDEV BELHE* (1902) . . . I. L. R. 26 Bom. 716

ss. 10, 11—*No guardian of property to be appointed in the case of a minor, member of an undivided family governed by Aliyanth-hanum Law* of an undivided family house.

bers of such family, no guardian of property or such minor can be appointed by the Court under the Guardian and Wards Act. No such appointment can be made, even with the assent of the adult members, as the minor has no property in respect of which a guardian can be appointed. *KAJIRAR LAKSHMI v. MAMU DEVI* (1908)

I. L. R. 32 Mad. 139

s. 12.

See HINDU LAW—MARRIAGE—GIVING IN MARRIAGE AND CONSENT.

2 C. W. N. 521

s. 13.

See DISTRICT JUDGE, JURISDICTION OF.

I. L. R. 23 Bom. 698

s. 14—*Application of section—"Report," meaning of.* S. 14 of the Guardians and Wards Act (VIII of 1890) does not apply to the High Court in the exercise of its original civil jurisdiction; and the term "report" in cl. (2) of that section refers, not to a judicial reference, but to a ministerial act. *In the matter of FAKARUDDIN MAHOMED CROWPHEE, HAFIZ AHMADUDDIN AHMED v. GARTI*

I. L. R. 26 Cal. 133  
3 C. W. N. 91

s. 17.

See ACT XXI OF 1850, s. 1.

1. ——— *Code Disabilities Removal Act, s 1—Hindu Law—Guardian and minor—Right of Hindu mother to be guardian of her infant daughter* In the absence of any special reason to the contrary a Hindu mother has a better right to the guardianship of her infant daughter than the

# GUARDIANS AND WARDS ACT (VIII OF 1890)—*contd.*

## s. 17—*concl'd.*

infant's paternal grandfather, and this right is not taken away by the fact that the mother has been ousted. *Kanahi Ram v. Buddya Ram*, I. L. R. 1 All. 549, followed. *KATEERA v. JORAI KASUNDHAN* (1905). I. L. R. 28 All. 233

2. Appointment of guardian of person of minor—*Hindu Law*. According to Hindu law in the case of minors, who have lost both parents, the nearest male kinsman should be appointed their guardian, the paternal

I. L. R. 32 Bom. 30

s. 24—*Court's power to make order as to marriage of minor* *Quere* Whether the marriage of a minor eight or nine years old can be regarded as falling within the scope of s. 24 of Act VIII of 1890, especially when the marriage of a minor female terminates the power of the guardian of the person? *Bai Diwali v. Moti Karson* I. L. R. 22 Bom. 509

s. 29—*Mortgage of minor judgment-debtor's property—Sanction of District Judge*. The guardian of a minor judgment-debtor, appointed under the Guardians and Wards Act, must obtain the permission of the District Judge under s. 29 of the Act to sell or mortgage the property of the minor which is under attachment in execution of a decree even if the Court executing the decree gives leave under s. 305 of the Code of Civil Procedure. *SARJU v. DISTRICT JUDGE OF BENARES* (1909)

I. L. R. 31 All. 378

## ss. 29, 30.

*See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.*

I. L. R. 23 All. 288

I. L. R. 25 All. 59

ss. 29 and 31—*Guardian and minor—Mortgage of minor's property to secure a loan sanctioned by the Court—Interest* In all cases where

on the moneys advanced. *Ganga Persad Saha v. Maharani Bibi*, I. L. R. 11 Calc. 379, followed. *THAKUR PRASAD v. GAURIPAT RAY* (1908)

I. L. R. 30 All. 188

# GUARDIANS AND WARDS ACT (VIII OF 1890)—*contd.*

## s. 30.

*See REGISTRATION ACT, s. 77.*

I. L. R. 24 Calc. 888

and s. 2—*Retrospective effect of—Mortgage without sanction of Court*. S. 2 of the Guardians and Wards Act (VIII of 1890) does not give retrospective effect to s. 30, which therefore does not apply to a mortgage executed before the Act came into operation, so as to destroy its void character as having been executed by a guardian under Act XL of 1858 without sanction of the Court and render it merely voidable. *LALA HURO PRASAD v. BASANTH ALI*

I. L. R. 25 Calc. 909

s. 30—*Minors Act (XL of 1858), s. 18—Guardian and minor—Lease by guardian in excess of his powers—Sale of leased property by minor on attaining majority—Suit by purchaser for possession—Limitation—Limitation Act (XV of 1877), Sch II, Art 91*. The certificated guardian of a minor granted, without previously obtaining the permission of the Court, a perpetual lease of certain immovable property forming part of the minor's estate on the 28th March 1890. The minor came of age on the 7th of December 1901, and on 21st October 1902, sold the property, the subject of the lease mentioned above. On the 22nd of July 1903, the purchaser sued for possession of the property purchased by him, asking for cancellation of the lease, if necessary. *Held*, that it was not necessary for the plaintiff to ask for cancel-

*Kazi Hamid Ali*, I. L. R. 9 All. 310, *Ramnarain Pandey v. Raghuraj Jati*, I. L. R. 5 All. 490, and *Unni v. Kunchi Amma*, I. L. R. 14 Mad. 26, referred to by *BANERJI, J. ABDUL RAHMAN v. SUREHDAYAL SINGH* (1905). I. L. R. 28 All. 30

## s. 31.

*See SPECIFIC PERFORMANCE.*

I. L. R. 22 Calc. 545

ss. 34, 35, 36 and 37—*Minor—Guardian—Administration bond passed to Judge—Refusal of the Judge to assign—Appeal*. No appeal lies from an order passed by the District Judge under s. 35 of the Guardians and Wards

prescribed, engaging duly to account for what the property of or in the High Court the bond ceases to operate either on the death of the guar-

# GUARDIANS AND WARDS ACT (VIII OF 1890)—*contd.*

## s. 34—*contd.*

dian or of the ward or on the ceases or otherwise of the guardianship, so that a right of suit would still continue notwithstanding the happening of these events. The District Judge can in his discretion under such circumstances assign such a bond to a proper person. *GANPATI AXTA* (1905)

I. L. R. 30 Bom. 184

ss. 34, 41—*Guardianship termination of—Guardian, liability of, after attainment of majority by ward—Power of District Judge—Jurisdiction.* The summary powers given by s. 34 of the Guardians and Wards Act cease as soon as the minority of the ward ceases. The object of that section is to give the Court, as representing the interest of the minor, certain summary powers for the protection of his property during minority. S. 41 cannot be construed into giving the Court, by summary procedure, a power to order accounts to be rendered after the termination of guardianship. *NABU BEFARI v. SBEIKH MAHOMED* (1906)

5 C. W. N. 207

s. 39—"Instrument"—*Construction of statute—Decree of Civil Court—Removal of guardian.* The word "instrument" in s. 39 of the Guardians and Wards Act (VIII of 1890) means instruments *ejusdem generis* with a will, and a decree of a Civil Court is not an instrument within the contemplation of the section. *BH HANNOH v. BAI SHANGAR*

I. L. R. 16 Bom. 375

ss. 39 and 52—*Minors—Guardian of person—Guardian of property—Minor having proprietary interest with adults in joint family—Joint family comprising all minors—Guardianship liable to cease as soon as there is an adult person.* A guardian of the property cannot be appointed for a minor, whose only proprietary interest is as co-partner with adults in a joint family property. This principle does not apply when all the co-partners are minors and a guardian of the property is appointed for the whole number. *Lingagouda v. Gangabai, P. J 521*, followed. As soon as there is an adult co-partner, any guardianship of the property previously constituted either ceases or is liable to cease. An order appointing a guardian of the property of minor co-partners, who exclusively constitute the joint family, should reserve liberty to any minor on attaining majority to apply for the removal of the

wards Act (VIII of 1890)

I. L. R. 30 Bom. 152

## ss. 47, 48.

*See COMPROMISE—CONSTRUCTION, EXTINGUISHING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.*

I. L. R. 30 Calc. 613

*Indian Majority Act (IX of 1875), s. 3—Power of Chamber Judge to*

# GUARDIANS AND WARDS ACT (VIII OF 1890)—*contd.*

## s. 47—*contd.*

*alter, vary, modify or set aside orders made by his predecessor in Chamber under the Guardian and Wards Act—Period of minority on vacating of such orders does not extend to 20 years.* S. 48 of the Guardian and Wards Act immediately following, as it does, the section which provides for appeals is intended to give finality to contested orders and to enact that, when once an order is made, except as provided in s. 47 and saving the provisions of s. 622 of the Civil Procedure Code, the order shall be final and shall not be contested by a substantive suit or by any other form of litigation. The Guardian and Wards Act makes no provision for setting aside an order made under the Act, but judging from the analogy of English practice there can be no doubt that in these miscellaneous matters the Judge sitting in Chambers and making orders on petitions and applications has the power to vary, alter, modify or set aside his own orders when he finds that the order is one which ought not to have been made and that the order is one that requires in the interests of justice to be dealt with in that way. If an order is made under the Guardian and Wards Act and such order is subsequently set aside, the period of minority is not extended to 21 years under s. 3 of the Indian Majority Act. *NIOUBAS v. ANANDRAS* (1907)

I. L. R. 31 Bom. 590

## s. 41.

*See DISTRICT JUDGE, JURISDICTION OF*  
I. L. R. 17 Bom. 566

1. *Guardian and ward—Death of guardian—Suit by ward against guardian's son for rendition of accounts.* No suit will lie by a ward against the son of his late guardian. *Dhanraj v. Tivari* (1882)  
ICK 1.

I. L. R. 32 All. 332

2. *Guardian—Order of discharge by the Court—Liability of the guardian to suit.* When a declaration is once made by the Court, under s. 41 of the Guardians and Wards Act, 1890, discharging a guardian from liability, the latter cannot be exposed to suit in connection with the management of the minor's property, except in the case of fraud discovered after the declaration. *MURLIDHAR v. VALLABHDAS* (1909)

I. L. R. 33 Bom. 410

## s. 41, cl. 4

*See GUARDIAN AND WARD*  
I. L. R. 34 Calc. 211

## s. 48

*See ante, ss. 7, 11, 13 and 46*  
*See DISTRICT JUDGE, JURISDICTION OF.*  
I. L. R. 23 Bom. 698

# GUARDIANS AND WARDS ACT (VIII OF 1890)—*concl.*

s. 48.

See RES JUDICATA—ESTOPPEL BY JUDGMENT I. L. R. 16 Mad. 380

s. 51.

See DISTRICT JUDGE, JURISDICTION OF. I. L. R. 17 Bom. 588

The word "guardian" in s. 51 of the Guardians and Wards Act means a guardian who was such at the time the Act came into force. *VALABDAS HIRACHAND v. KRISHNABAI* I. L. R. 17 Bom. 588

s. 52.

See GUARDIAN AND WARD I. L. R. 29 All. 872

See MAJORITY ACT, s. 3 I. L. R. 21 Bom. 281

See MINOR I. L. R. 38 Cal. 766

s. 53

See CODE OF CIVIL PROCEDURE, 1882, s. 244 I. L. R. 31 All. 572

See MINOR—REPRESENTATION OF MINOR IN SUITS I. L. R. 24 Cal. 25  
13 C W N. 643

# GUJARAT TALUKDARS' ACT (BOM. VI OF 1888)

See CIVIL PROCEDURE CODE, 1882, s. 30. I. L. R. 28 Bom. 209

See VALUATION OF SUIT—APPEALS. I. L. R. 18 Bom. 408

s. 2 (a)—*Talukdar—Purchaser from "talukdar"*—Definition The term "talukdar," as defined by s. 2 (a) of the Gujarat Talukdars Act (Bombay Act VI of 1888), does not include a purchaser of a talukdar's share sold in execution of a decree passed against him. *NIKANDAS PARBHIDAS v. FARNOTTAM VALU* (1902)

I. L. R. 28 Bom. 757

s. 10—*Application to the Talukdari*

to a one-sixth share in a certain village. The decree was never executed. In the year 1888 he presented an application to the Talukdari Settlement Officer under s. 10 of Bombay Act (VI of 1888) for partition under the decree. *Held*, that, as the execution of the decree was barred when the Act was passed, and as no fresh suit could have been brought against the defendant upon the right declared by the decree, the application should be rejected. *JAMSANG DEYABHAI v. GOYABHAI KIRABHAI* I. L. R. 18 Bom. 408

# GUJARAT TALUKDARS' ACT (BOM. VI OF 1888)—*concl.*

ss. 10, 11, 16 and 17—*Talukdari Settlement Officer—Decision—Appeal—Second appeal—Subsequent suit in a Court of competent jurisdiction—Res judicata.* Certain proceedings which had arisen out of an application to the Talukdari Settlement Officer under s. 11 of the Gujarat Talukdars' Act (Bombay Act VI of 1888) went up to the High Court in second appeal. Subsequently the same question having arisen between the same parties in a regular suit in a Court of competent jurisdiction. *Held*, that the question was not *res judicata*. A Talukdari Settlement Officer is not a Court of competent jurisdiction.

*MALUNBAI v. SURSANGJI* (1905)  
I. L. R. 30 Bom. 230

s. 12—*Representative order—Partition suit—"Known co-sharers"*—All persons interested parties—*Civil Procedure Code* (Act XIV of 1882), s. 30. It is a general rule that all persons interested ought to be made parties to a suit, however numerous they may be, so that the Court may be enabled to do complete justice by deciding and settling the rights of all persons interested and that the orders of the Court may be

to it, such as the power of the Court under a 30 of the Civil Procedure Code (Act XIV of 1882) to make a representative order. The phrase "known co-sharers" in s. 12 of the Gujarat Talukdars' Act (VI of 1888) covers all persons, who are known to have an interest in the property and is not limited to those co-sharers, whose names are recorded under the Act. A person who ought to be, but is not a party to a proceeding, is not ordinarily bound by any decree or order passed therein. *CHUDASAMA SUTSANGJI. PARTASANG KENGAR* (1904)  
I. L. R. 28 Bom. 209

s. 31.

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

I. L. R. 17 Bom. 289

I. L. R. 19 Bom. 80

I. L. R. 20 Bom. 585

See STATUTES, CONSTRUCTION OF.

I. L. R. 17 Bom. 289

cl. 2—*Sale in execution of a decree—Sale of talukdari estate—Sanction of Government.* A talukdar mortgaged his talukdari estate in

**GUJARAT TALUKDARS' ACT (BOM. VI OF 1888)—*contd.***

**s. 31—*contd.***

1883, i.e., prior to the passing of the Gujarat Talukdars' Act (Bombay Act VI of 1888) In 1893 the mortgagee sued on his mortgage and, without having the sanction of the Governor in Council, obtained an order in the District Court for the sale of the mortgaged property, that Court holding that the provisions of a 31, cl. 2, of Bombay Act VI of 1888 did not apply to the case of a mortgage effected prior to the passing of the Act. On appeal to the High Court:—*Held*, reversing the order of the District Court, that cl. 2 of s. 31 of Bombay Act VI of 1888 applied to the case, and that a sale in execution of a decree was such an alienation as came within the terms of the section and required the previous sanction of the Governor in Council. The Court, however, directed the District Judge to give the plaintiffs a reasonable time for the production of the sanction, and order that, in case they produced it, the order for sale should be affirmed, otherwise the plaintiff's application for sale should be dismissed. *Nagar Pragn v. Jivabhai*, I. L. R. 19 Bom. 80, and *Doshi Fulechand v. Mahab Dayiraj*, I. L. R. 20 Bom. 565, referred to and explained. *CHUDASAMA NAUDHABAI v. NARAIN TRIMHOVA* . I. L. R. 22 Bom. 384

**s. 31—Decree—Execution against Talukdar's estate—Consent of the Talukdar Settlement Officer—Civil Procedure Code (Act XIV of 1882), ss. 320, 323** In execution of a money-decree against a talukdar, several villages belonging to him were attached; and the darbhast was sent to the Talukdar Settlement Officer (who combined in himself the functions of Collector and Talukdar Settlement Officer for the purpose of execution of decrees against or in respect of talukdar lands) to be dealt with under ss. 320—323 of the Civil Procedure Code, 1882. That officer acting under the sections framed a scheme of management and placed the decree-holder in possession of one of the villages for a given number of years. All this was done after the death of the original judgment-debtor and after the amendment of s. 31 of the Gujarat Talukdars' Act, 1888, was made in 1905, but in ignorance of the amendment. The Talukdar Settlement Officer then took up the position that what he had done was done by him under the Civil Procedure Code, 1882; and that as he had not given his written consent to the arrangement as provided by the amended s. 31, the darbhast preferred by the decree-holder should be disposed of. *Per CHANDAVAKKAR, J.* If a person holding a certain office is empowered by law in virtue of that office to give previous consent in writing to certain proceedings or acts as a condition precedent to their legality or validity, and the person as a matter of fact gives such consent, it cannot be the less a consent previously given in writing, merely because at the time of giving it he happened to be unaware of the law empowering him to consent, or being aware of it, he thought he was consenting in virtue

**GUJARAT TALUKDARS' ACT (BOM. VI OF 1888)—*contd.***

**s. 31—*contd.***

of another office which he held. His ignorance of the law giving him the power cannot make the consent not a consent, and is no legal ground or excuse for withdrawing it after he has once given it. Where a certain act requires the concurrence of an official person, there is a presumption in favour of its due execution on the ground of the legal maxim *omnia presumuntur rite et solemniter esse acta donec probetur in contrarium*. In such cases "everything is presumed to be rightly and duly performed until the contrary is shown." That presumption can be rebutted by proof that certain forms required by law were not complied with. Where the two offices are combined in one and the same person on grounds of public convenience or expediency, his action must be referred to the exercise of his discretionary powers under both the capacities if it can be so referred. **s. 31** of the Gujarat Talukdars' Act (Bom. Act VI of 1888) requires that there must be (i) consent, (ii) it must be previous, and (iii) it must be in writing. If these conditions are fulfilled the requirements of the section are complied with. No particular form is requisite. *PURSHOTAM v. HARBHAI* (1009) I. L. R. 33 Bom. 443

**GURAV SERVICE.**

*See* STRIDHAN I. L. R. 50 Bom. 229

**H**

**HABEAS CORPUS, WRIT OF.**

*See* CUSTODY OF CHILDREN.

I. L. R. 16 Bom. 307

I. L. R. 23 Calc. 290

*See* FOREIGNERS I. L. R. 18 Bom. 638

**1** ——— **Power of High Court to issue writ into the mofussil—Habeas Corpus Act, 31 Car. II, c. 2—Reg. III of 1818—Warrant of arrest of Governor General in Council** On an application to the High Court to issue a writ of *habeas corpus* to the Superintendent (a European British subject) of the Alipore Jail: *Held*, that the Supreme Court had power to issue writs of *habeas corpus* to persons in the mofussil, and that the same power is continued to the High Court. As the person against whom the writ was applied for had acted under the written order of the Governor General in Council, the Court would not direct the writ to issue. *In re AMER KHAN* . 6 E. L. R. 392

On appeal in the same case: it was held, that, assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, it appearing that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818, the detention was legal. The detention, to be legal, need only be covered by an actually existing warrant of the Governor

**HABEAS CORPUS, WRIT OF—contd.**

General in Council in the form prescribed, without regard to the lawfulness of the arrest. *In re AMERU KHAN* 6 B. L. R. 459

2. ——— Accused becoming insane during criminal trial.—Detention in lunatic asylum after regaining sanity. An accused person, having become insane during his trial, was placed in a lunatic asylum and was detained there after becoming sane. *Held*, that such detention was not illegal, and he was not entitled to his discharge, but should be made over to the authorities for continuation of his trial. *In the matter of TIRUP* 1 Hyde 173

3. ——— Return to writ.—Custody of prisoner in jail.—Return by Sheriff. The Sheriff need not specify in his return on a *habeas corpus* that the prisoner has been continuously in his cus-

4. ——— Affidavit to convert return.—Amendment of return.—Custody of minor.—56 Geo. III, c. 100 The return to the

return to a writ of *habeas corpus* does, however, so amended. A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal conse-

choose for herself under whose protection she would remain. *QUEEN v. VAUGHAN*. *In the matter of GANESH SUNDARI DEVI* 5 B. L. R. 418

But see *KHATJA BIBI*, *In the matter of* 5 B. L. R. 557

where it was held that the return to a writ of *habeas corpus* is not necessarily conclusive, and does not preclude enquiry into the truth of the matters alleged therein, although 56 Geo III, c. 100, does not apply to this country.

5. ——— Mahomedan law.—Husband and wife.—Custody of wife. On an application for a writ of *habeas corpus* to bring before the Court M, a female infant, who was alleged to be in the unlawful custody of S, a Mahomedan, it was stated that M's father was a Jew by birth, who had embraced the Mahomedan faith many years ago, but had since returned to the Jewish persuasion; that her mother was a Mahomedan

**HABEAS CORPUS, WRIT OF—contd.**

woman; that she was detained by S on the allegation that she was married to him, but that the alleged marriage was invalid by reason of the want of consent of her father; and that she was of the age of about nine years, and had not attained puberty; and a writ was thereupon granted. The return stated that M, being then about ten years of age, was married with the consent of her mother to S; that after the marriage, M and her mother had lived with S until her mother, at the instigation of the father, had left the house of S, taking M with her; that S had thereupon instituted a charge against the father and mother for enticing away and detaining M, on which the Police Magistrate considered the marriage proved, and ordered her to be delivered into the custody of S. The High Court refused to consider the custody illegal, and ordered the writ to be quashed. *In re KHATJA BIBI*, 5 B. L. R. 557, distinguished. *In the matter of MANIM BIBI* 13 B. L. R. 160

6. ——— Constitution of Small Cause Courts.—Privilege from arrest. The Small Cause Court in the Presidency town is not a Court of co-ordinate jurisdiction with the High Court, but a Court of inferior jurisdiction and subject to the order and control of the High Court. Therefore, where on a prisoner being brought up to the High Court on a writ of *habeas corpus ad subjiciendum*, the return of the jailor stated that the prisoner was detained under a warrant of arrest issued in execution of a decree of the Small Cause Court; *Held*, that the return was not conclusive, but the prisoner was entitled to show by affidavit that he was privileged from arrest at the time he was taken into custody. *In the matter of QUATRO-LALL DEY* 1 L. R. 1 Cal. 78

7. ——— Right of appeal from order refusing to issue writ of *habeas corpus*.—Judgment not being order passed in criminal trial.—Powers of High Court hearing reference under s. 307 of the Criminal Procedure Code.—Jurisdiction to

by the Full Bench, that the provisions in cl 15 of the Letters Patent allowing an appeal apply to criminal as well as civil cases, and that an order of

as 456  
and 491 of the Code of Criminal Procedure for



**HABEAS CORPUS, WRIT OF—*concl.***

case as a Court of reference in the exercise of the jurisdiction vested in it by cl. 23 of the Letters Patent, which is co-extensive with its appellate jurisdiction. *In re HORACE LYALL*.

I. L. R. 29 Calc. 286 :  
s.c. 6 C. W. N. 254

**HACKNEY CARRIAGE.**

keeping horses for, without license—

See BENGAL MUNICIPAL ACT (III of 1884), ss 263, 273. 5 C. W. N. 331

**HACKNEY CARRIAGE ACT (BOM. ACT VI OF 1863).**

s. 6—License—License of public conveyance—Power of Commissioner of Police to grant license—Discretion to refuse license—Specific Relief Act (I of 1877), s 45—Practice. S 6 of the Bombay Act VI of 1863 empowers the Commissioner of Police in Bombay to grant licenses for public conveyances, and provides that he "may in his discretion refuse to grant any such license for any conveyance which he may consider to be insufficiently found or otherwise unfit for the conveyance of the public." Under this section the Commissioner is bound to exercise his discretion in each case. This discretion is not an absolute one, but one which is to be exercised after he has made himself acquainted with the conveyance to be licensed and has considered whether it, as an individual carriage, is fit for the conveyance of the public. Where it appeared that the Commissioner of Police had approved of a certain pattern of victoria as a public conveyance in Bombay, and refused to license victorias which did not conform to that pattern. *Held*, that his refusal on that ground was illegal, and under s 45 of the Specific Relief Act (I of 1877), he was ordered to issue the licenses asked for. *Per RUSSELL, J.* Under rule 577 of the High Court Rules, all applications under s 45 of the Specific Relief Act (I of 1877) should be made by motion, and not by petition. *GILL v. 1451 NODDS* (1903). I. L. R. 27 Bom. 307

**HANAFI SUNNIS.**

See **MAROMEDAN LAW**  
I. L. R. 34 Bom. 537

**HANDWRITING.**

See **EVIDENCE—CIVIL CASES—MISCELLA-NEOUS DOCUMENTS—HANDWRITING**  
8 B. L. R. 480

See **EVIDENCE—CRIMINAL CASES—HANDWRITING**  
1 B. L. R. A. Cr. 13  
I. L. R. 10 Calc. 1047

See **LIMITATION ACT, 1877, s 20**  
I. L. R. 26 Bom. 246

If witness deposing to the identity of document—Proof—Evidence Act (I of 1872), s 47. In proof of a document a witness

**HANDWRITING—*concl.***

stated that he was acquainted with the handwriting of the writer, but he was not asked in examination-in-chief any question, which would elicit any of the several matters indicated in the explanation to s 47 of the Indian Evidence Act (I of 1872). The witness was not cross-examined on the point. *Held*, that the law on the point is correctly stated in Taylor on Evidence to be as follows:—"A witness need not state in the first instance how he knows the handwriting since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands." It is within the power of the presiding Judge and often may be desirable to permit the opposing advocate to interfere and cross-examine so that the Court may at that stage be in a position to come to a definite conclusion, on adequate materials, as to the proof of the handwriting. *SHANKARAO v. RAMJI* (1904). I. L. R. 28 Bom. 58

**HANSARD'S PARLIAMENTARY REPORT.**

See **LABEL** I. L. R. 36 Calc. 883

**HAQ.**

See **DUTIES**, 2 Bom 80; 2nd Ed. 75  
2 Bom 253; 2nd Ed. 239  
7 Bom. A. C. 50

See **LIMITATION ACT, 1877, ART. 144**  
(1850), s 1, cl. 12)—INTEREST IN  
IMMOVABLE PROPERTY  
13 B. L. R. 254

See **PENSIONS ACT, 1871, ss 3 AND 4**  
I. L. R. 1 Bom. 203  
I. L. R. 4 Bom. 437, 443  
I. L. R. 5 Bom. 408  
I. L. R. 16 Bom. 731

See **ZAMINDAR**  
AGRA P. B. 62; Ed. 1874, 48

See **ZAMINDAR, RIGHTS OF**  
I. L. R. 23 All 200

**HARBOURING OFFENDER.**

See **PENAL CODE, s 216B**  
I. L. R. 25 All 261

**HÂT.**

See **CRIMINAL PROCEDURE CODE**  
8 C. W. N. 781

See **DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT**  
I. L. R. 5 Calc. 7

See **NUBANCE—(CRIMINAL PROCEDURE CODES)**  
I. L. R. 8 L. A. 77  
I. L. R. 3 All 787  
I. L. R. 9 Calc. 127

See **PUBLIC SERVANT**  
I. L. R. 31 Calc. 990

See **SPECIFIC RELIEF ACT (I of 1877), s 9**  
I. L. R. 29 Calc. 614

**HAT—contd.**

holding of—

See CRIMINAL PROCEDURE CODE, s. 141.  
11 C. W. N. 223

— suit on—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS  
I. L. R. 23 Calc. 851

1. — Sale of articles in—*Hat*—Right of proprietor to prohibit sale of particular articles by persons not permanent stall-keepers—*Estates—Hut*—If proprietors of a market have the right to direct that any particular kinds of things should not be sold there by a person who is not a permanent shop-keeper. *Raj Kumar Chatterjee v. Empress* (1900) 11 C. W. N. 28

2. — Mortgage—Whether the rents and profits of *hat* could be mortgaged—*Transfer of Property Act* (IV of 1882), s. 5—*General Clauses Act* (I of 1860), s. 2, cl. (3) The rents and profits derivable from a *hat* can be validly mortgaged. *Surrendra Prasad Bhattacharya v. Kedur Nath Bhattacharya*, I. L. R. 19 Cal. 8. *Bangshodhar Biswas v. Mudooli Mohiuddin*, 23 B. R. 383. *Surendra Narain Singh v. Bhai Lal Thakur*, I. L. R. 23 Cal. 752, and *Sikandar v. Bahadur*, I. L. R. 23 All. 462, referred to. *Gulam Mohiuddin Hossain v. Pirrati* (1900) I. L. R. 36 Calc. 665

**HATH-CHITTA.**

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS

I. L. R. 16 All. 157  
I. L. R. 21 I. A. 6

See LIMITATION I. L. R. 31 Calc. 1043

See LIMITATION ACT, 1877, s. 19.  
9 C. W. N. 83

— entry in—

See STAMP ACT, 1899 SECT. 11, ART. 5  
I. L. R. 4 Calc. 885  
25 W. R. 381

1. — Interpolation—Entry—*Hath chitta*, and on—Entry relating to acknowledgment of debt—Material alteration—Interpolation of entry as to interest—Document merely relied on as evidence—Effect of interpolation. Defendant had acknowledged his indebtedness to plaintiff for a certain sum found due upon an adjustment of accounts, by signing his name over an eight-anna stamp in a *hath-chitta*.

off was not suing upon any instrument, which he had fraudulently altered. The entry, on which he relied and which had not been altered or tampered with, was put in merely as an acknowledgment of defendant's liability, and there being no

**HATH-CHITTA—contd.**

question as to its genuineness, plaintiff was entitled to a decree. The authorities discriminate between cases in which the altered document is the foundation of the claim, and those in which it is only used as evidence. *Gopin Chandra Ghosh v. Dhuront, dhar Mundul*, I. L. R. 7 Cal. 616; *Christa Churlu v. Karibayya*, I. L. R. 9 Mad. 339, *Atmarani v. Umed Ram*, I. L. R. 25 Bom. 616, referred to. *Harendra Lal Roy Chowdhry v. Usha Charan Ghosh* (1905) 9 C. W. N. 895

2. — Stamp duty—Stamp Act (II of 1899), Sect. 1, sub s. cl. (b), and Art. 1 and 2—*Hath-chitta*, containing implied promise to pay interest, whether acknowledgment of debt, or agreement or memorandum of agreement—Stamp-duty. A *hath-chitta* ran as follows:—"Account E. B. (the debtor) The year 1312 B. S. Interest on this amount at the rate of one anna per month per rupee." Then followed the credit and the debit entries. *Held*, that there was an implied promise to pay interest and the document ought to be stamped as an agreement or a memorandum of agreement with an eight-anna stamp and not as an acknowledgment of a debt with a one-anna stamp only. *Udit Upadhyay v. Bhakani Das*, I. L. R. 27 All. 54, dissented from. *Luxmi Bai v. Ganesh Raghu Nath*, I. L. R. 25 Bom. 712, followed. *Koonya Mohun Das v. Krishna Chandra Shaha*, 25 B. R. 367, and *Brajendra Kumar v. Brahmanoy Chaudhuran*, I. L. R. 4 Cal. 885, distinguished. *Sambhu Chandra Depari v. Krishna Churn Depari*, I. L. R. 26 Cal. 179, referred to. *Enatullah Biswas v. Gajraddi Biswas* (1907) 11 C. W. N. 1122

**HATH-CHITTA BOOK.**

See HATH-CHITTA

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS  
1 Ind. Jur. N. S. 358**HEARING, ADJOURNMENT OF.**

See COMMISSION I. L. R. 36 Calc. 568

**HEARING OF APPEAL ON DATE OF FILING**See APPEAL, ADMISSION OF  
I. L. R. 36 Calc. 265**HEARSAY EVIDENCE.**See CRIMINAL PROCEDURE CODE, s. 436.  
I. L. R. 28 Calc. 397

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE.

See EVIDENCE—CRIMINAL CASES—HEARSAY EVIDENCE. 7 W. R. Cr. 2, 25  
2 C. W. N. 872See EVIDENCE ACT, s. 32  
I. L. R. 20 Calc. 758

See SETTLEMENT—CONSTRUCTION OF SETTLEMENT. I. L. R. 17 Cal. 458

**HABEAS CORPUS, WRIT OF—concl'd.**

case as a Court of reference in the exercise of the jurisdiction vested in it by cl. 23 of the Letters Patent, which is co-extensive with its appellate jurisdiction. *In re* HORACE LYALL

**I. L. R. 23 Calc. 288 :  
s.c. 8 C. W. N. 254**

**HACKNEY CARRIAGE.**

keeping horses for, without license—

*See* BOMBAY MUNICIPAL ACT (III OF 1884), s. 263, 273. **5 C. W. N. 331**

**HACKNEY CARRIAGE ACT (BOM. ACT VI OF 1863).**

s. 6—License—License of public conveyance—Power of Commissioner of Police to grant license—Discretion to refuse license—Specific Relief Act (I of 1877), s. 45—Practice. S 6 of the Bombay Act VI of 1863 empowers the Commissioner of Police in Bombay to grant licenses for public conveyances, and provides that he "may in his discretion refuse to grant any such license for any conveyance which he may consider to be insufficiently found or otherwise unfit for the conveyance of the public." Under this section the Commissioner is bound to exercise his discretion in each case. This discretion is not an absolute one, but one which is to be exercised after he has made himself acquainted with the conveyance to be licensed and has considered whether it, as an individual carriage, is fit for the conveyance of the public. Where it appeared that the Commissioner of Police had approved of a certain pattern of victoria as a public conveyance in Bombay, and refused to license victorias which did not conform to that pattern. *Held*, that his refusal on that ground was illegal, and under s. 45 of the Specific Relief Act.

**HANAFI SUNNIS.**

*See* MUHOMEDAN LAW  
**I. L. R. 34 Bom. 537**

**HANDWRITING.**

*See* EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—HANDWRITING.  
**8 B. L. R. 460**

*See* EVIDENCE—CRIMINAL CASES—HANDWRITING.  
**1 B. L. R. A. Cr. 13  
I. L. R. 10 Calc. 1047**

*See* LIMITATION ACT, 1877, s. 20  
**I. L. R. 28 Bom. 248**

Witness deposing to the identity of document—Proof—Evidence Act (I of 1872), s. 47. In proof of a document a witness

**HANDWRITING—concl'd**

stated that he was acquainted with the handwriting of the writer, but he was not asked in examination-in-chief any question, which would elicit any of the several matters indicated in the explanation to s. 47 of the Indian Evidence Act (I of 1872). The witness was not cross-examined on the point. *Held*, that the law on the point is correctly stated in Taylor on Evidence to be as follows:—"A witness need not state in the first instance how he knows the handwriting since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands." It is within the power of the presiding Judge and often may be desirable to permit the opposing advocate to interfere and cross-examine so that the Court may at that stage be in a position to come to a definite conclusion on adequate materials, as to the proof of the handwriting. **SHANKARRAO I. RAOJI (1901) I. L. R. 28 Bom. 58**

**HANSARD'S PARLIAMENTARY REPORT.**

*See* LABEL **I. L. R. 36 Calc. 883**

**HAQ.**

*See* DUKIES **2 Bom. 80 : 2nd Ed. 75  
2 Bom. 253 : 2nd Ed. 236  
7 Bom. A. C. 60**

*See* LIMITATION ACT, 1877, ART. 144 (1879, s. 1, cl. 12)—INTEREST IN IMMOVABLE PROPERTY.  
**13 B. L. R. 254**

*See* PENSIONS ACT, 1871, ss. 3 AND 4  
**I. L. R. 1 Bom. 203  
I. L. R. 4 Bom. 437, 443  
I. L. R. 5 Bom. 408  
I. L. R. 16 Bom. 731**

*See* ZAMINDAR.  
**Agra F. B. 63 : Ed. 1874, 48**

*See* ZAMINDAR, RIGHTS OF.  
**I. L. R. 23 All. 209**

**HARBOURING OFFENDER.**

*See* PENAL CODE, s. 216B  
**I. L. R. 25 All. 281**

**HAT.**

*See* CRIMINAL PROCEDURE CODE  
**8 C. W. N. 781**

*See* DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT.  
**I. L. R. 5 Calc. 7**

*See* NUISANCE—CRIMINAL PROCEDURE CODES.  
**I. L. R. 8 I. A. 77  
I. L. R. 3 All. 787  
I. L. R. 8 Calc. 127**

*See* PUBLIC SERVANT.  
**I. L. R. 31 Calc. 980**

*See* SPECIFIC RELIEF ACT (I OF 1877), s. 9.  
**I. L. R. 29 Calc. 614**

**HAT—concl.****holding of—**

See CRIMINAL PROCEDURE CODE, s 141.  
11 C. W. N. 223

**— suit on—**

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

I. L. R. 23 Cal. 651

1. ——— Sale of articles in—*Hat*—Right of proprietor to prohibit sale of particular articles by persons not permanent stall keepers—*Right*—Hut The proprietors of a market have the right to direct that any particular kinds of things should not be sold thereby by a person who is not a permanent shop-keeper. *Raj Kumar Chuckerberty v. Emperor* (1906) 11 C. W. N. 28

2. ——— Mortgage—Whether the rents and profits of *hat* could be mortgaged—*Transfer of Property Act* (I of 1882), s 5—*General Clauses Act* (I of 1860), s 2, cl (3) The rents and profits derivable from a *hat* can be validly mortgaged. *Surrendra Prasad Bhattacharya v. Kedar Nath Bhattacharya*, I. L. R. 19 Cal. 3, *Bangshodhur Biswas v. Mudoo Mohindur*, 21 Il. R. 315, *Surrendra Narain Sinha v. Bhair Lal Thakur*, I. L. R. 22 Cal. 752, and *Sikander v. Bahadur*, I. L. R. 27 All. 462, referred to *Gulam Mohiuddin Hossain v. Parvati* (1909) I. L. R. 36 Cal. 885

**HATH-CHITTA.**

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS

I. L. R. 18 All. 157  
L. R. 21 I. A. 8

See LIMITATION I. L. R. 31 Cal. 1043

See LIMITATION ACT, 1877, s 19  
9 C. W. N. 83

**— entry in—**

See STAMP ACT, 1899, s 11, Art 3  
I. L. R. 4 Cal. 885  
25 W. R. 361

1. ——— Interpolation—*Entry*—*Hath chitta*, suit on—*Entry* relating to acknowledgment of debt—*Material alteration*—*Interpolation* of entry as to interest—*Document* merely relied on as evidence—*Effect* of interpolation Defendant had acknowledged his indebtedness to plaintiff for a certain sum found due upon an adjustment of accounts, by signing his name over an eight-anna stamp in a *hath-chitta*. It was found that an entry relating to interest was interpolated in the *hath chitta*, at a subsequent date. In a suit to recover the amount acknowledged, plaintiff put the *hath-chitta* in evidence, but no reliance was placed on the entry relating to interest, nor was any interest asked for. *Held*, that plaintiff was not sumo upon any instrument, which he had fraudulently altered. The entry, on which he relied and which had not been altered or tampered with, was put in merely as an acknowledgment of defendant's liability, and there being no

**HATH-CHITTA—concl.**

question as to its genuineness, plaintiff was entitled to a decree. The authorities discriminate between cases in which the altered document is the foundation of the claim, and those in which it is only used as evidence. *Gogoi Chandra Ghosh v. Dhurondhar Mondal*, I. L. R. 7 Cal. 616, *Christa Churia v. Karibosappa*, I. L. R. 9 Mad. 399; *Atanrao v. Umed Ram*, I. L. R. 25 Bom. 616, referred to. *Harendra Lal Roy Chowdhury v. Uma Charan Ghosh* (1905) 8 C. W. N. 685

2. ——— Stamp duty—*Stamp Act* (II of 1899), Sec. 1, lit 5, cl (b), and Art 1 and s. 25—*Hath chitta*, containing implied promise to pay interest, whether acknowledgment of debt, or agreement or memorandum of agreement—*Stamp-duty* A *hath-chitta* ran as follows:—"According to E B (the debtor) The year 1312 B. S. Interest on this amount at the rate of one anna per month per rupee." Then followed the credit and the debit entries. *Held*, that there was an implied promise to pay interest and the document ought to be stamped as an agreement or a memorandum of agreement with an eight-anna stamp and not as an acknowledgement of a debt with a one-anna stamp only. *Udd Upadhyay v. Bhawanji Din*, I. L. R. 27 All. 84, dissented from. *Laxman Bai v. Ganesh Raghunath*, I. L. R. 25 Bom. 172, followed. *Koonya Mohan Das v. Krishna Chandra Shaha*, 25 Il. R. 361, and *Brojendra Kumar v. Brohmomoy Chaudharani*, I. L. R. 3 Cal. 885, distinguished. *Sambhu Chandra Bepari v. Krishna Chandra Bepari*, I. L. R. 26 Cal. 179, referred to. *Janatullah Biswas v. Gajarduddi Biswas* (1907) 11 C. W. N. 1122

**HATH-CHITTA BOOK.**

See HATH-CHITTA

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS  
1 Ind. Jur. N. S. 358

**HEARING, ADJOURNMENT OF.**

See COMMISSION I. L. R. 36 Cal. 566

**HEARING OF APPEAL ON DATE OF FILING**

See APPEAL, ADMISSION OF  
I. L. R. 36 Cal. 385

**HEARSAY EVIDENCE.**

See CRIMINAL PROCEDURE CODE, s 436.  
I. L. R. 28 Cal. 397

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE

See EVIDENCE—CRIMINAL CASES—HEARSAY EVIDENCE  
7 W. R. Cr. 2, 25  
2 C. W. N. 672

See EVIDENCE ACT, s 32.  
I. L. R. 20 Cal. 756

See SETTLEMENT—CONSTRUCTION OF SETTLEMENT  
I. L. R. 17 Cal. 456

**HABEAS CORPUS, WRIT OF—*concl'd.***

case as a Court of reference in the exercise of the jurisdiction vested in it by cl 28 of the Letters Patent, which is co-extensive with its appellate jurisdiction. *In re* HORACE LYALL.

**I. L. R. 28 Calc. 266 :  
S.C. 6 C. W. N. 254**

**HACKNEY CARRIAGE.**

keeping horses for, without license—

*See* BENGAL MUNICIPAL ACT (III OF 1834), ss 263, 273. **5 C. W. N. 331**

**HACKNEY CARRIAGE ACT (BOM. ACT VI OF 1863).**

**s. 6—License—***License of public conveyance—Power of Commissioner of Police to grant license—Discretion to refuse license—Specific Relief Act (I of 1877), s. 45—Practice.* **S. 6** of the Bombay Act VI of 1863 empowers the Commissioner of Police in Bombay to grant licenses for public conveyances, and provides that he "may in his discretion refuse to grant any such license for any conveyance which he may consider to be insufficiently found or otherwise unfit for the conveyance of the public." Under this section the Commissioner is bound to exercise his discretion in each case. This discretion is not an absolute one, but one which is to be exercised after he has made himself acquainted with the conveyance to be licensed and has considered whether it, as an individual carriage, is fit for the conveyance of the public. Where it appeared that the Commissioner of Police had approved of a certain pattern of victoria as a public conveyance in Bombay, and refused to license victorias which did not conform to that pattern. *Held*, that his refusal on that ground was illegal, and under s. 45 of the Specific Relief Act (I of 1877), he was ordered to issue the licenses asked for. *Per* **ROSSLIE, J.** Under rule 57.

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**HANAFI SUNNIS.**

*See* **MABONEDAN** **LAW.**  
**I. L. R. 34 Bom. 537**

**HANDWRITING.**

*See* **EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—HANDWRITING.**  
**6 B. L. R. 400**

*See* **EVIDENCE—CRIMINAL CASES—HANDWRITING.**  
**1 B. L. R. A. Cr. 13**  
**I. L. R. 10 Calc. 1047**

*See* **LIMITATION ACT, 1877, s. 20**  
**I. L. R. 26 Bom. 246**

*See* **WITNESSES—deposing to the identity of the document—Proof—Evidence Act (I of 1872), s. 47** in proof of a document a witness

**HANDWRITING—*concl'd.***

s. 47 of the Indian Evidence Act (I of 1872). The witness was not cross-examined on the point. *Held*, that the law on the point is correctly stated in Taylor on Evidence to be as follows:—"A witness need not state in the first instance how he knows the handwriting since it is the duty of the opposite party to explore on cross examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands." It is within the power of the presiding Judge and often may be desirable to permit the opposing advocate to introduce and cross-examine so that the Court may at that stage be in a position to come to a definite conclusion, on adequate materials, as to the proof of the handwriting. **SHANKARRAO L. HANJI** (1904) **I. L. R. 28 Bom. 58**

**HANSARD'S PARLIAMENTARY REPORT.**

*See* **IMPEL** **I. L. R. 36 Calc. 883**

**HAQ.**

*See* **DUTIES** **2 Bom. 80 : 2nd Ed. 75**  
**2 Bom. 253 : 2nd Ed. 239**  
**7 Bom. A. C. 50**

*See* **LIMITATION ACT, 1877, ART. 144**  
**(1859), s. 1, cl. 12—INTEREST IN**  
**IMMOVABLE PROPERTY.**  
**13 B. L. R. 254**

*See* **PENSIONS ACT, 1871, ss 3 AND 4**  
**I. L. R. 1 Bom. 203**  
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*See* **ZAMINDAR**  
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*See* **ZAMINDAR, RIGHTS OF.**  
**I. L. R. 23 All. 209**

**HARBOURING OFFENDER.**

*See* **PENAL CODE, s. 216B**  
**I. L. R. 25 All. 261**

**HAT.**

*See* **CRIMINAL PROCEDURE CODE**  
**8 C. W. N. 781**

*See* **DECLARATORY DECREE, SUIT FOR—**  
**ORDERS OF CRIMINAL COURT**  
**I. L. R. 5 Calc. 7**

*See* **NUISANCE—CRIMINAL PROCEDURE**  
**CODES**  
**I. L. R. 8 I. A. 77**  
**I. L. R. 3 All. 797**  
**I. L. R. 9 Calc. 127**

*See* **PUBLIC SERVANT**  
**I. L. R. 31 Calc. 890**

*See* **SPECIFIC RELIEF ACT (I of 1877), s. 9.**  
**I. L. R. 29 Calc. 614**

**HÂT—concl'd**

holding of—

See CRIMINAL PROCEDURE CODE, s. 141.  
11 C. W. N. 223

— suit on—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

I. L. R. 23 Calc. 651

1. — Sale of articles in—*Hât*—Right of proprietor to prohibit sale of particular articles by persons not permanent stall keepers—*Riching—Hurl*—The proprietors of a market have the right to direct that any particular kinds of things should not be sold there by a person who is not a permanent shop-keeper. *B. J. KUMAR (BUCKERBURY) v. EMPEROE* (1906) 11 C. W. N. 28

2. — Mortgage—Whether the rents and profits of *hât* could be mortgaged—*Transfer of Property Act* (11 of 1882), s. 52—*General Clauses Act* (1 of 1860), s. 2, cl. (5) The rents and profits derivable from a *hât* can be validly mortgaged. *Surrendra Prasad Bhattacharya v. Kidar Nath Bhattacharya*, 1 L. R. 19 Calc. v. *Bangshodhar Bhowmik v. Mudtoo Mohiddar*, 21 B. R. 353, *Surrendra Narain Singh v. Dhai Lal Tanker*, 1 L. R. 22 Calc. 552, and *Sikander v. Bahadur*, 1 L. R. 27 All. 462, referred to *GULAM MOHIEDDIN HUSSEIN v. PARBATI* (1907) 1 L. R. 36 Calc. 665

**HATH-CHITTA.**

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS

I. L. R. 16 All. 157

L. R. 21 L. A. 6

See LIMITATION 1 L. R. 31 Calc. 1043

See LIMITATION ACT, 1877, s. 19

9 C. W. N. 83

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25 W. R. 361

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**HATH-CHITTA—concl'd**

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2. — Stamp-duty—Stamp Act (11 of 1899), Sec. 1, Art. 5, cl. (b), and Art. 1 and 2—*Hath-chitta*, containing implied promise to pay interest, whether acknowledgment of debt, or agreement or memorandum of agreement—Stamp-duty A *hath-chitta* ran as follows:—"Account E B (the debtor) The year 1312 B S. Interest on this amount at the rate of one anna per month per rupee." Then followed the credit and the debit entries. Held, that there was an implied promise to pay interest and the document ought to be stamped as an agreement or a memorandum of agreement with an eight-anna stamp and not as an acknowledgment of a debt with a one-anna stamp only. *Udit Upadhyaya v. Bhawanji Din*, 1 L. R. 27 All. 84, dissentient. *Luxum Bai v. Ganesh Raghu Nath*, 1 L. R. 25 Bom. 522, followed. *Koonji Mohun Doss v. Krishna Chandra Shaha*, 25 B. R. 361, and *Brojendra Kumar v. Brohmanmoy Chaudhary*, 1 L. R. 4 Calc. 555, distinguished. *Sambhu Chandra Bepari v. Krishna Churn Bepari*, 1 L. R. 26 Calc. 179, referred to. *ENATULLAH BISWAS v. GAJARUDDI BISWAS* (1907) 11 C. W. N. 1122

**HATH-CHITTA BOOK.**

See HATH-CHITTA

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS

1 Ind. Jur. N. S. 356

**HEARING, ADJOURNMENT OF.**

See COMMISSION 1 L. R. 36 Calc. 566

**HEARING OF APPEAL ON DATE OF FILING**

See APPEAL, ADMISSION OF

1 L. R. 36 Calc. 385

**HEARSAY EVIDENCE.**

See CRIMINAL PROCEDURE CODE, s. 436.

1 L. R. 26 Calc. 397

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE

See EVIDENCE—CRIMINAL CASES—HEARSAY EVIDENCE . 7 W. R. Cr. 2, 25  
2 C. W. N. 672

See EVIDENCE ACT, s. 32.

1 L. R. 20 Calc. 758

See SETTLEMENT—CONSTRUCTION OF SETTLEMENT . 1 L. R. 17 Calc. 458

**HEARSAY EVIDENCE—concl'd.**

See TRANSFER OF PROPERTY ACT, s. 107.

I. L. R. 23 Calc. 752

*Evidence Act (I of 1872), s. 6, Illus. (a)—Murder—Res gesta—Statement of eye-witness shortly after occurrence, if relevant—Same transaction—Interval of time—Physical and mental condition of person making statement Hearsay evidence of the statement of a by-stander as to an occurrence would be admissible in evidence as a part of the res gesta only if it was made at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction had terminated when the statement was made, it would be irrelevant. In this case a chowkidar deposed that one G ran up to him and stated that he had seen the accused persons murder his mistress whom he had met by assignation and that he had run away from the place of occurrence to save his life. What interval of time passed between the murder and the alleged statement did not appear. G seemed to be quite sensible when he made the statement and the condition of his mind did not appear to be such as to exclude the supposition of his fabricating evidence or being tutored. Held, that the statement was inadmissible in evidence. Sarat Dhoobai's Case, I. L. R. 10 Calc 302, distinguished. CHAIN MARTO v. EMBEROR (1900) 11 C. W. N. 266*

**HEIGHT LIMIT.**

See CALCUTTA MUNICIPAL ACT.

13 C. W. N. 74

**HEIR.**

See EVIDENCE I. L. R. 31 Calc. 671

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—  
ALIENATION FOR LEGAL NECESSITY  
OR WITH CONSENT OF HEIRS OR  
REVERSIONERS;

INHERITANCE—SPECIAL HEIRS.

— bequest to—

See MAHOMEDAN LAW—INHERITANCE.

I. L. R. 30 Calc. 663

**HEIR OF DECEASED DEBTOR.**

See MAHOMEDAN LAW—DEBTS.

See REPRESENTATIVE OF DECEASED PERSON.

**HEREDITARY ALLOWANCE.**

See PENSIONS ACT, s. 4.

See REGISTRATION ACT, s. 17.

I. L. R. 18 Bom. 82

I. L. R. 21 Bom. 367

See SMALL CAUSE COURT, MORUSSUT—

JURISDICTION—IMMOVABLE PROPERTY.

I. L. R. 21 Bom. 387

**HEREDITARY OFFICE.**

See GHATWALI TENURE.

See HEREDITARY OFFICES ACT.

See JURISDICTION OF CIVIL COURT—  
OFFICES, RIGHT TO.See MADRAS REGULATION XXIX OF 1802,  
s. 7 I. L. R. 18 Mad. 420

See MAHOMEDAN LAW—CUSTOM.

I. L. R. 1 Bom. 633

See MAHOMEDAN LAW—KAZI.

I. L. R. 1 Bom. 633

I. L. R. 3 Bom. 72

I. L. R. 18 Bom. 103

I. L. R. 19 Bom. 250

See VATANDAR

— land attached to—

See HINDU LAW I. L. R. 36 Calc. 590

— suit for—

See ACCOUNT, SUIT FOR.

I. L. R. 1 Mad. 343

See LIMITATION ACT, 1877, s. 23 (1871,  
s. 20) I. L. R. 1 Mad. 343See LIMITATION ACT, 1877, ART. 124  
(1871, ART. 123).See RIGHT OF SUIT—OFFICE OR ENROLL-  
MENT.

See SERVICE TENURE

1. — Grant by Government in  
inam—Bom. Reg. V of 1827, s. 4—Limitation.  
The grant of a village in inam by the Government  
cannot deprive the meymoodars of their hereditary  
rights To entitle the person in possession to the

quired. Claims to recover arrears of such dues are  
limited by s. 4, Regulation V of 1827 of the Bombay  
Code, to 12 years. BLEMA SUNKUR v. JAMASIEE  
SHAPORIEE

5 W. R. P. C. 121: 2 Mac. I. A. 23

2. — Hereditary gomastah ap-

had been appointed by the ruling power of the day,  
from which authority also the deshmukhi had been  
derived. It was also shown that the hereditary  
gomastah's title was independent of the deshmukhi,  
and that the latter could not displace him.  
No change had been made under the British rule  
from what had prevailed as to this under the Peish-  
wa; but such evidence as there was, accorded with

**HEREDITARY OFFICE—*concl.***

the above. *Held*, that the right of the gomastah to act as such and to receive the payments had either been granted or else had been so recognized and confirmed by an authority binding on the desh-

upon  
right,  
himself  
from  
Triv-

BAK NARAYAN LAKSHMI . I. L. R. 19 I. A. 39  
L. R. 19 I. A. 39

3. ———— **Form of suit.** Two persons joined in a suit, and claimed the offices of karnam and shroff as being hereditary. The offices formed portion of a permanently-settled estate of which first defendant was proprietor. The second defendant was alleged to have possession of the offices, the second plaintiff, who had the titular right to

*Held*, that it  
have been  
no doubt  
that it was

properly brought for possession. SADASIVA PILLAI  
v. KALAPPA MUDALIAR (1900)

I. L. R. 24 Mad. 39

**HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874).**

See BOMBAY REVENUE JURISDICTION ACT,  
s 4 . . . I. L. R. 18 Bom. 319

See HEREDITARY OFFICE

See HINDU LAW—ADOPTION—WHO MAY  
OR MAY NOT BE ADOPTED

I. L. R. 27 Bom. 75

See JURISDICTION OF CIVIL COURT—  
OFFICES, RIGHT TO.

See SERVICE TENURE 3 Bom. A. C. 128

5 Bom. A. C. 107, 203

8 Bom. A. C. 83

12 Bom. 232

I. L. R. 15 Bom. 13

1. ———— **Alienation of vatan—Bom Reg. XVI of 1827, s 20** A mortgage by a vatandar of vatan property, executed at a time when

**HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)  
—*concl.***

In Dom. Reg. XVI of 1827 s 20—*concl.*

cognized vatandar in possession in 1805. She mortgaged two villages of the vatan to the father of the respondents. The latter two, after litigation, retained possession in 1886, by order of the Commissioner in the Revenue Department, until there should be a decree of Court to the contrary. The widow, according to the judgment below, had held the vatan adversely to her late husband's son, the plaintiff, who was born in 1818 of her co-widow, and he was the true heir, entitled from his birth. But the High Court gave effect to the adverse possession of the widow for the period of limitation supporting the mortgage. The plaintiff was the sole heir of the widow, his step-mother, who died in 1877. The appellant contended that the vatan, as inherited by him, was free from the mortgage encumbrance, and that he was entitled to possession. *Held*, reversing the decree of the High Court, that the mortgage was void against the heir, and had no force beyond the life of the vatandar who had executed it. The decree of the Subordinate Judge to that effect and for possession was maintained. PADAPA v. SWAMURAO SHANIVAS

I. L. R. 24 Bom. 558

L. R. 27 I. A. 88

4 C. W. N. 517

3. ———— **Dom. Reg. XVI of 1827, s 20—Adverse possession.** A sale by a vatandar of vatan property, executed at a time when Regulation XVI of 1827 was still in force, was in its inception void against the heir of the vatandar, nor did it become in any way the more valid against such heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874. Adverse possession only begins to run against the heir from the time when he is entitled to succeed to the possession of the vatan property, i.e., from the date of the death of the vatandar. RAYLOKHAV v. BALVANTRAY VENKATPISH

I. L. R. 5 Bom. 437

4. ———— **Dom. Reg. XVI of 1827—Mortgage of vatan property—Mortgagor's**

2. ———— **Vatan—Restriction upon alienation by a vatandar—Mortgage invalid to what extent—Bom. Reg. XVI of 1827.** An alienation by way of mortgage of vatan property, or any part of it, executed when Regulation

of the vatan on the 10th October of the same year. On his (defendant's) death in 1869 his son succeeded to the estate and obtained a removal of the attachment before 1874. The plaintiff thereon applied for a fresh attachment of the property. *Held*, that, the mortgagor having only a life-interest, the vatan came into the hands of his son free of the mortgage. JAGJIVANDAS JAYERDAS v. IMDAD ALI

I. L. R. 6 Bom. 211



# HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)—contd.

5. ————— Jurisdiction ———  
*Tatandar kulkarni and ranyat—Perquisites, right to.* Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a *tatandar kulkarni* is entitled to receive perquisites from his *ranyat*. *Vishnu Hari Kulkarni v. Ganu Trimbak*

I. L. R. 12 Bom. 278

1. ————— s. 4—Hereditary Offices Act Amendment Act (Bombay Act V of 1896), s. 2—  
 "Hereditary office"—Village *satir*—Bombay Government Resolution No 512 of 1892. The duties with which s. 4 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) deals are confined to duties in which Government, as being responsible for the administration of the country, is directly interested. The definition of "hereditary office" does not extend to the duties of a carpenter, which, though useful to the village community, are not matters with which Government has any direct concern. *Held*, therefore, that the village *satir* (carpenter) does not hold an "hereditary office" within the meaning of that section. *Nasu v. Sitaram*, I. L. R. 21 Bom. 733

2. ————— and s. 5—*Tatandar*—Persons having an "hereditary interest"—Hereditary Offices Act Amendment Act (Bombay Act V of 1896), s. 2. *G*, by his will, devised all his property, which was *vatan* property, to *V*, a distant cousin. The plaintiff, as the nearest heir of *G*, claimed the property, contending that *V* had not an "hereditary interest" in the *vatan* within the meaning of s. 4 of the Bombay Hereditary Offices Act, that he was not a *tatandar* capable of taking under the will of *G* within the meaning of s. 5, and that the will of *G* was therefore inoperative. *Held*, that *V* had not "an hereditary interest" in the *vatan*, and that the devise to him was therefore inoperative. The expression in s. 4, "persons having an hereditary interest in a *vatan*," means persons having a present interest of an hereditary character in the *vatan*, and does not include persons who may have a *spice* succession, however remote. "Hereditary interest" means an interest acquired by inheritance as distinguished from an interest acquired by purchase, gift, or other modes of acquisition. *Chinnava v. Brinnigauda*

I. L. R. 21 Bom. 787

3. ————— Daughter of a *tatandar*, status of, during her father's lifetime—Bombay Act III of 1874, s. 5—Hereditary Offices Act Amendment Act (Bombay Act V of 1896). The daughter of a *Hindu* *tatandar* is not during the lifetime of her father a *tatandar* of the same *vatan* within the meaning of s. 5 of Bombay Act III of 1874, as amended by Bombay Act V of 1896. *Muktarai v. Antaji*

I. L. R. 23 Bom. 715

4. ————— Hereditary Offices Act Amendment Act (Bombay Act V of 1896), s. 2—  
 Widow—Rights of succession of a widow other than the widow of the last holder—Adoption by

# HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)—contd.

s. 4—contd

*such widow—Collateral male member—Vatan*  
 Under s. 2 of Bombay Act V of 1896, if there is a male member of a *vatan* family, the succession goes to him in preference to a female member, and on his death the succession will go to his heirs with a similar provision. Where there is a male member qualified to inherit *vatan* property, he inherits, and a widow other than the widow of the last male member acquires no right to the *vatan* by succession or inheritance, and consequently she cannot create, transfer or revive any rights by adoption. A *kulkarni* *vatan* was owned by two brothers, *A* and *B*. *B* died first and *A* became the last male holder. *A* died in 1881, leaving a widow who held the *vatan* until her death in 1892. On her death, *B*'s widow took a son in adoption. The adopted son filed a suit to establish his title to the *vatan* against the defendant, who was a male member of the family and had been registered by the revenue authorities as the *tatandar* on the death of *A*'s widow. *Held*, that the plaintiff could not succeed, the defendant having a better title to the *vatan* than the plaintiff or his adoptive mother under s. 2 of Bombay Act V of 1896. *Krishnaraj Trimbak v. Tarawa*, I. L. R. 24 Bom. 494

5. ————— ss. 4 and 5—*Vatan*—*Vatan* in *Guzerat*—Service commutation settlement—Inheritance—Succession to a *vatan*—Succession through females—Bombay Act III of 1874, s. 5, as amended by ss. 1 and 2 of Bombay Act V of 1896—Attention of *vatan*. A *vatan* in *Guzerat* does not cease to be *vatan* property, as defined by s. 4 of Bombay Act III of 1874, merely because a service commutation settlement has been effected. Such a settlement does not change the nature of the property simply because service is not demanded. As far as the power of alienation is concerned, if it is granted by the settlement it cannot be taken away by the change introduced in s. 5 of Bombay Act III of 1874 by s. 1 of Bombay Act V of 1896. S. 2 of Bombay Act V of 1896 (which amends s. 5 of Bombay Act III of 1874) does not

remove the power of alienation in such *vatan* had ceased to be demanded. One *Namatrai* was a *tatandar* in *Guzerat*. He died in 1841, leaving behind him a widow, a daughter, and a separated brother. His property consisted of certain *pasata* lands and a cash allowance attached to his *vatan*. In 1868 the Government effected a service settlement with the *tatandar*, by which the *vatan* property was continued to *Namatrai*'s heirs, free from all liability to render any services in connection with the *vatan*. In 1880 *Namatrai*'s widow died, her daughter having predeceased her. Thereupon plaintiffs, who were the sons of *Namatrai*'s daughter, sued to establish their title as heirs to the *vatan* property as against the defendants

HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)—*contd*s. 4—*contd.*

who were the son's sons of Niamatra's separated brother. *Held*, that, under s. 2 of Bombay Act V of 1886, plaintiffs, as claiming through a female, were not entitled to Niamatra's vatan property in preference to the defendants, who were male members of the deceased vataadar's family. *RAJADAV v. NARSILAL* (1900). I. L. R. 25 Bom. 470

## s. 5.

## See ESTOPPEL—ESTOPPEL BY CONDUCT.

I. L. R. 14 Bom. 404

1. ——— *Vatandars—*

*Alienation to persons not vatandar—Validity of grant. Quære* Whether s. 5 of the Vatandars Act, III of 1874, makes an alienation to a person outside the vatandar family void as between the grantor and grantee. *NARAYAN KHANDU KULKARNI v. KALASANDA BIRDAR PATIL*

I. L. R. 14 Bom. 404

2. ——— ss. 5, 7, 10, 13—*Officiator's remuneration—Civil process—Power of Collector.* The power of the Collector to procure the removal of the process of the Civil Court, or to get the Court to set aside a sale under s. 13 of the Bombay Hereditary Offices Act, No III of 1874, extends to any vatan, or any part thereof, or any of the profits thereof, assigned or not assigned as remuneration of an officiator, but the exemption from liability to the process of the Civil Court extends only to such vatan property or profits thereof, as have been assigned as remuneration of an officiator. *NILKANTH ANANDI KAROUTI v. BASLINGA*

I. L. R. 9 Bom. 104

s. 7—*Agreement for payment by deputy to the vatandar out of the cash allowance for procuring the deputy's nomination—Hereditary Offices (Vatandars) Act (Bombay Act III of 1874), s. 23.* An agreement between the vatandar and a deputy nominated by him for the payment by the latter to the former, in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office is not legal, being contrary to the spirit of s. 7 read with s. 23 of the Hereditary Offices Act (Bombay Act III of 1874). *APPA v. SADDU*. I. L. R. 18 Bom. 752

## s. 8.

## See LIMITATION ACT, 1877, SCH II, ART 62

I. L. R. 7 Bom. 181

I. L. R. 8 Bom. 426

I. L. R. 9 Bom. 111

I. L. R. 10 Bom. 665

## s. 9.

## See MAHOMEDAN LAW—KAZI

I. L. R. 18 Bom. 103

I. L. R. 19 Bom. 250

1. ——— ss. 9, 10—*Effect of certificate under s. 10.* The plaintiff sued as purchaser at a Court sale of the interest of defendant No. 1, to

HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)—*contd*s. 9—*contd.*

redeem and recover possession of the land in dispute, alleging that it had been mortgaged by defendant No. 1 to defendant No. 2. Defendant No. 1 denied he had, part of aving a the suit,

the estate was administered by the Collector. On the application of the minor's personal guardians, the Collector was joined as a party. The Collector had also certified to the Court, under s. 10 of Act III of 1874, that the land formed part of a vatan. The District Judge rejected the plaintiff's claim and ordered the sale to be set aside. On appeal by the plaintiff to the High Court: *Held*, following *Shankar Gopal v. Babaji Lalshman*, I. L. R. 12 Bom. 550, that the Judge ought not to have acted on the certificate by setting the sale aside. Ss. 9 and 10 of Act III of 1874 were not applicable to the case, as the first defendant, whose interest was purchased by the plaintiff, was not a vatandar. *BHAU BALAPA v. NANA*. I. L. R. 18 Bom. 343

2. ——— ss. 9, 23 and 84—*Talwar—Shetsanadi—Lease—Alienation of talwar lands—Bom Reg XVI of 1827, s. 19 and 20—Act XI of 1843, s. 15.* In 1860 the defendant took a

entitled exclusively to the emoluments attached to it. When the Vatan Act (Bombay Act III of 1874) came into operation, no order as regards remuneration was made, but the plaintiff, subject to objection, was appointed to officiate. The plaintiff thereupon sued to eject the defendant. *Held*, that the lease to the defendant as a partial alienation was invalid under Regulation XVI of 1827, s. 20, that the invalidity thereof was not removed by the Collector not being called upon to declare it to be null and void under s. 9, cl. 1, of Bombay Act III of 1874; and that the plaintiff as life-owner was entitled to possession. *PURSHOTTAM TALWAR v. MUDKANGAOVADA SHIDANYADA*

I. L. R. 7 Bom. 420

## s. 10.

## See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

I. L. R. 9 Bom. 328

## See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622.

I. L. R. 8 Bom. 284

1. ——— *Certificate of Collector—Jurisdiction of Civil Court.* A certificate under s. 10 of Bombay Act III of 1874, stating that a vatan has been assigned to an officiator as his remuneration and granted by the Collector to save a vatan from attachment before judgment does not exclude the jurisdiction of the Civil Court to

HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)—*contd.*S. 10—*contd.*

2. *Certificate of Collector—Removal of attachment made by Civil Court.* The applicant held a decree, dated the 28th June 1861, against Ismail Ali Khan and another for Rs. 956-13-7, of which he had already recovered Rs. 742-4-5. On the 24th December 1866, he ap-

his decree, on the 7th February 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was

1874. The certificate referred to the profits of the

moved the attachment and dismissed the application on the 11th January 1879. The order was affirmed in appeal. On an application to the High Court under its extraordinary jurisdiction: *Held*, that the Collector was authorized, by the first part of s. 10 of the Vatanara Act, to inform the

Act, and which had not been assigned, fell within the latter part of the section. The High Court accordingly dismissed the application with costs. *JAGJIVAN v ISMAIL ALI KHAN*

I. I. R. 4 Bom. 426

3. *Vatan, alienation of—Certificate of Collector—Bom. Reg. XVI of 1827, s. 20* Previously to the year A.D. 1818, R, the great-grandfather of the plaintiff, settled accounts with Rudrapa, the father of the defendant, in respect of debts due by himself (R) and his ancestors. The amount found due to Rudrapa was Rs. 20,000, and, as security for this sum, R, by deed, dated A.D. 1812, mortgaged to Rudrapa certain vatan lands, and also an annual allowance of Rs. 200 received by him (R) on account of a *rusum*. Under this deed these properties were to be held by Rudrapa in lieu of interest until repayment of the principal of Rs. 20,000. A dispute subsequently arose as to the amount of the *rusum*, and J, the son and successor of R, the mortgagor, having by attachment interrupted Rudrapa's possession (as mortgagee) of the vatan lands, he (Rudrapa) presented a peti-

HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. ACT III OF 1874)—*contd.*. 10—*contd.*

tion of complaint to the Sub-Collector of B, who issued an order, on the 10th November 1830, to the Mamlatdar directing him to require the parties to refer their disputes to arbitration. The arbitration took place, and on the 20th August 1831 both parties executed a *rajnama* (exhibit No. 20), which set forth the terms of settlement agreed upon. Rudrapa was to hold the mortgaged lands and *rusum* (annual allowance) for fifty years. At the end of that period the principal debt and all interest thereon was to be deemed to have been paid off, and the lands and *rusum* were to be surrendered to the mortgagor or his heir. Under this *rajnama*, the mortgagee held uninterrupted possession of the mortgaged property until A.D. 1872. A, one of the signatories of the *rajnama*, died in 1843, and was succeeded as vatanar by R, and R again was succeeded by the present plaintiff, who in 1872

Judge held that the mortgage of A.D. 1818 was genuine, but he agreed with the Subordinate Judge in regarding the *rajnama* as a fresh alienation of vatan property, and therefore invalid as against

that the *rajnama* was not a fresh alienation of vatan lands, but a compromise of a dispute in regard to an alienation by way of mortgage in A.D. 1818 of vatan lands, and that the *rajnama* was therefore valid, and ought to be enforced, and was not affected by Regulation XVI of 1827, s. 20. Previously to this decree of the High Court, the

1874, stating that the property, the subject of the application, formed part of a vatan. On appeal, the Assistant Judge, affirmed the order of the Subordinate Judge, being of opinion that the receipt of the certificate by the Subordinate Judge compelled him to refrain from giving effect to the

HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. III OF 1874)—*contd.*s. 10—*contd.*

decree of the High Court. Thereupon, the defendant filed a special appeal in the High Court. *Held*, that the certificate of the Collector was lawfully issued, and that the Subordinate Judge

the Collector is authorized to issue under a 10 of Bombay Act III of 1874 should be sent to the Court by whose decree or order the vatan is affected, in the manner mentioned in the section. The Collector's certificate in this case, therefore, had not been issued to the proper Court. The restitution of the mortgaged property to the defendant in whose possession it was at the commencement of this suit in 1872, and until the execution of the erroneous decree of the Court of first instance in 1873, was not such a passing into the ownership or beneficial possession of any person not a vatanadar of the same vatan as is meant by s. 10 of Bombay Act III of 1874. The alienation of the vatan property to Rudrapa having in 1831 received the sanction of the authorized officer of Government, s. 10 of Bombay Act

the execution of the erroneous decree of a subordinate Court *RACHAPA v. AMINGOYA*

I. L. R. 5 Bom. 283

4. — *Execution of decree—Transfer of vatan property from one not vatanadar—Collector's certificate prohibiting delivery of decreed property—Procedure.* The plaintiff and his brother, who were vatanadar deshpandes, sued to redeem a certain property alleged to have been mortgaged by their undivided paternal aunt to the defendant. The defendant objected on the ground that the plaintiffs were not the heirs of the widow, who had left a daughter. The daughter was joined as co-plaintiff, and a decree passed in her favour and that decree was confirmed by the Special Judge. The plaintiffs, being dissatisfied

HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. III OF 1874)—*contd.*s. 10—*contd.*

case to the High Court. *Held*, that the Court should not act upon the certificate of the Collector. The effect of the decree being to transfer the pro-

5. — *Certificate issued by Collector more than twelve years after death of last holder—Court bound to act on certificate—Limitation.*

heir alleging that the lands were vatan, applied to the Collector for a certificate under a 10 of the Vatan-dars Act (Bombay Act III of 1874). The Collector referred the matter to his subordinate for inquiry, and the certificate was not issued until the 13th March 1890, that is, more than twelve years after the death of the last holder *N. Held*, that, although more than twelve years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by s. 10 of the Vatan-dars Act. *CHANDRA NATH v. BAHINABAI*

I. L. R. 17 Bom. 382

6. — *Hereditary Offices Amendment Act (Bombay Act V of 1886), s. 1—Deshamukhi vatan—Commutation of service—Gordon Settlement.* S. 10 of the Hereditary Offices Act (Bombay Act III of 1874) applies to deshamukhi service vatan with respect to which the liability to serve has been commuted under the Gordon Settlement. *BHAU v. RAMCHANDRARAO*

I. L. R. 20 Bom. 423

7. — *Redemption, suit for—Possession obtained by plaintiff under decree—Decree reversed on appeal—Collector's certificate under the Hereditary Offices Act (Bombay Act III of 1874).* Where an erroneous decree of the District Court is reversed by the High Court and the decree of the original Court restored, the successful

of 1874. *Rachapa v. Amingoya*, I. L. R. 5 Bom. 332, referred to. *VENKATESH NARASIMHA v. GOVINDARAO*

I. L. R. 21 Bom. 55

8. — *Share of vatan—Vatan divided into tokshams or shares—Execution of decree by holder of one share against holder of other—Collector's certificate based on a misunderstanding of word "vatan."* There cannot be two separate vatans in connection with one hereditary office therefore, when a vatan is broken up into shares or

# HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. III OF 1874)—*contd*

## s. 10—*concl'd.*

takshims, those takshims do not constitute separate vatans. Where the Collector's certificate under s. 10 of the Vatan Act was based on a mis-

s. 11, 12, 22 Bom. Civ

9. — s. 10 and ss. 25 and 56—*Representative vatandar—Attachment—Jurisdiction of Revenue and Civil Courts—Res judicata* A decree of the District Court at Solapur, made in 1863, declared the plaintiff to be an hereditary deputy vatandar of a certain deshpande vatan vested in the defendants as hereditary vatandars, and as such deputy entitled to receive a certain sum annually out of the income of the vatan. The plaintiff received moneys from time to time under his

ment of a certain amount belonging to the vatan for arrears due to him under his decree. The money was accordingly attached. Subsequently the Collector issued a certificate to the Subordinate Judge, who had attached it for the removal of the attachment under Bombay Act III of 1874, s. 10. The Subordinate Judge accordingly ordered it to be removed, and his order was affirmed by the Assist-

lishing his right to be an hereditary deputy deshpande, he was entitled to the benefit of s. 56 of Bombay Act III of 1874. His status as hereditary deputy vatandar was a fact which neither a Revenue nor a Civil Court could properly ignore or re-open. It was *res judicata* GOPAL HANMANT GUMASTE v. NAKHARAN GOVIND I. L. R. 4 Bom. 254

s. 13—Office of kazi—*Hereditary service vatan—Rozina, allowance, its liability to attachment and sale in execution of a decree—Pensions Act (XXIII of 1871), s. 4.* The office of kazi is not a hereditary service vatan under Bombay Act III of 1874. Plaintiff obtained a money-decree against H, and in execution sought to attach and sell a decree obtained by H against M, which entitled H to receive annually a certain portion of the rozina allowance paid by Government to M as kazi. H contended that the rozina allowance was paid to M and his family for service as kazi, and that therefore it was not liable to the process of a Civil Court under s. 13 of Bombay Act III of 1874. This contention was upheld by both the lower courts. *Held*, that, as the kazi's office was not a hereditary service vatan, plaintiff's rights to attach the decree obtained by H against M was not barred

# HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. III OF 1874)—*contd.*

## s. 13—*concl'd.*

by s. 13 of Bombay Act III of 1874. *Held*, also,

as the decree sought to be attached was passed before the Pensions Act (XXIII of 1871) came into force, plaintiff's dakhast was not barred for want of a certificate under s. 4 of the Act. DEARANDAS SAMBRUDAS v. HAFASJI I. L. R. 19 Bom. 250

See BABA KAKAJI SHET SHIMP v. NASSAR-UDDIN I. L. R. 18 Bom. 103

s. 17—*Vatan—Collector's power to determine the amount of payments of a fluctuating character—Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (c)—Right of suit—Jurisdiction of Revenue Court—Jurisdiction of Civil Court.* The payments referred to in s. 17 of Bombay Act III of 1874 are those mentioned in s. 4, namely, "customary fees or perquisites in money or in kind, whether at fixed times or otherwise." It is the commutation of these customary and fluctuating payments that is provided for by ss 17 to 21. But the Collector has no power under s. 17 to impose new burdens on the land-owner in cases where, the payment being constant already, there is nothing to determine. Plaintiff was the inamdar of a certain village. Defendant No. 3 was the vatandar hulkarni of the village. He enjoyed, for the performance of his duties, some inam lands and a cash allowance of Rs 5 paid annually by the inamdar. In 1884, defendant No. 3 having failed to perform the service in person or by deputy, the

increased his remuneration according to the scale fixed for Government villages known as the Wingate scale, and ordered plaintiff to pay the increased remuneration, so as to make up the amount due under that scale. On 20th September 1890, the Collector recovered the sum of Rs 171 from the plaintiff by attachment of his property. The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied. The defendant pleaded that the Collector, having determined the amount of de-

I. L. R. 10 Bom. 101

# HEREDITARY OFFICES ACT (XI OF 1843 AND BOM. III OF 1874)—concl'd.

s. 18.—*Vatan*—*Suit for a declaration of right to a share in a vatan, and to participate in the emoluments of the vatan—Jurisdiction of the Civil Court to entertain such suit—Jurisdiction.* Where the plaintiffs sued to obtain a declaration that they were entitled to a third share in a *Mahārki vatan*, and to participate in the profits of the *vatan*: *Held*, that, under s. 18 of Bombay Act III of 1874, the Civil Court had no jurisdiction to make the declaration sought. *Parsha v. Lagmya*, I. L. R. 16 Bom. 83, followed. *Bhiva v. Vithva* (1900) . . . I. L. R. 25 Bom. 188

ss. 33-35.

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—SANCTION.  
I. L. R. 1 Bom. 807

## HEREDITARY OFFICES AMENDMENT ACT (BOM V OF 1888).

See HEREDITARY OFFICES ACT.

ss. 1, 2—

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), ss. 4, 5.  
I. L. R. 25 Bom. 470

s. 2.

See HINDU LAW—REVERSIONERS—POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—WHO MAY SUE I. L. R. 19 Bom. 814  
See MAHOMEDAN LAW—INHERITANCE.  
I. L. R. 21 Bom. 118

## HEREDITARY OFFICES REGULATION (MADRAS REGULATION VI OF 1831).

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

I. L. R. 8 Mad. 334  
I. L. R. 13 Mad. 41  
I. L. R. 17 Mad. 302  
I. L. R. 21 Mad. 134

See LIMITATION ACT, 1877, s. 28  
I. L. R. 21 Mad. 134

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . . . I. L. R. 8 Mad. 249

See SMALL CAUSE COURT, MUFUSSIL—JURISDICTION—DAMAGES.  
5 Mad. 393

s. 3.—*Suit for emoluments attached to office of Iarnam in unsettled districts.* A suit for the emoluments attached to the office of *Iarnam* in an unsettled district is barred by the operation of s. 3, Regulation VI of 1831. *Collector of Kistna v. Kalayaunta Chinnamraou*  
5 Mad. 380

# HEREDITARY SHEBAITSHIP.

See HINDU LAW—SHEBAIT.

I. L. R. 35 Calc. 228

## HEREDITARY TENURE.

See CHATWALI TENURE.

See GRANT.

See HEREDITARY OFFICE.

See HEREDITARY OFFICES ACT.

See LEASE—CONSTRUCTION.

See SERVICE TENURE.

See UNSETTLED POLLIAM.

14 B. L. R. P. C. 115  
L. R. 1 I. A. 268, 282

## HERITABILITY.

See NON-OCCUPANCY RAIYAT.

I. L. R. 34 Calc. 518  
18 C. W. N. 937

See UNDER-RAIYAT . . . 11 C. W. N. 518

## HERITABLE AND TRANSFERABLE RIGHT.

See BIRT ZEMINDARS.

I. L. R. 28 All. 708; L. R. 34 I. A. 142

## HIBA BIL EWAZ.

See MAHOMEDAN LAW 13 C. W. N. 180

## HIBANAMA.

See MAHOMEDAN LAW

I. L. R. 81 Calc. 319

## HIDDEN TREASURE.

See TREASURE TROVE.

## HIGH COURT.

See CIVIL PROCEDURE CODE, 1882, ss. 244, 622 . . . I. L. R. 28 All. 72

See CRIMINAL PROCEDURE CODE, s. 145.  
I. L. R. 31 Calc. 88

See COURT OF WARDS 12 C. W. N. 1085

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, POWER OF.

See INSOLVENCY, I. L. R. 31 Calc. 781

See JURISDICTION.

See LAND ACQUISITION ACT (I OF 1894), s. 18 . . . 12 C. W. N. 88

See LAND REGISTRATION ACT.  
I. L. R. 35 Calc. 120

See LETTERS PATENT, 1865.

See LETTERS PATENT FOR BOMBAY HIGH COURT, CL. 13 . . . 10 C. W. N. 285

See LIMITATION ACT (XV OF 1877), SEC. II, ART. 178.

See LIMITATION ACT, 1877, SEC. II, ART. 179 . . . 10 C. W. N. 22

**HIGH COURT—*contd.***

See MANDAMUS . I. L. R. 35 Calc. 915

See MORTGAGE . 8 C. W. N. 690

See MUKHTIAR . 8 C. W. N. 401

See POSSESSION . I. L. R. 33 Calc. 487

See PRACTICE.

See PRIVY COUNCIL.

See SMALL CAUSE COURT ACT  
I. L. R. 30 Bom. 147

Calcutta—

See RULES OF HIGH COURT, CALCUTTA

constitution of—

See HIGH COURT, N.-W. P.  
I. L. R. 6 All. 676

delegation of power by—

See LEAVE TO SUE  
I. L. R. 34 Calc. 619

disciplinary powers of—

See ADVOCATE . I. L. R. 29 All. 95

See PLEADER . I. L. R. 33 Bom. 252

extraordinary jurisdiction of—

See TRESPASS . I. L. R. 36 Calc. 433

power of—

See UNPROFESSIONAL CONDUCT.  
I. L. R. 35 Calc. 317

power of Coroner to commit to—

See CORONER . 7 C. W. N. 899

power of, to prosecute under  
s. 476, Criminal Procedure Code—See CRIMINAL PROCEDURE CODE, s. 476.  
13 C. W. N. 1038power of, to stay further pro-  
ceedings—See CIVIL PROCEDURE CODE (V OF 1908)  
O. XLV, R. 13 . 13 C. W. N. 690

reference to—

See REFERENCE TO HIGH COURT—

CIVIL CASES;

CRIMINAL CASES.

See SMALL CAUSE COURT—PRESIDENCY  
TOWNS—PRACTICE AND PROCEDURE—  
REFERENCE TO HIGH COURT.

revisional powers of—

See HINDU LAW—INHERITANCE.  
I. L. R. 34 Calc. 929See APPEAL . 13 C. W. N. 797  
rulings of—See PRACTICE—CIVIL CASES—RULINGS OF  
HIGH COURT . I. L. R. 15 Bom. 419  
I. L. R. 17 Bom. 555**HIGH COURT—*contd.***1. Expenses of witness—*Applica-  
tion in Chambers—Expenses for attendance in  
Court.* A witness, who attends the Court on a  
subpoena, is entitled to demand at any time his  
reasonable expenses of such attendance from the  
party issuing the subpoena, even though he only  
gives evidence as a witness for a party to the suit  
other than the party summoning him. *In re  
Bullock* (1904) . I. L. R. 28 Bom. 6472. Decision of, if binding on  
lower Court—*Construction of Act—Reference to  
proceedings of Legislative Council.* A lower Court  
is legally bound to follow the decision of the  
High Court SARAT SUNDARI BARMANI & UMA  
PRASAD ROY CHOWDHRY (1904) 8 C. W. N. 5783. Extension of jurisdiction—  
*High Court—Jurisdiction over Sambalpur District—  
Extension of High Court's jurisdiction to place not  
within jurisdiction of any High Court, if ultra vires—  
Interpretation of Statute—Reference to repealed  
Statute—28 & 29 Vict., c. 15, s. 3. Under s. 3 of  
28 & 29 Vict., c. 15, the Governor General in  
Council may not*Sambalpur District, when it was transferred from  
the Central Provinces to Bengal was not *ultra vires*.  
The repealed provisions of s. 18, 24 & 25 Vict.,  
c. 105, were referred to as throwing light on the  
construction of s. 3 of 23 & 29 Vict., c. 15.  
Construction of Statute by reference to repealed  
Statutes, when permissible, discussed by MOOKER-  
JEE, J. BULESWAR BAGARTI & BHAGARATHI DAS  
(1908) . I. L. R. 35 Calc. 701  
a.c. 12 C. W. N. 657**HIGH COURT CIVIL CIRCULAR,  
RULE 80.**

See LIMITATION ACT.

I. L. R. 31 Bom. 162

**HIGH COURT, CONSTITUTION OF.**

See JUDGE OF HIGH COURT.

I. L. R. 16 All. 136

High Court, N.-W. P.—*Stat. 24  
& 25 Vict., c. 101, s. 7—Letters Patent, N.-W. P.,  
s. 2—Omission to fill up vacant appointment—Court  
consisting of Chief Justice and four Judges only—  
By s. 2 of the Letters Patent for the High Court  
it was not intended that, if the Crown or the  
Government should omit to fill up a vacancy among  
the Judges under the appointment made by s. 7 of the*

## HIGH COURT, ESTABLISHMENT OF.

## N. W. P. High Court.

See REFERENCE FROM SUDOOR COURT AT  
AGRA . . . 6 B. L. R. P. C. 263  
13 Moo. I. A. 585

## HIGH COURT, JURISDICTION OF.

Col

## 1. CALCUTTA—

(a) CIVIL . . . . 4548  
(b) CRIMINAL . . . . 4551

## 2. MADRAS—

(a) CIVIL . . . . 4553  
(b) CRIMINAL . . . . 4554

## 3. BOMBAY—

(a) CIVIL . . . . 4555  
(b) CRIMINAL . . . . 4558

## 4 N. W. P.—CIVIL . . . . 4560

See APPEAL . . I. L. R. 32 Calc. 572

See APPEAL—NORTH-WESTERN PRO-  
VINCES ACTS . . I. L. R. 25 All. 141

See ARBITRATION ACT.  
I. L. R. 31 Bom. 236

See CIVIL PROCEDURE CODE, 1882, s 111.  
9 C. W. N. 746

See CONTEMPT OF COURT—CONTEMPTS  
GENERALLY . . I. L. R. 4 Calc. 655  
I. L. R. 7 Bom. 1, 6  
I. L. R. 10 Calc. 106  
3 W. R. Cr. 2

See COPYRIGHT ACT, ss. 3 AND 6  
6 C. W. N. 581

See CRIMINAL PROCEDURE CODE, 1898,  
ss 145, 146 . . 9 O. W. N. 1046  
11 C. W. N. 198  
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See CRIMINAL PROCEDURE CODE, 1898, s  
195, sub-s G . . 8 C. W. N. 321

See EVIDENCE ACT, s 85  
8 C. W. N. 888

See FIRST OFFENDERS  
I. L. R. 24 All. 306

See GUARDIAN—APPOINTMENT  
I. L. R. 25 Bom. 353

See HIGH COURT, POWER OF

See INSOLVENCY . . 8 C. W. N. 652

See JURISDICTION.  
I. L. R. 34 Calc. 836

See JURISDICTION OF CRIMINAL COURTS

See LETTERS OF ADMINISTRATION.  
I. L. R. 24 Mad. 120

See LETTERS PATENT, s 39  
8 C. W. N. 368

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See PRACTICE . . I. L. R. 32 Calc. 146

See PROBATE—

POWER OF HIGH COURT TO GRANT;

OPPOSITION TO, AND REVOCATION  
OF, GRANT . . 5 O. W. N. 377

See REVIEW . . I. L. R. 27 All. 92

See REVISION . . I. L. R. 20 All. 563

See RIGHT OF SUIT—FRAUD.  
7 O. W. N. 353

See SANCTION FOR PROSECUTION.  
I. L. R. 32 Calc. 379

See SUPERINTENDENCE OF HIGH COURT.

See TRANSFER OF CIVIL CASE.

See TRANSFER OF CRIMINAL CASE.

See WARRANT OF ARREST—CIVIL CASES.  
I. L. R. 26 Mad. 120

in Kumaon and Garhwal—

See LEGAL PRACTITIONERS ACT, ss. 6 AND  
8 . . . I. L. R. 24 All. 348

minor residing out of—

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I. L. R. 21 Calc. 206  
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to hear appeal—

See MADRAS GENERAL CLAUSES ACT, s. 8.  
I. L. R. 24 Mad. 30

to inquire into validity of Acts  
of local Councils—

See BOMBAY CITY IMPROVEMENT ACT.  
I. L. R. 27 Bom. 424

## Calcutta, Criminal—

See POSSESSION, ORDER OF CRIMINAL  
COURT AS TO—LIKELIHOOD OF BREACH  
OF THE PEACE I. L. R. 26 Calc. 446

See REFORMATORY SCHOOLS ACT, ss. 8, 16.  
I. L. R. 28 Calc. 423

## 1. CALCUTTA.

## (a) CIVIL.

1. — Issue of writ of *habeas corpus*  
—Sut begun in Supreme Court—24 & 25 Vict.,  
c. 104, s. 12. In an ordinary suit commenced in the  
High Court, a writ of *habeas corpus* could not issue  
except within the limits of the Court's original juris-  
diction; but in a suit originally commenced in the  
Supreme Court, the High Court had power, under  
24 & 25 Vict., c. 104, s. 12, to issue a *habeas corpus*  
beyond the limits of its original jurisdiction, and to  
sell under it property situated there. *MONOMOTHO*  
*NATH DEY v. GRINDLER CHUNDER CHOW*  
24 W. R. 386



HIGH COURT, JURISDICTION OF—  
contd.

## 1. CALCUTTA—contd.

## (a) CIVIL—contd.

GRISH CHUNDER DOSS &amp; BROJO JIBAN BOSE

8 C. L. R. 4

CHAIRMAN OF MOTIHARI MUNICIPALITY

I. L. R. 17 Calc. 328

See STREACHEY v MUNICIPAL BOARD OF CAWNPORE

I. L. R. 21 All. 348

3. Cause of action arising in district in which British subjects were subject to Supreme Court. The High Court, previously to the issue of the Order in Council,

4. Irregularity in title of suit—*Immaterial mistake*. Where a suit, cognizable by the High Court by reason of the testamentary and intestate jurisdiction of the Court, was wrongly entitled as being brought in the ordinary original civil jurisdiction;—*Held*, that the Court had jurisdiction to entertain the suit. It was a mere blunder which the Court could correct. *TOXLUCK NAUTH DASS v MEONAUTH DASS*

2 Ind. Jur. N. S. 245

5. Power of execution of decrees—*Execution out of jurisdiction*. The High Court in the exercise of its jurisdiction had not

1 Hyde 136

6. Civil Procedure Code (Act X of 1877), s. 619. Although the High Court in its Appellate Side does not, as a general rule,

7. Power to relieve judgment-debtor in Small Cause Court. The High Court is not authorized by law to interfere for the relief of a necessitous judgment-debtor whose salary has been attached in execution of a decree of a Small Cause Court. *HARRIS v BRITAIN*. 15 W. R. 634

8. Appellate jurisdiction of High Court—*Law in subordinate Courts*. The

HIGH COURT, JURISDICTION OF—  
contd.

## 1. CALCUTTA—contd.

## (a) CIVIL—contd.

9. Sonthal Pergunnahs—*Act XXXVII of 1855, s. 2—Civil Procedure Code (Act XIV of 1882), ss. 1 and 3*. An appeal lies to the High Court from the Sonthal Pergunnahs in all civil suits in which the matter in dispute is over Rs. 1,000 in value. *SORBOJIT ROY v. GONESH PROSAD MISSE*

I. L. R. 10 Calc. 781

10. Appeal in criminal cases. The High Court has no jurisdiction to entertain appeals in civil suits tried in the Sonthal Pergunnahs. *STENDHARRE LOEL v. MANSOON ALLY KHAIR*

I. L. R. 3 Calc. 298

11. Original jurisdiction, High Court—*Fraud—Decree—Mofussil Court—Letters Patent, 1863, cl. 12—Civil Procedure Code (Act XIV of 1882), ss. 11, 17*. The High Court has original jurisdiction, under cl. 12 of the Letters Patent and ss. 11 and 17 of the Civil Procedure Code, to entertain a

on the  
de Fir  
L. C  
patra,  
Dasi v  
Moron

to. NISTARINI DASSI v NUNDO LAL BOSE (1902)

I. L. R. 30 Calc. 369

12. Ordinary Original Jurisdiction—*Administration suit—Prayer for setting aside fraudulent award and decree made thereon by a Mofussil Court, and for setting aside leases of and in Mofussil obtained by fraud—Accounts—Poojias, expenses for—Enquiry, form of—Executor's liability*. Where the primary object of a suit instituted on the Original Side of the High

administration  
side leases  
of its juris-  
diction, these leases having been made as an incident of the same fraud. *BENODE BEHARI BOSE v. SHIMATI NISTARINI DASSI* (1903) 9 C. W. N. 88

HIGH COURT, JURISDICTION OF—  
cont'd.

## 1. CALCUTTA—cont'd.

## (a) CIVIL—cont'd.

## 13. Appellate jurisdiction—

I. L. R. 29 Calc. 488

## (b) CRIMINAL

14. Appeal in criminal case—  
Superintendent of Cachar. The High Court had

15. Revision—Superintendent of Tributary Mehals—Offence committed out of British India. The High Court has no power, either by way of appeal or revision, to interfere with a sentence passed by the Superintendent of

16. High Court's power of revision—Presidency Magistrate's proceedings—Order for further inquiry—Criminal Procedure Code (V of 1898), ss. 423, 435 and 439—Letters Patent, High Court, 1865, cl (23). The High Court has, under ss. 435 and 439, read with s. 423 of the

I. L. R. 26 Calc. 746  
3 C. W. N. 598

17. Appellate and revisional jurisdiction—Withdrawal of the operation of the Criminal Procedure Code—Scheduled Districts Act (XIV of 1874), s. 6—Assam Frontier Tracts Regulation, 1880, s. 2—Power of the Supreme Council. The effect of the rules laid down by the

HIGH COURT, JURISDICTION OF—  
cont'd.

## 1. CALCUTTA—cont'd.

## (b) CRIMINAL—cont'd.

172: L. R. 5 I. A. 178, "expressly authorized and contemplated" by the Statutes and Letters Patent which affect the constitution and jurisdiction of the Court. *Semble*: Notwithstanding the withdrawal of the operation of the Criminal Procedure Code

18. Appeal from conviction of offences committed in Chittagong Hill Tracts—Jurisdiction of High Court to hear such appeal—Chittagong Act (XXII of 1860), s. 1—Penal Code (Act XLV of 1860), ss. 379 and 457. There is no jurisdiction in the High Court to hear appeals in respect of sentences passed on conviction of offences committed within the districts known as the Chittagong Hill Tracts. *QUEEN-EMPEROR v SONAI MUGH*. I. L. R. 27 Calc. 654

19. Criminal Revisional Jurisdiction—Calcutta Municipal Act (Bengal Act III of 1899), s. 645 and s. 408—General Committee, power of the—Owner, determination of. By s. 645 of the Calcutta Municipal Act (Bengal Act III of 1899) the Legislature has given power to the General Committee of the Calcutta Municipal Commissioners to determine in a case, where there are gradations of owners of persons, who may be regarded as owners, or where there is a doubt as to who is the owner bound to perform any duty imposed by the Act, which of such owners shall be

set aside or question the act done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law. *SHAMUL DHONE DUTT v CORPORATION OF CALCUTTA* (1906). I. L. R. 34 Calc. 30

20. Power to revise orders directing prosecution—Jurisdiction of the Sessions Judge to set aside such orders—Criminal Procedure Code (Act V of 1893), ss. 433, 476—Indian Penal Code (Act XLV of 1860), s. 211. A Sessions Judge has no power to set aside an order passed by a Magistrate under s. 476 of the Criminal Procedure Code. But the High Court has power to revise such orders, whether passed by Criminal or a Civil Court, under s. 439 of the Criminal Procedure Code or under its general powers of superintendence, if a

HIGH COURT, JURISDICTION OF--  
contd.

## 2. MADRAS—contd.

(a) CIVIL—concl'd.

2. Complaint against Governor and Council of Madras—21 Geo. III, c. 79, s. 6; 39 & 40 Geo. III, c. 79, s. 3, 4 Geo. IV, c. 71, s. 17. S. 3 of 39 & 40 Geo. III, c. 79, which provides that the Governor and Council at Madras shall enjoy the same exemption and no other from the authority of the Supreme Court at Madras as is enjoyed by the Governor-General and Council from the jurisdiction of the Supreme Court at Calcutta, did not confer on the Supreme Court at Madras a jurisdiction over the Governor and Council of Madras similar to that conferred by 21 Geo. III, c. 21, s. 5, on the Supreme Court at Calcutta over the Governor-General and Council. Held, therefore the High Court, Madras, had no jurisdiction to entertain an application based on a complaint of certain acts of the Governor and Members of the Council of Madras alleged by the complainant to be injurious and oppressive.

IN RE WALLACE. I.L.R. 8 Mad. 24

3. ----- Agency Court at  
Vizayapatam--Act XXIV of 1839--Order in execu-

of the Agency Rules for Ganjam and Vizagapatam. An order passed by the Agent in execution prohibited entry into the Agency Enclaves "deemed"

*Dabee v. Barendra Nath Mozumdar*, 1 L. R. 27 Cal. 126; *Kedar Nath Sangal v. Ekhetra Nath Sikdar*, 6 O. L. J. 705; and *Debi Bux Shroff v. Jutanai Dungarwal*, 1 L. R. 33 Cal. 1232, discussed and dissented from. The High Court cannot interfere, under s. 15 of the Charter Act, with the order of a subordinate Court on the ground of an error in law, but only for an error affecting jurisdiction, that is, either a want or refusal of jurisdiction or an illegality in the exercise of it. *Teyam v. Harsukh*, 1 L. R. 1 All. 10, and *Corporation of Calcutta v. Bhupati Roy Chowdhry*, 1 L. R. 26 Cal. 74, referred to. Where on the admission of the accused an offence of criminal misappropriation might have been established, and the Magistrate did not consider or elicit matters of vital importance in the case—*Held*, that there had been no proper inquiry into the charge and that there were *prima facie* grounds for directing a further inquiry. *Rana Logan Dhoi v. Inglis*, unreported, and *Hari Modi v. Kunode*, unreported, distinguished.

MILIK PRATAP SINGH v. KHAJ MAHOWED (1909)  
1 L. R. 38 Cal. 894

## 2. MADRAS.

(a) CIVIL.

1. - - - Power to sell immovable property out of jurisdiction—*Law before 1865* - *From 1865 to 1907* - *1907 to 1925* - *1925 to 1930* - *1930 to 1935* - *1935 to 1940* - *1940 to 1945* - *1945 to 1950* - *1950 to 1955* - *1955 to 1960* - *1960 to 1965* - *1965 to 1970* - *1970 to 1975* - *1975 to 1980* - *1980 to 1985* - *1985 to 1990* - *1990 to 1995* - *1995 to 2000* - *2000 to 2005* - *2005 to 2010* - *2010 to 2015* - *2015 to 2020* - *2020 to 2025* - *2025 to 2030* - *2030 to 2035* - *2035 to 2040* - *2040 to 2045* - *2045 to 2050* - *2050 to 2055* - *2055 to 2060* - *2060 to 2065* - *2065 to 2070* - *2070 to 2075* - *2075 to 2080* - *2080 to 2085* - *2085 to 2090* - *2090 to 2095* - *2095 to 2100* - *2100 to 2105* - *2105 to 2110* - *2110 to 2115* - *2115 to 2120* - *2120 to 2125* - *2125 to 2130* - *2130 to 2135* - *2135 to 2140* - *2140 to 2145* - *2145 to 2150* - *2150 to 2155* - *2155 to 2160* - *2160 to 2165* - *2165 to 2170* - *2170 to 2175* - *2175 to 2180* - *2180 to 2185* - *2185 to 2190* - *2190 to 2195* - *2195 to 2200* - *2200 to 2205* - *2205 to 2210* - *2210 to 2215* - *2215 to 2220* - *2220 to 2225* - *2225 to 2230* - *2230 to 2235* - *2235 to 2240* - *2240 to 2245* - *2245 to 2250* - *2250 to 2255* - *2255 to 2260* - *2260 to 2265* - *2265 to 2270* - *2270 to 2275* - *2275 to 2280* - *2280 to 2285* - *2285 to 2290* - *2290 to 2295* - *2295 to 2300* - *2300 to 2305* - *2305 to 2310* - *2310 to 2315* - *2315 to 2320* - *2320 to 2325* - *2325 to 2330* - *2330 to 2335* - *2335 to 2340* - *2340 to 2345* - *2345 to 2350* - *2350 to 2355* - *2355 to 2360* - *2360 to 2365* - *2365 to 2370* - *2370 to 2375* - *2375 to 2380* - *2380 to 2385* - *2385 to 2390* - *2390 to 2395* - *2395 to 2400* - *2400 to 2405* - *2405 to 2410* - *2410 to 2415* - *2415 to 2420* - *2420 to 2425* - *2425 to 2430* - *2430 to 2435* - *2435 to 2440* - *2440 to 2445* - *2445 to 2450* - *2450 to 2455* - *2455 to 2460* - *2460 to 2465* - *2465 to 2470* - *2470 to 2475* - *2475 to 2480* - *2480 to 2485* - *2485 to 2490* - *2490 to 2495* - *2495 to 2500* - *2500 to 2505* - *2505 to 2510* - *2510 to 2515* - *2515 to 2520* - *2520 to 2525* - *2525 to 2530* - *2530 to 2535* - *2535 to 2540* - *2540 to 2545* - *2545 to 2550* - *2550 to 2555* - *2555 to 2560* - *2560 to 2565* - *2565 to 2570* - *2570 to 2575* - *2575 to 2580* - *2580 to 2585* - *2585 to 2590* - *2590 to 2595* - *2595 to 2600* - *2600 to 2605* - *2605 to 2610* - *2610 to 2615* - *2615 to 2620* - *2620 to 2625* - *2625 to 2630* - *2630 to 2635* - *2635 to 2640* - *2640 to 2645* - *2645 to 2650* - *2650 to 2655* - *2655 to 2660* - *2660 to 2665* - *2665 to 2670* - *2670 to 2675* - *2675 to 2680* - *2680 to 2685* - *2685 to 2690* - *2690 to 2695* - *2695 to 2700* - *2700 to 2705* - *2705 to 2710* - *2710 to 2715* - *2715 to 2720* - *2720 to 2725* - *2725 to 2730* - *2730 to 2735* - *2735 to 2740* - *2740 to 2745* - *2745 to 2750* - *2750 to 2755* - *2755 to 2760* - *2760 to 2765* - *2765 to 2770* - *2770 to 2775* - *2775 to 2780* - *2780 to 2785* - *2785 to 2790* - *2790 to 2795* - *2795 to 2800* - *2800 to 2805* - *2805 to 2810* - *2810 to 2815* - *2815 to 2820* - *2820 to 2825* - *2825 to 2830* - *2830 to 2835* - *2835 to 2840* - *2840 to 2845* - *2845 to 2850* - *2850 to 2855* - *2855 to 2860* - *2860 to 2865* - *2865 to 2870* - *2870 to 2875* - *2875 to 2880* - *2880 to 2885* - *2885 to 2890* - *2890 to 2895* - *2895 to 2900* - *2900 to 2905* - *2905 to 2910* - *2910 to 2915* - *2915 to 2920* - *2920 to 2925* - *2925 to 2930* - *2930 to 2935* - *2935 to 2940* - *2940 to 2945* - *2945 to 2950* - *2950 to 2955* - *2955 to 2960* - *2960 to 2965* - *2965 to 2970* - *2970 to 2975* - *2975 to 2980* - *2980 to 2985* - *2985 to 2990* - *2990 to 2995* - *2995 to 3000* - *3000 to 3005* - *3005 to 3010* - *3010 to 3015* - *3015 to 3020* - *3020 to 3025* - *3025 to 3030* - *3030 to 3035* - *3035 to 3040* - *3040 to 3045* - *3045 to 3050* - *3050 to 3055* - *3055 to 3060* - *3060 to 3065* - *3065 to 3070* - *3070 to 3075* - *3075 to 3080* - *3080 to 3085* - *3085 to 3090* - *3090 to 3095* - *3095 to 3100* - *3100 to 3105* - *3105 to 3110* -

L. L. R. 7 Med. 50

DAGQPA v JAMUNA  
I. L. R. 5 Msd. 54

Reversing on review SIDAGOPA & JANUNA  
Bhai Anant I.L.R. 5 Mad. 54

of the Agency Rules for Ganjam and Vizagapatam. An order passed by the Agent in execution proposed names in the Agency Rules as "daams."

(5) CRIMINAL.

4. \_\_\_\_\_ Criminal Procedure Code,  
s. 2—Letters Patent, s. 23—Scheduled Districts Act  
(XIV of 1874), Notifications under—Agency Tracts,  
jurisdiction of High Court over—Agency rules—  
Act XXIV of 1839, s. 3. The High Court set

ingly, and was convicted of murder, and he appealed to the High Court. The Agency Tract of Vizagapatam is a scheduled district under Act XIV of 1874, and the Government have extended the operation

the accused be tried by the Sessions Judge under the provisions both of the Letters Patent and of the

## HIGH COURT, JURISDICTION OF—

—*contd.*2. MADRAS—*contd.*(b) CRIMINAL—*contd.*

Criminal Procedure Code, QUEEN-EXPRESS & BUDAIA JANNI . . . I. L. R. 14 Mad. 121

5. — Jurisdiction under Local Act—Offence under Madras Act I of 1866—Act making offence triable by Magistrate—Power of local Legislature. The prisoner was committed to a criminal sessions of the High Court for supplying liquor without a license, an act made punishable by Madras Act No. I of 1866. Held, that the High Court had no jurisdiction, inasmuch as the Act which

6. — Extradition and Foreign Jurisdiction Act (XXI of 1879), Ch. II—European British subjects in Bangalore—Justices of the Peace of Mysore—Transfer of criminal case—Criminal Procedure Code, 1832, s. 526.

7. — Superintendence of High Court—Criminal proceedings, stay of, when civil suit on same facts pending. The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings, if launched, will be stayed by the

I. L. R. 23 Cal. 610, distinguished. ANNA AYAR v. EMPEROR (1906) . . . I. L. R. 30 Mad. 226

## 3. BOMBAY.

## (a) CIVIL.

1. — Exercise of extraordinary jurisdiction—Superintendence of High Court

## HIGH COURT, JURISDICTION OF—

—*contd.*3. BOMBAY—*contd.*(a) CIVIL—*contd.*

under s. 15, 24 & 25 Fict., c. 104—Bom. Reg. II of 1827, s. 5, cl. 2—Mamladars' Courts—Bombay Act V of 1864. Distinction between the

2. — Power of High Court as Court of original jurisdiction. The High Courts are not Courts of ordinary original civil jurisdiction over the whole of the territories of the presidencies to which they belong, and there is no presumption in favour of jurisdiction beyond what is found expressly conferred by the Charters. SUGACHAND SHIVDAI v. MULCHAND JOHARRMAL . . . 12 Bom. 113

3. — Inhabitant of Baroda carrying on business in Bombay by munim—Charter of Supreme Court, Bombay, s. 41—Subject to process of High Court. An inhabitant of Baroda, who carries on the business of a banker at Bombay by a munim, and has a place of business

Supreme Court, and continued to the High Court by the Act under which it was established. HURIVALLAB DAS KALLIAN DAS v. UTTAMCHAND MANTICHAND. In re GOPALRAI MYRAL . . . 8 Bom. O. C. 238

4. — Suit to declare a Parsi infant marriage null and void—Parsi Matrimonial Court—Act XV of 1865, ss. 3, 30—Letters Patent, s. 12. In 1868 the plaintiff and defendant, then of the ages of seven and six years, respectively, went

in filed this suit praying for a declaration that the pretended marriage was null and void, and did not create the status of husband and wife between the plaintiff and defendant. The defendant resisted the suit, and claimed to be the lawful wife of the plaintiff. The plaintiff and defendant never lived

## HIGH COURT, JURISDICTION OF—

—*contd.*3. BOMBAY—*contd.*(a) CIVIL—*contd.*

maintained in the High Court, to which it had been given by s. 12 of the Letters Patent. **PESHOTAM HORMASJI DUSTOOR & MEHERBAI**

I. L. R. 13 Bom. 502

5. ——— Sult by Parsi husband for divorce—*Parsi Marriage Act (XV of 1865), ss. 3, 30—British India—Valid marriage out of British India—Marriage when husband is a minor—Previous consent of guardian* The plaintiff and defendant were Parsis. The husband filed this suit in Jan'y 1891, stating that in March 1885 he and the

and that his mother and guardian had not given her previous consent to the ceremony, nor was she present at it. He and the defendant subsequently

marriage. So that the marriage would have been valid if it had been celebrated within British India. It was also found that the defendant had been guilty of adultery. *Held*, that the jurisdiction of the Court was not barred merely by the cir-

at the time of the marriage, and were still so domiciled, and the adultery was also committed within the jurisdiction. The Court, therefore,

6. ——— Jurisdiction over Consular Court of Zanzibar—*Power of revision—Superintendence of High Court—Appellate Court, Power of—Civil Procedure Code, 1882, s. 622—Bombay Civil Courts Act (XIV of 1889), ss. 9 and 10—Zanzibar Order in Council, 1884, arts. 7, 8, 9, 21, 27 and 30* *Held* by the majority of the full Bench (JARDINE, J., dissenting), that the High Court at Bombay has no power of revision over civil cases

## HIGH COURT, JURISDICTION OF—

—*contd.*3. BOMBAY—*contd.*(a) CIVIL—*contd.*

tried by the Consular Court at Zanzibar, though it is authorized to hear appeals from the decisions of that Court as a District Court by the Zanzibar Order in Council of 1884. A power of revision is not au-

## (b) CRIMINAL

European British subject—

CIVIL 8 Bom. Cr. 92

8. ——— Criminal cases sent from Zanzibar—*Stat. 6 & 7 Vict., c. 94—Stat. 23 & 29 Vict., c. 118—Stat. 29 & 30 Vict., c. 87—Order in Council of 9th August 1866.* The High Court at

9. ——— Court of Her Majesty's Consul at Muscat—*High Court's criminal Revisional jurisdiction over the Consular Court—Order in Council, dated 4th November 1867—Criminal Procedure Code (Act V of 1885), s. 435.* The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. *In re RATTANSEE PESHOTAM*

I. L. R. 24 Bom. 471

10. ——— Court of Judicial Superintendent of Railways at Secunderabad—*Sanction of proceedings—Subsequent sanction, effect of—Irregular commitment accepted by High Court—Criminal Procedure Code (X of 1882), ss. 197 and 532—Power of Court of Judicial Superintendent of Railways to commit to High Court—Charges preferred by Advocate-General—Letters Patent, 1855, cl. 24—European British subjects.* The provisions of the Code of Criminal Procedure

## HIGH COURT, JURISDICTION OF

—*confd.*3. BOMBAY—*confd.*(b) CRIMINAL—*confd.*

without any previous sanction having been obtained as required by that section;—*Held*, that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but *Held*, also, that the provisions of s. 532 of the Criminal Procedure Code applied, and that the Judge presiding at the Criminal Sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. *Per*

I. L. R. 3 Bom. 208

11. ——— European British subjects at Secunderabad—*Criminal Procedure Code, 1882, s. 826—Act III of 1884, s. 11—Transfer of*

of 1884, s. 11; and the High Court possesses, by

## HIGH COURT, JURISDICTION OF—

—*confd.*3 BOMBAY—*confd.*(b) CRIMINAL—*confd.*

ground that no machinery for a trial by jury existed at Secunderabad. *QUEEN-EMRESS v. EDWARDS* . . . I. L. R. 9 Bom. 333

## 12. ——— Reference and appeal in a

Agent for the Melwasi Estates, convicted the accused of murder committed at a village in the Scheduled Districts, and sentenced him to transportation for life. He then forwarded the proceedings to the Government for confirmation. The accused also appealed to the Government

question arose as to whether the High Court had jurisdiction to dispose of the reference. *Held*, that the High Court had jurisdiction. *IMPERATRIX v. RATNYA* (1897) . . . I. L. R. 25 Bom. 687

## 4. N.-W. P.—CIVIL

1. ——— Legislative power of the Governor-General in Council—*Stat. 24 &*

Governor-General in Council, and the town and fort of Jhansi are subject to the jurisdiction of the High Court for the N.-W. Provinces in the same manner as the rest of the Jhansi District. The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian territories under the dominion of Her Majesty, no matter when such territories were acquired. His legislative powers are not limited to those territories which, at the date when the Indian Councils Act (24 & 25 Vict., c. 67) received the royal assent (i.e., the 1st August 1861), were under the dominion of Her Majesty. In the preamble to the 28 & 29 Vict., c. 17, and in s. 1 of the 32 & 33 Vict., c. 98, Parliament has placed this construction upon s. 22 of the Indian Councils Act. Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future. *Postmaster General of the United States v. Early, Curtis Rep. U. S. 86*, referred to. It must be presumed that the laws and regulations of the Governor-General in Council are known to

**HIGH COURT, JURISDICTION OF—**  
*concl'd.*4. N.-W. P.—CIVIL—*concl'd.*

Parliament *Empress v. Burah*, I. L. R. 3 Calc. 143 : I. L. R. 4 Calc. 183, referred to. *ABDULLA v. MOHAN GIR* I. L. R. 11 All. 480

2. Appeal from decree of District Judge in Oude—Order dismissing suit for dissolution of marriage—Divorce Act (IV of 1869), ss. 3, sub-s. (3), 8, 9, 13, 17, and 55—Oude Civil Courts Act (XIII of 1879), s. 27—Oude Courts Act (XIV of 1891), s. 8—N.-W. P. and Oude Act (XX of 1890), s. 42—Notification 1203, dated 23rd September 1874—Stat. 28 Vict., c. 25, s. 3 The High Court of Judicature for the N.-W. P.

I. L. R. 18 All. 375

**HIGH COURT, POWER OF.**

See CRIMINAL PROCEDURE CODE, ss. 145, 435 I. L. R. 31 All. 150

See ENGLISH COMMITTEE.

10 B. L. R. 79, 80, 82 note

See HIGH COURT, JURISDICTION OF.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE I. L. R. 28 Calc. 410

See REVISION—CRIMINAL CASES

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES.

See SUPERINTENDENCE OF HIGH COURT

See TRANSFER OF CIVIL CASE.

See TRANSFER OF CRIMINAL CASE

See UNPROFESSIONAL CONDUCT

I. L. R. 35 Calc. 317

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

revisional powers of—

See HINDU LAW—INHERITANCE

I. L. R. 34 Calc. 929

to interfere with discharge by Presidency Magistrate—

See CRIMINAL PROCEDURE CODE, ss. 435, 439 13 C. W. N. 1221

to interfere with verdict of jury—

See REVISION—CRIMINAL CASE—VERDICT OF JURY AND MISDIRECTION.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS

**HIGH COURT REVISION SUB MOTU.**

See CIVIL PROCEDURE CODE, 1832, ss. 526, 522, 622 10 C. W. N. 608

**HIGH COURT RULES (ORIGINAL SIDE).**

See ADVOCATE-GENERAL

I. L. R. 30 Bom. 474

See PRACTICE I. L. R. 31 Bom. 465

I. L. R. 32 Bom. 152

Rules 70, 71, 72—

See BARRISTERS 13 C. W. N. 605

Rule 80 (a 1)—Pauper, petition to sue as—Prothonotary's decision—Application to Judge in Chambers—Right to be heard. The plaintiff filed a petition to be allowed to continue her suit in forma pauperis. The petition was heard by the Prothonotary under Rule 81 of the Bombay High Court Rules. The plaintiff's petition was refused.

that the Judge in Chambers is bound to decide the matter for himself. *MEGHRAI v. POONJABAI* (1907). I. L. R. 32 Bom. 183

Rules 111, 112 and 162—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 59 I. L. R. 32 Bom. 152

Rule 361—Suit against a firm—Addition of the names of partners constituting the firm—Practice and procedure—Jurisdiction of the Court to entertain suit—Letters Patent, cl. 12 Rule 361 of the Rules and Forms of the Bombay High Court does not extend the jurisdiction of the Court : it merely sanctions the use of the firm's name as a convenient description of its several members and exempts a plaintiff from the obligation of setting forth their names at length. *SHAW WALACE & Co. v. GORDEHANDAS* (1905)

I. L. R. 30 Bom. 364

Rule 540—Petition—Taxing Master—Solicitors' retainer denied—Taxation of costs. An attorney can obtain an order in taxation of his costs although he knows that his client disputes the retainer as to the whole bill. *In re Jones* (1887), 36 Ch. D. 105, followed. *In re MADHAVJI* (1903) I. L. R. 33 Bom. 687

Rule 544—Bill of costs—Order for taxation—Business not transacted in Court—Practice. Rule 544 of the Rules of the High Court does not empower a Judge to make an order on an attorney's application for taxation of his bill of costs for business not transacted in Court, unless the business was transacted in Court. *In re Jones* (1887), 36 Ch. D. 105, followed. *In re MADHAVJI* (1903) I. L. R. 33 Bom. 687

Rule 577—Costs—Taxing Master's decision on a question of costs—Review by the Chambers Judge—Third Counsel's costs in a defended long cause—Practice as to retaining of Counsel and their costs—Costs of a third Counsel

**HIGH COURT RULES (ORIGINAL SIDE)—concld.****Rule 577—concld.**

*engaged to ask for transfer of case from one Judge to another—Practice.* As a general rule the Judge

would be his duty in all such cases to review and revise taxation and judge and decide for himself what would be a just order to make under the circumstances. Where two counsel are already briefed in a case, and a third is instructed to make an application to transfer the case from one Judge to another, and the order making the transfer makes no provision as to costs, the costs should on taxation be refused between party and party, though they may be allowed between attorney and client. A party to a defended long cause is entitled to appear by two counsel. If both counsel attend throughout the hearing and the other party is ordered to pay costs of the suit, their brief fees and full refreshers would be allowed on taxation against the losing party. If the suit is

portion of the time the case is at hearing, his refresher, proportionate to the time he attends, would also be properly allowable, in addition to the full refresher allowed to the counsel, who attends and conducts the case. Where a party to a defended long cause engages two counsel he has a right to the services of at least one of them. He is under no obligation whatever to engage a third counsel. If both Counsel find that they would, owing to other

between attorney and client, if he proves express

I. L. R. 32 Bom. 262

**Rule 859—Limitation Act (XV of 1877), Art. 178—Application for enforcement of payment of costs by a solicitor against his client is not an application under the Civil Procedure Code**

**HIGH COURT RULES (ORIGINAL SIDE)—concld.****Rule 859—concld.**

*—Art. 178 applies only to applications under the Civil Procedure Code (Act XIV of 1882). There is no period of limitation provided for an application*

THE CIVIL PROCEDURE CODE. *See Manekdas v. Manelji Karsaji, I. L. R. 7 Bom. 213, followed. WADIA, GANDHY & Co. v. PERSHOTAM (1907) I. L. R. 32 Bom. 1*

**HIGH COURT RULES (APPELLATE SIDE).**

**Rules 17, 18 and 25—Civil Procedure Code (Act XIV of 1882), s. 652—Limitation**

say High Court Rules are extraneous to the memoranda of appeals, applications and appeals in execution and the rule expressly does not fix any

(XV of 1877), if it is accompanied by the copies required by the Civil Procedure Code (Act XIV of 1882). *Per CHANDAVARKAR, J.*—No rule of the High Court can add to or modify the conditions and limitations laid down in the Limitation Act (XV of 1877). It is true that the Court has the

**Rule 25—**

*See LEGAL PRACTITIONERS' ACT, s. 7. 13 C. W. N. 415*

**Part II, Ch. IV, Rule XX—**

*See PRIVY COUNCIL APPEAL. I. L. R. 36 Calc. 653*

**Rule 515 A—**

*See MORTGAGE. 13 C. W. N. 787*

**HIGH COURTS' CHARTER ACT (24 & 25 VICT., c. 104).****ss. 1, 8, 13, 14—**

*See BARRISTERS. 13 C. W. N. 605*

**s. 11—**

*See WARRANT OF ARREST—CIVIL CASES. I. L. R. 28 Mad. 120*



# HIGH COURTS' CHARTER ACT (24 & 28 VICT., c. 104)—*concl'd.*

s. 15—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE I. L. R. 28 Cal. 418

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15.

*Civil Procedure Code (Act XIV of 1882), ss. 336, 622—High Court can interfere under s. 15 of the Charter Act, when the lower Court issues a commission to examine a witness on grounds other than those mentioned in the Code. An order under s. 336 of the Code of Civil Procedure*

absence of any such ground. The High Court has power to interfere with such an order under s. 15 of the Charter Act. *Obiter*: The High Court may also interfere with such an order under s. 622 of the Code of Civil Procedure, although the order is only interlocutory. SOMASUNDARAM CHETTIAR (v. MANICKA VASAKA DESIKA GNANA SAMMANDA PANDARA SANNIDI (1907)

I. L. R. 31 Mad. 60

# HIGH COURTS' PROCEDURE ACT, 1875 (ORIGINAL).

See CRIMINAL PROCEDURE CODE, ss 266-336.

s. 147—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.

# HIGHWAY.

See PORT COMMISSIONERS ACT (BENGAL ACT V of 1870), ss 5, 6, 31, 38, 39. I. L. R. 33 Cal. 1243

# HILLY LAND.

See POSSESSION, SCIT FOR. 12 C. W. N. 273

# HINDU FAMILY.

See HINDU LAW I. L. R. 33 Cal. 507

# HINDU LAW.

See ADVOCATE I. L. R. 33 Cal. 151

See CHAMPERTY AND MAINTENANCE I. L. R. 31 Cal. 433

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 266 I. L. R. 31 Mad. 500

See CONTRACT ACT (IX OF 1872), s 27. I. L. R. 27 All 361 I. L. R. 33 Mad. 185

# HINDU LAW—*cont'd.*

See CONVERTS . . . 1 W. R. P. C. 1  
8 Moo I. A. 195  
I. L. R. 2 Mad. 209  
1 Agra F. B. 39  
2 Agra 61  
3 Agra 82  
I. L. R. 10 Bom. 1  
I. L. R. 20 Bom. 53, 181  
I. L. R. 25 All. 546

See CUTCH MEMONS.

See DEBUTTUR . . . 13 C. W. N. 805

See EVIDENCE . . . I. L. R. 31 All. 118

See EVIDENCE ACT (I OF 1872), s 90  
I. L. R. 33 Cal. 571

See GRANT, PARTITION, WILL  
8 C. W. N. 105  
8 C. W. N. 1009

See KHOJA MAHOMEDANS.  
I. L. R. 28 Bom. 85

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS, ETC., ON LAND . . . I. L. R. 10 Mad. 112

See LIMITATION ACT (XV OF 1877), Sch. II, ART. 119 . . . I. L. R. 32 Bom. 7

See MAJORITY, AGE OF.  
I. L. R. 1 Cal. 108  
10 B. L. R. 231

See OUDH LAND REVENUE ACT, 1876, s. 74 . . . I. L. R. 31 All. 73

See OWNERSHIP, PRESUMPTION OF.  
I. L. R. 9 Mad. 175

See PRACTICE . . . I. L. R. 30 Bom. 477

See PROBATE AND ADMINISTRATION ACT, s. 50 . . . 10 C. W. N. 855

See SALSETTE LAW, APPLICABLE IN.  
I. L. R. 19 Bom. 680

See SPECIFIC RELIEF ACT, 1877, s 42  
8 C. W. N. 485  
I. L. R. 31 I. A. 67

See STRIDHAN . . . I. L. R. 30 Bom. 229

See SUCCESSION ACT, ss 111, 116, 117.  
10 C. W. N. 695

See SUCCESSION CERTIFICATE ACT, 1857, s. 1, CL. (4) . . . I. L. R. 31 All. 236

See TRANSFER OF PROPERTY ACT, s. 6.  
I. L. R. 31 All. 53

See TRUSTEES ACT, s. 3 . . . 9 C. W. N. 79

See VENDOR AND PURCHASER.  
I. L. R. 12 Bom. 33  
I. L. R. 27 All. 271

See VENDOR AND PURCHASER—POSSESSION.

See WAJIB-UL-AZ . . . 10 C. W. N. 730

See WILL . . . 9 C. W. N. 309, 749, 784

**HINDU LAW—*concl'd.***

father's right in property acquired by son—

See HINDU LAW I. L. R. 33 Cal. 1119

house built with money furnished by son—

See HINDU LAW . . . 13 C. W. N. 396

interpretation of—

See OUDH ESTATES ACT (I OF 1869).

5 C. W. N. 602

reversion of infant to Hinduism.

See HINDU LAW—ADOPTION—EVIDENCE OF ADOPTION I. L. R. 30 Cal. 999

I. — Sources of Hindu Law. The sources of Hindu law described and their comparative authority discussed. The various schools of Hindu Law, and their divisions and sub-divisions, enumerated and classified. GANOA SARAI : LEXHRAJ SINGH . . . I. L. R. 9 All. 253

2. — Usage as a source of law. The judgment in *Collector of Madura v. Mootoo Ramalinga Sathupathy*, 12 Moo. I. A. 397, gives no countenance to the conclusion that in order to bring a case under any rule of law, laid down by

**HINDU LAW—ADMINISTRATION.**

Administrator *pendente lite*, liability of, to pay debt of deceased—*Quasi-executor de son tort* Under the Hindu law, as in English law, any one taking charge of property belonging to a deceased person renders himself liable for his debts. So an administrator *pendente lite*, who intermeddles with the estate of a deceased person, after he ceases to be administrator, can be

ACHARYA CHOWDERY v. RADHIKA MOHAN ROY (1907). . . I. L. R. 35 Cal. 276  
13 C. W. N. 237

**HINDU LAW—ADOPTION.**

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See CIVIL PROCEDURE CODE, 1882, s. 13.

I. L. R. 29 All. I

See ESTOPPEL—ESTOPPEL BY CONDUCT.

3 Agra 103A

11 Bom. 180, 182, note

I. L. R. 7 Mad. 3

I. L. R. 11 Bom. 361

I. L. R. 15 Mad. 499

I. L. R. 14 Bom. 312

I. L. R. 19 Mad. 53, 145, 397

I. L. R. 19 Bom. 374

See EVIDENCE . . . 13 C. W. N. 370

See HINDU LAW—CUSTOM—ADOPTION.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION.

See LIMITATION ACT, 1877, SEC. II—

ART. 118; . . . I. L. R. 25 Bom. 26

I. L. R. 27 Bom. 614

ART. 119; . . . I. L. R. 24 All. 195

I. L. R. 26 Bom. 720

ARTS 119, 118 AND 121.

I. L. R. 26 Mad. 261

See ONUS OF PROOF—HINDU LAW—ADOPTION

— effect of adoption—

See HINDU LAW—WIDOW—POWER OF DISPOSITION ON ALIENATION.

I. L. R. 26 Mad. 143

**I. AUTHORITIES ON LAW OF ADOPTION.**

1. — Authorities on Hindu Law—*Dattaka Mimamsa—Kalika Purana* . . . with questions of the Hindu law of adoption unsafe to resort to analogical argument from the *arrogance* of the *arrogance* . . .

HINDU LAW—ADOPTION—*contd.*1. AUTHORITIES ON LAW OF ADOPTION—*contd.*

law, and where it is necessary to resort to such authority.

373; and *Ramalakshmi Ammal v. Sitanantha Perumal Selkurayar*, 14 Moo. I A. 570, referred to. The dictum of the Lords of the Privy Council in *The Collector of Madura v. Mootoo Ramalinga Sathupathy*, 12 Moo. I A. 397, that the duty of European Judges administering the Hindu law is not so much to inquire whether a disputed doctrine is deducible from the earliest authorities as to ascertain

Hindu law. In that case no inflexible rule was laid down assigning supreme and infallible authority to the Dattaka Mimamsa in questions connected with Benares school. The text of the child must years, is assigned to that or necessarily

intended to be universally applicable, and admits of a construction which would confine the application of the text to Brahmins intended for the priesthood, and various other equally plausible interpretations have been adopted by other authorities. This being so, it would be unsafe to act upon the text in question and upon the interpretation placed upon it in the Dattaka Mimamsa so as to set aside an adoption which took place many years ago, which had ever since been recognized as valid, and under which the adoptee had ever since been in possession of his adoptive father's estate upon the single ground that at the time of the adoption the adopted son was more than five years of age. According to the Kalika Purana as interpreted by the Dattaka Mimamsa of Nanda Pandita, an adoption in the Dattaka form is wholly null and void if made after the adoptee has completed the fifth year of his age. It is a mistake to hold that, according to the Dattaka Mimamsa, so

... passed the fifth anniversary of his birth. It indicates, on the contrary, that he is in his fifth year. *Thaloor Oomrao Singh v. Thalooram Mohab Koonwar*, 1 N. W. 103a, dissented from. *Chandra Sahai v. Lekhraj Singh*

I. L. R. 9 All. 253

HINDU LAW—ADOPTION—*contd.*

## 2. REQUISITES FOR ADOPTION.

## (a) SANCTION.

1. — Gift and acceptance—Valid adoption. To constitute a valid adoption, there must be a gift and an acceptance. *Collector of Surat v. Dhushringji Vaghaji*, 10 Bom. 235

See *KENCHAWA v. NINGAPA*

10 Bom. 265 note

2. Sanction of ruling power—Adoption otherwise valid—Consent of ruling power—Succession to service *watan*. A formal adoption is not invalid because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitles the adopted son to succeed to property of the nature of a service *watan*. *Ramchandra Vasudev v. Nanaji Timaji*

7 Bom. A. C. 26

3. — Sanction of Government—Adoption by *Kulkarni*—Act XI of 1843—Bom. Act III of 1874, ss. 33, 34 and 35. The sanction of Government to an adoption by a *kulkarni* or his widow, or by a co-parcener in a *kulkarni*ship or his widow, is not necessary to give it validity nor has

... ..

5. — Adoption by the widow of a Hindu who predeceased his father—Presence of the widowed mother-in-law at the ceremony of adoption—Acquiescence. The widow of a Hindu, who predeceased his father, made an adoption. At the ceremony of adoption the widowed mother-in-law of the widow was present. A question having arisen as to whether the presence of the widowed mother-in-law was equivalent to consent on her part to the adoption. *Held*, that mere presence is not necessarily equivalent to consent, for consent in this connection implies an intelligent concurrence on due consideration, and it is for the Court to determine whether the whole circumstances of the case invite the inference that such a consent had been given, bearing in mind that the consent required is a matter not of form, but of substance. *Bhimsappa v. Basawa* (1905)

I. L. R. 29 Bom. 400

## (b) AUTHORITY

6. Adoption made without authority—Invalid adoption. There can be no gift in adoption where there is an absence of authority, the attempt to give being a mere nullity. There is nothing in such an attempted trans-

**HINDU LAW—ADOPTION—*contd.*****2 REQUISITES FOR ADOPTION—*contd.*****(b) AUTHORITY—*contd.***

action to set aside; it should simply be declared null and void *ab initio*. **LAKSHMANA v. RAMAYA**  
12 Bom. 384

**7. ——— Verbal authority—Mode of giving authority.** According to Hindu law, a power to adopt may be given verbally. **SOONDER KOOMAREE DEBEA v. GUDADHUR PERSHAD TEWAREE**

4 W. R. P. C. 116; 7 Moo. I. A. 54

**8. ——— Necessity of express authority of deceased husband—*Maxim*, “*quod fert non debuit, factum valet*”—*Law in Benares—Mitakshara law.*** *Held*, by the Full Bench that,

**11. ——— Adoption by widow—*Adop-***

adoption binding as against the heirs of her father-in-law. **GOPAL BALAKRISHNA KENJALE v. VISHNU RAGHUNATH KENJALE** I L. R. 23 Bom 250

**12. ——— Widow's capacity to adopt—*Implied prohibition—Adoption by senior widow.*** In the absence of express prohibition, the husband's consent to an adoption by his widow is always to be implied. The question of implied pro-

widow's power to give or take in adoption is co-extensive with that of the husband. **LAKSHMANA v. SARASVATIBAI** I L. R. 23 Bom. 769

**HINDU LAW—ADOPTION—*contd.*****2 REQUISITES FOR ADOPTION—*contd.*****(b) AUTHORITY—*contd.***

**13. ——— Power to adopt—*Presumption of authority—Proof of power to adopt—Adoption on contingency.*** Circumstances under which a Court will require strict proof of power to adopt, and under which it will assume the power to have been given. *The presumption of power to adopt.*

**ROOKINEY DEBEA** Cor. 42

**14. ——— Presumption from acquiescence—*Consent to adoption.*** Where an adoption had been acquiesced in for a period of thirty-three years, it was presumed that the necessary consent of some person competent to give away the adopted son had been obtained. **ANANDRAY SIVAJI v. GANESH ESHVANT ROKIL** 7 Bom. Ap. 33

**15. ——— Proof of authority to adopt—*Ceremonies—Presumption.*** The Court when

by a Hindu widow, has been really obtained. **RADHAMADHUB GOSSAIN v. RADHABULLU GOSSAIN** 2 Ind. Jur. O. S. 6; 1 May 311

**16. ——— Presumption of consent—*Acts of adoptive mother.*** When a Hindu lady adopted a son in the lifetime of her husband, the fact that she carried on a law-suit during his lifetime, calling herself his wife and the mother of the adopted son, and that neither the husband nor any one else denied the adoption, would be strong corroborative evidence that the adoption was made not only with the husband's consent, but that the ceremonies usual on the occasion of an adoption were done in his actual presence. **TISCOORIE CHATTERJI v. DEONATH BANERJEE**

W. R. 1864, 155

**17. ——— Proof of authority to adopt—*Adoption by widow to deceased husband, proof of.*** In an adoption made by a Hindu widow, under authority conferred upon her for that purpose by her husband, the authority must be strictly proved, and as the adoption is for the husband's benefit, the child must be adopted to him, and not to the widow alone. An adoption by the widow alone would not, for purposes of Hindu law, give the adopted child, even after her death, any right to property inherited by her from her husband. *Held*, in the present case, that the evidence did not support the presumption.

12 Moo. I. A. 350

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

18. ————— *Reference to deed in subsequent deed* When a subsequent deed of permission to adopt was proved, a distinct reference made in it to a former deed of the same character which corresponded in every particular with the description of it given in the subsequent instrument was, in the absence of proof of the existence of any other document or of anything calculated to throw doubt on the former instrument, held sufficient to establish its identity. *KISHU SUNKUR DUTT v. MONA MIA DOSSEE*. W. R. 1884, 210

19. ————— *Evidence of adoption and power to adopt.* A writing under the hand of a deceased husband declaring that he gave his wife power to adopt, though not complete as a testamentary disposition, may yet be evidence of a declaration of fact. *BROJESWONER DASSEE v. SREENATH BOSE*. 9 W. R. 463

20. ————— *Evidence of au-*

Judge that no such authority had been given was maintained. *AMMI DEVI v. VIKRAMA DEVU*

I. L. R. 11 Mad. 486

L. R. 15 I. A. 178

21. ————— *Power to adopt—Validity of power to widow and executors to adopt—Exercise of such power by widow with consent of the surviving executor* A testator by his will authorized and empowered his wife to adopt a son in the following words: "I hereby authorize and empower my wife and executor, and my executors and trustees, to whom I give full permission and liberty, to adopt after my decease a son, and in case of his death during his minority or on attaining his full age, and without leaving male issue, to adopt a second son, and in case of his death during minority or on

purpose of insuring a wise exercise of her discretion in the selection of a son for adoption, and not

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time being of the office of executors; the death of one of them before the power was exercised did not therefore render the power void. The power was validly exercised by the wife adopting with the consent of the surviving executor. The mere fact of the surviving executor not having actually and

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

physically taken in adoption was not a failure to comply with the terms of the power. *AMRITO LALL DUTT v. SURNOWOYE DASSEE*

I. L. R. 24 Cal. 589

1 C. W. N. 346

Held, on appeal, that such power was bad. Under

Held by the Privy Council:—That no one except the widow, authorized for the purpose by her husband, can adopt a son to him after his decease as a principle in the Hindu law of adoption. The power is exercisable by the widow alone, though restri-

adopt was given to the widow. The conjecture that the testator really meant to give authority to the widow to adopt, restricting her power merely to the extent that there should be others, his executors, who were to consent to the choice of a boy to be adopted by her, could not be accepted as a legitimate construction of the will. The authority was expressed in clear terms to be to the three. It would

*LAL DUTT v. SURNOWOYE DASI*

I. L. R. 27 Cal. 888

L. R. 27 I. A. 128

4 C. W. N. 549

22. ————— *Specifying a child for*

fused by his parents, the authority given warrants (at least in Bombay) the adoption of another child. The presumption is that the husband desired an adoption, and by specifying the object merely indicated a preference. *LAKSHMIBAI v. RAJAJI*

I. L. R. 22 Bom. 986

23. ————— *Termination of authority to adopt.* The authority of a widow to adopt is at an end when the estate, after being vested in her son, has passed to the son's widow. *ANAYA v. MAHAB. GAUDA*

I. L. R. 22 Bom. 416

24. ————— *Consent of sapinda—Adoption by widow—Consent of sapinda—Exercise of discretion—Effect of representation by widow that her husband had given authority, when none had in fact been given—Effect of asking consent of one of two sa-*

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

*pindas of equal degree.* Where a widow obtains the assent of a *sapinda* to an adoption, by representing that her late husband had authorized it, when in fact he had not, such assent is inefficacious in law. The assent of a *sapinda* to an adoption to be made by the widow of a deceased kinsman should be given by him in the exercise of his discretion as to whether the adoption ought or ought not to be made by a widow who has not received her husband's

not been asked for at or about the time of the adoption, it must be taken that his assent had been applied for and refused, inasmuch as the circumstances and the attitude he had assumed showed that he would have refused to give it. *Held*, that the adoption was invalid. If it was the widow's duty to seek the assent of both *sapindas*, she could not be

give an opportunity to the *sapindas* concerned to

*sapinda*, the Court would have been in a position to decide whether consent had been withheld properly or improperly and capriciously. But it was clear that in this case the widow had been determined to ignore the other *sapinda*, and not to care for his advice or even to give him an opportunity to advise her. There is nothing improper in a *sapinda* proposing to give his assent to a widow adopting his own son, if such son be the nearest *sapinda*, and refusing to give his assent to her adopting stranger or a distant *sapinda*, if there be no reasonable objection to the adoption of his own son. In the case of an undivided family, it may be that the assent of the senior *sapinda*, having the status of

especially when they are divided as between themselves. *SUBRAHMANYAM VENKAMA* (1903)

I. L. R. 28 Mad. 327

25. ——— Authority of husband to his wife to adopt—Adoption in pursuance of it—Death of son so adopted—Subsequent adoption

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

by widow with assent of some *sapindas*—Validity. A husband authorized his wife to adopt a son and died. The widow adopted a son in pursuance of that authority, but the son also died. The widow adopted a second time. Both adoptions were made with the assent of some *sapindas*; but the assent to the second adoption was of questionable validity. *Held*, that the husband's authority was not exhausted by the first adoption, and held good for the second adoption also, which was valid for that reason, independently of the assent of the *sapindas*. *Semble* that where some *sapindas* signed a document assenting to an adoption by a widow of "any boy at any time," which was not acted on for nine years, during which period circumstances materially changed, the assent so given would not be valid. *SURYANARAYANA v. VENKATARAMANA* (1903) I. L. R. 28 Mad. 681

whom the *datta-homa* ceremony is necessary. Plaintiff, a Rajput, whose natural mother was dead, and whose natural father had become a convert to Mohammedanism, was given in adoption by his uncle, to whom the natural father had given necessary authority; *Held*, that the addition was valid. *SHAN-SING v. SANTABAI* (1901) I. L. R. 25 Bom. 551

27. ——— Widow—Power of widow to give a son in adoption—Authority to give in adoption. According to Hindu law, a widow, even in the absence of any authority from her deceased husband, is competent to give one of her sons in adoption. *Sri Balusu Gurulingaswami v. Sri Balusu Rama Lakshammamma*, I. L. R. 22 Mad. 398; *Mahabai v. Vithoba Khandappa Gulte*, 7 Bom. H. C. Appx 26; *Huroosondree Dossee v. Chundermoney Dossee* (1863), *See*, Rep. 333 and *Tarini Charan Chowdhry v. Sarada Sundari Dasi*, 3 B. L. R. (d. C.) 145, referred to. *Rangubai v. Bhagirthibai*, I. L. R. 2 Bom. 377, distinguished. *JOGESH CHANDRA BANERJEE v. NITYAKALI DEBI* (1903)

I. L. R. 30 Cal. 965  
s.c. 7 C. W. N. 871

28. ——— Authority to adopt—Power of Hindu widow acting on authority from her husband—Evidence as to giving authority and carrying out its directions. All the schools of Hindu law recognise the right of the widow to adopt a son to her husband with his assent, which may be given either orally or in writing, and when given must be strictly pursued. The widow cannot be compelled to act upon such authority, unless and until she chooses to do so;

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

and in the absence of express direction to the contrary there is no limit to the time within which she may exercise the power conferred upon her. In this case it was held on the evidence that the authority to adopt a son had been given, and its directions had been strictly pursued, the judgment of the High Court being affirmed. *MUTASADDI LAL v KUNDAN LAL* (1905) . I. L. R. 28 All. 377  
s. c. L. R. 33 I. A. 55

29. ———— *Adoption—Consent of sapindas obtained by false representation* Held, that a widow, who fails to prove her husband's authority to adopt, cannot support its validity by consent given by her husband's sapindas on her representation that by so doing they were ratifying the husband's authority. *JONKALAGADDA v SRIBRAHMANIAM* (1905) . L. R. 34 I. A. 22  
s. c. I. L. R. 30 Mad. 50

30. ———— *Authority given jointly to two widows to adopt—Character of descendibility not affected by forfeiture and regrant to heirs—Adoption—Authority given jointly to two widows to adopt, and can be exercised by one after the death of the other—Adoption made under coercion only voidable—Adoption does not divest an adopted son of joint property of which he had become sole and absolute owner* The question whether an estate is subject to the ordinary Hindu law of succession or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it. *Srimantu Raja Yarlagadda Mallikarjuna v Srimantu Raja Yarlagadda Durga*, L. R. 17 I. A. 131 at p. 144, referred to and followed. Where an estate is

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estate, that is, a partible according to the ordinary Hindu law applicable to co-parcenary property. An authority to adopt given to two widows jointly is not invalid and may be exercised by one after the death of the other. An adoption made under coercion is not void, but voidable and will be valid, if ratified subsequently. If no one's interest is prejudicially affected by such ratification before it is made. The adoption into another family of the only surviving member of a joint family, in whom the family estate has vested solely and absolutely, does not, in law, operate to divest him of his rights in such estate. *VENKATA NARASIMHA AYYA Row v SRIKANTHA AYYA Row and others* (1905) . I. L. R. 29 Mad. 437

31. ———— *Adoption after birth of posthumous son to sole surviving co-par*

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

*coner—Adoption by widow with authority of husband—Joint family—Mitakshara*—'s daughter out of court'—Right to particularly governed

possessed of considerable ancestral property. One of them died on 14th September 1900 without male issue but leaving his widow pregnant. The other brother died on 17th December 1900 leaving a will, dated 30th November, by which he purposed to make certain dispositions of the family property and also authorized his widow to adopt a son with the consent of persons specifically mentioned in the will: "such adoption to be made even though a son is born to my brother's widow." On 18th December his brother's widow gave birth to a son, the plaintiff. On 17th February 1901, the testator's widow adopted a son to her husband with the consents directed in the will. It was contended that on the face of the will the adoption was illegal and void because the power to adopt was part of a plan for the disposition of the family property which was in contravention of the law, and the power was dependent on that plan having effect. Held, on the construction of the will, that the dispositions made were within the testator's competence at the date of the will and at the date of his death; they were only liable to be defeated in one event (which in fact happened), namely, his brother's widow giving birth to a son.

absolutely and exclusively in the plaintiff and that the adoption could not divest it. Held, that the adoption being made with the authority of the husband and under the circumstances

property. *Sri Virada Mutapa Raghunada Deo v. Sri Brozo Kishore Datta Deo*, L. R. 3 I. A. 154, followed. Held, also, that a sum of Rs 20,000 given to his daughter, one of the defendants, by the testator and transferred to her in his lifetime, was a valid gift and justified by the circumstances of the case and as being made not out of capital but out of income. Held, further, that partition of the property which was asked for in case the plaintiff had no exclusive right to it was rightly refused by the Courts in *In Re Bachoo v. MANKORERAR* (1907) . I. L. R. 31 Bom. 373; L. R. 34 I. A. 107

32. ———— *Adoption with consent of sapindas—Assent given on the strength of representation by widow that she had her husband's authority to adopt—Such authority found on evidence not to have been proved—Omission to add consent of one of two of husband's nearest kinsmen, effect of* The first appellant was the widow of a deceased Brahman who was separate in estate from

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*contd.*(b) AUTHORITY—*contd.*

his kinsmen, two of whom were the respondents who were brothers of the deceased and also divided between themselves. The widow, representing that she had the oral authority of her husband to adopt a son, obtained the assent of the second respondent, the elder of the two brothers, who executed a deed purporting to ratify the husband's authority, and this was signed also by some remoter kinsmen of the husband; and the widow thereupon purported to adopt the second appellant as a son to her husband. The first respondent was not asked for his consent, the widow alleging, as her reason for omitting to ask him, that she knew from his attitude towards the proposed adoption that he would refuse. In a suit brought by the first respondent to have the adoption declared void both the lower Courts found that there was not sufficient evidence

proof of the natural advisers of the widow, the

ground of defence. Nor had the widow justified her omission to ask for the authority of the first respondent, one of the nearest kinsmen of her husband, and holding an important position in the family. To consult him was essential to her ob-

SUBRAMANIAM (1906)

I. L. R. 30 Mad. 50; I. L. R. 34 I. A. 22

## (c) CEREMONIES.

33. — Ceremony of putressee jag  
—Consent of person adopted—Superior castes  
The performance of the putressee jag is essential to the validity of an adoption in the Dattaka form, at least among the three superior castes. The consent of the party adopted is essential to the validity of an adoption in the Lritima form. LUCHWUN LALL v. MORDUN LALL BRAYA GAYAL. 18 W. R. 179

34. — Ceremony of datta homam  
—Brahmans. *Semle*: The ceremony of datta homam is among Brahman an essential element in adoption. *Singamma v. Vinjamuri Venkatacharlu*, 4 Mad. 165, questioned. VENKATA v. SUBHADRA. I. L. R. 7 Mad. 548

HINDU LAW—ADOPTION—*contd.*2 REQUISITES FOR ADOPTION—*contd.*(c) CEREMONIES—*contd.*

35. — *Brahmans—Giving and receiving child.* In order to establish a valid adoption in a Brahman family, proof of the performance of the datta homam is not essential.

36. — *Dakhani Brahman.* In the case of Dakhani Brahman, the "datta homam" or any other religious ceremony is not required to give validity to the adoption of a brother's son; the giving and taking of the child is sufficient for that purpose. ARUNAVI v. MADHO RAO. I. L. R. 6 All. 276

37. — *Brahmans in Bombay—Adoption of brother's son.* Among Brahman in the Presidency of Bombay the performance of the datta homam ceremony is not essential to the validity of the adoption of a brother's son. VALUBAI v. GOVIND KASHINATH. I. L. R. 24 Bom. 216

38. — *Place for performance of ceremony.* Although, according to the Dattaka Mimamsa, the ceremony of homam, or burnt

39. — *Adoption by widow during pollution.* Dicta in *Shashinath Ghose v. Krishna Sunder Das*, I. L. R. 6 Cal. 381: I. L. R. 7 I. A. 230, as to incidents of a formal adoption discussed. Observations on the necessity

40. — A Brahman took a boy in adoption, but died before the ceremony of datta homam was performed. This ceremony was performed after the death of the adoptive father by his widow. *Held*, that the adoption was valid. SUBBARAYAN v. SUBBAMMAL. I. L. R. 21 Mad. 497

41. — *Validity of adoption without ceremonies among Brahman.* *Quare*: Whether an adoption is valid among Brahman without the performance of the essential religious ceremonies. RAVJI VINAYAKRAV JAGANNATH SHANKARSETT v. LAKSHMINIBAI. I. L. R. 11 Bom. 381

42. — *Adoption among Brahman—Datta homam, when it may be dispensed with.* The ceremony of datta homam is not essential to a valid adoption among Brahman in Southern India, when the adoptive father belong to the



**HINDU LAW—ADOPTION—contd.****2. REQUISITES FOR ADOPTION—contd.****(c) CEREMONIES—contd.**

*Charlu, 4 Mad. 165*, approved and followed, *Shashinath Ghose v. Krishnasundari Das, 1 L. R. 6 Cal. 381*, considered. *GOVINDAYAR v. DORASANI, 1 L. R. 11 Mad. 5*

**43.** ——— **Upanayana, ceremony of—**  
*Second birth—Age of adoptee.* As understood in the Hindu law, adoption is itself a "second birth" proceeding upon the fiction of law that the adoptee is "born again" into the adoptive family. The male issue being favoured existence of mainly for the sake of the parent's beatitude in the future life, adoption is a sacrament justified under certain conditions when the natural male offspring is wanting. It is effected by a substantial adherence to ceremonies, but principally by the acts of giving

rites of initiation. According to Manu, in the case of the three "twice-born" classes the turning point of the "second birth," which means purification from the sin inherent in human nature, is represented by the ceremony of upanayana or investiture of the sacred thread hallowed by the gayatri, and until the performance of this ceremony, the person concerned, though born of twice-born parents, remains on the same level as a Sudra. The ceremony is, moreover, the beginning of his education in the duties of his tribe, as prescribed by Manu. According to the Hindu law, as observed by the Benares school, the ceremony of upanayana, representing as

*A. Beng. (1859), 229*, referred to *Dharma Daga v. Ram Krishna Chinnai, 1 L. R. 10 Bom. 80*, discented from. *GANGA SAHAI v. LAKHRAJ SINGH, 1 L. R. 9 All. 253*

**44.** ——— **Ceremonies in case of Sudras—Necessity for ceremony.** *Quare* Whether religious ceremonies are necessary to make an adoption valid among Sudras. *SEINABAIN MITTER v. KISHEN SOONDARY DASI, 11 B. L. R. 171, 1 L. R. I. A. Sup. Vol. 149*

**50. NUGENDRO CHUNDER MITTRO v. KISHEN SOONDARY DASS, 19 W. R. 133**

**HINDU LAW—ADOPTION—contd.****2. REQUISITES FOR ADOPTION—contd.****(c) CEREMONIES—contd.**

**45.** ——— **Necessity for ceremonies.** A Hindu Sudra adopted the plaintiff, his brother's son, in 1247 (1840), who, upon the death of his adoptive father, performed his shraddha and obtained possession of all his property as such adopted son. The adoption had not been questioned except in 1256 (1849), when the defendant sued the plaintiff, who was then still a minor, through his guardian, and obtained possession from the plaintiff of certain of the property of the deceased, on the ground that the adoption was invalid. The plaintiff now, within twelve years of such dispossession, sued to recover possession stating that the decree in the former suit had been obtained by the defendant in collusion with the guardian. The defence was, that the adoption was invalid, the proper ceremonies not having been performed. The Court refused to entertain such defence. *Per BAYLEY, J.*—Ceremonies which are necessary to be observed for a valid adoption among Hindus of the superior classes are not necessary in the case of an adoption by a Sudra. In the case of adoption by a Sudra of a brother's son, mere giving and taking may be sufficient to make the adoption valid. *NIPTANEND GHOSE v. KRISHNA DOYAL GHOSE, 7 B. L. R. 1: 15 W. R. 300*

**46.** ——— **Necessity of cere-**

Affirmed on appeal in *INDRANANI CHOWDHARI v. BENARI LAL MULLICK*

**1 L. R. 5 Cal. 770: 8 C. L. R. 183, 1 L. R. 7 I. A. 24**

*Overruling BHAIRUBHATA SYE v. MONESH CHANDRA BHADURY*

**4 B. L. R. A. C. 182: 13 W. R. 168**

**47.** ——— **Adoption by widow under pollution.** Among Sudras no religious ceremonies are essential to adoption, and consequently an adoption by a Sudra widow under pollution is not invalid. *THANGATHANNI v. RAMU, 1 L. R. 5 Mad. 358*

**48.** ——— **Ceremonies to complete adoption.** In a suit for confirmation of a right to adopt a son and to cancel deeds of agreement adopt must the execution of the deeds was not necessary. *SEINABAIN MITTER v. KISHEN SOONDARY DASI, 2 B. L. R. A. C. 279: 11 W. R. 196*

In the same case on appeal to the Privy Council it was, however, held that the execution of the deeds, if they were deeds of gift and adoption, and not mere agreements to give and adopt, was sufficient, and that the fact that they were not interchanged

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was not necessary or important. *SREENARAIN MITTER v. KISHEN SOONDERY DASER*

11 B. L. R. 171  
L. R. I. A. Sup. Vol. 149

SIDDESSORY DAS v. DOOROA CHURN SETT  
2 Ind. Jur. N. S. 23: Bourke O. C. 360

49. ———— *Execution of mutual deeds—Actual giving and taking of child.*

was found on the evidence that it was not the intention of the parties to complete the adoption by the mere execution of the deeds. *SNOSHINATH GHOSE v. KRISHNASUNDERI DAS*

I. L. R. 6 Calc. 381: 7 O. L. R. 313  
L. R. 7 I. A. 250

50. ———— *Ceremonies in case of Kshatriyas—Necessity of religious ceremonies.* Among Kshatriyas in the Madras Presidency, adoption without religious ceremonies is valid. *Sugamma v. Pinjamuri Venkatacharlu, 4 Mad. 165*, followed. *CHANDRAMALA PATTI MAHADEVI v. MUKTAMALA PATTI MAHADEVI*

I. L. R. 6 Mad. 20

51. ———— *Necessity for performance of ceremonies—Construction of will—Gift. G, a childless Hindu, by his will, directed as follows:—“And as I am desirous of adopting a son, I declare that I have adopted K, third son of my eldest brother. My wives shall perform the ceremonies*

nam, left by me, also that adopted son. When he comes to maturity, the executors shall make

at that time Nandini has not a son eligible to adoption, they shall adopt another son of Saroda and the wives and executors shall perform all the aforementioned acts.” In a suit by one of G’s

by the testator to a designated person independently

**HINDU LAW—ADOPTION—contd.****2 REQUISITES FOR ADOPTION—contd.****(c) CEREMONIES—contd.**

of the performance of the ceremonies. *Quare*: Whether the performance of the ceremonies was essential to the completeness of the adoption; and if so, whether one widow was effectually empowered to perform them. *NIDHOOMONI DEBYA v. SARODA PERSHAD MOOKERJEE*

L. R. 3 I. A. 253: 26 W. R. 91

52. ———— *Proof of performance of ceremonies—Evidence.* In a case to set aside an adoption on the ground that the ceremonies had not been performed, where there was satisfactory evidence showing that the adoption had been continuously recognized for a series of years, and that the party adopted had been in possession, either in person or through his guardian, of the property in dispute:—*Held*, that the Court might well dispense with formal proof of the performance of the ceremonies, unless it were distinctly proved, on the part of the plaintiff, that the ceremonies had not been performed. *SABO BEWA v. NARAYAN MATI*

2 B. L. R. Ap. 61: 11 W. R. 380

CROWDHY HEERASUTOOLAH v. BROJO SOON-  
DUA ROY

18 W. R. 77

53. ———— *Authority to adopt.* The Court, when it is satisfied that

the husband's authority has been really obtained. *RADHAMADHUB GOSSAIN v. RADHABULLAY GOSSAIN*  
1 Hay 311: 2 Ind. Jur. O. S. 5

54. ———— *Subsequent performance of ceremonies—Omission to perform ceremonies at adoption.* *Quare*: Whether, where the ceremonies of an adoption are not performed at the proper time, *INDAO.*

I. L. R. 24  
A. 24

55. ———— *Portion of ceremonies performed by relation, not by widow.* Where a widow performs the principal part of the adoption ceremony,—namely, the gift and acceptance,—the fact that at her request the religious part of the ceremony is completed by a relation does not vitiate the adoption. *LAJSHMIBAI v. RAM-CHANDRA*

I. L. R. 22 Bom. 580

56. ———— *Gift and acceptance—Ceremonies of adoption.* In the case of an adoption under the Hindu law, if there is evidence of gift and acceptance, and it is further shown that the adoptee

VYAS RANCHANDRA . I. L. R. 24 Bom. 473

57. ———— *Dwyamushyayana form—Adoption—Succession—Natural mother.* *Held*, that

HINDU LAW—ADOPTION—*contd.*2. REQUISITES FOR ADOPTION—*concl.*(c) CEREMONIES—*concl.*

the natural mother of a Hindu adopted into another branch of his family by the *mitya dnyamushayana* form of adoption does not, on account of such adoption, lose her right of succession to her son in the absence of nearer heirs. An adoption in the absolute *dnyamushayana* form depends upon and has its efficacy in the stipulation entered into at the time of adoption between the natural father and the adoptive father and does not depend upon the performance of any initiatory ceremony by the natural father. *BERARI LAL v SHRI LAL* (1904) . . . I. I. R. 28 All. 472

58. — Gayawal priests—Custom—Agreement between adoptive mother and adopted son, not depending upon the validity of the adoption—Revocation of agreement—Contract of service—Termination on notice—Employment of priest. Plaintiff, the widow of a Gayawal priest, purported to adopt the defendant, a married man, twenty-four years of age, in accordance with an alleged custom by which it was said the childless widow of a Gayawal priest is allowed to make such an adoption in order that the adopted son may get his feet worshipped by the clientele of her family for her own immediate benefit and ultimately for the benefit of the adopted son who takes by inheritance her estate as well as the estate of her husband. The son so adopted was, it was further alleged, liable according to the said custom to be dismissed for misconduct. At the time of the adoption the plaintiff executed a deed which recited the fact of the adoption having been made pursuant to the above custom and specified the circumstances under which the adoption might be cancelled. The alleged custom not having been established. Held, that the adoption was not valid either as a *dattak* or a *krutima* adoption, the necessary rites and ceremonies not having been performed and the defendant having already been invested with the sacred thread, married and had a son at the time of adoption, that the transaction was essentially a contract to enable the plaintiff to keep up her connection, spiritual as well as worldly, with her husband's clientele and to enjoy the benefits resulting from such connection, and this contract did not depend for its validity upon the validity of the adoption and was consequently enforceable. That the contract was not determinable at the mere choice of the plaintiff. The contingencies which in the contemplation of the parties was to terminate the contract not having arisen, the plaintiff was not entitled to rescind the contract. *Manley v. L. and N.W. Railway, L. R. 8 Ch. App. 912, 919, and St. Barabas v. M. I. Electric Co., 40 L. R. A. 385*, referred to. The contract in this case was not a contract of service terminable on notice. *Seemle*: The obligation to employ a specified priest is rather a matter of conscience than a juristic obligation enforceable in a Court of law. *LACHMI DU MOHUTAIN v. KISSAN LALL PAHARI* (MAHATON GAYA 1906) . . . 11 C. W. N. 147

HINDU LAW—ADOPTION—*contd.*

## 3. WHO MAY OR MAY NOT ADOPT.

1. — Childless Hindu—*to adopt a son*—*A son if at a son is required with him, but* . . . RAJENDRO NARAYAN LAKSHMI v. SARODA SOONDRE DEBIA . . . 15 W. R. 548

2. — Husband or widow after his death—*Modes of adopting*—An adoption—*be made either by a man or by his wives after upon her for the* . . . RADHON MOORE . . . 7 W. R. P. C. 71; 4 Moo. I. A. 414

3. — Widow succeeding as heir of son—*Effect of, on right to adopt*—A widow succeeding as heir to her own son does not lose the right to exercise the power of adoption. *BYKANT MONER ROY v. KRISTO SOONOREE ROY* . . . 7 W. R. 392

4. — Giving in adoption—*Mother—Paternal grandfather*. When the natural father is dead and the mother is living, she is the person who can give in adoption. . . . COL. . . . DHRISHINGJI VAGHARIA . . . 10 Bom. 235

See KENCHAWA v. NINGAPPA 10 Bom. 265 note

5. — Joint giving by father and mother—*Brother—Consent of father*. Amongst Hindus in the Presidency of Bombay, a valid gift in adoption can be made only by the natural father or mother of the son given or by them both conjointly. They cannot jointly or severally delegate that authority to another person so as to validate a gift by him, made after they are both deceased. Therefore, a gift in adoption by the brother of the adoptee after the decease of his father and mother, though made with the previous assent of his father, was held to be invalid. *BASHOTIAPPA BIN BASLINGAPPA v. SHIVLINGAPPA BIN BALLAPPA* . . . 10 Bom. 268

6. — Adoption among Jains—*Deed of adoption, validity of—Authority of widow*. A R., a member of the community of Jains of Marvadi origin, who form part of the inhabitants of Ahmadnagar in the Deccan. . . .

After her death, C D and E F (another brother of A B), with the assent of the Panch or senior members of the community, performed a ceremony of gi . . . of agreement was executed by . . . with the property . . .

**HINDU LAW—ADOPTION—contd.****3. WHO MAY OR MAY NOT ADOPT—contd.**

*B. Held*, that the adoption was invalid, and that

their divergence from Hindus in matters of religion ; and Hindu law does not allow any one but the widow to act vicariously for the man to whom the son is to be affiliated ; the widow is a delegate either with express or implied authority, and cannot extend that authority to another person, so as to enable him to adopt a son to her husband after her decease ; not only a giving, but an acceptance by the man or his wife or widow, manifested by some overt act, being necessary to constitute an adoption by Hindu law. *BHAGAVANDAS TEJMAL v. RAOMAL alias HIRAJAL LACHMIANDAS* . 10 Bom. 241

**7. ———— Death of only son leaving widows in lifetime of father—Subsequent death of father—Vesting of father's estate in son's widows—Adoption by son's senior widow without consent of junior widows—Divesting of estate.** By

and after she has inherited the estate, is valid.

authority of a widow to adopt is at an end when the estate, after being vested in her son, has passed to the son's widow. An adoption by a widow in a divided family cannot divest any estate other than her own and her co-widow's except, perhaps, with the consent of the heir in whom the estate has vested. *AMAYA v. MAHADGAUDA*

I. L. R. 22 Bom. 418

**8. ———— Members of Talabda Koli caste—Absence of spiritual motives for adoption.** It is not a necessary consequence of the circumstance that the spiritual motive for adoption, which exists amongst the higher castes of Hindus, has no influence upon the Talabda Koli caste, that its members may not lawfully adopt. *BHALA NAHANA v. PARBHU HARI* . I. L. R. 2 Bom 67

**9. ———— Naikins (dancing girls)—Adoption, invalidity of—Want of presupposition of husband.** The plaintiff and the defendant were Naikins. The plaintiff, as the adopted daughter of

**HINDU LAW—ADOPTION—contd.****3. WHO MAY OR MAY NOT ADOPT—contd**

**10. ———— Adoption by minor—Power of minor to adopt or give permission to adopt—Age of discretion.** According to the Hindu law prevalent in Bengal, a lad of the age of fifteen is regarded as having attained the age of discretion, and as competent to adopt, or to give authority to adopt, a son. *JUMMOONA DASSYA v. BAMSUNDAI DASSYA* . I. L. R. 1 Calc. 289 : 25 W. R. 235  
I. L. R. 3 I. A. 72

**11. ———— Age of discretion.** An adoption is not invalidated by the mere fact of the adoptive father being a minor, if he has attained the years of discretion. Such an adoption is not attended by any civil disability. *RAJENDRO NARAIN LAHOREE v. SARODA SOONDUREE DEBIA* . 15 W. R. 548  
I. L. R. 18 Calc. 69

**12. ———— Minor widow.** A widow, although a minor, is competent to adopt a son. *MONDARIN DASI v. ADINATH DEY*

**13. ———— Adoption by widower—Validity of adoption.** An adoption by a widower is valid according to Hindu law. *NAGAPPA UDAPA v. SUBBA SASTRY* . 2 Mad. 367

*CHANDVASEKHARUDU v. BRAMHANNA* . 4 Mad. 270

**14. ———— Adoption by an unmarried man.** Adoption by an unmarried man is not invalid. *GOPAL ANANT v. NARAYAN GONESH* . I. L. R. 12 Bom. 329

**15. ———— Adoption by man who has never married—Validity of adoption. Semble :** The Hindu law does not prohibit an adoption by a man who has not been married. *CHANDVASEKHARUDU v. BRAMHANNA* . 4 Mad. 270

**16. ———— Adoption by husband with**

*SHANMA GARU* . I. L. R. 3 Mad. 180

**17. ———— Adoption during wife's pregnancy—Posthumous son, Rights of, in family property—Will limiting legal share of such son.** The adoption of a son by a childless Hindu is valid, although at the time of adoption his wife is pregnant. The possibility that a son may afterwards be

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death. An adopted son stands in the position of a natural son, subject to having his share reduced to one-fourth in the event of a natural son being subsequently born. *R* died, leaving him surviving his widow, who was then pregnant, and the defendant, whom he had adopted few days before his death. By his will *R* directed that, in the event of a son being born to him after his death, his property should be divided equally between such son and the defendant, but otherwise all his property was to go to the defendant. Shortly after *R*'s death, a son (the plaintiff) was born. The present suit was brought by the guardian of the plaintiff to recover the family property from the defendant. It was contended that the adoption of the defendant was invalid having taken place during the pregnancy of the plaintiff's mother, and that *R*'s will, in so far as it was in prejudice of the plaintiff's right as a son, was also invalid. *Held*, that the adoption of the defendant by *R* was valid, notwithstanding that *R*'s wife was pregnant at the time of the adoption. *Held*, also, that *R*'s will was inoperative in so far as it reduced the plaintiff's share to a moiety of the property. On the birth of the plaintiff, the defendant, as the adopted son, became by Hindu law entitled only to one-fourth, the plaintiff, as the natural son, taking the other three-fourths. **HAJIANAT RAM-CHANDRA v. BHIMACHARYA** I. L. R. 12 Bom. 105

18. — *Vaishya* who has undergone the ceremony of *Vibhut Veda*—*Custom as to incapability to adopt*. There is nothing in the books of authority amongst Hindus to show that a *Vaishya* who has undergone the ceremony of *Vibhut Veda* is incapable of adopting a son. If a custom to that effect exists, it should be proved by satisfactory evidence. **MHALSARAI v. VITHOBA KHAN-DAPPA GULVE** 7 Bom. Ap. 20

19. — *Adoption by leper*—*Validity of adoption*. The Hindu law does not prevent a leper from giving his son in adoption. **ASUND MOHUN MOZOOMDAR v. GOVIND CHANDER MOZOOMDAR** W. R. 1864, 173

20. — *Person under pollution* from death of relative—*Validity of adoption*. Objection that the respondent's adoption was not valid because the adopted son was the son of a sister, and also because it was made when the adopter was under pollution in consequence of the death of a relative. Upon a conflict of evidence as to the time of the relative's death, the Privy Council decided in favour of the respondent. The period of pollution, according to Hindu law, is sixteen days. **HANALINGA PILLAI v. SUDASIVA PILLAI**

I. W. R. P. C. 25  
9 Moo. I. A. 508

21. — *Widow whose husband's corpse has not been removed*—*Adoption during pollution of adoptive parent*—*Contract Act (IX of 1872), ss 15, 16—Coercion—Undue influence*. The minor widow of a deceased Hindu of the Komati or Vaisya caste (who had authorized

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her to adopt a son) corporeally accepted a boy as in adoption from his natural father, who (*semble*) belonged to a different gotra from her deceased husband. There were no formal declarations of giving and taking the child and datta homam was not performed. At the time when the child was handed over to the widow, her husband's corpse was still in the house, and the relatives of the child and other members of the caste obstructed the removal of the corpse until the child had been accepted as above and the widow had executed a deed of adoption. *Held*, that there was no valid adoption by the widow. *Per Curiam*. Obstructing the removal of a corpse by the deceased's widow or her guardian unless she made an adoption and signed a document is an unlawful act, and amounts to "coercion" and "undue influence," such as are defined by s. 15 or 16 of the Contract Act. Dicta in *Shosinath Ghose v. Krishna Sunders Dasi*, I. L. R. 6 Cal. 331; *L. R. 7 I. A. 250*, as to incidents of a formal adoption discussed. Observations on the necessity of datta homam in a ceremonial adoption among members of a twice-born class, and on an adoption taking place during the pollution of the adoptive parent. **RANGANAYA-KANHA v. ALWAR SETTI** I. L. R. 13 Mad. 214

22. — *Adoptive mother of same gotram as natural father*—*Subsequent datta homam*—*Absence of natural father at datta homam*—*Validity of adoption*—*Estoppel*. In a suit to recover possession of certain land to which the plaintiff claimed that the adopted son of a deceased

was performed subsequently that the plaintiff had since been recognized as the adoptive son of the deceased and had acted accordingly during a period of twenty-five years. The defendant was in possession under a claim of title as a reversionary heir, the widow having died shortly before suit. It appeared further (i) that the widow was under pollution at the time of the plaintiff's adoption, but the pollution had ceased at the time of the datta homam; (ii) that the natural father was not present at the time of the datta homam, but his wife took part in the ceremony with his consent. *Semble*: Neither of the last-mentioned circumstances invalidated the adoption, but *quære*—whether the adoption was not invalid for the reason that the plaintiff's adoptive mother was by birth a member of the same gotram as his natural father. *Held*, on the evidence, that the defendant was estopped from denying the validity of the adoption. **SANTAPATTA v. RANGAPATTA** I. L. R. 15 Mad. 397

23. — *Unchaste widow*—*Incompetency to adopt*. A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. **SAYAMA-LAL DUTT v. SAUDAMINI DASI** 5 B. I. R. 362

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But see *THANOGATHAN R. RAMA*

I. L. R. 5 Mad. 358

where the parties, however, were *Sadras*.

24. — *Unchastity of widow after vesting of estate, effect of, on power of adoption—Sunt to set aside adoption* One *O* died leaving him surviving his widow *Y* and his undivided son *R*, who subsequently also died, leaving him surviving his widow *P* and a son *I*, who died shortly afterwards. *Y* adopted the plaintiff, and immediately afterwards *P* adopted the defendant. The plaintiff sought to set aside the adoption of the

the defendant. Her existence and the vesting in her of her husband's estate rendered the elder widow *Y* incapable of adopting. The estate, having thus vested in *P*, would not be divested by her subsequent unchastity, and therefore the inquiry into her chastity was irrelevant. *KESHAV RAVAKRISHNA v. GOVIND GONESH* I. L. R. 9 Bom. 94

25. — *Untonsured widow—Validity of adoption—Conflicting opinions of Shastris as to validity of adoption.* In a suit to uphold the validity of an adoption made by the defendant of the plaintiff, the defendant admitted that she had performed certain ceremonies which she intended to be an adoption of the plaintiff as son of *V*; but she alleged that at the time of the said adoption she had not, nor had she since, undergone tonsure; and

plaintiff was a valid adoption. From the evidence it appeared that the requisite religious ceremonies had been performed. Before the defendant took part in them, Shastris were consulted as to whether the defendant, while untonsured, could properly do so, and on making certain expiatory gifts she was pronounced competent. Under such circumstances, the Court could not hold her to be incompetent. Even if other Shastris were of a different opinion, a Civil Court could not decide between conflicting opinions upon such a question of

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opinions of other Shastris expressing or entertaining contrary views. *RATJI VINAYAKRAY JAGGAN-NATH SHANKARETT v. LAKSHMIRAI*

I. L. R. 11 Bom. 381

26. — *Delegation of authority to adopt—Ceremony of adoption* Under the Hindu law, the widow only can adopt a son to her husband and she cannot delegate this authority to any other relation. Where a widow performs the principal part of the adoption cere-

I. L. R. 22 Bom. 590

27. — *Rights of adoption of elder widow—Adoption by younger widow without consent of elder widow invalid, although child selected by both widows—Right of selection.* An adoption by a younger widow, without the consent of the eldest widow, of a boy who has previously been selected by all the widows for adoption

the mutual acts of giving and receiving the child are accomplished, and until they take place, there is necessarily a *locus penitentie* for the elder widow of which she may avail herself, although contrary to the wishes of the other widows, by changing her mind and selecting another child. To hold that any

complete the adoption which, at the most, was only *in fieri*. *B* died in 1865 without a son, leaving three widows, viz., *L*, *A*, and *C*, of whom *L* was the oldest and *C* the youngest. The plaintiff was unanimously selected by the three widows for adoption after the death of their husband. The unanimity continued down to May 1866; but on the 20th June 1866 *L*

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adoption was invalid, having been carried out without the consent of *L*, the senior widow. He further contended that the plaintiff's claim to the property

and therefore was not entitled to the property in dispute. His adoption by *C*, the younger widow, without the consent of *L*, the senior widow, was invalid. *PADAMAY V. RAMRAY*

I, L. R. 13 Bom, 160

28. — Adoption by a mother after the death of her son who has left neither child nor widow. Under the Hindu law, a mother is competent to adopt when her son dies leaving no widow or other heir nearer than herself. *GAUDAPPA V. GIRIMALLAPPA*

I, L. R. 19 Bom, 331

29. — Adoption by widow, but ceremonies performed by deputy (by uncle) — Validity of adoption. Where a mother, in pursuance of the promise of her deceased husband, allowed her son to be adopted, but did not herself attend at the adoption ceremonies to give him in adoption, but commissioned her uncle to give the boy on her behalf: Held, that the adoption was not on that account invalid. *VIJAYARAM V. LAKSHMAN*

8 Bom. O. C. 244

30. — Adoption with consent of father, but ceremonies performed by deputy — Validity of adoption. Where the father of a boy gave his formal consent to the adoption of his son, but was prevented by sickness from attending the adoption ceremony, and delegated to his deputy to perform the ceremony: Held, that the adoption was valid.

11 Bom. 229

31. — Adoption made by brother in pursuance of father's agreement — Validity. *by ad. v. S.*

32. — Son, adoption by — Son's power to adopt — Impartible estate — Failure to prove alleged custom in a family against adoption — Invalid agreement between father and father's brother, in a joint family, contrary to rights of son already born. Two brothers, undivided under the Mitakshara, the family estate being an impartible zamindari in the possession of one of them who had a son, contracted with each other that, in the event of an indefinite failure of male issue in the line of either of them, the estate should descend in the line of the brother having *auras* (self-begotten) issue, and should not be alienated from the line of the latter by adoption. Held, that this contract did not bind the son not to adopt, or exclude from the

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inheritance a son adopted by him. Such a stipulation was contrary to the law declared in the *Tagore Case*, 9 B. L. R. 377, and was ineffectual to prevent the son's exercising his right of adoption. *SURIYA RAO & RAJA OF PITTAPUR* I, L. R. 9 Mad, 499  
L. R. 13 I. A. 97

33. — Adoption by wife — Sanction to wife to adopt in husband's lifetime. According to the law, a wife is not competent to adopt in the lifetime of her husband.

*sindhu* pointed out. Dictum in the case of *Collector of Madura v. M. Ramalinga Sathapathi*, 2 Mad. 230, "that the opinion of *Deranda Bhatta* must have been that the assent of the husband stood upon precisely the same footing, and was of the same scope, in the cases of giving and receiving" (by the wife in adoption), questioned. *NARAYAN BABAI V. NANA MANCAR* 7 Bom. A. C. 153

34. — Power of wife to give in adoption — Consent of Government to adoption — Non-fulfilment of conditions of adoption — *Mitale* (by ad. v. S.) 11 Bom. 229

circumstances from which the husband's assent can be inferred. *RANGURAI V. BROGIRIBAI*

I, L. R. 2 Bom. 377

25. — Adoption by widow — Authority of husband — Consent of sapindas. A widow cannot make a valid adoption without either the authority of her husband or the consent of the sapindas. *ARUNDADI AMMAL V. KUPPAMMAL*

3 Mad. 283

36. — Authority of husband — Ceremonies, performance of. In cases of adoption in the *Dattaka* form, it must be proved that the widow had the authority of her husband to adopt, and that she made the adoption when the boy adopted was under six years of age, and with the prescribed ceremonies. *DOMRAO SINGH V. MAHTAREKONWAR*

3 Agra 103

*GURSHAN SINGH*

b W. L. R. C.

38. — Prohibition by husband — Effect of an adoption by widow — Fraud — Concealment of rights from widow. A Hindu

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adopt without the authority of her husband given prior to his decease. Where a Hindu childless husband, when at the point of death, positively

Bhatta must have been that the assent of the husband stood upon the same footing, and was of the scope, in the case of giving and receiving "a son in adoption by the wife," questioned. Where an adoption by a young Hindu widow is set up against her and to defeat her rights, the Court will expect clear evidence that at the time she adopted she was fully informed of those rights, and of the effect of the act of adoption upon them; and if it find that fraud or cajolery was practised upon the widow to induce her to adopt, or that there has been suppression or concealment of facts from her, it will refuse to uphold the adoption. *BAIABAI v. BALAJI VENKATESH RAOIA KANT* . . . 7 Bom. Ap. 1

**38.** ———— *Authority to adopt—Kinmen, consent of—Prohibition to adopt*  
According to the Hindu law current in the Dra-

ance of a religious duty and not capriciously, or from a corrupt motive. The widow cannot adopt where there is a prohibition by the husband, direct or implied. *COLLECTOR OF MADURA v. MUTU RAMALINGA SATHUPATHY*

**1 B L R. P. C. 1: 12 Moo. I. A. 397**  
**10 W. R. P. C. 17**

*S.C. in Court below, COLLECTOR OF MADURA v. MUTTU VIJAYA RAOUNADA MUTTU RAMALINGA*

succeed to her only. *COLLECTOR OF TIRHOOT v. HURROTHERSHAD MOHENT* . . . 7 W. R. 500

*SHIND KOOEREE v. JOOGUN SINGH. BOOLEE SINGH v. BUSTEN KOOEREE* . . . 8 W. R. 155

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**41.** ———— *Authority of husband—Permission of relatives or younger widow—Maratha country* In the Maratha country a Hindu widow may, without the permission of her husband and without the consent of his kindred, adopt a son to him if the act is done by her in the proper *bond fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. An elder Hindu widow has the power to adopt a son to her deceased husband without the consent of a younger widow. *RAKHMABAI v. RADHABAI*  
**5 Bom. A. C. 181**

**42.** ———— *Adoption by a widow whose husband died while a minor—Implied authority from minor husband—Adoption from corrupt and improper motives—Onus of proof—Adoption in Gujarat—Kadia Kunbi case, adoption among—Custom as to adoption.* In the Maratha country a Hindu widow may, without the permission of her husband and without the consent of her kindred, adopt a son to him if the act is done by her in the proper and *bond fide* performance of a religious duty, and neither capriciously nor

properly so called. Apart from local or caste customs, the general law in Gujarat must be taken to be as stated in *Rakhmabai v. Radhabai*, 5 Bom. A. C. 181. A widow has implied authority from her husband to adopt, even though her husband be a minor. Where a widow adopts, there is a presumption that she has performed the duty from

the completion of his sixteenth year, and who was separated from his brother; *Held*, that the adoption was valid. The authority of the husband to adopt

husband, as well as in the case of one who had attained his majority. A Hindu widow having adopted a son about eight years after her husband's death, it was held that she was acting in accordance

was made on an insuspicious day showed the anxiety of the widow to adopt, but not the motive. *PATEL VANDRATAN JEWISAN v. PATEL MANILAL CHITALAL* . . . **1 L. R. 15 Bom. 585**

**43.** ———— *Motives of widow in adopting—Adoption from corrupt motives—Pre-*



HINDU LAW—ADOPTION—*contd.*3 WHO MAY OR MAY NOT ADOPT—*contd.*

men is not required) that the ceremony has been performed.

in question. Whether the presumption that a widow adopting widow has performed her duty from proper motives ought or ought not to be deemed an irrebuttable presumption, is a question which still remains to be judicially decided. The fact that the motives of the widow were of a mixed character is not sufficient to rebut the presumption—*Patel Vondraan Jekisan v. Patel Manilal Chunalal*, 1, L. R. 15 Bom. 565. The fact that the widow has made terms for herself with the father of the boy to be adopted, or that she has

Courts that unless she had been assured by the father and guardian of the adopted boy that she would receive Rs. 4,000, she would not have adopted him, but it was not found that she had not the special benefit of her husband in view when she made the adoption: *Held*, that the presumption that she made the adoption from motives of duty was not rebutted, and that presumption should be allowed to prevail. *MAHABHESVAR FONDBA v. DURGABAI*, 1, L. R. 22 Bom. 139

44. — *Motive in adopting—Adoption made by a widow to defeat the claim of her co-widow to a share in her husband's estate—Validity of such adoption.* In adoption made by a Hindu widow is not invalid, merely because it is made with the object of defeating the claim of a co-widow to a share in her husband's property. *BHIMAWA v. SANGAWA*, 1, L. R. 22 Bom. 208

45. — *Motives in making adoption.* *Held* by a Full Bench (HOSKING, J., dissenting), that in the Bombay Presidency a widow having the power to adopt, and a religious benefit being caused to her deceased husband by the adoption, any discussion of her motives in making the adoption is irrelevant. *RANCHANDRA BHAGAVAN v. MULJI NANABHAI*, 1, L. R. 22 Bom. 558

46. — *Consent of kindred—Validity of adoption.* *Quære*—Whether the ruling in *Collector of Madura v. Mooloo Ramalinga Sathupathy*, 12 Moo I. A. 397, applies to cases governed by the Mitakshara law in Northern India, and whether an adoption made by a widow after the death of the husband without his express consent, but with the consent of his near

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kindred, is valid, or whether the recognition of the adopted son by the next reversioner would likewise render the adoption valid. *LALA PARBHULAL v. MILNE*, 1, L. R. 14 Cal. 401

47. — *Widow adopting to her deceased husband, with consent of sapindas—Effect of estate having already vested in the widow of a son.* A son's widow having obtained her

*Ram Kishore Acharj Chowdhry*, 10 Moo. I. A. 179, and *Padmakumari Debi v. Court of Wards*, 1, L. R. 8 Cal. 392; 1, L. R. 8 I. A. 239. *THAYAKMAL v. VENKATARAMA*, 1, L. R. 10 Mad. 205

48. — *Consent of kindred—Dixiting of estate.* Although, as a general rule, the adoption by a Hindu widow of a son to her

already vested in a third person, e.g., the widow of her husband's deceased brother, the consent of such third person would appear to be necessary to give validity to such an adoption. *Rakhnabai v. Radhabai*, 5 Bom. A. C. 181, and *Collector of Madura v. Mutu Ramalinga Sathupathy*, 12 Moo. I. A. 397, commented on and compared *RUPCHAND HINDUMAL v. RAKHIBHAI*, 8 Bom. A. C. 114

49. — *Consent of relatives.* The doctrine that the consent of all her husband's relatives is requisite to make an adoption by a Hindu widow valid is erroneous. *GOPAL SRIDHAR DIESHIT PATVARDHAN v. NARO VINAYAK DIESHIT PATVARDHAN*, 7 Bom. Ap. 24

50. — *Permission of husband—Theory of adoption.* According to the law prevalent in the Dravida country, a Hindu widow, without having her husband's express permission, may, if duly authorized by his kindred, adopt a son to him. *Collector of Madura v. Mutu Ramalinga Sathupathy*, 12 Moo. I. A. 397, referred to and approved. *Semble*: In the case of an undivided family the requisite authority to adopt must be sought within that family, and cannot be given by a single separated and remote kinsman. Speculations founded on the assumption that the law of adoption now prevalent in Madras is a substitute for the old and obsolete practice of raising up seed to a husband by actual procreation are inadmissible as a ground of judicial decision.

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**VIRADA PRATAPA RAGHUNADA DEO v. BROZO KISHORO PATTA DEO** . I. L. R. 1 Mad. 69  
25 W. R. 201; L. R. 3 I. A. 154

S. C. in Court below **BROZO KISHORO PATTA DEO v. VARADHI VIRAPRATAPA SHRI RAGHUNATHA DEVO** . 7 Mad. 301

**51. — Adoption in Dravida country—Widow's power to adopt with consent of sapindas—Motives for making adoption.** According to the Hindu law, a widow who has received from her deceased husband an express power to adopt a son in the event of his natural-born son dying under age and unmarried may, on the

death of her husband, without any permission from her husband, may, if duly authorized by his kinsmen, adopt a son to him in every case in which such an adoption would be valid if made by her under written authority from her husband. The observations of the Judicial Committee in the *Ramnad case*, 13 Moo. I. A. 397, to the effect "that there should be such evidence of the assent of kinsmen as suffices to show that the act [of adoption] is done by the widow in the proper and *bona fide* performance of a religious duty, and neither capriciously nor from a corrupt motive," considered and explained. **VELLANKI VENKATA KRISHNA RAO v. VENKATA RAMA LAKSHMI** . I. L. R. 1 Mad. 174  
L. R. 4 I. A. 1; 26 W. R. 21

**52. — Authority of husband, express or implied—Right of widow to adopt—Assent of nearest sapindas** Without the express or implied authority of the husband, a

divided from the deceased husband, for whose benefit it is desired to make the adoption, and also from each other, and equally distant from the deceased, there seems nothing in principle to throw doubt upon the sufficiency of the assent of some of them if *bona fide* given, if it be shown that the consent of the others is refused from interested or improper motives or without a fair exercise of discretion. **PARASARA BHATTAR v. RANGARAJA BHATTAR** . I. L. R. 2 Mad. 302

**53. — Authority of husband—Assent of sapindas.** The sapinda of a

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younger brothers disputed the validity of the adoption. Two Courts having found against the

deceased, was an assent by a sapinda to an adoption by a widow sufficient to support her adopting in the absence of an authority from her husband. It was decided that under all the circumstances under which this child had been applied for by the widow and given by the father, the assent of the latter was not one which had rendered the adoption valid as against the brothers. There was no sufficient evidence to show that the widow applied to the boy's father to give his assent as sapinda to an adoption, on the ground that he could not adopt without the sapinda's assent. It was not necessary to determine whether this sapinda could alone have given a valid assent, if it had been given to the widow as one having no authority from her husband to adopt, and if it had been given without his mind having been influenced by other and undue considerations. **GANESA RATNAMAIYAR v. GOPALA RATNAMAIYAR** . I. L. R. 2 Mad. 270  
L. R. 7 I. A. 173

**54. — Authority of husband—Consent of sapinda.** V, one of the nearest male sapindas of S, gave his son in adoption to the widow of S in 1978. Both the giver and

**55. — Authority to adopt—Consent to adopt given by husband's family—Adoption in undivided family—Adoption to a husband separated in estate.** A Hindu widow, who has not the family estate vested in her and whose husband was not present at the

On the death of K and the two sons of J, the plaintiff sued G (the widow of J) for possession of the family estate. G claimed the estate as heir

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of her last surviving son, and, while admitting the fact of the plaintiff's adoption by K, denied its validity on the ground that the members of the family had given no assent to the adoption. It was admitted that K had not received from her husband N any permission or direction to adopt a son. *Held*, that the plaintiff's adoption by K was invalid, inasmuch as she had not the authority of her husband or the consent of his undivided co-parceners to adopt, nor did she hold any estate in the property. *RAMJI v. GHAMAD*

I. L. R. 6 Bom. 498

56. — *Undivided Hindu family—Adoption without the consent of husband or his undivided co-parceners and without the authority of her husband to adopt.* A Hindu widow, who has not the estate vested in her, is not competent to adopt a son to her husband without his authority or the consent of his co-parceners with whom he was united in estate at the time of his death. K and P were two Hindu brothers. K had a son who died in 1849 in the lifetime of his father, but who was then united interest with him (K). K died in 1856, leaving him surviving his two nephews, S and P (the sons of his brother, P), and his daughter-in-law, Y (the widow of his predeceased son). At the time of his death, K was united in estate with his nephews S and P. In 1871, Y adopted the plaintiff as son to her husband and herself. In 1873 the plaintiff sued P and the sons of S (who died in the meantime) for a share in the family estate. It was found that Y had not the authority either of her husband or of her father-in-law, K, or of any of his co-parceners to adopt. *Held*, that the adoption was not valid. *Held*, further, that a separated kinsman was not qualified to authorize the adoption. *DINKAR SITARAM v. GANESH SITRAM*

I. L. R. 6 Bom. 505

57. — *Assent of a majority of sapindas—Presumption of bona fides—Degree of relationship of sapindas to husband of adopting widow.* A widow, having survived her son (who died unmarried and issueless), succeeded to his estate, and made an adoption with the assent of three out of the four of her late husband's sapindas, who were living at the time and who had been divided from the deceased and from each other. The fourth sapinda, who had refused his consent

*Sathupathy, 12 Moo I A. 397, and Parasara Bhattar v. Rangaraya Bhattar, I. L. R. 2 Mad. 202, referred to and considered. Adoption being a proper act, it will be presumed that, when the majority give their assent, such assent was given on bona fide*

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grounds. If, however, it be shown that the majority were not withheld their consent from the defendant

KRISHNAMMA v. ANNATURNAMMA

I. L. R. 23 Mad. 486

58. — *Adoption without consent of kinsmen—Adoption of a brother's son in pursuance of express authority of husband to adopt—Execution of such authority after a long time since death of husband—Agreement by widow to enjoy property for life, effect of—Acquiescence—Estoppel.* B and R were brothers and vatandar kulkarnis of a village in the Kalsadgi District. B

revenue authorities, and it admitted her right to a moiety of the vatan. Subsequently in 1830 the defendant passed a document to R to the effect that, in consideration of receiving certain property as her share, she would not trouble R in the enjoyment by him of the rest of the vatan, and that she was to hold and enjoy this property for her life. The arrangement continued till 1881. In the meanwhile, the defendant adopted her brother's son and made a gift to him of the property held by her under the agreement of 1830. R having died, his son, the plaintiff, brought a suit against the defendant for a

that it was invalid, having been made without the consent of the plaintiff; and that, after the death of the defendant, the property in the possession of the defendant should revert to the plaintiff. On

husband plaintiff enjoy for a Hindu on the exercise of her powers. As a widow of a Hindu separated from his brother in worship and estate, she could adopt a son, which right, even if she could forego, she did not by the document which was of a family settlement, and recognized the right of defendant as that of a widow of a separated brother. The fact of separation having thus become distinct

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and having been ceded on for about twenty-eight years, the plaintiff was not at liberty to impeach it. *Held*, also, that, as the widow of *B* separated in interest from *R*, the defendant was at liberty to adopt a son without the previous sanction of *R* or the plaintiff. The fact that the adoptee was son of the brother of the defendant did not render the adoptee unfit for adoption, as it was a case from the Southern Marathe country. *Held*, further, that though so long a period as twenty-five years had been allowed to pass between the date of the death of her husband and that of adoption, that circumstance did in any way extinguish the right of the defendant to adopt under circumstances calling for adoption. *GIRIOWA v. BHIMJI*

I. L. R. 9 Bom. 58

59. *Adoption by widow with consent of father-in-law—Adoption in a united family—Consent of the head of the family* The widow of a deceased co-parcener in a joint Hindu family can adopt with the sole assent of

commenced to live separately from *V*, but the family estate was not divided. In 1886 *V* died, leaving a widow without male issue. In 1887 *A*'s widow adopted the plaintiff with the consent of her father-in-law *B*, with whom she was living. *B* died shortly after the adoption. Thereupon the plaintiff as adopted son sued *V* to recover a moiety of the family estate. The defence to this suit was that the plaintiff's adoption was invalid on the ground that the adoption had not been made with the assent of all the co-parceners. *Held*, that the adoption was valid. As *B*, who was the head of the family and natural guardian of the adoptive mother, had given his assent to the adoption, the consent of the other co-parceners was not necessary. *VITHOBA v. BAPU*

I. L. R. 15 Bom. 110

80. *Adoption by widow without consent of husband—Jains of Southern India—Evidence of adoption—Proof of custom—Will of a Jain widow.* In a suit to declare plaintiff

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on the ground that there was no reason for supposing that the parties to the present suit were other than natives of Southern India whose ancestors had been converted to Jainism. *PERIA AMMANI v. KRISHNASAMI, ADINADHA v. KRISHNASAMI*

I. L. R. 18 Mad. 182

81. *Adoption by widow of a predeceased son of owner after the estate had vested in the daughters of the deceased owner—Assent of a minor daughter in whom the estate had vested to the adoption—Ratification by the minor on attaining years of discretion—Adoption invalid—Acquiescence not equivalent to consent.* On the death of one *V*, his estate vested in his two daughters, one of whom was a minor. Six months later, the widow adopted a son. *Held*, that the adoption was invalid, as the minor daughter could not give such a consent to it as would operate to divest her of her estate. *Per FULTON and HOSKING, JJ.*—Subsequent assent to an adoption cannot give it validity if it was invalid when made. *Per RANADE, J.*—The adoption of the plaintiff was invalid for the double reason

that she had no power to consent to the adoption of a son, and that she had acquiesced in the adoption of a son by her mother. *Held*, that the adoption was invalid, as the minor daughter could not give such a consent to it as would operate to divest her of her estate. *Per FULTON and HOSKING, JJ.*—Subsequent assent to an adoption cannot give it validity if it was invalid when made. *Per RANADE, J.*—The adoption of the plaintiff was invalid for the double reason

imply an acquiescence, but mere acquiescence is not equivalent to consent. *VASUDEO VISINU MANOHAR v. RANCHANDRA VINAYAK MODAK*

I. L. R. 22 Bom. 551

82. *Adoption by a daughter-in-law of A after the estate has vested in A's widow—Permission by A to adopt—Non-consent of widow—Divesting of estate once vested—Widow's authority to adopt in Bombay—Daughter-in-law must have permission—Co-widows—Adoption by one co-widow—Adoption of a son older than adoptive mother.* An adoption cannot divest a person of an estate which has once vested in him unless such adoption is made with his consent.

I. L. R. 15 Bom. 110. Unless prohibited expressly or by implication, a widow in the Presidency of

against the issue of her father-in-law. *A* was the widow of *B*, who died in 1877 in the lifetime of his father *R*. Fourteen years later, viz., in 1891, *R* died, leaving a widow *Saibai*, who succeeded to his estate

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as his heir. In March 1892 *S* adopted the plaintiff *G* as son to her husband, alleging that she had *R*'s permission to do so. *G* sued for a declaration that

Sarbai's consent, it was inoperative and invalid. As Sarbai did not give her consent to the plaintiff's

63. ————— Adoption by widow of a predeceased son.—Consent of mother-in-law.—Rule that adoption must be by widow of the last full owner.—Exceptions to this rule. By Hindu law as settled by judicial decisions, it is only the widow of the last full owner who has the right to take a son in adoption to such owner, and a person in whom the estate does not vest cannot make a valid adoption so as to divest (without their consent) third parties, in whom the estate has vested, of their proprietary rights. To this rule there are four exceptions: (i) In the case of co-widows. Though, on the death of the husband without male issue, the estate vests in all his widows, it has been held that the elder widow can, by adopting a son with the express or implied permission of her husband, divest the co-widow or widows of their vested rights. The consent of such younger widows has not been held to be essential. (ii) In the case of a mother who succeeds as heir to an unmarried son, legitimate or adopted, who dies after his father. In such a case

while any difficulty as to the inheritance and the

death, his estate vested in his widow *U*. In 1879 *S*, with *U*'s consent, adopted a son (defendant No. 3). The plaintiff in this suit sued to recover certain land which formed part of *B*'s estate, alleging that it had been given to him by *U*. The first defendant alleged and proved that he had bought the land from the third defendant, who was the adopted son of *S*. Held (dismissing the suit), that the adoption

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was valid, and that the first defendant was entitled to the land. *PATAPPA AKEAPPA PATEL v. APPANNA*  
I. L. R. 23 Bom. 327

64. ————— Inheritance.—Sonless widow.—Usage of Jains.—Right of widow to adopt.—Status of widow who has adopted. On the evidence given in this case. Held, that, accord-

kinsmen; and may adopt a daughter's son, who, on the adoption, takes the place of a son begotten. *Quare*. Whether on such an adoption the widow is entitled to retain possession of the estate either as proprietor or as manager of her adopted son. *SHEO SINGH RAI v. DAKHO*. I. L. R. 1 All. 888

Affirming decree of High Court in *SHEO SINGH RAI v. DAKHO*. 8 N. W. 382

65. ————— Widow of Osmal Jain sect.—Adoption without authority of husband. a son  
husba  
Rep.  
211,  
on ap.  
referred to. *MAHE CHAND GOLECHA v. JAGAT SETHANI PRAN KUMARI BIRI*  
I. L. R. 17 Cal. 518

66. ————— Step-mother.—Competency of step-mother to give in adoption.—Adoption of an adult. In a suit to set aside an adoption, it appeared that the person said to have been adopted was an unmarried man of forty years of age, who had already succeeded to his father's estate for twenty years at the time of the alleged adoption, and that he had been given in adoption by his step-mother without the previous consent of her husband, deceased. Held, that the adoption was invalid on the ground that under the Hindu law a step-mother cannot give her step-son in adoption. *Semle*:

*APPA RAU v. VENKATADRI APPA RAU*  
I. L. R. 18 Mad. 384

67. ————— Grandmother.—Grandmother succeeding to her grandson.—Divesting of estate by adoption. Where a Hindu grandmother succeeds as heir to her grandson who dies unmarried, her power to make an adoption is at an end. Where a

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revived. RAMKRISHNA RANCHANDRA v. SHANURAG YESHWANT (1902) I. L. R. 26 Bom. 526

68. ——— Mother—Adoption by a mother succeeding to her son who has been married—Ceremonial competency of the son no bar to the adoption—Only limitation to a mother's right to adopt. A mother succeeding as heir to her deceased son, who has left neither widow nor issue, is competent to adopt, notwithstanding the fact that her deceased son had attained ceremonial competency by marriage, investiture or otherwise, before his death. The real limitation on a mother's right to adopt when she succeeds as heir to her son does not depend upon the investiture, marriage or ceremonial competency of her deceased son, but upon the question whether by such adoption she derogates from any other rights save her own *Jivaj* Krishna, the holder of a *kulkarni watan*, mortgaged the *watan* lands to the defendants in 1879. He died in 1884, at the age of thirty, without issue. His wife had predeceased him, and his mother *Tulsava* therefore succeeded as heir. In 1894 she adopted the plaintiff and died shortly afterwards. In 1896 the plaintiff brought this suit to set aside the mortgage and recover the mortgaged lands. The defendants contended, *inter alia*, that *Tulsava's* right to adopt had been extinguished because her deceased son had been married and had attained ceremonial competency, and that the plaintiff's adoption was therefore invalid and his suit could not be maintained. *Held*, that the plaintiff's adoption by *Tulsava* was valid, inasmuch as it only affected her own interests and did not affect the vested rights of others. *VENKATAPPA BAPU v. JIVAJI KRISHNA* (1900) I. L. R. 25 Bom. 306

69. ——— Adoption by a

TRIMBAK HASABNIS v. SHANKARRAY VINAYAK HASABNIS I. L. R. 17 Bom. 164

70. ——— Prostitute—Adoption of a girl

a prostitute. *TRIMBAK HASABNIS*, three days before her death adopted a girl, then thirteen years of age, as her daughter, and by her will left the latter all her property as such adopted daughter. The Court found that *Manji's* object in adopting was that there might be someone who, after her death, could perform her funeral ceremonies and inherit her property, and that there was nothing to show that she contemplated the girl following the profession of a prostitute. *Held*, that the adoption was valid and that the adopted daughter was entitled to the property under the will. *PER CANNY, J.*—The test of such an adoption would seem to be whether the

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SHESHGIRIRAO VITHALRAO (1902) I. L. R. 26 Bom. 491

71. ——— Sudra leper—Validity of adoption by a Sudra leper in Bengal—Religious ceremonies, competency to perform. In Bengal, a Sudra leper may adopt a child. Such an adoption was held valid, in the absence of any proof that the disease of the adoptive father was incurable or that he was in such a state as not to be able to adopt at all. *SUKUMARI BEWA v. ANANTA MAJIA* (1900) I. L. R. 26 Calc. 166

72. ——— Widow—Chudamr Gameli Garasas—Custom prohibiting adoption—Effect on

to be not proved. A member of that caste died in 1837 leaving a widow, and a son who died in 1839 between fifteen and sixteen years of age and unmarried. In 1891 the widow adopted a son to her husband. *Held*, that the adoption was valid. It was contended that the adoption was invalid on the ground that the natural son had survived his father and lived to attain ceremonial competency.

the son had, or was treated as having, attained such competence, the objection was not sustained. *VERABHAI AJURHAI v. BAI HIRABA* (1903)

I. L. R. 27 Bom. 492 ;  
S.C. I. L. R. 30 I. A. 234 ; 7 C. W. N. 716

73. ——— Co-widow—Es. late vested in one co-widow by inheritance from her

KASHIBAI (1904) I. L. R. 28 Bom. 461

74. ——— Adoption by widow, under authority from her husband, of her brother's grandson. The rule of Hindu law that a

adoption being in law an adoption made by the widow as agent on behalf of her husband. The adoption therefore by a Hindu widow, in virtue of

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a written authority to adopt given to her by her deceased husband of her brother's grandson (or son) is not according to Hindu law an invalid adoption. *Musammal Bhatta Kuar v. Lachman* (1905) . . . I. L. R. 27 All. 417

referred to. *JAI SINGH PAL SINGH v. BHOY PAL SINGH* (1905) . . . I. L. R. 27 All. 417

75. Adoption by widow—Authority to adopt—Joint family—Gift to daughter out of joint property—Limits of property. Where the widow of a deceased co-parcener in a joint Hindu family, under an authority to adopt, given to her by her husband's will, adopted a son, and prior to such adoption, a posthumous son was born to the other co-parcener. *Held* (upholding *TYABJI, J.*), that the adoption was valid. The sole surviving member of a joint Hindu family, owning property worth from Rs 10 lacs to 15 lacs, out of the income of such property, made a gift of Rs 20,000 to his daughter and only child. *Held* (reversing *TYABJI, J.*), that the gift was valid, and did not exceed the limits of property. *BACHOO v. MAN-KOREBAI* (1905) . . . I. L. R. 28 Bom. 5

76. Adoption by senior widow without consulting junior widow—Validity of. An adoption made after the death of a Hindu by his senior widow, after having obtained the consent of his *sapindas*, but without consulting the junior widow, is valid and cannot be impeached on the ground that such adoption has the effect of divesting the estate of the junior widow or her infant daughter. *Rakhmadus v. Radhabai, 5 B. H. C. A. C. J. 181 at p. 192; Bhimau v. Sungou, I. L. R. 22 Bom. 206. Amava v. Mahadgauda, I. L. R. 2 B. M. 416*, referred to and followed.

*Madura v. Melloo Ramalingo Sathupatty, 12 Moo. I. A. 397, 442. NARAYANASAMI NAICKER v. MANOHARAL* (1905) . . . I. L. R. 28 Mad. 316

77. Jains—Custom—Adoption of married man—Suit for declaration of invalidity of adoption—Burden of proof. *Held*, that according to the law and custom prevailing amongst the Jain community a widow has power to adopt a son to her deceased husband without any special authority to that effect, and if there are two widows the senior widow may adopt without the concurrence of the junior widow. A widow is also competent, with the consent of the *sapindas*, to give a son in adoption after the death of her husband. *Held*, also, that adoption being amongst the Jains a

HINDU LAW—ADOPTION—*contd.*3. WHO MAY OR MAY NOT ADOPT—*concl.*

purely secular institution, there is no legal objection to the adoption of a married man. *Manohar Lal v. Danarsi Das, I. L. R. 29 All. 495*, followed. *Chotay Lal v. Chunno Lal, L. R. 6 I. A. 15, Amava v. Mahadgauda, I. L. R. 22 Bom. 416, Sri Balusu Gurulingaswami v. Sri Balusu Ramalakshamma, I. L. R. 22 Mad. 398, and Radha Mohan v. Horlai Bibi, I. L. R. 21 All. 460*, referred to. *Held*, also, that where the plaintiff asks for a declaration that an alleged adoption is invalid, but cannot claim immediate possession by reason of the intervention of a widow's estate, the burden is still on him to make out a *prima facie* case that the adoption challenged by him is invalid in law or never took place in fact. *Brojo Kishore Dossee v. Sreenath Bose, 9 W. R. 463, and Sardar Singh v. Ram Kunwar, All Weekly Notes (1902), 62*, followed. *Tacoorden Tewarry v. Ali Hossain Khan, L. R. 1 I. A. 192*, at page 206, referred to. *Tarinee Churn Choudhry v. Sharada Sconduree Dossee, 11 W. R. 463, Choudhry Pudum Singh v. Koer Oddry Singh, 12 W. R. P. C. R. J. Gooreo Prasanna Singh v. N. Madhab Singh, 21 W. R. 84, and Har Dyal Nag v. Roy Krishna Bhoomick, 24 W. R. 107*, distinguished. *ASHAFI KUNWAR v. RUP CHAND* (1903) . . . I. L. R. 30 All. 197

heritance on the adopted son. *NARENDRA NATH BANERJEE v. DINA NATH DAS* (1903)

I. L. R. 30 Calc. 624

## 4. WHO MAY OR MAY NOT BE ADOPTED.

See HINDU LAW—ADOPTION—EVIDENCE OF ADOPTION. I. L. R. 30 Calc. 999

1. Adoption not in accordance with will—Adoption without consent of trustees—Invalid adoption. A Hindu by will bequeathed his estate to a son to be adopted in a certain event by A with the consent of B or B's representatives with a gift over on failure of

SEAL . . . 2 Ind. Jur. N. O. 111

2. Consanguinity—Adoption of son of person with whom adopter could not intermarry—Invalid adoption. *Semle*: The adoption of the son of a person with whom the adopter could not have intermarried is invalid according to Hindu law. *JAYANTI BHAI v. JIVA BHAI, 2 Mad. 462*

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

3. ———— *Adoption of son of person with whom adopter could not intermarry—Relationship prior to marriage.* The rule of Hindu law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage. *SRIRAMALU v. RAMAYYA*  
I. L. R. 3 Mad. 15

4. ———— *Adoption of son of person with whom adopter could not intermarry*

I. L. R. 1 Mad. 62

5. ———— *Widow adopting son whose mother her husband could not have legally married.* It is a general rule of Hindu law that there can be no valid adoption unless a legal marriage is possible between the person for whom the adoption is made and the mother of the boy who is adopted in her maiden state. *MINAKSHI v. RAMANADA*  
I. L. R. 11 Mad. 49

6. ———— *Sapinda relationship, limitation of.* Where the natural mother

when the relationship is more than six degrees removed, sapinda relationship between the natural mother and the adopter does not cease. *VRAS CHITMANLAI v. VRAS RAMCHANDRA*  
I. L. R. 24 Bom. 473

7. ———— *Validity of adoption—Superior castes.* Consanguinity does not invalidate an adoption where the parties involved do not belong to any of the three regenerated castes. *PER MITTEN, J. NUNKOO SINGH v. PURN DASS SINGH*  
12 W. R. 356

8. ———— *Boy of unregenerate classes—Beggars, Scumble; That beggars*

I. L. R. 10 All. 341

9. ———— *Son adopted after payment of price—Contract to give son in consideration of an annual allowance—Contract Act (IX of 1872), s. 23.* An adoption of a son after payment of price is not recognized in the present, the Kali Yuga. The only adoption now recognized is that of the dattaka son, or son given. A contract to give a son in adoption, in consideration of an annual allowance to the natural parents, is void under s. 23 of Act IX of 1872, inasmuch as the contract, if carried out, would involve an injury to the person and property of the adopted son, and would defeat the provisions of the Hindu law. *ISHAN KISHOR*

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

*ACHARJEE CHOWDHRY v. HARIS CHANDRA CHOWDHRY* . . . 13 B. L. R. Ap. 42; 21 W. R. 391

10. ———— *Adult Brahman—Performance of upanayana—Validity of adoption. Ovaru; Whether a Brahman adult, whose upanayana and marriage ceremonies have already been per-*

11. ———— *Adoption of person on whom upanayana has been performed.* The weight of authority is against the validity of the adoption of one upon whom upanayana has been already performed. In strictness, there is no authority upon the other side. *VENKATESAIYA v. VENKATACHARLU* . . . 3 Mad. 28

12. ———— *Brahmans—Validity of adoption.* Among Brahmans the adoption of a son for whom the chudakarana and upanayana ceremonies have been performed in his natural family is not on that ground invalid. He notwithstanding acquires the legal status of an adopted son, the fact of those ceremonies having been already performed only rendering necessary, in a religious point of view, their re-performance and the performance of certain additional ceremonies in the adoptive family, the latter being considered to have the effect of annulling those performed in the boy's natural family. *LAKSHMIAPPA v. RAMAYA* 12 Bom. 384

13. ———— *Brahmans—Custom—Validity of adoption.* According to the custom obtaining amongst Brahmans in Southern India, the adoption of a boy of the same gotra, after the upanayana ceremony has been performed, is valid. *Venkatesaiya v. Venkatacharlu*, 3 Mad. 28, overruled. *VIRARAGAVA v. RAMALINGA*  
I. L. R. 9 Mad. 148

14. ———— *Adoption of a married asagotra Brahman—Validity of adoption—Fatum valet.* The adoption of a married asagotra Brahman is not prohibited by the Hindu law in force in the Presidency of Bombay. The circumstance that there was a person better qualified than the adoptee would not by itself render such

good. *DHARMA DAGU v. RAMKRISHNA CHIMNAJI*  
I. L. R. 10 Bom. 80

15. ———— *Adoption among Brahmans—Ceremony of adoption after marriage of person to be adopted—Fetoppel.* An adoption to be valid must take place before the marriage of the person adopted. In a suit for partition of family property, the plaintiff sued as the adopted son of defendant, who had, after performing the usual



**HINDU LAW—ADOPTION—*contd.*****4. WHO MAY OR MAY NOT BE ADOPTED—*contd.***

ceremony of adoption, long treated him as his adopted son. The defendant denied that the plaintiff was his adopted son on the ground (which was established by the evidence) that the plaintiff was married at the date of the ceremony of adoption. The parties were Brahmans and members of the same gotra by birth. *Held*, (i) that the adoption

16. — Adoption of Sudra after marriage—*Validity of adoption. Quare: Whether a Sudra can be validly adopted after marriage.* *VITHILINGA MUPPANAR v. VIZIATRAMMAL* I. L. R. 6 Mad. 43

17. — Law in Western India—*Validity of adoption According to the*

*NATHIAJI JARISHNAJI v. HAJI JAGORI*

8 Bom. A. C. 67

18. — Law in Western India—*Validity of adoption. In Western India an adoption of a Sudra*

Whether the adoption of an asagotra married man belonging to any of the three regenerate classes would be invalid. *LAESHIMAPPA v. RAMAYA*

12 Bom. 364

19. — Adoption of self-given adult son—*Law in Bombay Presidency—Validity of adoption. Amongst Hindus in the Presidency of Bombay an adoption of*

20. — Son older than adopting mother—*Validity of adoption. Semble: The fact that an adopted son is older than the adopting mother does not make his adoption invalid. The rule prescribing a difference of age in favour of the adopting mother is only directory, and not mandatory.* *GOTAI. BALKRISHNA KESJALE v. VISVNU RAGHUNATH KENJALE*

I. L. R. 23 Bom. 250

21. — Gotraja relationship—*Limit of age within which person may be adopted. In a*

**HINDU LAW—ADOPTION—*contd.*****4. WHO MAY OR MAY NOT BE ADOPTED—*contd.***

adoption in the dattaka form can take place. Adoption in that form implies that the second birth has taken place in the adoptive family; and it cannot be effected after the boy's place in his natural family has become irrevocably fixed by the upanayana representing his second birth therein. The age of the boy is material only as determining the term at which the upanayana may be performed. *Kerulnaran v. Bhoojunesree*, 1 Scl. Rep 161, and

Mimamsa necessarily indicates that the person referred to has passed the fifth anniversary of his birth. It indicates on the contrary that he is in his fifth year. *Thakoor Oomrao Singh v. Thakooranee Mehtab Roomer*, 1 N. W. 103a, dissented from. The authenticity of the text of the Kalika Purana, which lays down that a child must not be adopted whose age exceeds five years, is extremely doubtful. The interpretation given to that text in the Dattaka Mimamsa was not necessarily intended to be universally applicable, and admits of a construction which would confine the application of the text to Brahmans intended for the priesthood; and various other equally plausible interpretations have

since been recognized as valid, and under which the

**HINDU LAW—ADOPTION—contd.****4. WHO MAY OR MAY NOT BE ADOPTED—contd.**

adoptee had ever since been in possession of his adoptive father's estate upon the angle ground that at the time of the adoption the adopted son was more than five years of age. In such a case the onus of proof is upon the person who alleges this adoption to be invalid. *Haimun Chull Singh v. Koomer Gungseam Singh*, 5 W. R. P. C. 69, referred to. In a case where the validity of an adoption was in dispute and the parties to the suit were Chhatryas:—*Held*, that, even if it had been established that five

among the clan of the Chhatryas to which the parties belonged, any such rigid rule prevailed. *GANGA SARAI v. LEKHRAJ SINGH*

I. L. R. 9 ALL 53

22. ——— Brother's son—*Invalid adoption*. A woman may not affiliate by adoption a brother's son. *BATTAS KOAR v. LACHMAN SINGH*

7 N. W. 117

23. ——— *Validity of such adoption*. Under the Hindu law, a widow may adopt her brother's son. *BAI NANI v. CHUNIAL*

I. L. R. 22 Bom. 973

24. ——— *Adoption of a daughter—Validity of such adoption*. The adoption of a daughter by a Brahman is invalid under the Hindu law. *GANGABAI v. ANANT*

I. L. R. 13 Bom. 890

25. ——— *Adoption by naitkin or dancing girl—Custom of adoption of more than one daughter at a time—Rights of adopted daughter*. A, a naitkin, or dancing girl, in South Canara, affiliated prior to 1849 three girls and a boy. These four persons lived together as a joint family till 1849, when a partition of their joint property was decreed between them in equal shares. T, one of the girls, died in 1880, leaving certain property. P, claiming to be the sister by adoption of T, sued to recover T's estate from M, T's uterine brother. *Held*, (i) that

I. L. R. 12 Mad. 393

26. ——— *Daughter's son—Doctrine of factum valet—Invalid adoption*. Amongst Brahmans, the adoption of a daughter's son is

I. L. R. 5 Bom. 280

**HINDU LAW—ADOPTION—contd.****4. WHO MAY OR MAY NOT BE ADOPTED—contd.**

In Southern India it seems to be a valid adoption. *VAIDYANATHA v. APPU* I. L. R. 9 Mad. 44

27. ——— *Daughter's or sister's son—Invalid adoption—Lingayats—Factum valet, Doctrine of*. It is a general rule and fundamental

marry by reason of propinquity. The burden of proving a special custom to the contrary amongst any members of these three regenerate classes prevalent either in their caste or in a particular locality lies upon him who avers the existence of that custom. Limits within which the maxim *quod fieri non debuit factum valet* applies pointed out. Lingayats are members of the Sudra, and not of the Vaisya class. *GOPAL NARHAR SAFFRAY v. HANMANT GANESH SAFFRAY* I. L. R. 3 Bom. 273

28. ——— *Eldest son—Validity of adoption*. The adoption of an eldest son is, under the precedents of the Sudder Court, although improper, not illegal. *SEETARAM L. DHUNOOK DHAREE SAHYE* I. L. R. 1 May 260

29. ——— *Validity of adoption*. In a suit by a Hindu widow to recover possession of certain property dedicated to idols as

Hindu law. *JANAKI DEBEA v. GOPAL ACHARJEA* I. L. R. 2 Calc. 385

30. ——— *Validity of adoption*. The prohibition to the adoption of an eldest son—unlike that to the adoption of an only son—is admonitory merely, and does not create any legal restriction. Texts from original Smriti writers, with the opinions of their commentators and the decisions of the High Court, bearing on the subject referred to and discussed. *KASHIBAI v. TATIA* I. L. R. 7 Bom. 221

31. ——— *Validity of adoption*. Adoption of the eldest son upheld. *JAMNABAI v. RAYCHAND NARALCHAND* I. L. R. 7 Bom. 225

As to the adoption of an eldest son, see also *NELMADHRA DAS v. BISHWANATH DAS*

3 B. L. R. P. C. 27; 12 W. R. P. C. 29  
13 Moo. I. A. 85

and *LAKSHMIPTA v. RAMAYA* 12 Bom. 364

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

32. ——— Grand-nephew—*Reflection of a son—Appointment.* A grand-nephew may be validly adopted under Hindu law. *Morun Moyee Dabee v. Bejoy Kishen Govamee, W. R. F. B. 121*, followed *HARAN CHUNDER BANERJI v. HIRRO MOHUN CHUCKRABUTTY*

I. L. R. 6 Cal. 41  
6 C. L. R. 393

33. ——— Validity of

34. ——— Half-brother—*Invalid adop.*

I. L. R. 3 Mad. 15

35. ——— Adoption of paternal uncle's son—*Niyoga, Custom of.* A member of an undivided Hindu family, consisting of himself, his adopted son, and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the adopted son was the son of the paternal uncle of the adoptive father. *Held*, that the adoption was not invalid by reason of the abovementioned circumstance *VIRAYYA v. HANUMANTA*

I. L. R. 14 Mad. 459

36. ——— Maternal aunt's daughter's son—*Validity of adoption.* Neither by local usage nor by the law of Mitakshara is the adoption of the son of a maternal aunt's daughter invalid. *VENKATTA v. SOBHADRA* . I. L. R. 7 Mad. 548

37. ——— Mother's sister's son—*Validity of adoption—Sudras.* Adoption of the mother's sister's son is valid among Sudras. *CHINNA NAGAYYA v. PEDDA NAGAYYA*

I. L. R. 1 Mad. 62

38. ——— Cousin on maternal side—*Adoption by one of the regenerate classes of a mother's sister's son—Benares school of law.* *Held*, by EDGE, C. J., and KNOX, BLAIR, and BURKITT J. J. (BANERJI and AIKMAN, J. J. dissenting), that the Hindu law of the school of Benares, does not prohibit an adoption amongst the three

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imposes on the right of adoption restrictions not to be found in the recognized authorities of the school of Benares. *Held*, by BANERJI, J. (AIKMAN, J. J. concurring), that the adoption by a Hindu belonging to one of the three regenerate classes of his

Mimamsa are works of paramount authority on ques-

39. ——— Only son—*Validity of adoption.* The adoption of an only son is, when made, valid according to Hindu law. *CHINNA GAUNDAN v. KUMARA GAUNDAN* . I. Mad. 51

SHINAM GOUNDEN v. COOMARA GOUNDEN  
1 Ind. Jur. O. S. 115

40. ——— Validity of adoption. The adoption of an only son is invalid according to Hindu law. *OPENDRA LAL ROY v. PRASANNAWATI* . I. B. L. R. A. C. 221

S. O. OPENDRA LAL ROY v. BROMO MOYEE  
10 W. R. 347

41. ——— Invalidity of such adoption. The adoption of an only son is, by the general Hindu law, invalid. *WAMAN RAOHUPATI BOVA v. KRISHNAJI KASHTRAJ BOVA*

I. L. R. 14 Bom. 249

42. ——— Effect of his afterwards becoming not the only son. The adop-

I. L. R. 10 Bom. 11

43. ——— Adoption by Sudra—*Validity of adoption.* The adoption by a Sudra of an only son as a karta putro is not illegal under Hindu law. *TIDEY v. LALLA HUBERLAIL* . W. R. 1884, 133

44. ——— Validity of adoption—*Factum valet, doctrine of.* *Held* (TURNER, J., dissenting), that the adoption of an only son cannot, according to Hindu law, be invalidated after it has once taken place. *HANUMAN TIWARI v. CHERRAI* . I. L. R. 2 All. 184

45. ——— Maxim "quod

According to the  
having taken place in fact is not null and void;

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and the maxim "*quod fieri non debuit factum valet*" is applicable and should be applied to such an adoption. So held by the Full Bench. *Nannaman Tiwari v. Chirai*, I. L. R. 2 All. 161, approved and followed. *BENI PRASAD v. HARDAI LHM*

I. L. R. 14 All. 67

Held in the same case by the Privy Council in

I. L. R. 21 All. 460

I. L. R. 26 I. A. 113

3 C. W. N. 427

See *GURULINGASWAMI v. RANALAKSHMINAMMA*

I. L. R. 23 Mad. 388

I. L. R. 26 I. A. 113

3 C. W. N. 427

48. ———— *Construction of deed of gift—Adoption of eldest or only son.* A Hindu died after having made a *hibbanama*, or deed of gift, giving the bulk of his property to the eldest son of one of his brothers, designating him as his *palleputra*. The donee thereof died without issue,

equally entitled with the step-brother to succeed. The defendant denied the fact of the adoption. The

*Aghran 1211 B.S. (1803)*, with the *anumati* (permission) of your parents, for the purpose of securing future oblations of water and funeral cake, and having brought you up like a son, performed the ceremonies of your *sangskar*, etc., and have constituted you my representative"] were not those which properly import the adoption of a son by gift—*dattak putra*. Held, that the presumption which

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

48. ———— *Age of adopted son—Validity of adoption.* Held, that the adoption by a Hindu widow of an only son, if valid in every other respect, cannot be set aside by reason of the adopted being an only son of an advanced age. *VYANKATRAY ANANDRAY NIMBALKAR v. JAYAVANTRAY BIN MALHARAY RANADIVE*

4 Bom. A. C. 181

49. ———— *Married son—Sudras—Validity of adoption.* An adoption amongst Sudras is not necessarily invalid because the person adopted is an only son and is married, and has been given in adoption by his mother after her husband's death and without his authority. *MHALSABAI v. VITHOBA KHANDAPPA GULVF*

7 Bom. Ap. 26

conferred upon her by him during his lifetime.

deney of Bombay. *LAKSHMAPPA v. RAMAYA*  
12 Bom. 364

51. ———— *Absence of authority of husband—Validity of adoption.* In the Presidency of Bombay a widow may give in adoption a younger son where her husband has not, by direct prohibition or otherwise, indicated his

did not expressly indicate such assent in his lifetime. *Semle*: Where a father gives his only son in adop-

a case the *factum valet* principle is wholly inapplicable because the adoption would be, as regards her, not *quod fieri non debuit*, but *quod fieri non potuit*. The maxim *quod fieri non debuit factum valet* considered, and its application pointed out. There is no authority for drawing any distinction between Sudras and the other classes on the question of the legality of the adoption of an eldest or an only son. *Mhalsabai v. Vithoba*, 7 Bom. Ap. 26, dissented from, so far as it supported the gift in adoption by a widow of an only son without the authority of her husband. *LAKSHMAPPA v. RAMAYA* 12 Bom. 364

52. ———— *Lingayats—Gift in adoption by widow without an express authority from her husband.* The plaintiff, a Sudra of the Lingayat caste, sued for possession of certain

the higher castes. *JANAKI CHANDER DUTT v. BHOOGOWDITY DOSSETT*. I. L. R. 3 Calc. 443

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

properly, alleging that he had been adopted by the defendant, a widow of the same caste. The defendant denied the adoption, and contended that it was invalid, inasmuch as he was an only son, and had been given in adoption by his widowed mother without an express authority from her husband. The plaintiff, in support of his adoption, produced two documents executed by the defendant, viz., a deed of adoption and a compromise in which the defendant had ratified the plaintiff's adoption. It was found that the defendant was very young, and did not act independently in the execution of those documents. *Held*, that the adoption was invalid on two grounds, viz., 1st, that the mother had no authority to give the plaintiff in adoption, because he was the only son of her deceased husband at the time of the adoption; and, 2ndly, that the defendant (whether an infant or not) was not, either at the time of the alleged adoption or at that of the alleged ratification of it, a free agent, but was subject to undue influence. In the case of an only son the High Court refuses to imply authority in the mother to give such a son in adoption. *Quere*: Whether the plaintiff was incapable of being adopted by the defendant because his mother was a second cousin of the defendant's husband. *Bayala v. Bala Venkatesh*, 7 Bom. Ap. 1, Gopal Narhar v. Hamant Ganesh, 1. L. R. 3 Bom. 273, referred to. *Lakshminappa v. Ramana*, 12 Bom. 364, approved. *SOMASHEKHARA v. SUNDARAJI*

1. L. R. 6 Bom. 524

53. — *Adoption of an only son—Validity of such adoption among Lingayats—Custom of Lingayats.* According to the custom of Lingayats in the districts of Dharwar and Bijapur, the adoption of an only son is valid. *Basava v. Lingaiah*

1. L. R. 19 Bom. 428

54. — *Adoption of only son of divided brother—Lingayats—Adoption in dnyamushyayana form.* Amongst Lingayats, the dnyamushyayana form of adoption is not obsolete. The adoption can take place in cases in which brothers are divided as well as where they are joint. *Chenava v. Basanavda* 1. L. R. 21 Bom. 105

55. — *Validity of adoption of only son in Gujarat—Hindu law.* The adoption of an only son is valid in Gujarat, where the Mayukha is the paramount authority on Hindu law. *Vyas Chinatal v. Vyas Ranchanra*

1. L. R. 24 Bom. 67

56. — *Gift of son in adoption by a widow after re-marriage—Widow re-marriage.* *Act (XV of 1856), ss. 2 and 3.* A Hindu widow has no power, after her re-marriage, to give in adoption her son by her first husband, unless he has expressly authorized her to do so. *Panchappa v. Sanganbasawa*

1. L. R. 24 Bom. 89

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

57. — *Only son given in adoption by widow.* A widow is competent to give in adoption whenever the husband is legally competent to give and when there is no express prohibition from him. These principles appear to regulate the power to give in adoption. *Is the joint property of the pair a coming*

and the mother, the former has the predominant interest or a potential voice; and (iii) after the father's death, the property survives to the mother. The adoption of an only son is not invalid. *Chinna Gaudan v. Kamara Gaudan*, 1 Mad. 54, followed. *NARAYANASAMI v. KUPPUSAMI* 1. L. R. 11 Mad. 43

58. — *Question as to validity of adoption.* The Courts below differed as to whether the adoption, if authorized, was validly effected, the boy adopted having been the only son of his natural father. Whether this is a disqualification invalidating an adoption is a question that has not come before Her Majesty in Council for decision. *ANVI DEVI v. VIKRAMI DEVI*

1. L. R. 11 Mad. 488  
1. L. R. 15 I. A. 176

59. — *Only son given in adoption by his widowed mother.* The plaintiff sued for a declaration of the invalidity of an adoption made by the widow of a deceased husband. *appeared that*

*son* *Hindu law* *MAHARAJA* 1. L. R. 18 Mad. 53

On appeal to the Privy Council on the general question as to the validity by Hindu law of the adoption of the only son of his natural father decided in one judgment upon these two appeals: *Held*, that such an adoption is valid by that law. The authority of a widow in reference to adoption not being identical in different schools of Hindu law, it was *held*, on a question peculiar to the appeal from Madras, that it is there established in regard to the giving of a boy in adoption by the widow of his natural father that, unless there has been some express prohibition by the husband, the wife's power with the concurrence of sapindas, where the concurrence of sapindas is required

*son* *has* *das* *express power from her husband.* *GURULINGASWAMI v. RAMALAKSHMAN* 1. L. R. 22 Mad. 398

*See RADHA MOHAN v. HANUM BISHI.* 1. L. R. 21 All. 460  
1. L. R. 28 I. A. 113  
3 C. W. N. 427

60. — *Orphan—Invalid adoption.* According to Hindu law, an orphan cannot be adopted. *SUBBALOCHAN v. ANNAKUTTI ANNAL* 2 Mad. 128

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

61. ————— *Law of Western India—Invalid adoption.* According to the Hindu law prevailing in Western India, an orphan cannot be adopted. *BALVANTRAY BHASKAR v. BAYABAI* 8 Bom. C. C. 63

62. ————— *Palak-putra—Invalid adoption.* The Hindu law does not allow of the adoption of a palak-putra. *KALEE CHUNDER CHOWDHURY v. SHIB CHUNDER* 2 W. R. 281

This decision was not disputed in the Privy Council on this point.

See *KALI CHANDRA CHOWDHURY v. SHIB CHUNDER BHADURI*

8 B. L. R. 501; 15 W. R. P. C. 12

63. ————— *Putrika-putra—Invalid adoption.* The adoption of a "putrika-putra" is invalid. *NURSING NARAIN v. BRUTTON LALL* W. R. 1864, 184

64. ————— *Sister's son—Andhra country—Invalid adoption.* In the Andhra country, as in Bengal, a Brahman cannot adopt his sister's son *NARASIMAI v. BALARAMACHARLU* 1 Mad. 420

65. ————— *Validity of adoption.* It is now well settled law that the adoption of a sister's son by a Hindu of the Vaishya caste is valid. *GANPATRAY VIRISHYAN v. VITHORA KHANDAPPA* 4 Bom. A. C. 130

66. ————— *Validity of adoption—Custom—Acquiescence in fact of adoption.* Suit to set aside the adoption of the first defendant, the alleged adopted son of plaintiff's undivided brother, to declare plaintiff's title to certain lands and for possession. First defendant pleaded that the question of his adoption was *res judicata*,

acts as adopted son since 1833 at least. It was also argued on plaintiff's part that the adoption was

country, the adoption was legal, or if not legal, that it was too late to dispute it. The plaintiff appealed and the case was referred to a full Court. The Court decided that on the general principles of Hindu law, as expounded by the writers of all schools, a Brahman could not legally adopt his sister's son,

tion coming before the High Court, the finding

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of the Civil Judge as to the existence of the custom was reversed and the following issue sent for determination:—"Has the conduct of the plaintiff and that of the members of his family been such as to render it inevitable for him to set up as against the present defendant the rule of law upon which he now insists?" The Judge found to that effect that there had been a long course of ac-

duct the defendant had not altered his situation so that it would be impossible to restore him to that original situation; that he had done so; and that,

changed situation which had resulted. *GOPAL AYYAN RAOMUPATIAYAN alias AYYAYAYAN*

7 Mad. 250

67. ————— *Suit for partition of property by person in possession making a false claim thereto.* According to the Hindu law, a Brahman cannot validly adopt his sister's son. *B*, a childless Hindu and a Brahman, adopted *X*, his sister's son, and subsequently, apprehending that the adoption was invalid, executed a will, by which he left his estate to *X*. After *B*'s death, *X* obtained possession, and remained in possession of the estate till his death, which occurred before he had obtained majority. After this, joint possession of the estate was obtained by *P* and *S*, two widows of *B*, who set up a right of inheritance from *X*, as being in the position of mothers to him, in consequence of his adoption by their deceased husband. A suit was brought by *S* against *P* for partition of the estate. Held, that the adoption of *X* by *B*, a Brahman, was invalid, and that *P* and *S* were not entitled to succeed him as his heirs. *PARBATI v. SUNDAR*

I L. R. 8 All. 1

68. ————— *Brahman.* The child whom the testator had purported to adopt was his sister's son. If it had been necessary to determine the point, their Lordships would probably have had little difficulty in accepting the opinion of the High Court that a Brahman cannot lawfully adopt his sister's son. *SUNDAR v. PARBATI*

I L. R. 12 All. 51

I. L. R. 16 I. A. 166

69. ————— *Bohra Brahman's—Custom.* Amongst the Bohra Brahman's of the northern districts of the North-Western Provinces there exists a valid and legal custom in virtue of which a person of that caste can adopt his sister's son. *CHAIK SUEH RAM v. PARBATI. MANSA RAM v. SUNDAR* I L. R. 14 All. 53

HINDU LAW—ADOPTION—*contd.*4. WHO MAY OR MAY NOT BE ADOPTED—*contd.*

70. ————— *Sister's son, mother's sister's son, and daughter's son.* The adoption of a mother's sister's son by a Hindu of any of the three regenerate classes, Brahmins, Kshatriyas, and Vaisya, equally with the adoption of a daughter's son or a sister's son is contrary to law and void. The ancient texts condemning such adoptions are not only admonitions, but have been judicially decided to be prohibitions of law for such a length of time that it is now not competent to a Court to treat them as open to question in this respect. The judgment in *Collector of Madras v. Mootoo Ramalinga Sathupathy*, 12 Moo I.A. 437, gives no countenance to the conclusion that, in order to bring a case under any rule of law laid down by recognized authority for Hindus generally, evidence must be given of actual events to show that in point of fact the people subject to that general law regulate their lives by it. *BHADWAN SINGH v. BHAGWAN SINGH*. I. L. R. 21 All. 412. I. L. R. 26 I. A. 163. 3 C. W. N. 454.

71. ————— *Custom—Brahmans—Daughter's son.* In Southern India the custom which exists among Brahmans of adopting a sister's or daughter's son is valid. *VAIDYANADAI v. APPU*. I. L. R. 9 Mad. 44.

72. ————— *Jain law—Validity of adoption.* The question of the validity of an adoption, the parties between whom the question arose being Jains, was decided in accordance with the law of that sect, and not in accordance with Hindu law. Under Jain law, the adoption of a sister's son is valid. *HASSAN ALI v. NAGA MAL*. I. L. R. 1 All. 288.

73. ————— *Mitākshara law—Kayasthas—Sudras.* As a general principle, Kayasthas are Hindus of the Sudra class, and may, as such, adopt their sister's son. *RAJ COOMAR LALL v. BISSESSUR DYAL*. I. L. R. 10 Cal. 688.

74. ————— *Stranger—Adoption of stranger where there is a brother's son—Validity of adoption.* By the Hindu law, the adoption of a stranger is valid, notwithstanding the existence of a brother's son at the time of the adoption. *GOCOLANUND DOSA v. WOONA DAES*. 15 B. L. R. 405; 23 W. R. 340.

In the same case on appeal before the Privy Council, it was laid down that passages in the Dattaka Mimamsa and the Dattaka Chandrika, which prescribe that a Hindu wishing to adopt a son shall adopt the son of his brother, if such a person be in existence and capable of adoption, in preference to any other person, although binding upon the conscience of pious Hindus as defining their duty, are not so imperative as to have the force of laws, the violation of which should be held in a Court of Justice to invalidate an adoption which has

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otherwise been regularly made. *WOONA DAES v. GOCOLANUND DOSA*.

I. L. R. 3 Cal. 587; 2 C. L. R. 51. I. L. R. 5 I. A. 40.

75. ————— *Wife's brother's son—Validity of adoption.* The son of a wife's brother may be adopted. *SRIKANTH v. RAMAYYA*. I. L. R. 3 Mad. 15.

76. ————— *Only son—Dnyamushyayana adoption—Power of a Hindu widow to give away an only son in adoption.* A Hindu widow can make a valid gift of her only son in adoption. The power of giving and taking an only son in adoption in the *dnyamushyayana* form is not confined to brothers, but may also be exercised by their widows. *Lakshmappa v. Ramana*, 12 Bom H. C. R. 361, explained and distinguished. *KRISHNA v. PARAMSIRI* (1901). I. L. R. 25 Bom 537.

77. ————— *Stranger to vatandar family—Vatan—Adoption of a person not a member of the vatan family—Gordon Settlement—Vatan Act (Bombay Act III of 1874).* A sanad with respect to vatan property which was subject to the Gordon Settlement contained the following clauses: "2nd.—No nazrana or other demand on the part of Government will be imposed on account of the succession of heirs, lineal, collateral or adopted, within the limits of the vatan family; and permission to make such adoptions need not hereafter be obtained from Government. 3rd.—When all the sharers of the vatan agree to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, will be granted by Government to the vatan on the payment from that time forward in perpetuity of an annual nazrana of one anna in each rupee of the above total emoluments of the vatan." It was contended that the adoption of a person who did not belong to the vatan family, in respect to whose vatan the said sanad was granted, was invalid. *Held*, that the sanad did not prohibit such an adoption, and that the adoption in question was valid. *RAJAJI RAMCHANDRA DESHPANDE v. DATTO RAMCHANDRA* (1902). I. L. R. 27 Bom. 75.

78. ————— *Purbia Kurmis—Adoption—Custom—Held*, that the Purbia Kurmis, calling themselves Purbia Chattris, do not really belong to the regenerate classes, and therefore, the adoption by a member of this caste of the grandson of his father's sister is not invalid as being within the prohibited degrees of relationship. *JIWAN LAL v. KALLU MAL* (1903). I. L. R. 29 All. 170.

79. ————— *Jains—Adoption—Custom—Authority of widow to adopt—Adoption of married man.* *Held*, that according to the law and custom prevailing amongst the Jain community (1) a widow has power to adopt a son to her





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7. ———— *Adoption by a mother after the death of her son who has left neither child nor widow—Adoption by a grand-mother without the consent of her daughter-in-law.* Under the Hindu law, a mother is competent to adopt when her son dies leaving no widow or other heir nearer than herself. A Hindu of the Sudra class dies, leaving him surviving his mother and the paternal grand-mother. After his death, his grand-mother adopted the defendant. Subsequently to this adoption, the deceased's mother adopted the plaintiff. Thereupon both plaintiff and defendant claimed the deceased's estate. *Held*, that the plaintiff was entitled to succeed. The deceased's mother having succeeded as heir to her son, her mother-in-law could not by any adoption divest her of her rights as such heir without her consent. The defendant's adoption was therefore invalid. *GAYDAPPA & GIRIVALLAPPA*  
I. L. R. 19 Bom. 331

8. ———— *Jain law—Validity of adoption.* In a suit to which the parties were Jains, and in which the plaintiff claimed a declaration that he was adopted by the defendant to her deceased husband, and that as such adopted son he was entitled to all the property left by her deceased husband, it was found that subsequent to the husband's death the defendant had adopted another person who had died prior to the adoption of the plaintiff, and without leaving widow or child. *Held*, that the powers of a Jain widow, except that she can make an adoption without the permission of her husband or the consent of his heirs, and may adopt a daughter's son, and that no cere-

monies, it must be assumed that the widow had power to make a second adoption, and that such adoption was to her husband. *Held*, therefore, that the adoption of the plaintiff was valid and effective. *Held*, also, that the effect of the second adoption being to make the second adopted son the son of the deceased husband, he must be treated as if he had been born, or at all events conceived, in the husband's lifetime, and his title related back to the death of the elder brother, the first adopted son, so that, if the elder brother left no widow or child who would succeed him to the exclusion of his younger brother, the second adopted son would succeed as heir to the father. *Sheo Singh Rai v. Datta*, I. L. R. 1 All. 685, referred to. *LAHMI CHAND & GATTO RAI*

I. L. R. 8 All. 319

9. ———— *Adoption by widow under husband's authority—Second adoption, validity of—Restrictions to widow's power—Intention—Spiritual benefit how secured—Continuation of line—Law in Madras, Bombay and Bengal.* A Madras Brahmin died intestate and without issue

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leaving his widow authority to adopt. He placed no specific limitation on the power to adopt, his object being to secure spiritual benefit to himself and to continue his line. The first child adopted by the widow having died when little more than two years of age: *Held*, that the widow's authority to adopt was not exhausted by the first adoption and the adoption of a second boy after the first died was valid. *Gournath Choudhry v. Anapurna Choudhry*, S. D. A. for 1852, 332, adversely commented on and not followed. The main factor for consideration in these cases is the intention of the husband. Any special instructions, which he may give for the guidance of his widow, must be strictly followed. Where no such instructions have been given, but a general intention has been expressed to be represented by a son, effect should, if possible, be

18 Calc. 355, and the judgment of MITTER, J., in *Ram Soundur Singh v. Surbanee Dassee*, 22 W. R. 121, approved. *KANNAPALLI SURYANARAYANA & PUCHA VENKATARAMANA* (1906) I. L. R. 33 I. A. 145  
I. L. R. 29 Mad. 362

10. ———— *Second adoption after death of widow of first adopted son—Validity—*

dies leaving a widow as his heiress. A second adoption made after the adoptive mother has succeeded to the estate on the death of the widow of the first adopted son is therefore invalid. *Pudma Kumari v. Court of Wards*, I. L. R. 3 I. A. 229; s.c. I. L. R. 8 Calc. 392; *Thayammal v. Venkatarama*, I. L. R. 14 I. A. 67; s.c. I. L. R. 10 Mad. 205, followed. *Bykanta Montee v. Kristo Soondere Roy*, 7 W. R. 392; *Manik Chand v. Jagat Settani*, I. L. R. 17 Calc. 518; *Kannepalli v. Pucha*, 10 C. W. N. 921; s.c. 4 C. L. J. 171, referred to. *MANIKYA MALI BOSE & NANDA KUMAR BOSE* (1906)

11 C. W. N. 13

11. ———— *Simultaneous adoption—In-*

and where such a thing is attempted, neither of the children is the legally adopted son of the deceased, although the ceremonies of adoption may have been performed as regards each, and also at the same time. *GYANENDRO CHUNDER LAHMI & KALAPAHAR HAJI*

I. L. R. 9 Calc. 50; 11 C. L. R. 297

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sons successively and you . . . the younger widow may adopt three sons successively." *Held*, that this might more reasonably be construed as

referred to and approved. **AKROY CHUNDER BAGCHI v. KALATAHAR HAJI**

**I. L. R. 12 Calc. 408 : L. R. 12 I. A. 166**

**MONEMOHNATH DEY v. ONAATH NAATH DEY**  
**2 Ind. Jur. N. S. 24**

s.c. in Court below **Bourke O. C. 189**

**SIDDESSORY DASSEE v. DOORGACHURN SEIT**  
**2 Ind. Jur. N. S. 22 : Bourke O. C. 360**

**DOSMONEY DOSSEE v. PROSONOVAYEE DOSSEE**  
**2 Ind. Jur. N. S. 16**

where the question was only raised however, and it was assumed such an adoption would be invalid without deciding it.

See also **CHOUNDAWALEE BAHOOJEE v. GIEDHAREEJEE** **3 Agra 226**

Affirmed by the Privy Council in **GOOPTEE LALL v. CHANDRAGOJEE BAHOOJEE** **11 B. L. R. 301**  
**19 W. R. 12 : L. R. I. A. Sup. Vol. 161**

**12. ——— Adoptions by each of two widows simultaneously made to one father.** By Hindu law there cannot be simultaneous adoptions by two widows of two sons to one father. **SURENDRO KESHUN ROY v. DOORMASOONDERY DOSSEE** **I. L. R. 19 Calc. 613**  
**L. R. 19 I. A. 106**

**13. ——— Invalidity of gift made to a person as being the adopted son of donor, where the adoption fails—Persona designata.** A testator gave by will to each of his two wives a power to adopt, and gave his property to his sons as to be adopted, but did not provide, nor did he know who the adopted sons were to be. The adoption which subsequently took place was found to have been a simultaneous adoption by the two widows. *Held*, that such an adoption was invalid, and that the persons purporting to be the adopted sons did not answer the description in the will of adopted

**CHANDRANATH LAL v. ANU, SUT. N. S. 24**, distinguished, and **Farindra Deb Raihat v. Bageswar Das**, **I. L. R. 11 Cal. 463 : L. R. 12 I. A. 72**, followed on the

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question of *persona designata*. **DOORJA SUNDARI DOSSEE v. SURENDRO KESHAV RAI**

**I. L. R. 12 Calc. 666**

**14. ——— Conditional adoption—Position of father giving son in adoption.** Where

perity, subject, however, to the boy's maintenance and education, and upon the faith of such agreement adopted the boy, it appearing that she would not have done so at all if it had not been for such agreement. *Held*, that the agreement was

father in giving his son in adoption is not only co-extensive with the power of a guardian, but is more like the power of an absolute proprietor. **CHITRO RAGHUNATH RAJADIKSH v. JANAKI**

**11 Bom. 199**

**15. ——— Consent given to**

adoption. **RANGUBAI v. BHAGIRTHIRAI**  
**I. L. R. 2 Bom. 377**

**16. ——— Agreement by natural father restricting son's interest in the inheritance of his adoptive father.** The natural father of a boy whom the widow of a deceased Hindu

**I. L. R. 2 Mad. 61**  
**L. R. 8 I. A. 166**

**17. ——— Minor adopted on conditions. Semble.**—A minor taken in adoption is not bound by the assent of his natural father to terms imposed as a condition for the adoption. **LAKSHMANNA RAO v. LAKSHMI AMMAL**

**I. L. R. 4 Mad. 160**

**18. ——— Validity of adoption—Mitakshara law.** The will of B, a Hindu, appointed one K, manager of all his property and gave his widow S power to adopt a son, and

**HINDU LAW—ADOPTION—*could.*****5. SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS—*could.***

went on to state that S "shall manage all the affairs with the consent of the said manager" (K), "and she will not be able to do any wrongful act or alienate and waste property uselessly and without his consent. If she do so, it will be cancelled by the said manager or the adopted son; and she will adopt a son with the..."

any advice or assistance, intimating her intention and asking him to come and see the ceremony performed, but he declined to receive the letter which was returned to S by the postal authorities, and the plaintiff was eventually adopted without the consent of K. Held, that the consent of K was not a condition precedent to the validity of the adoption and that it... of its ba... nd... onser... BA... NAND.

22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

19. Adoption under agreement—Validity of adoption by untimely widow—Agreement at time of adoption affecting rights of adopted son. The defendant's husband, V, died intestate at the age of seven, leaving the said L, his mother, as his only heir and legal representative.

became entitled by reason of his adoption. The agreement was in the following terms:—"Memorandum of agreement made this 18th day of April in the Christian year 1878 between O of Bombay, Hindu inhabitant, of the one part, and L, widow of V, also of Bombay, Hindu inhabitant, of the other part. Whereas the said V died intestate at Bombay on or about the 5th day of October 1873, leaving him surviving the said L as his only widow, a son named B, who was born during his lifetime, and...

and legal... l whereas... fant and... the said L, his mother, as his only heir and legal representative.

the said O has agreed to do. Now these presents witness that, in pursuance of the said agreement and in consideration of the premises, the said Shree agreed to give, and the said L has agreed to

**HINDU LAW—ADOPTION—*could.*****5. SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS—*could.***

accept, in adoption the said S on the express terms and conditions following, that is to say:—1. That the said L shall have during her lifetime, both before and after the said S has attained his majority, absolute power and control over the whole of the immovable and moveable property, estate, and effects so inherited by her as the heir and surviving legal personal representative of B as aforesaid, and shall be at liberty to deal with and manage the same according to her own absolute discretion, as she may, in the exercise of such discretion, deem most advantageous to the estate. 2. The said L shall and will during her life provide the said S with lodging, food, clothes, medical attendance, and all other necessities and... and educate him suitable to the...

him married and... ceremonies on his marriage at her own expense as aforesaid in a manner suitable to the position and respectability of the said family. 3. That after the death of the said L, the said S, his heirs, and legal representatives will be entitled to inherit for his and their own absolute use and benefit all the moveable and immovable property, estate, and effects of which the said L shall be possessed at the time of her death. 4. That the terms and conditions specified and contained in cls. 1 and 2 and 3 of this agreement shall have full effect and be considered as valid and operative in every respect, any provision of law or the Hindu Shastras to the contrary notwithstanding. The plaintiff alleged that since he had attained majority he had always repudiated the validity of the agreement as affecting his rights in any way. The plaintiff also alleged that on the Dassara day of 1883 the defendant assembled her friends and relatives, and in view of the approaching majority of the plaintiff, which he attained on the 14th December 1883, announced her intention of making him her son.

and had threatened that she would proceed to adopt a son and run the plaintiff. He prayed for a declaration that he was the validly adopted son of, and entitled to the property which formerly belonged to, L, and that the defendant was not his mother, or, given

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might have been entitled under the said agreement, etc. The defendant admitted that she had performed certain ceremonies which she intended to be an adoption of the plaintiff as son of V; but she alleged that at the time of the said adoption she had not, nor had she since, undergone tonsure; and that, according to the custom of the Dairadnya community, to which she and the plaintiff belonged, a widow could not adopt until her head had undergone tonsure. She also stated that the majority of her caste had declared the said adoption to be invalid, and she submitted that, in consequence of this, the adoption was null and void.

and conditions contained therein, as she would not, except upon those terms and conditions, have adopted him. She further contended that on the death of her husband, the plaintiff was adopted by her.

From the evidence it appeared that the requisite religious ceremonies had been performed. Before the defendant took part in them, Shastris were consulted as to whether the defendant, while untoued, could properly do so, and on making certain expiatory gifts she was pronounced competent. Under such circumstances, the Court could not hold her to be incompetent. Even if

requisite rites with the assistance of priests and in accordance, with the opinions of Shastris, the Court will uphold it, even against the opinions of other Shastris expressing or entertaining contrary views. *Held*, that the effect of the agreement of the 18th April 1878 was to give the defendant the beneficial ownership of the estate for her life, with the largest possible discretionary powers of management, subject to the duty of maintaining and educating the plaintiff. *Held*, also, following *Chittha v. Janaki*, 11 Bom. 199, that the agreement was valid and binding on the plaintiff, and that the defendant had not waived the benefits to which she was entitled under its provisions. *RAVI VINAYAKHAR JAGANNATH SHANKARSETT v. LAKSHMI*

I. L. R. 11 Bom. 381

20. — *Invalid agreement relating to estate of adopted son.* A talukdar by his will authorized his senior widow to select and adopt a minor male child of his family to be the owner of the entire riasat. This power having been exercised, the adoption was questioned on the ground that the widow had agreed, with the natural father of the adopted son, that she should retain the whole estate during her life. *Held*, that this had not

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rendered the adoption conditional, and that it did not affect the rights of the adopted son. Even if it

the condition herein would have been void without invalidating the adoption. *BHAIYA RABIDAT SINGH v. INDAR KUNWAR*

I. L. R. 16 Cal. 558  
I. R. 16 I. A. 53

21. — *Will of a Hindu in favour of his wife made on his taking a son in adoption—Adoption made on the understanding that the dispositions of the will be observed.* A Hindu,

provisions. *LAKSHMI v. SUBRAMANYA*

I. L. R. 12 Mad. 490

22. — *Adoption made the day after the adoptive father made his will—Adoptive son bound by the will—inconsistent plea.* A Hindu wrote his will devising certain ancestral property to his wife, and on the following day he registered it and took the plaintiff in adoption,

consent of the natural father to those dispositions. The defendants, who claimed under a gift from the wife, had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in. *Held*, (i) that the defendants were not precluded from succeeding on the latter of these inconsistent pleas; (ii) that the plaintiff was not entitled to the ancestral property devised by the will to the testator's wife. *Lakshmi v. Subramanya*, I. L. R. 12 Mad. 490, followed. *NARAYANASAMI v. RAMANAMI*

I. L. R. 14 Mad. 172

23. — *Adoption by widow—Agreement between adoptive mother and natural father.* A Hindu, who is taken in adoption by a widow, acting under an authority from her husband, is not bound by an agreement entered into by her with his natural father at the time of the adoption. *Bhaiya Rabidat Singh v. Indar Kunwar*, I. L. R. 16 Cal. 558, and *Lakshmi v. Subramanya*, I. L. R. 12 Mad. 490, referred to. *JAGANNADHA v. PAPAYDIA*. *BUCHAMMA v. JAGANNADHA*. *PAPAYDIA v. JAGANNADHA*. I. L. R. 18 Mad. 400

HINDU LAW—ADOPTION—*contd.*5. SECOND, SIMULTANEOUS, OR CONDITIONAL ADOPTIONS—*contd.*

24. ———— *Gift by adoptive father at the time of adoption—Gift binding on adopted son.* Where a Hindu at the time of taking a son in adoption made a gift of a portion of his

having been a party to the deed of adoption which referred to the deed of gift executed along with it,

the *dwayamushayana* form of adoption has become obsolete in the southern districts of the Presidency of Bombay. *BASAVA v. LINGANGAUDA*

I. L. R. 10 Bom. 428

See *CHENAYA v. BASANGAUDA*.

I. L. R. 21 Bom. 105

25. ———— *When sapinda consents on condition that adopted son should not claim the property of his adoptive father, adoption not thereby invalid.* When a sapinda in giving his consent to an adoption, protects himself from loss by stipulating that the adopted son should not claim a share in the joint family property in the enjoyment of such sapinda, the consent of the sapinda is not given from corrupt or improper motives, and the adoption will be good. *Ramu Reddi v. Rengamma*, 11 M. L. J. 29, distinguished. *SRINIVASA AYYANAR v. RAOASAMI AYYANAR* (1907)

I. L. R. 30 Mad. 450

## 6. EFFECT OF ADOPTION.

1. ———— *Effect in adopting parent's power of making will.* A Hindu adopting a son does not thereby deprive himself of any power that he may have to dispose of his property by will. There is no implied contract on the part of the

2. ———— *Retrospective effect.* An adoption by a widow has a retrospective effect, and relating back to the death of the deceased husband, entitles the adopted son to succeed to his estate. *VRANKATRAY ANANDRAY v. JAYAVANTRAY BIN MALHARAY RANADIVE* . 4 Bom. A. C. 191

3. ———— *Power of adopted son to set aside gift made before his adoption.* The adoption of a son by a Hindu widow has a retrospective effect, a son therefore adopted to her husband by a widow is entitled to set aside a gift of ancestral immovable property made by his adop-

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tive father's widow previous to his adoption. *NATHAJI KRISHNAJI v. HARI JAOOJI*

8 Bom. A. C. 67

4. ———— *Date from which title of son takes effect.* The title of a son adopted by a widow under authority from her husband does not relate back to the death of the husband. *LAKSHMANNA RAO v. LAKSHMI AMMAL*

I. L. R. 4 Mad. 180

5. ———— *Illatam custom—Status of son-in-law—Co-parcenary—Survivorship—Proof of special custom.* Although an illatam son-in-law and a son adopted into the same family may live in commensality, neither they nor their descendants can, in the absence of proof of custom, be treated as Hindu co-parceners having the right of survivorship. *CHENCHAMMA v. SUBBAYA*

I. L. R. 6 Mad. 114

6. ———— *Custom of adoption of Gayawals of Gaya—Effect on adopted son as to his rights in family of natural father.* The proved practice of the Gayawals in adopting sons did not sever the adopted child from the family of his natural father, so that he did not lose his rights therein. *LACHMAN LAL CHOWDHRI v. KANHAYA LAL MOWAR* . I. L. R. 22 Calc. 608

I. L. R. 22 I. A. 51

7. ———— *Status of adopted son—Theory of adoption.* The theory of an adoption is a

1 Mad. 420

8. ———— *Rights in his*

9. ———— *Inheritance in adopted family.* Adoption is tantamount to the

SINGH . 1 Agra 200

10. ———— *Consent to adoption of inherited son, disavowed by father afterwards assuming to adopt a second son and settling the hereditary property upon such*

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

tween A and B. A used a person denying the right of his adoptive father to adopt B, and protesting against the will; but afterwards he signed a consent to the will. *Held*, that, as the father afterwards endeavoured to deprive A of all his rights, as well those under the will as by the adoption, the consent did not bind A, since it was given on the basis of a family arrangement, from which the adoptive father afterwards departed. *Semle*: That if the consent were given by A in ignorance of his right, it would not be binding upon him. *SUDANUND MOHAPATTUR v. BONOMAYEE Doss*. Marsh. 317; 2 May 205

11. ———— *Right of adopted son to self-acquired immovable property of his adoptive father.* An adopted son does not stand in a better position with regard to the self-acquired immovable property of his adoptive father than a natural-born son would occupy. *PURNOTAM SHAMA SHENVI v. VASUDEVA KRISHNA SHENVI* 6 Bom. O. C. 196

TARA MONU BHATTACHARJEE v. KRIPANMOYEE DEBIA 9 W. R. 423

12. ———— *Succession of adopted son—Rights among other heirs.* When an adopted son is entitled to share with heirs other than the legitimately begotten sons of his adopted father in the property of kinsmen, he takes the same share as the other heirs. The true meaning of paragraphs 24 and 25 of section V of the Dattaka Chandrika is that an adopted son and the adopted son of a natural son stand in the same position, and this rule does not extend to distinct collateral heirs. *DIXONATH MOOKERJEE v. GOPAL CHANDER MOOKERJEE* 9 C. L. R. 379; 8 C. L. R. 57

13. ———— *Succession—Sapinda relationship.* The rights of an adopted son, unless contracted by express texts, are in every respect similar to those of a natural-born son. An adopted son takes the same share as a natural-born son.

KISHORE CHOWDHRY v. PANCHOO BABOO 4 C. L. R. 538

14. ———— *Succession lineal and collateral.* According to Hindu law, an adopted son succeeds not only lineally, but also collaterally, to the inheritance of his adoptive father's relations. *SUNSHOCHUNDR CHOWDHRY v. NARAINI DEBIA* 5 W. R. P. C. 100

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

15. ———— *Termination of authority to adopt—Succession of adopted son to collaterals in gotra not that of father by adoption.* An instrument of permission (anumati patra) to a Hindu wife to adopt should be left a widow provided that "dattaka (adopted) son shall be entitled to perform your and my sraddha and that

and in the suit arising thereupon—*Bhoolnarmoyee Debia v. Ramkishore Achari Chowdhry*, 10 Moo. I. 479—it was decided that, the son's widow having acquired a vested interest, a new heir could not be so substituted for her. *Held*, that, although such a substitution might have been disallowed without the adoption being held invalid for all other purposes, the above decision had determined that, upon the vesting of the estate in the widow, the power of adoption was incapable of execution, and was at an end, and that this would have been the conclusion if the question of the validity of the power had been raised without any previous decision upon it. An adopted son occupies the same position in the family of the adopter as a natural-born son, except in a few instances which are accurately defined both in the Dattaka Chandrika and Dattaka Mimamsa, governing authorities in the Bengal school. An adopted son succeeds not only lineally, but collaterally to the inheritance of his relations by adoption. *Sunshochunder Chowdhry v. Naraini Debia*, 5 W. R. P. C. 100, referred to and followed. *Held* in this case, that the adopted son of the maternal grandfather of the deceased, though the gotra into which he was adopted was not the same as the latter's, was an heir nearer to him than such maternal grandfather's grandnephew. *PADMAKUMARI DEBIA CHOWDHRY v. COURT OF WARDS* I. L. R. 8 Cal. 302 I. R. 8 I. A. 229

Affirming decision of High Court in *Pudbo Koonaree Dabee v. Juggut Kishore Acharjee* I. L. R. 5 Cal. 615

JUGGOERNATH SAHAI v. MUKKUM KOOVWAR 3 W. R. 24

TEENCOWRIE CHATTERJEE v. DINONATH BAKSHI 3 W. R. 49

18. ———— *Succession of adopted son on the mother's side.* An adopted son

natural-born son, had there been one, would have

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

been entitled to succeed a maternal uncle, as being brother's daughter's son to the latter : *Held*, that

KUMUL MOZUNDAR v. UMA SONKUR MOITRA  
I. L. R. 10 Calc. 232 : 13 C. L. R. 379  
L. R. 10 I. A. 138

Affirming the decision of the High Court in *UMA SONKUR MOITRA v. KALI KUMUL MOZUNDAR*  
I. L. R. 8 Calc. 265 : 7 C. L. R. 145

17. ————— *Collateral succession—Son adopted in kintima form.* A son adopted in the kintima form in the Mithila provinces does not become a member of the adopting family so far as collateral heirship is concerned, the relation of kintima for the purpose of inheritance extending to the contracting parties only. He can only succeed to his adoptive mother's property. *SHIRO KOOEREE v. JOOGUN SINGH BOOLEE SINGH v. BUSUNT KOOEREE* 8 W. R. 155

COLLECTOR OF TIRHOOT v. HIRDOPEERAD MOHUN . . . . . 7 W. R. 500

18. ————— *Rights of adopted son—Adoption by widow after death of natural-born son—Divesting of property.* A Hindu widow, who adopts a son after the death of her natural-born son divests herself of her estate. *JANNABAI v. RAYCHAND NARALCHAND* . . . I. L. R. 7 Bom. 225

BYRAT MONKE ROY v. KRISTO SOONDEREE ROY  
7 W. R. 392

19. ————— *Divesting of property.* An adoption by the widow divests her of the right of inheritance to her husband's property and vests it in the adopted son. *COLLECTOR OF BAREILLY v. NARAIN DAY* . . . 3 Agra 349

20. ————— *Second adoption—Divesting of mother's estate.* *Per THELWYAN, J.*—By a second adoption a widow divests herself of the mother's estate in the same way that she divests herself of her widow's estate on the first adoption. *AMRITO LALL DUTT v. SERNOWONI DAS*  
I. L. R. 25 Calc. 683  
2 C. W. N. 389

21. ————— *Position of*

the widow and vested it in the adopted son, the widow sued for an undivided share in the joint property, and a decree was made directing her to be put in possession. *Held*, that the widow must be assumed to have prosecuted the suit only as guardian for her adopted son; that the decree must be considered to be for his benefit; and that she was put in possession as trustee for him and accountable to him as guardian and trustee for

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

the profits of the property, being entitled herself to a maintenance out of it. *DUTTA DOSS PANDAY v. SHAMA SOONDERY DERIA*

8 W. R. P. C. 43  
3 Moo. I. A. 229

22. ————— *Divesting of property—Vested right of inheritance.* An inheritance, having once vested, cannot be defeated and divested by an adoption. *ANNAMMAH v. MABBU BALI REDDY* . . . . . 8 Mad. 108

23. ————— *Divesting of*

24. ————— *Succession of adopted son—Divesting of estate.* An adopted son,

his heir, she acquires a vested interest in her husband's property as widow, and a new heir cannot be substituted by adoption to defeat that estate, and

KISHORE ACHARJEE  
3 W. R. P. C. 115 : 10 Moo. I. A. 279

GORINDO NATH ROY v. RAM KANAY CHOW-  
DARY . . . . . 24 W. R. 183

25. ————— *Son adopted*

having made a will, by which he gave his widow to adopt a son. The widow of K adopted a son in August 1876. In a suit brought by the plaintiff as adopted son of K and heir of P to recover the property left by P, the issue was

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

raised whether, assuming the plaintiff to be legally adopted son of K, he was the heir of P. *Held*, that, his adoption not having taken place when the succession to the property of P opened out on the death of B D, he was not entitled to the property; his adoptive mother could not claim on the death of B D to hold the property as trustee for the plaintiff; and inasmuch as the property must have vested in some one on the death of B D, and property once vested cannot, by Hindu law, be divested, the plaintiff was not entitled to succeed. *KALLI PROSONNO GHOSH v. GOCCOL CHUNDER MITTER*  
I. L. R. 2 Cal. 295

26. — *Divesting of property.* A, who had a son, D, by his wife C, during the lifetime of his son executed an *unoomuttee puttro* in favour of C, empowering her to adopt a son in the event of the death of B D, on coming of age, succeeded to the ancestral and other estate of his father, who had died. Subsequently B died childless, and his widow succeeded as heir to her deceased husband. C afterwards exercised the power of adoption from her husband, and adopted D. *Held*, that, although, as heir to A, D could not displace the widow and full heir of D, and that although as heir to B he came after B's widow and mother, D might succeed when on their deaths he united in himself the capacities of heir to A and heir to B. *JOY KISHORE CHOWDERY v. PANCHOO BABOO*  
4 C. L. R. 538

27. — *Adoptive son claiming share in estates already vested in another before the date of the adoption—Fraud.* Shortly before his death in 1862, A, by his will, gave his widow power to adopt a son. In consequence of fraud on the part of B, the son of a brother of A, in suppressing this will and setting up another, the will was not proved until 1874, when the widow exercised the power. C, the widow of another brother,

death of C, and that thus he had been deprived of

under any circumstances, remain in abeyance in expectation of the birth of a preferable heir not

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

conceived at the time of the owner's death. *Keshub Chunder Ghose v. Bishen Pershad Bose, S. D. A. 1860, p. 340, and Bhobun Moyee Debia v. Ram Kishore Achary Chowdury, 10 Mo. I. A. 279, followed. NILCOMUL LAHURI v. JOTENDRO MONDY LAHURI* I. L. R. 7 Cal. 178; 8 C. L. R. 401

*Held* in the same case by the Privy Council,

for him, under any circumstances, to have been made an adoptive heir to the uncle. According to Hindu law, as laid down in the decided cases, an adoption effected after the death of a collateral relation does not entitle the adopted son to come in among the heirs of such collateral. *BIJUNESWARI DEBI v. NILCOMUL LAHURI*

I. L. R. 12 Cal. 19; I. R. 12 I. A. 137

28. — *Vested estate divested by adoption—Power to adopt.* A, a Hindu, having succeeded to his father's estate, died unmarried, leaving him surviving his father's mother S and his step-mother N. After A's death, N, under a power from her husband, adopted B as a son to A's father. *Semble* That the adoption did not divest the estate of S, in whom A's estate had vested on his death. *DROBOMOYEE CHOWDHARIE v. SHAMA CHURN CHOWDERY*

I. L. R. 12 Cal. 246

29. — *Divesting of estate taken by widow.* The defendant's husband, F, died intestate in 1873, leaving his widow (the defendant) and a son B him surviving. A post-

upon his adoption, became entitled to the property. *RAVJI VINAYAKRAV JAGANNATH SHANKARSETT v. LAKSHMINIBAI* I. L. R. 11 Bom. 381

30. — *Inheritance of adopted son—Divesting estate—Effect of adoption*

adoptive father, when such estate has vested before his adoption in some heir other than the widow who adopts him. Where a man died leaving two widows



HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

and having given either of them the power to adopt a son, and the younger widow, on the refusal of the elder one to adopt, adopted a son:—*Held*, that the estate which was in the elder widow was divested by adoption, and that the adopted son took all the estate of his adoptive father. *MONDAKINI DAS v. ADINATH DEY*. I. L. R. 18 Cal. 69

31. — *Divesting of estate already vested*—*Mitakshara law*. B and R were living as a joint family subject to the *Mitakshara law*. B died on the 28th February 1884, leaving him surviving a widow S, to whom he gave power to adopt a son to him, and R who succeeded by survivorship to B's share in the joint-family property. S adopted the plaintiff on the 27th October 1885. *Held*, that on such adoption the plaintiff became entitled to the share of his father B, notwithstanding that such share had already vested in R. *MONDAKINI DAS v. ADINATH DEY*, I. L. R. 18 Cal. 69, followed. *SURENDRA NANDAN alias GYANENDRA NANDAN DAS v. SAILAJA KANT DAS MAHAPATRA*. I. L. R. 18 Cal. 385

32. — *Widow with express authority from her husband to adopt*—*Adoption by such widow cannot divest estate vested by inheritance devolved from a lineal heir of the husband*—*Adoption by elder brother's widow after younger brother's death*. K and his two sons, B and N, were members of an undivided family. B died first, leaving a widow: then K died. On his death N succeeded to the family property. N afterwards died, leaving him surviving his widow, the defendant G, who then got possession of the said property. After N's death, however, B's widow adopted the plaintiff as son to her husband, and he brought this suit against G to recover the property from her. He alleged that B in his lifetime, with the concurrence of K, had given express authority to his wife to adopt a son after his death. The Court of first instance gave the plaintiff a decree. On appeal, the District Judge rejected his claim. The plaintiff appealed to the High Court. *Held*, confirming the decree of the lower Court, that the plaintiff was not, by virtue of his adoption, entitled to oust the defendant G from the estate of her husband. At the time of his death, N was full owner as last survivor of the joint family. The property then devolved as his, and a subsequent adoption, however well authorized to B, a collateral heir of N, could not divest the defendant G, who did not claim through B at all. If the question had arisen between the plaintiff and N, the plaintiff would have been entitled to succeed. *VIRADA PRATAPA Raghunada Deo v. Brojo Kishore Poffa Deo*, I. L. R. 1 Mad at p. 83. I. L. R. 3 I. A. at p. 193, referred to. Adoption by a widow under her husband's authority has the effect of divesting an estate vested in any member of the undivided family of which the husband was himself a member. But it does not divest the estate of one on whom the inheritance has devolved from a lineal heir of the husband.

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

This rule, however, must be supplemented by the addition that the adoption, though authorized by the husband, cannot divest the estate vested in a collateral relation of the husband in succession to some other person who had himself become owner in the meantime. *CHANDRA v. GOJARABAI*

I. L. R. 14 Bom. 463

33. — *Effect of an adoption by a co-widow after the estate has been vested in the other widow*—*Divesting of estate*—*Sale in execution of decree*—*Salable interest*. A Hindu, governed by *Mitakshara law*, died, leaving him surviving two widows, G and B, and a son S by G. By a will he authorized his widow, B, to adopt a son, in the event of dying unmarried; but he made no disposition of his property, which was left to devolve according to Hindu law. S died unmarried in the year 1290 (1883), and B adopted a son in the same year, to which adoption G was not a party. In the year 1296 (1889), in order to liquidate debts of their husband, the widows executed a mortgage-bond in favour of one F, who obtained a decree in 1299 (1892). In execution of that decree, the mortgaged properties were sold and purchased by a third party. On an application made by the auction-purchaser to set aside the sale, on the ground that the judgment-debtors had no salable interest in the property, as it had upon the adoption vested in the adopted son. *Held*, that, as an adopted son is not entitled to claim as preferential heir the estate of any other person besides his adoptive father when such estate has vested before his adoption in some heir other than the widow who adopted him, the adoption by B could not have the effect of divesting G of the estate which had devolved upon her as heir of her son, and if that was so, it could not be said that the judgment-debtors had no salable interest in the property, and therefore the sale could not be set aside. *Held*, also, that G was not under any such religious obligation to give her assent to the adoption by B as should have the effect of divesting her of the estate. *Lakshman Dada Naik v. Ramchandra Dada Naik*, I. L. R. 5 Bom. 485; I. L. R. 7 I. A. 18; *Dhoochun Moyee Debia v. Ram Kishore Acharye Chowdhry*, 3 W. R. P. C. 15; 10 Mo. I. A. 279; *Annammah v. Mabbu Bali Reddy*, 3 Mad. R. C. 108; *Drobomoyee Chowdhra v. Shama Churn Chowdhry*, I. L. R. 12 Cal. 246; *MONDAKINI DAS v. ADINATH DEY*, I. L. R. 18 Cal. 69; and *SURENDRA NANDAN v. SAILAJA KANT DAS MAHAPATRA*, I. L. R. 18 Cal. 385, referred to. *FAIZUDDIN ALI KHAN v. TINSOWRI SARA*

I. L. R. 22 Cal. 565

34. — *Adoption not effectual in divesting an estate which had already vested in another person*—*Consent of such person to adoption*. One D, a separated Hindu, died in 1852 childless, leaving three widows and a daughter-in-law F, the widow of a predeceased son, C. D's estate was taken on his death by his widows, and ultimately became vested in L, the survivor of them.

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

In 1871, while she was in possession, *V* adopted the plaintiff. In 1874, a decision was passed against *L*, in execution of which a large portion of her deceased husband's property passed into the possession of the defendant. In 1886, the plaintiff filed this suit

come to her as heir of her husband, *D*. On *D*'s

an end. DHARNIDHAR v. CHINTO

I. L. R. 20 Bom. 250

35. ——— Adoption by widow relating back to husband's death—Divesting of estate of heir who had succeeded before the adoption. *A* and *S* were two divided brothers. *A* died, leaving his brother *S* and a daughter-in-law (the widow of his predeceased son *G*) him surviving.

— and how of *t* Having been adopted ed grandson of *rt*y which had option to *O*'s

widow, while divesting *M* of the right to inherit as his heir, invested him with the right to inherit *A*'s estate. For the purposes of inheritance, an adoption may be considered as relating back to the death of the adoptive father divesting all estates which have during the intermediate period become vested as it were conditionally in another. ANAJI v. RATNOJI KRISHNABAO I. L. R. 21 Bom. 319

38. ——— Adoption by widow in divided family An adoption by a widow in a divided family cannot divest any estate other than her own and her co-widow's, except perhaps with the consent of the heir in whom the estate has vested. ANAYA v. MAHADOUDA

I. L. R. 22 Bom. 418

37. ——— Adoption by a daughter-in-law of *A* after the estate has vested in *A*'s widow—Permission by *A* to adopt—Non-consent of widow—Divesting of estate once vested—Widow's authority to adopt in Bombay—Daughter-in-law must have permission—Co-widow's Adoption by one co-widow. An adoption cannot divest a person of an estate which has once vested in him, unless such adoption is made with his consent. An exception to this rule is where a co-widow adopts

HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*contd.*

Such an adoption will divest the younger widow of

specially authorized by her father-in-law in order that she may make a valid adoption hunding as against the heirs of her father-in-law. *S* was the widow of *B*, who died in 1877 in the lifetime of his father *R*. Fourteen years later, viz., in 1891, *R* died, leaving a widow Saibai, who succeeded to his estate as his heir. In March 1892, *S* adopted the plaintiff *G*, who was older than herself, as son to her husband, alleging that she had *R*'s permission to do so. The plaintiff sued for a declaration that as adopted son of *B* he was entitled to succeed as heir to the property of *R* as against the defendant *V*, who claimed to have been adopted by Saibai as son to *R*. The lower Appellate Court disallowed the plaintiff's adoption on the grounds that Saibai had not consented to it. Held (confirming the decree of the lower Court), that, as the adoption of plaintiff *G* was made by *S* without proper authority and without Saibai's consent, it was inoperative and invalid. As Saibai did not give her consent to the plaintiff's adoption, that adoption did not divest her of her exclusive right to succeed as heir of *R*. GOPAL BALKRISHNA KENJALE v. VISHNU RAGHUNATH KENJALE I. L. R. 23 Bom. 250

38. ——— Adoption of the

been adopted by his uncle *H L*, and that consequently he had no interest in the properties in suit. But subsequently under an order of the Court *T N L* was made a co defendant. The parties were subject to the Dayabhaga law, and the suit was for partition, the main question being as to the effect of the adoption upon the respective shares of the parties. Held, that under the Dayabhaga law,

vesting of the inheritance entails loss of the right of claiming any share in the estate of the adopted person's natural father or natural relation, yet the interest which is once vested in a son upon the death of his father is not divested by his subsequent adoption into another family; and the parties were



HINDU LAW—ADOPTION—*contd.*6. EFFECT OF ADOPTION—*concl.*

43. ——— Alienation by the widow prior to the date of adoption—*Adoption by a widow*—Right of the adopted son to dispute the alienation. Where a Hindu widow, who has inherited her husband's property, adopts a son, the adoption has the effect of divesting her of the property and putting an end to her estate as heir of her husband. The adoption has the same effect as her death with this difference that after the

her any right to the estate or entitle her to transfer it by way of sale or mortgage. Thus, if a widow before the adoption severs a portion of the inheritance therefrom and transfers it to a stranger, without any proper or necessary purpose binding the estate absolutely according to Hindu Law, the transfer, logically speaking, must cease to have any effect after the adoption, since it could only operate during the time that the estate was represented by her as heir and the result of the adoption is to terminate that estate. *Lakshman v. Radhabai* I. L. R. 11 Bom. 609 and *Moro v. Balaji* I. L. R. 19 Bom 809, followed *Sreeramulu v. Kristamma*, I. L. R. 26 Mad. 143, not followed. *RAMAKRISHNA v. TRIPURABAI* (1908) I. L. R. 33 Bom. 88

44. ——— Adoption of a married man having a son—*The son's gotra and rights of inheritance in the family of his birth*. When a married Hindu having a son, is given in adoption, the son does not like his father lose the gotra and rights of inheritance in the family of his birth and does not acquire the gotra and a right of succession to the property of the family into which his father is adopted. *KALGAUDA TAVASAPPA v. SONAPPA TAVANGAUDA* (1909)

I. L. R. 33 Bom. 669

## 7. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER

1. ——— Death of adopted son—*Estate of Hindu widow*—Adopted son dying a minor. The widow of a childless member of a divided Hindu family is entitled to a life-interest in her husband's estate after the death of an adopted son before attaining majority. *SOONDER KOONAREE DEBEA v. GUDAKRUR PERSHAR TAYARE* 4 W. R. P. C. 118 : 7 Moo. I. A. 54

2. ——— Widow with power to adopt—*Power to adopt another son*. G executed an uncommuted potro to his wife S to adopt, on the failure of each adopted son, five sons in suc-

HINDU LAW—ADOPTION—*contd.*7. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER—*contd.*

cession. After his death, S adopted a boy who died ten or twelve years later, after which she adopted another, whose adoption it was now sought to have declared invalid. The contention in special appeal was that, as the son first adopted lived to an age sufficiently mature to perform a

the contention was not supported by the Privy

22 W. R. 121

3. ——— Widow with authority to adopt, position of—*Limitation*. A Hindu died after leaving directions with his widow to adopt a son. On a partition of the joint property among his brothers and widow, a certain property was allotted to the widow as her share, afterwards in 1849 the brother dispossessed her. In 1851 she adopted a son, who attained his majority in 1865, and in 1866 sued for possession of the property. *Held*, that the possession of the widow previous to the adoption was not that of a trustee for the son to be adopted so as to prevent limitation. *OSIND CHANDRA SARMA MAZOONDIR v. ANAND MOHAR SARMA MAZOONDIR* 2 B. L. R. A. C. 813

4. ——— Failure to adopt—*Widow with power to adopt not adopting*—*Suit for estate as widow*. Authority was given by deed, by a childless Hindu in Bengal, to his widow to adopt a son at his decease. The widow did not exercise that power and many years after her husband's death brought a suit in her character as widow claiming his succession in the family estates. *Held*, that the mere fact of there being authority given her by her husband to adopt a son, did not, before an adoption had actually taken place, supersede and destroy her personal right as widow to sue. *BANUNOSS MOOKERJEE v. TANNIR* 7 Moo. I. A. 189

5. ——— Omission to adopt—*Inheritance, widow's right to*. A husband's express authorization, or even direction, to adopt does not constitute a legal duty on the part of the widow to do so, and for all legal purposes it is absolutely non-existent till it is acted upon. When a Hindu by his will gave his widow authority to adopt, if

HINDU LAW—ADOPTION—*contd.*7. FAILURE OF ADOPTION OR OMISSION TO EXERCISE POWER—*contd.*

her husband :—*Held*, that she was entitled to the decree she prayed for. *UMA SUNDRI DABEE v. SOTROBINEE DABEE*

I. L. R. 7 Cal. 288 : 9 C. L. R. 63

See *DINO MOYEE CHOWDHRAIN v. REKLING*  
2 W. R. Mls. 25

*DENO MOYEE DOSSEE v. DOORGA PERSHAD MITTER* . . . . . 3 W. R. Mls. 6

8. ———— *Omission of widow to adopt as directed in will—Right of inheritance.* When a widow neglects to adopt a second son on the death of the first adopted son, as directed by her deceased husband, she commits a wrong, but may nevertheless be the heiress of the first adopted son. *SREEMETTI DOSSEE v. TARRACHEND COONDGO CHOWDHRI* . . . . . *Bourke A. O. C. 48*

## 8. EFFECT OF INVALIDITY OF ADOPTION.

1. ———— *Adoption held to be invalid—Position of person adopted.* Where an adoption is held invalid, the natural rights of the person adopted remain unaffected. *BAWANI SANKARA PANDIT v. AMBABAY AMMAL* . . . . . 1 Mad. 363

But see *AYYAVU MUTTAKAR v. NILADATCHI AMMAL* . . . . . 1 Mad. 45

2. ———— *Adoption by a widowed daughter-in-law under the direction of the father-in-law after his death—Disposal of the estate of daughters—Adoption invalid.* A Hindu testator died leaving him surviving two daughters and a widowed daughter-in-law. In his will he made the following provision—"I wanted to dispose of the above-mentioned property myself. But as I am ill, it is not possible for me to do so. Therefore the Panch should give a boy in adoption to my daughter-in-law and (thus) keep (the doors of) my house open. After the death of the father-in-law, the widowed daughter-in-law adopted a boy under the said provision. The adopted boy having subsequently brought a suit for a declaration of his title as the grandson of the testator the validity of the adoption was impeached by one of the daughters of the testator, whose interest became devested by the adoption. *Held*, that the adoption was invalid. From the fact that a husband's authority to his widow to adopt may be operative after his death, it does not follow that a father-in-law's assent survives beyond his lifetime so as to enable his son's widow to direct an estate that had already devolved by inheritance on heirs, who did not derive a title through the son. *LAKSHMI v. VISNU VASUDEVI* (1903) I. L. R. 29 Bom. 401

## 9. EVIDENCE OF ADOPTION.

1. ———— *Suit as to validity of adoption—Nath v. Raj* In a suit as to the validity of

HINDU LAW—ADOPTION—*contd.*9. EVIDENCE OF ADOPTION—*contd.*

the adoption of a claimant to the *Nattore Raj* :—*Held*, notwithstanding a finding of the Court of first instance, that the adoption was not proved, that the evidence fully supported the adoption. *CHENDER NATH ROY v. GOBIND NATH ROY*

11 B. L. R. P. C. 86 : 18 W. R. 231

*COLLECTOR OF MOORSHERABAD v. SHIBSREE DABEE* . . . . . 11 B. L. R. P. C. 86  
18 W. R. 236

upholding the decision of the High Court.

See *KISHEN MONEE DEBIA v. KASHEE SOONDARI DEBIA* . . . . . W. R. F. B. 108

*COLLECTOR OF MOORSHERABAD v. ANUND NATH ROY. KINTONGNEE DEBIA v. ANUND NATH ROY*  
W. R. F. B. 112

2. ———— *Deeds of adoption—Internal probabilities—Witnesses.* Deeds of adoption executed long ago, several witnesses to the execution of which having died, should be judged of more from their internal probabilities and from the indirect evidence than from the testimony of witnesses either subscribing the deeds or present at the same time. *KISHEN MONEE DEBIA v. KASHEE SOONDARI DEBIA* . . . . . W. R. F. B. 108

3. ———— *Suit to establish adoption—Test of validity of deeds of adoption.* In cases of adoption careful scrutiny is necessary. The party seeking to establish an adoption is bound to produce the best evidence procurable. The rule for testing the validity of a deed of adoption is contemporaneity of execution and publication of the deed of permission. In the absence of the original deed, all the circumstances bearing upon the alleged deed, and all the probabilities for and against its genuineness, must be considered. *ROOPHONJORLE CHOWDHRAIN v. RAMLAL SIKAR. GREENSH CHENDER LANGORE v. RAMLAL SIKAR* . . . . . 1 W. R. 144

4. ———— *Adoption by dharm-putr—Ceremony of dharm-putr.* An adoption made by a Patee immediately before his death would render extremely improbable the execution of a will by him a very short time previous thereto, and therefore call for very clear proof to establish its existence. Although in cases of adoption by dharm-putr (a partial adoption) it is not indispensably necessary that a declaration should be made on the third day after the decease, yet it is usual to make such a declaration and to take a writing from the dharm-putr. In the absence of any such writing and upon the whole evidence, the adoption in this case was pronounced to be as a *paluk-putr*, and not merely as a *dharm-putr*. *HOWABHARE v. PRINJABHARE DOSABHREEN* . . . . . 5 W. R. P. C. 109

5. ———— *Requisition for validity of adoption—Registration—Acknowledgment in writing.* According to Hindu law, neither registration of the act of adoption nor any written evidence of that act having been completed is essential to its validity. In no case should the rights of wives and

**HINDU LAW—ADOPTION—contd.****9. EVIDENCE OF ADOPTION—contd.**

daughters be transferred to strangers or to more remote relations, unless the fact of adoption by which this transfer is effected be proved by evidence

**FUTLY S. SABITRA DYE . 5 W. R. P. C. 109**

**6. —** Deed expressing wish to adopt a particular person. A cousin and heir to an insane proprietor having been sued for

been adopted by the insane proprietor previously to his decease, and could not be held liable for the debts of the cousin and heir, who, moreover, had formally relinquished his right to it. The plaintiff's claim rested on the contention that the formalities required to validate an adoption had not been attended to in this case. This contention was met by the plea that the adoption was complete, but that, even if it had not been so, a document declaring the deceased proprietor's desire to adopt the minor had the effect of a testament. *Held* by the High Court, that, though the intention of the deceased proprietor to adopt the minor was clear, that intention, even as expressed in the above-mentioned document, which was not testamentary in character, did not amount to an adoption in the absence of the necessary formalities. The estate was accordingly declared liable for the amount of the decree against the cousin and heir. **BANFE PERSHAD v COURT OF WARDERS . 25 W. R. 182**

**7. —** Evidence of conditional adoption. In a suit in which a claim was made in virtue of an alleged adoption to the estate of a deceased Hindu, the widow made a compromise, not in writing, with the claimant where the adoption was admitted, but alleged to have been on condition that the widow should enjoy the entire property for her life without power of alienation, and that, after her death, her minor daughters should take the self-acquired property, and the claimant should succeed to the ancestral estate. *Held*, that the evidence to establish such a conditional adoption must, as in the case of a nuncupative will, be very strong. **INRIT KOWAR v ROOF NARAIN SINGH . 6 C. L. R. 76**

**8. —** Deed purporting to effect an adoption—Giving and taking. An *eknamam* executed by the natural father in favour of the adoptive father recited that the former had made over his third son to the sonship of the adoptive father, so that the latter might, whenever

**HINDU LAW—ADOPTION—contd.****9. EVIDENCE OF ADOPTION—contd.**

he would wish, fulfil the rights of adoption in accordance with the *Shastras* and the usage of the country, and from that day the natural father would have no claim or right in respect of the said son. *Held*, that this deed did not of itself operate to effect an adoption. It did not even amount to a giving and taking of the boy, as it contemplated the subsequent performance of the necessary rites. *Held*, further, that deeds of this kind did not take the place of the necessary evidence as to the actual adoption. **MINDIR KOER v. PHOOL CHAND LAL . 2 C. W. N. 154**

**9. —** Factum of adoption—*Onus probandi*. Custom among *Shatriyas*—The ruling of the Privy Council in *Shoshinath Ghose v. Krishna Soondari Dasi, L. R. 7 I. A. 250*, has no application to a case in which there is ample evidence, both oral and documentary, to prove the factum of adoption. Where it was sought to set aside an adoption which took place many years ago, which had ever since been recognized as valid and under which the adoptee had ever since been in possession of his adoptive father's estate, on the single ground that at the time of the adoption the adopted son was more than five years of age, it was held that the onus of proof was upon the person who alleges the adoption to be invalid. **Haimun Chull Singh v. Koomer Gunsheem Singh, 5 W. R. P. C. 69**, referred to. In a case where the validity of an adoption was in dispute and the parties to the suit were *Shatriyas*:—*Held*, that, even if it had been

**SINGH . I. L. R. 9 All. 253**

**10. —** Nambudrdis—*Marumakkalatayam law*—Adoption of an adult male—Form of adoption. Is a suit the parties to which were Nambudri Brahmins following the *Marumakkalatayam law*, the plaintiff sued as the adoptive son of the last member of an otherwise extinct *mana* for a declaration of his title to certain lands as the sole male of a *devason*. The plaintiff was an adult at the time of his adoption, and no female was adopted at the same time with the plaintiff. *Held*, on the evidence, that the plaintiff was entitled to succeed. The form and evidence of adoption considered. **SUBRAMANYAN v. PARAMASWARAN . I. L. R. 11 Mad. 116**

**11. —** Evidence of authority to adopt. Whether an elder widow who had purported to adopt a son to her deceased husband under his authority had received such authority orally or by will was disputed by a junior widow, the Courts below differing as to the question

HINDU LAW—ADOPTION—*contd.*2. EVIDENCE OF ADOPTION—*contd.*

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12. Report of punchayet—*Evidence—Family pedigree* The question was whether a certain adoption was made. It was shown that the dispute had been referred to a punchayet, whose report, dated the 7th February 1819, was filed and preserved in the Collector's office, from whence it was produced. It did not appear whether any formal order was made on the report, and there was not in the record any order of reference or formal statement of the case to show what was the precise subject of decision. But it being clear that a minute local enquiry into the history of the family took place before a competent local tribunal, and also that the

On a consideration of the evidence and specially of the report of the punchayet: *Held*, by the Privy Council that the adoption which was denied by plaintiff was made out. *ADASSING v. NANARIAU VALAD DHANSHING RAUL*. 3 C. W. N. 130

13. Old reports of punchayets—*Documentary evidence—Claim to a valan existing from Maratha rule. Title to an inheritance devolving upon a single heir was contested between the parties representing respectively two lines of descent from the same ancestor.* *three till 1877.* *surviving lines* claimed to have his right to the succession declared. The question was whether an ancestor of the claimant had adopted as his son a member of the family born in the senior line. The decision depended on the weight to be attached to entries in old documents. These were reports by punchayets to the Collector.

But the authenticity of the report was not impeached. But the adoption now in question could hardly have been the point then in dispute, and the entries as to it had been tampered with. The enquiry, however, into the history of the family was minute, and the plaintiff's strong evidence of decision of the suit (after termination of evidence was

I. L. R. 25 Bom. 1

HINDU LAW—ADOPTION—*contd.*9. EVIDENCE OF ADOPTION—*contd.*

14. Son of a Brahmo, adoption of—*Adoption, validity of—Onus of proof—Inaccuracy—Brahmo Samaj—Evidence taken on commission, reference to—Practice. The fact of adoption being admitted, and its validity being*

The question as to custom or usage being raised in the pleadings, the adoption must be determined by reference to the principles of Hindu law. Evidence taken on commission, until tendered and admitted as evidence in the suit, cannot be made use of by either party. *Nistarini Dassee v. Nundo Lall Bose*, 3 C. W. N. (notes) 239, dissented from. Inasmuch as a Hindu, having renounced Hinduism, is entitled to revert to Hinduism according to the rites of that religion, it follows that his infant son can, with his consent and approval, also revert in the same manner. Where an orthodox Hindu adopted an infant son of a member of the Sadharan Brahmo Samaj: *Held*, that, in the absence of proof of special custom, such adoption was valid under the Hindu law. *Shamsing v. Santabai*, I. L. R. 25 Bom. 551, followed. *KURUM KUMARI ROY v. SATIA KANTAN DAS* (1903) I. L. R. 30 Cal. 989; s.c. 7 C. W. N. 784

15. Evidence of Adoption—*Adoption of Daughter's son, validity of—Question not raised until too late a stage of the hearing—Estoppel by assent of Reversioner to Alienations by Widow—Power of Reversion to bind later Reversioners—Reversioners claiming not through preceding Reversioners but through last male owner—Misorder of Causes of Action—Civil Procedure Code (XIV of 1882), s. 578. The appellant's right to maintain a suit to set aside alienations of certain immovable property made by the widow and the natural mother of the last male owner, who was the daughter's son of the*

the alleged adopted son succeeded to the estate without controversy which he could only have done

dity of the adoption on the ground that under the Hindu law a daughter's son could not be adopted, was only put forward for the first time at the very last stage of the hearing, after all the evidence was closed and nothing but argument remained. The decision depended on whether the rule of Hindu law had been varied by family custom:—*Held*, that the District Judge was right in refusing to entertain at that late stage of the case a new

HINDU LAW—ADOPTION—*contd.*8. EVIDENCE OF ADOPTION—*contd.*

question of that kind the solution of which must be dependent upon evidence. The main defence to the suit was that the assent of the appellants' father to the transactions in dispute, not only estopped him from contesting the validity of the alienations, but created an estoppel binding his sons, the appellants. As showing this a document dated 3rd September 1871 was produced which, after reciting that except his mother there was no heir to or claimant of the adopted son's property, stated that the widow agreed that during the mother's lifetime she should remain in possession of a half share of the property, and that after the death of the mother and the widow both the shares should devolve by inheritance on the sons of the mother, who were the natural brothers of the adopted son. This deed was signed by the father

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the descent of the maintenance after her death in a line different from that prescribed by law was a thing which the widow could not do either with or without his assent. There was, therefore, no estoppel on the reversioner, and consequently none on his sons. Another document relied on by the respondents was one of the alienations sought to be set aside. It was executed by the two ladies on 1st July 1893, and recited that they inherited the property in question from the

stated that they, the executants, were absolute owners by exercising proprietary rights. They conveyed the land to the purchasers absolutely, and finally stipulated that neither they nor their heirs

coming from the adopted son through whom the appellants claimed; they were, therefore, not estopped. The ladies, the alienees, of the four separate alienations sought to be set aside, and the natural brothers of the adopted son were all made defendants in the present suit.—*Held*, that it was very doubtful whether, on the

HINDU LAW—ADOPTION—*contd.*9. EVIDENCE OF ADOPTION—*contd.*

restored. *LALA RUP NARAIN v. GOPAL DEVI* (1909)  
 I. L. R. 36 Cal. 780

## 10 DOCTRINE OF FACTUM VALET AS REGARDS ADOPTION.

1. ——— Application of *maxim*—*Gift by widow without authority of husband's only son. The maxim quod fieri non debuit factum valet* considered and its application pointed out.

2. ——— *Adoption of daughter's son among Brahmans. Amongst Brah-*

3. ——— Limitation of *maxim*—Limits within which the *maxim quod fieri non debuit factum valet* as to adoption applies pointed out. *GOPAL NARAIAN SAIFFRAY v. HANMANT GANESH SAIFFRAY* I. L. R. 3 Bom. 273

4. ——— Recognition of *maxim*—Schools of Hindu law other than Bengal. The *maxim quod fieri non debuit factum valet* is recognized to some extent by other schools of law in India besides that of Bengal. *WOONIA DACE v. GOCULANUND DASS* I. L. R. 3 Cal. 587; 2 C. L. R. 51

5. ——— Suit by adoptive father to set adoption aside. *Held*, that, when an adoption of a son has once been absolutely made and acted on, it cannot be declared invalid or set aside at the suit of the adoptive father. *SURESH LAL v. GUMAN SINGH* I. L. R. 2 All 366

6. ——— Applicability of *maxim*—Nature of adoption. The *maxim quod fieri non debuit factum valet* is applicable not only in the



HINDU LAW—ADOPTION—*contd.*10. DOCTRINE OF FACTUM VALET AS REGARDS ADOPTION—*contd.*

the matter of selection, and similar points of moral or religious significance, which relate to what may be termed the *modus operandi* of adoption. but it not affect its essence. *Th...*

as the essence of the transaction, and such texts may be sufficiently imperative to vitiate an adoption in which they have been disregarded; but unless their meaning is undoubted, the doctrine of *factum valet* should be restricted to adoptions which, having been made in substantial conformity to the law, have infringed minor points of form or selection. Adoption under the Hindu law being in the nature of a gift, it contains three elements—capacity to give, capacity to take, and capacity to be the subject of adoption—which are essential to the validity of the transactions, and as such are beyond the scope of the doctrine of *factum valet*. *Uma Devi v. Gokoolanund Das Mahapatra*, 1 L. R. 51 A. 40; *Hannuman Tiwari v. Chrai*, 1 L. R. 3 All 164; *Singamma v. Vinjamuri Venkatesharlu*, 4 Mad. 164; *Dharma Daga v. Ramkrishna Chinnayy*, 1 L. R. 10 Bom. 80; *Lakshmappa v. Ramana*, 12 Bom. 364, and *Gopal Narhar Safray v. Hanmant Ganesh Safray*, 1 L. R. 3 Bom. 973, referred to *GANGA SARAI v. LEKHAJI SINGH*. 1 L. R. 8 All. 233

7. Adoption by younger widow without consent of elder. Where a younger widow had adopted without the consent of the elder widow it was contended that the right of the elder widow, was merely the right to select, and that in any case it was only a preferential right, and that consequently the doctrine of *factum valet* applied. *Held*, that the doctrine of *factum valet* cannot apply to the case of an adoption by a younger widow, for it is plain that, until the elder widow waives her preferential right to adopt, her right is exclusive, and that the other widows have no authority to adopt. The rule of *factum valet* applies in cases of adoption only where "there is neither want of authority to give or to accept, nor imperative interdiction of adoption." *PADAJIRAV v. RAMRAV*. 1 L. R. 13 Bom. 180

## 11. TERMS OF ADOPTION.

1. Adoption—Agreement limiting property to be taken by minor adopted son—Validity. A Hindu widow, in pursuance of authority given by her husband, wife deceased, adopted plaintiff, a minor. A registered document was executed by the widow on the day of the adoption, wherein the fact of the adoption was recited and certain terms were set forth as to the manner in which the property of the deceased adoptive father should be enjoyed as between the plaintiff and the widow. By those terms it was declared that, in the event of disagreement between plaintiff

HINDU LAW—ADOPTION—*contd.*11. TERMS OF ADOPTION—*contd.*

and his adoptive mother, the property described in the second schedule should be enjoyed by the latter during her life, and should be taken by the plaintiff after her death. The authority, under which the widow adopted, had been given orally, and merely enabled her to adopt a son, and made no reference to the manner in which the estate of the deceased should be enjoyed either by the son or the widow. The effect of the arrangement was to vest in the widow on the contingency mentioned, for her life, about a moiety of the property inherited by her from her husband. The terms embodied in this agreement were consented to by the plaintiff's natural father prior to the adoption, and it was in consequence of such consent that the adoption took place and the document was executed. Disagreements arose between plaintiff and the widow, and plaintiff, still a minor, sued through his natural father as next friend to recover all the property of his deceased adoptive father. *Held*, that the provision in the document in favour of the widow was binding on the plaintiff and the widow was entitled to enjoy the property in the second schedule during her lifetime. *VISALAKSHI AMMAL v. SIVARAMU* (1904). 1 L. R. 27 Mad. 13

## 12. ADOPTION DURING WIFE'S PREGNANCY.

3. Adoption during wife's pregnancy. *Held*, that the fact that at the time of making an adoption the wife of the adopting father is pregnant does not affect the validity of the adoption. *Nagabhusanam v. Sethanmagan*, 1 L. R. 3 Mad. 180, and *Hanmant Ramchandra v. Bhimacharya*, 1 L. R. 12 Bom. 105, followed. *Narayana Reddi v. Varduchala Reddi*, (1939) M. S. D. 97, dissented from. *DULAT RAM v. RAM LAL* (1907). 1 L. R. 29 All. 310

## 23. CONSIDERATION FOR GIVING IN ADOPTION.

Adoption—Receipt of consideration by natural father for giving in adoption does not make the adoption invalid. Where a boy, being a fit subject for adoption in the Dattaka form, is given and accepted, with the proper ceremonies for such adoption, by persons respectively competent to give and accept him, he acquires the status of an adopted son. The receipt of money by the natural father in consideration of giving his son and the payment of such by the adoptive father, though illegal and opposed to public policy, do not make the adoption invalid, as the gift and acceptance of the boy is a distinct transaction clearly separable from the illegal agreement and payment. Such payment has not the effect of converting the adoption into an 'affiliation by sale,' a form now obsolete. *Manganeer pathran* is synonymous with Dattaka son. *Bhuvan Rabidat Singh v. Indar Kunwar*, 1 L. R. 16 Cal.

**HINDU LAW—ADOPTION—concl'd.****13. CONSIDERATION FOR GIVING IN ADOPTION—concl'd.**

556, followed. *MURUGAPPA CHETTI v. NAGAPPA CHETTI* (1905) . . . I. L. R. 28 Mad. 181

**14. LIMITATION.**

*Limitation Act* (XV of 1877), Sch. II, Art. 119—Period of limitation applicable to suits where factum and also validity of adoption is denied. Suits in which either the factum or validity of an adoption is denied are governed by the provisions of Art. 119 of Sch. II to the Limitation Act (XV of 1877). The observations to the contrary in *Ningawa v. Ramappa*, I. L. R. 28 Bom. 91, and *Shriram v. Krishnabai*, I. L. R. 31 Bom. 50, disavowed from *Shrinivas v. Hanmant*, I. L. R. 24 Bom. 269, followed and applied. *LAXMANA v. RAVAPPA* (1907)

I. L. R. 32 Bom. 7

**HINDU LAW—ALIENATION.**

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See LIMITATION ACT, 1877, ART. 141.

See ONES OF PROOF—HINDU LAW ALIENATION.

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

**1. RESTRAINT ON ALIENATION.**

1. ———— Restraint invalid as inconsistent with Hindu law—*Restraint by will*. A restraint on alienation put by a testator on his descendants was considered void as being unknown to, and inconsistent with, Hindu law. *NITAI CHALAN PYNF v. GANOA DASI*

4 B. L. R. O. O. 285 note

2. ———— Impartibility, effect of—*Chota Nagpore Raj, alienation of portion of*. The fact that the Raj of Chota Nagpore is an impartible one does not prevent the Maharaja for the time being from alienating a portion of it in perpetuity. *NARAIN KHOTIA v. LORENATH KHOTIA*

I. L. R. 7 Cal. 481; 9 C. L. R. 243

3. ———— Alienation of impartible estate—*Custom—Succession to raj*. Impartibility of an inheritance does not, as a matter of law, render it inalienable. The owner of an estate which descends as an impartible inheritance

the case of a titular raj, of which the lately deceased raja had made a mokuram pottah, or grant in perpetuity, of part of the zamindari lands thereto belonging, in favour of a younger son, it was found that the only custom proved was that the raj

4 ———— Impartible raj estate—*Power to alienate—Custom*. In regard to a

**HINDU LAW—ALIENATION—*contd.*****1. RESTRAINT ON ALIENATION—*contd.***

raj estate in Gorakhpur by custom impartible and descending by primogeniture, the family being in

ity, the Raja's power over the estate would have been restricted by the law declared in *Mitakhara*, 10 All. 272, and the estate would have been

pendent on custom or on the nature of the tenure. In this case the evidence did not establish that by custom the estate was inalienable. *SARTAJ KUARI v. DEORAJ KUARI* . . . I. L. R. 10 All. 272

L. R. 15 I. A. 51

5. ——— Custom—Impar-  
tible zamindari—Right of zamindar to alienate—  
Suit to set aside the alienation of impartible property.

cessor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), now sued the assignee of the leasee to have the lease set aside. *Held*, by PARKER, J., MUTTUSAMI AYYAR, J., and WILKINSON, J., that the

ment of PARKER, J.), that in the absence of evidence of any family custom rendering the zamindari inalienable by the zamindar for the time being for purposes other than those warranted by the Mitakhara law, the lease was not invalid as against the plaintiffs. *Sartaj Kuari v. Deoraj Kuari*, I. L. R. 10 All. 272, discussed and followed. *REDFORD v. RAMASUBRA* . . . I. L. R. 13 Mad. 197

6. ——— Condition not to alienate—  
Restriction of enjoyment of estate. Upon a division of family property, the parties to the division entered into an agreement that the property of any one of the parties to the agreement or their heirs

to whom the property was allotted upon the divi-

**HINDU LAW—ALIENATION—*contd.*****1. RESTRAINT ON ALIENATION—*contd.***

sion:—*Held*, that an estate cannot be made subject

the agreement. *VENKATRAMANNA v. BRANJANNA SASTRULU* . . . 4 Mad. 345

7. ——— Alienation and  
suit by alienee for mutation of names. On the construction of an *ikardama* or deed of agreement and partition of an ancestral estate among several brothers:—*Held*, that the terms of the deed were not restrictive upon the power of each brother to alienate his separate share. A, one of the brothers had his share registered on the Collector's books as owner, and by deed of sale conveyed such share to his daughter, who was also his heir. The Collector on the objection of one of A's brothers (who denied A's right to alienate, on the ground that it was ancestral property), refused to register the daughter's name as proprietor. *Held*, that the Collector was bound by Bengal Regulation VIII of 1800, s. 21, to register her name as purchaser, but that such mutation of name was to be without prejudice to the question of the right of succession. *COWLEAS KOONWAR v. LAL BHABUR SINGH*

9 Moo. I. A. 39

**2. ALIENATION BY SON.**

Alienation without father's consent—*Mitakhara* law. Under the Mitakhara law, an alienation by a son without the father's consent is invalid. *SHED RUTTEN KOONWAR v. GOUR BHABARE BHUKT* . . . 7 W. R. 449

**3. ALIENATION BY UNCLE.**

Right of nephew to object to alienation. A nephew is not competent by Hindu law to object to any alienation of ancestral property made by his uncle. *ADJODHIA GIR v. KASHEE GIR* . . . 4 N. W. 31

**4. ALIENATION BY FATHER.**

1. ——— Alienation with consent of son—Right of grandson to object to alienation. An alienation made by a Hindu with the consent of his son cannot under the Mitakhara law, be questioned by the grandson. *BURAIK CHATTER SINGH v. GHEEDHAREE SINGH* . . . 9 W. R. 337

2. ——— Grandson's right to set aside alienation—Suit by grandsons, sons of a son adopted in *kritrima* form to set aside alienation. Where the son of a certain person, who had been adopted as a *kritrima* son, sought to set aside certain alienations of self-acquired property which the adoptive father had made, on the double ground that as grandsons they had an interest in that pro-

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perty, and that the alienations were for improper purposes.—*Held*, that, as the alienations were proved to be for legitimate purposes, and the relations established by the *kritima* form of adoption were confined to the contracting father and did not extend beyond them on either side, the plaintiffs in this case had no right to set aside the alienations which the adoptive father of their father had made. **JESWANT SINGH v. DOOLEY CHUND** . . . . . 25 W. R. 256

3. ——— Self-acquired property—*Mithila law—Separate acquisitions* According to *Mithila law*, the owner of self-acquired property has full power of disposition over it. **BISDEN PERKASH NARAIN SINGH v. BAWA MITSEN** . . . . . 12 B. L. R. F. C. 430 : 20 W. R. 137

4. ——— Power of a father of a joint family to alienate—*Self-acquired immovable property*

acquired, as distinguished from ancestral property. **BALWANT SINGH v. RAMKISHORE**

I. L. R. 20 ALL 267  
L. R. 25 I. A. 54

**RAO BALWANT SINGH v. RAMKISHORE** . . . . . 2 C. W. N. 273

5. ——— Ancestral property—*Outcaste, right of* There is a distinction between ancestral and self-acquired property under the *Mitakshara law* with regard to the right of a father to dispose of it. The fact of his being an outcaste would not prevent him from exercising his rights over the property to the same extent as he might otherwise have done. **GOODHYA PRSHAD SINGH v. RAMSARUN** . . . . . 6 W. R. 77

6. ——— Ancestral property. A, a Hindu, sued B, the widow of C, claiming to be entitled with others as heirs of C under the *Mitakshara law* to certain property. The suit was compromised on the terms, as to one portion of the property, that it was to be retained by B for life, and after her death to be divided according to

ancestral property *absolutely*, and not as ancestral property. **MAHAIR ROWEN v. JENNA SINGH** . . . . . 8 B. L. R. 38 : 16 W. R. 221

7. ——— Non-existence of son of date of acquisition. Suit to recover a share of the property of the plaintiff's maternal grandfather. The facts found were as follows: Plaintiff's mother and 1st defendant's mother were sisters, daughters of one M, who having no male issue selected, in pursuance of a special custom, the 1st

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defendant's father as a son-in-law, who should take his property as if a son. On the death of M, the 1st defendant's father entered into possession of the property, and afterwards, during the minority of his son (1st defendant), associated with himself the plaintiff on promise of a share. In accordance with this agreement, the plaintiff joined the 1st defendant's family and continued for many years aiding in the management and improvement of the property, until, a short time before the present suit was brought, the 1st defendant turned the plaintiff out of doors and refused to give him the promised share. Upon these facts:—*Held per HOLLOWAY and INNES, JJ.*, that the 1st defendant's father was what is called in English law a purchaser and had all the powers of disposition existent over self-acquired property; that also there was a complete adoption or ratification of the father's contract by 1st defendant and that he ought to be held to it. *Per INNES, J.*—That the right of 1st defendant's father to dispose of property self-acquired might depend upon whether 1st defendant was or was not in being at the date of the acquisition. **CHALLA PATI REDDI v. CHALLA KOTI REDDI alias KOTATTA** . . . . . 7 Mad. 25

8. ——— Property inherited by father collaterally—*Power of son to prevent alienation* In execution of a decree against A, a Hindu living under the *Mitakshara law*, his right, title, and interest in a certain property, part of which he had

power of alienation only applies to the grandfather's property. **NUND COOMAR LALL v. RAZZOODDEEN HOSSEIN** . . . . . 10 B. L. R. 163 : 18 W. R. 477

**LOOCHUN SINGH v. NENDHAREE SINGH** . . . . . 20 W. R. 170

9. ——— Right of father in undivided *Mitakshara* family. The father in an undivided family under the *Mitakshara law* has no

**PANDEY** . . . . . 16 W. R. 31

10. ——— Alienation by man without issue—*Power of the unborn son to contest alienation subsequently*. *Held*, that alienation of property made by a Hindu, who at the time of such alienation has no issue living, cannot be contested by a son who at the time of alienation was neither

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born nor begotten. MADHO SINGH v. HURMAT ALLY 3 Agra 432  
JADO SINGH v. RANEE 5 N. W. 113

11. ——— Ancestral property—Necessity—Effecting release from prison. Ancestral property may be sold by a father to effect his release from prison. DULEEP SINGH v. SREEKISHOON PANDEY 4 N. W. 63

12. ——— Right of son to set aside sale of ancestral property made for his father's debts. *M.*, a Hindu who had, on the death of his

father, as security for the repayment of moneys advanced to him by *S.R.* The debt was not contracted by *M.* for an immoral purpose. *S.R.* obtained a decree on the bond hypothecating the property, and in good faith brought the property to sale in execution of the decree and became the *bond fide* purchaser. *Held*, that a son born to *M.* after the mortgage-debt was incurred was not entitled to come in and set aside all done under the decree and execution, and recover back a moiety of the estate. SALIO RAM v. LULTA PERSHAD 8 N. W. 329

13. ——— Illegitimate son—Assignment for maintenance Since by the Hindu law the illegitimate son of a person belonging to one of the "twice-born" classes is entitled to main-

Mitakshara law a father who has no child born to

14. ——— Power of father over ancestral land—Gift to daughters A Hindu during the infancy of his son, conveyed certain immovable ancestral property to his wife and married daughters by way of gift. After his death, the son sued by his next friend to have these alienations set aside and to recover the property. *Held*, that the alienations should be set aside altogether. RAYAKKAL v. SUBBANYA 1 I. L. R. 16 Mad. 84

15. ——— Ancestral property—Sale after the birth of a son, sold in execution of a decree obtained on the mortgage after the birth, in a suit

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to which the son was not made a party. *Held*, that

16. WOOMA SUNKER PERSHAD 7 C. L. R. 429

18. ——— Right acquired by son in ancestral property on birth—Mitakshara law—Inheritance of share in village—Interest of son acquired on birth. A mouzah, of which the proprietary right formerly belonged to one zamindar the ancestor of the plaintiff, was sold, whilst in the possession of the generation succeeding him, for arrears of revenue, and became the property of the Government by purchase. The Government before the birth of the plaintiff's father, had acquired it in four parcels

father, who thus obtained possession of a *live-divided* share. *Held*, that whatever interest the plaintiff as son might have under the Mitakshara law in ancestral property, it could not be said that at the time of his birth there was any proportionate share

his birth acquire an interest. UJAGAR SINGH v. PRITAM SINGH 1 I. L. R. 4 All. 120  
L. R. 8 I. A. 190

17. ——— Right acquired by unborn son—Right to ancestral property not defeated by will of father According to the Hindu law which obtains in the Madras Presidency, the right of a son in the womb to ancestral property cannot be defeated by a will or gift. *Quære*. Whether this rule would govern the case of an alienation for value. MINAKSHI v. VIRAPPA 1 I. L. R. 8 Mad. 89

SUNDARAM 1 I. L. R. 16 Mad. 10

19. ——— Right of son whose share is unaffected—Purchaser's equity for refund of purchase money. There is no equity in favour of

sundaram, 1 I. L. R. 16 Mad. 10

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the original judgment, and are due to a printer's error. **VIRABHADRA GOWDU v. GURUVENKATA CHARLU** . . . **I. L. R. 22 Mad. 313**

**20. ——— Alienation without consent of children—*Mithila law.*** Under the *Mithila law*, the father of a Hindu family cannot give a *mokurari* lease of land at a nominal rent as a reward for faithful service, when his children being infants do not consent to such grant. **PRATAP-KARATAN DAS v. COURT OF WARDS**

**3 B. L. R. A. C. 21**  
**11 W. R. 343**

**21. ——— Legal necessity—Ancestral property—*Mitakshara law.*** To justify an alienation of ancestral property, a legal necessity for the sale must be strictly proved to have existed, and such necessity cannot be inferred from the habits and general character of a vendor. **MITTRAJI SINGH v. RAGHUBHAI SINGH** **8 B. L. R. Ap. 5**

**Nowaiton Kesh v. Gouree Dutt Singh**  
**6 W. R. 103**

**22. ——— Alienation by father when binding on son—Burden of proof.** The father of an undivided Hindu family has no power to alienate the son's co-parcenary share in land in the absence of any debt. One claiming merely as the father's vendee must therefore give evidence that the alienation was made for some purpose which would bind the son, or that it was made with his consent. **CHINNATTA v. PERUMAL**

**I. L. R. 13 Mad. 51**

**23. ——— Mortgage—Loan at time of mortgage—Whether mortgage binding on the property of the mortgagor's undivided son.** In order to justify a sale or a mortgage by a father

**24. ——— Alienation proportionate to the necessity.** The rule that only so much of the property should be sold as will meet the necessity does not apply to cases where the excess is small or where the money really required cannot otherwise be raised. **LACHEMEERU SINGH v. EKBAL ALI**

**8 W. R. 75**

**25. ——— Mitakshara law—Right of son to prevent or set aside alienation by father.** According to the *Mitakshara law* a son has an equal right with his father in ancestral property. He can compel the father to divide the property during his lifetime, and any alienation

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creditors, such fraud would not bind the son, who was neither a party nor was privy to such fraud. **BEER KISHORE SURVE SINGH v. HIR BULLUB NARAIN SINGH** . . . **7 W. R. 502**

**26. ——— Suit for declaration of future right to a share in joint property.** A

**4 B. L. R. Ap. 90**

**27. ——— Consent of son—Property not partible among members of joint family—Custom.** Where, in a part of the country the general law of which is the *Mitakshara*, a custom exists with regard to ancestral immovable property that it is not partible among the members of

alienation is justified by family necessity. **RAM NARAIN SINGH v. PENTUM SINGH** **11 B. L. R. 397**  
**20 W. R. 189**

**28. ——— Family distress—Pious purposes—*Mitakshara law.*** According to the *Mitakshara law*, a father is not incompetent to sell immovable property acquired by himself. Landed property acquired by a grandfather, and distributed by him amongst his sons, does not by such gift become the self-acquired property of the sons, so as to enable them to dispose of it by gift or sale without the consent and to the prejudice of the grandson. The sale by a father of ancestral immovable property, without the concurrence of his sons, is not necessarily void, though it may be

the assets of the joint family; and therefore, if the son seeks the aid of the Court to set aside the purchase, he must do equity and offer to repay the purchase-money, unless he can show that no part of such purchase-money or the produce of it has ever come to his hands. **MUDDUN GOPAL THAKOOR v. RAM BUKSH PANDEY** . . . **6 W. R. 71, 74**

**29. ——— Alienation without consent of son—Ratification.** In a suit to recover possession of certain ancestral fields, sold during the absence of the defendant, who was united in

death:—*Held*, that the defendant, by retaining

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possession of the house, ratified the act of his father and elected to take the house in lieu of the ancestral fields, the sale of which was declared to be valid and possession thereof given to the plaintiff. *GANGABAI v. VAMANAJI DATAR* . 2 Bom. 301

30. ——— Power of son to control father's alienation of property liable to obstruction—*Right of son at birth*. A son cannot control his father's act in respect of a property the succession to which is liable to obstruction. It is only in respect of property not subject to obstruction that the wealth of a father and grandfather becomes the property of his sons or grandsons by virtue of birth. *JAWAHIR SINGH v. GUYAN SINGH* . 3 Agra 78

31. ——— Gift by father of joint family of share of ancestral estate, moveable and immoveable. A Hindu father, while unseparated from his son, has no power, except for purposes warranted by special texts, to alienate to a stranger his undivided share in the ancestral estate, moveable or immoveable. *BASA v. TIMBA* . I. L. R. 7 Mad. 357

32. ——— Power of son to set aside alienation—*Sale of ancestral property—Judgment-debt—Evidence of necessity*. The sale of a joint ancestral estate for the discharge of a judgment-debt incurred by a father for moneys borrowed by him, which are not shown to have been borrowed for or applied to improper purposes, is not impeachable or voidable by his sons. A judgment-debt is a *prima facie* proof of necessity. *BHOWNA T. ROOP KISHORE* . 5 N. W. 89

33. ——— Ancestral property—*Mitakshara law*. *T S*, a Hindu, who with his son *J N* formed a joint Hindu family, subject to the Mitakshara law, executed in favour of *D* a bond, whereby he professed to pledge a share of certain family property as security for the repayment of

the purchaser thereof, and took exclusive possession of the property. In a suit brought by *J N* against *T S* and *D* to recover possession of the property purchased by *D* on the ground that no legal necessity existed for the loan—*Held*, that *T S* had no individual right to any portion of the property which he could pass to a third person, and therefore *J N* was entitled to have the alienation set aside and to recover possession of the property. There being nothing amounting to any voluntary representation by *T S* of his having any right or interest in the property, or any representation of fact made by *T S* in order to induce *D* to advance the money, and nothing to show that there was no other property out of which the decree could be

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satisfied, no equity arose between *T S* and *D* such as entitled the latter to call on *T S* to divide the property with his son, so as to make the share of *T S* available by *D* to the extent of the loan. *JYOTDEE NARAIN SINGH v. DEENDIAL* . 12 B. L. R. 100 : 20 W. R. 174

*re* on appeal

I. L. R. 3 Calc. 198 : I C. L. R. 49  
L. R. 4 I. A. 247

SOOMRAN THAKOOR v. CHUNDER MUN MISSEER  
3 C. L. R. 292

34. ——— Power of father to alienate ancestral property *F*, during the

value for such property. *Held*, by the majority of the Full Bench (SPRINGE, J., and OLDFIELD, J.), in a suit by *R* against the purchaser and *F* to recover such property and to have such sale set aside as invalid under Hindu law, that such sale was not valid even to the extent of *F*'s share, and that *R* was entitled to recover such property as

*KUAR v. RAM PRASAD* . I. L. R. 2 All. 207

35. ——— Power of father to alienate ancestral property *D*, in pursuance of a promise to give his daughter a dowry, about

I. L. R. 2 All. 673

36. ——— *Mitakshara law*—*Alienations for joint debts—Waste*. Under the Mitakshara law, according to which the father and son are joint owners of the ancestral estate, the son's power to prevent alienations by the father extends only to acts of waste, and not to alienations for the payment of joint family debts and for the maintenance of the family. *BISAMBHAR NAIK v. SUDASHEER MAHAIPATTUR* . 1 W. R. 98

37. ——— Liability of son for father's debt—*Decree against father—Execution sale—Son's interest when not affected by such sale—Hindu law*. When ancestral property is sold in execution of a decree against a Hindu father, there are only two cases in which the son's interests do not pass under the sale—*first*, when they are not sold ; *second*, when the debt is not binding upon the sons by reason

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of its having been contracted for an illegal or immoral purpose. *JOHANNAI v. EKNATH*

I. L. R. 24 Bom. 343

38. ————— *Necessity—Minor sons—Debt contracted to enable father to earn a maintenance.* The expression "family necessity," justifying the sale of ancestral property, must be construed reasonably, and the head of the family and those dealing with him must be supported in transactions which, though in themselves diminishing the estate, yet prevent or tend to prevent still greater losses. A reasonable latitude must be allowed for the exercise of a manager's judgment, especially in the case of a father, though this must not be extended so far as to free the persons dealing with him from the need of all precautions where a minor son has an interest in the property. The fact that a mortgage or a bond, to pay off which ancestral property is sold, had some time to run is not a sufficient reason to disprove an otherwise apparent family necessity. The Hindu law recognizes a debt contracted by the father of a family to enable him to earn a maintenance as one contracted under pressure of a family necessity. *BARAJI MAHADEVI v. KRISHNAJI DEVJI*

I. L. R. 2 Bom. 686

39. ————— *In partible zamindari—Self-acquired property—Zamindari inherited from maternal grandfather.* The course of decisions in the Madras Presidency from 1818

courses of decisions in this presidency. *See*

But held on appeal to the Privy Council which reversed the decision of the High Court, that the

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*Held*, that all the right, title, and interest which had come to his son by heritage from the indebted zamindar, as well in the hypothecated part as in the rest of the zamindari, were liable, so far as they had not been administered in payment of the father's debt, to be attached and sold in execution of a decree against the father based on his admission of the debt. A zamindari inherited from a master.

had come through the male line. *MUTTAYAN CHETTI v. SINGI VIRA PANDIA CHINNATANDIAR*

I. L. R. 6 Mad. 1

I. L. R. 9 I. A. 128 : 12 C. L. R. 169

40. ————— *Ancestral property—Son's share—Rights of co-parceners—Purchaser, right of.* Under the law of the Mithakshari each son upon his birth takes a share equal to that of his father in ancestral immovable estate, and can compel his father to make partition of such estate. The rights of the co-parceners in a joint Hindu

alienations, voluntarily made by one co-parcener

property, with the power of ascertaining and realizing it by partition. Under the Hindu law subject to certain limited exceptions, the whole of the undivided estate of a joint family is liable in the hands of sons for the debts of their father. Accordingly, where ancestral property has passed out of the family either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were of a kind for which they would not have been liable and that the purchasers had notice to that effect, and a purchaser at an execution-sale, being a stranger to the suit without such notice is not bound to make enquiry beyond what appears on the surface of the proceedings. In a suit by the



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members of an undivided Hindu family governed by the law of the Mitakshara to set aside a sale of joint ancestral property which had been sold in execution of a decree obtained against their deceased father, on the ground that the debt was not one for which such property could be made liable, it appeared that prior to the sale the plaintiffs had preferred a claim of objection thereto on the same grounds, and that the Court of execution had declined to adjudicate the claim, and had directed the sale to proceed, referring the claimants to a regular suit. *Held*, that the purchasers at the execution-sale must be taken to have had notice, actual or constructive, of the objections made to the sale by the plaintiffs, and of the order passed thereon by the Court, and to have purchased with knowledge of the plaintiff's claim, and subject to the result of their suit. *Held*, also, that the property having been attached for the debt of a co-

made liable, the sale was not good for their shares.  
**SURAJ BUNSI KOER v. SHEO PERSAD SINGH**

I. L. R. 5 Cal. 148  
 4 C. L. R. 238  
 L. R. 8 I. A. 58

41. — *Alienation of joint undivided family property by father—Rights of sons.* Z, a member of a joint Hindu family consisting of himself and his sons, in January 1860, in order to raise money to pay off family debts and for family necessities, conveyed a two-anna share out of an eight-anna share of a village belonging to the family to B, who sued him on such conveyance for possession of the two-anna share, and obtained a decree and possession of such share. In June 1879 the sons, as such share.

the Privy  
**Persad Singh**, was not maintainable. **DARSU PANDEY v. BIKAR NAJIT LAL**  
 I. L. R. 3 All. 125

42. — *Minor sons—Necessity for alienation.* A, the father and managing member of a Hindu family subject to Mitakshara law, executed bonds mortgaging a portion of the ancestral estate to the father of the defendants. At the date of the mortgages A had living a wife and two sons, one of whom was married to B.

him in those suits, four portions of ancestral property were attached and sold by the Court, the sale-certificates being of the right, title, and interest of the judgment debtor, and were purchased by the mortgagee, who got possession of the whole sixteen annas of the four portions of ancestral estate sold. In a suit by the widow and the two

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sons of A to recover their shares in the property from the ———— that, as A alone made the sale it pass the entire sixteen annas of the estate only in

adult son, only the right, title, and interest of A would pass unless necessity were shown. *Quare* : Whether, even if necessity were proved, the interests of adult members of the family could be affected

**SURAJ BUNSIKOER v. SHEO FERHAD SINGH**, I. L. R. 5 Cal. 148; and **DEENDAL LALL v. JAGDEEP NARAIN SINGH**, I. L. R. 3 Cal. 198, enunciated and discussed. **PURSID NARAIN SINGH v. HONOOMANA SAMAY** : I. L. R. 5 Cal. 845; 5 C. L. R. 576

43. — *Joint Hindu family—Joint family property—Joint family debt—Execution of decree against father—Rights of sons.* R, a Hindu father, gave certain persons a bond in which he hypothecated the joint undivided property of his family. Such persons obtained a decree against R on such bond, in the execution of which "such rights and interests only as R had as a Hindu father in a joint undivided family" were put up for sale. *Held*, that, although R might have as

purchasers could be held only to have purchased interests **NANHAJ JOTI v. JAIMANGAL CHAUDHRY**  
 I. L. R. 3 All. 294

44. — *Joint Hindu family—Sale of joint family property*

family, such decree may properly be executed against the family property. *Held*, therefore (STRAIGHT, J., dissenting), where the father of a joint Hindu family, as the representative of the family, borrowed money for family purposes, hypothecating family property for the repayment of such money, and in a suit to recover

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such money by the sale of such property and other family property a decree was made against him, directing the sale of the hypothecated property and such other property, and such properties were sold in execution of such decree, that, having regard to these facts, it was reasonable to hold that the father was sued as the representative of the family, and such decree was made against him in that capacity, and was so executed against him, and consequently his sons were not entitled to recover their legal shares of such properties from the auction-purchaser. *Bisessar Lal Sahoo v. Lurkateswar Singh*, L. R. 6 I. A. 233, followed. *Deendyal Lal v. Jugdeep Narain Singh*, L. L. R. 3 Cal. 198, distinguished. *Per STRAIGHT, J.*—That the father alone having been a party to such suit, and the sons not having been parties thereto either personally or by a formally constituted representative, and such decree being against the father alone, the rights and interest of the sons in the family properties were not affected by the sale of such properties in execution of such decree, and the sons were entitled to recover their legal shares of such properties from the auction purchaser. *Deendyal Lal v. Jugdeep Narain Singh*, followed. *RAM NARAIN LAL v. BHAWANI PRASAD*, L. L. R. 3 All. 443

45. *Joint Hindu family—Debts contracted by father as manager of family business—Sale of ancestral property in execution of decree against father—Son's share.* N, a

ger of such business, he contracted certain debts, for which he was sued as the "proprietor" of the firm of "Atma Ram Anokhe Lal," and for which decrees were passed against him in execution of which ancestral property of the family was sold. L, his minor son, sued to have such sale set aside and to recover his share of such property on the ground that such decrees had been passed against his father personally and only his interests in such

I. L. R. 4 All. 486

46. *Mitakshara law—Ancestral property—Sale of joint family property—Debts legally contracted by father—Sale in execution of decree.* There is no foundation either in the Mitakshara law itself or in any decisions passed by the Judicial Committee for the broad proposition that in all cases under a sale in execution of a money-decree against the father in a joint family, consisting of a father and sons, whether

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adults or minors, nothing but the father's share

decree was obtained against the father alone is not conclusive upon the point); and it should further be enquired whether the father was sued in his representative capacity or not, and if not so need, then whether the sons are entitled to set aside the sale *qua* their shares. The decision of the Privy Council in *Deen Dyal Lal v. Jugdeep Narain Singh*, L. L. R. 3 Cal. 198, in no way conflicts with the principle laid down in the case of *Muddun Thakoor v. Kantoo Lal*, 14 B. L. R. 187, *UNPICA PRASAD*

*LEWART v. RAM SANAY LALL*, L. L. R. 8 Cal. 898: 10 C. L. R. 505

47. *Ancestral property—Father and son—Right of father to alienate for debts—Insolvency of father—Vesting order—Insolvent Act, 11 & 12 Vict., s. 7—Death of insolvent—Subsequent sale by Official Assignee—Title of purchaser—Rights of son.* A father and son were possessed of immovable ancestral property consisting of certain houses. The father, becoming insolvent, took the benefit of the Insolvent Act and the usual vesting order, under s. 7 of the Insolvent Act, 11 & 12 Vict. c. 21, was thereupon made. Shortly afterwards the father died, and soon after his death the Official Assignee sold the houses in question to the defendant in order to raise money to pay off the deceased insolvent's debts. The son now brought a suit to recover the whole or a portion of the said houses, contesting the right of the Official Assignee to convey any interest or at least his interest in the said houses, to the purchaser. *Held*, that the sale was valid and conveyed to the purchaser the interest of the plaintiff as well as that of his deceased father. Under the Mitakshara law, a father has the right to dispose of his son's interest in ancestral immovable estate for the payment of his own debts not contracted for

estate previously vested in the Official Assignee was not therefore divested from him, and vested in the son by right of survivorship. *See also*: In the event of the father's estate producing a surplus over and above the amount required to satisfy his debts, such surplus might be made available to answer the claims of the son in respect of his interest in ancestral immovable property sold in the realization of the father's estate. *FAKIRCHAND MOTICHAND v. MOTICHAND HURRUCHAND*

I. L. R. 7 Bom. 438

48. *Mitakshara law—Son's interest in ancestral estate.* Ancestral pro-

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party which descends to a father under the Mithila law is not exempted from liability to pay his debts because a son is born to him. Such exemption can

obtained against the father can be executed by sale of such ancestral estate, and the interests of the sons as well as of the father will be bound by it. A purchaser at such sale is not bound to enquire into the circumstances under which the decree was made. **GIRDHAREE LALL v. KANTOO LALL; MUDDUN THAKOOR v. KANTOO LALL**

14 B. L. R. 187

22 W. R. 56; L. R. 21 A. 321

Reversing the decision of the High Court in **KANTOO LALL v. GIRDHAREE LALL** 9 W. R. 469

**ANOOBAGEE KOOR v. BHUGOBUTTY KOOR; SHAN SOONDER KOOR v. JUMA KOOR**

25 W. R. 148

**RAM SAROY SINGH v. MOHABEEB PERSHAD; KESHO LALL v. MOHABEEB PERSHAD**

25 W. R. 185

**MUNBASI KOOR v. NOWRUTTON KOOR**

8 C. L. R. 428

**49. Son's interest in the ancestral estate.** The interest which a son by birth acquires in the ancestral estate of his father under the Mitakshara law does not entitle him to claim exemption from all debts contracted by the father subsequent to his birth. Such exemption can only be claimed when the debts are of an illegal nature, or have been contracted for immoral purposes. An alienation made by the father by way of

**BUTTY; GIRDHAREE LALL SAHOO v. GOWRUBUTTY; POOSUN LALL SAHOO v. GOWRUBUTTY**

15 B. L. R. 284; 23 W. R. 365

**50. Suit on promissory note given by father for family purposes.** Per **INNES, J.—Semble.** A suit on a promissory note made by a Hindu father would lie against sons joined in the suit with the father as defendants on an allegation that the debt was incurred for proper family purposes. **RAMASAMI MUDALIAR v. SELLAYANMAL**

L. L. R. 4 Mad. 375

**51. Nature of debt.** In a suit to set aside a sale of ancestral property in which it was contended, *firstly*, that the debt in satisfaction of which the sale had taken place was contracted for an immoral purpose; *secondly*, that a debt might be immoral either in respect of the object for which it was contracted or in respect of the means by which the money was obtained; and,

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*thirdly*, that in any case the judgment-debtor could only sell his own half interest and not the half interest which his son had in the property:—**Held,**

party, which would ripen on the father's death, was not a separate half interest in the estate, the father's whole interest in which had passed in the sale. **WAJID HOSSEIN v. NANKOO SINGH**

25 W. R. 311

**52. Right of son to set aside alienation—Immorality.** Following a ruling of the Privy Council, **Girdharee Lall v. Kantoo Lall**, 14 B. L. R. 187, it was held that a *bond fide* purchaser, for valuable consideration, of ancestral property sold in execution of a decree is not bound to go further back than to see that there was a decree, and that the property was liable to satisfy the decree. Where this is done, the heirs of the deceased judgment-debtor are not entitled to come in and set aside the proceedings and recover the property. A son's freedom from obligation to discharge his father's debt has respect to the nature of the debt and not to the nature of the property, whether ancestral or acquired. If the debt of the father had been contracted for any immoral purpose, the son might not be under any pious obligation to pay it. Attending nautches, and occasion-

**53. Mitakshara law**

divided the estate between them, the property in suit falling to the share of the plaintiff's father. It

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immoral purpose, and that, under the circumstances, it was of the moral. *Kur*

54. *Sale in execution of personal decree, of decree to enforce mortgage against father—Son's right to set aside sale.* *R.*, the father of an undivided Hindu family, borrowed R700 from *P* in 1867, and executed a mortgage-bond hypothecating family property to secure the debt. In suit No. 198 of 1876 *P* recovered judgment

out execution of his decree, and the mortgaged

that the plaintiff's claim against *P* was invalid, considering the decree against the father sufficient evidence of the debt. *R* also borrowed R450 from

by sale of the mortgaged land, and in 1877 the mortgaged lands were sold in execution of the decree and a certificate issued, in the same form as in *P*'s suit, to *A*. *A* also intervened in the partition suit, and was made a party. The amount due by *R* to *A*, secured by the mortgage, was not disputed nor was it alleged that the debt was contracted for immoral purposes. The lower Courts decided the plaintiff's claim against *A* in the same way as his claim against *P*. *Held* (JAMES and MORTIMER AYER, JJ., dissenting), that the decision of the Privy Council in the case of *Girdharee Lal v. Kantoo Lal*, 14 B. L. R. 187, is binding on and must be

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was established by the plaintiff that the debt was substantially less than it was asserted to be, the

the plaintiff's claim was properly dismissed as against *A*, but if the sale was made in execution of the order for the enforcement of the mortgage, it could not bind the plaintiff, inasmuch as it was the duty of the mortgagee to make plaintiff a party to suit No. 35 and afford him an opportunity of redemption, but that, if the sale was set aside, the plaintiff could not claim to be placed in a better position than he would have occupied had the sale not taken place, and that, as his interest was bound

set, while the power of the father to deal with ancestral immovable property has been curtailed. A personal obligation arising from the filial relation and independent of assets exists as well as an obligation attaching to the heritages in the hands of lineal descendants of the debtor. The question as to the extent of the son's liability is not one of contract, but the duty is an incident of inheritance. Assets available for the payment of a father's debts mean and include the whole estate in which the son by birth acquired rights. The validity of an alienation to a purchaser for consideration in Bombay, as in Madras, did not originate in any local usage, but in an exceptional doctrine established by modern jurisprudence. The duty of the son is incidental to the heritage and subsists from the inception of the son's interest therein. As a father can make a valid alienation of ancestral property so as to bind the son's interest, the law will execute the father's power for the benefit of creditors. There are substantial differences between a sale in execution for a money decree and

at the date of the attachment; in the latter case whatever interest the mortgagor was, under any circumstances, competent to create and intended to create at the time of the mortgage. Although a son's interest may pass by a sale in execution of a decree in a suit to which he was no party, yet the son is not

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science. Since 1837 the decisions in Madras have determined that the liability of the son exists only to the extent of his separate debts.

available as assets, because of the rule of Hindu law which requires the taker of wealth, whether by survivorship or inheritance, to discharge the debts of the deceased.

and that decision ought not to be followed in the Madras Presidency so far as it lays upon the son the duty of discharging his father's debt in his lifetime, or so far as it limits the son's right to question charges made by the father upon the family property to the case of debts immorally contracted. The rules laid down in *Saravana Thero v. Mutlayi Ammal*, 6 Mad. 371, should be followed, and when a decree is against the father for his separate debts,

charge was created. *Per MUTTUSWAMY AYYAR, J.*—The power of a Hindu father to sell ancestral lands is limited. The rights of co-parceners in an undivided Hindu family governed by the Mitakshara, which consists of a father and sons, do not differ from those of co-parceners in a family which consists of undivided brothers, except so far as they are affected by the peculiar obligation which the Hindu law imposes on sons of paying their father's debts. The son's duty to pay his father's debts is according to the ancient text, a legal obligation because it was enforced compulsorily by Hindu kings through their Judges, who exercised an ecclesiastical as well as a secular jurisdiction. Since 1837 in this Presidency it has been held that a

not by Hindu law, but by the rule of equity and good conscience. There is no case decided in the Madras Presidency before *Girdharee Lall's Case* in which the son's obligation was not treated as a mere moral duty. But, granting that the judgment

*Girdharee Lall's Case* ought not to be followed in this Presidency—(i) because of the peculiar view which has prevailed, as to the nature of the pecu-

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obligation, for more than forty years; (ii) because of the doctrine of alienability of undivided interest which has been generally recognized as a matter of equity for more than sixty years, and as a matter of right for upwards of twenty years; (iii) because the son's right of interdiction and power to defraud creditors, provided by the Mitakshara, have been taken away by recognizing that an undivided interest is on the footing of the co-parcener's separate property for the purpose of satisfying his obligations; (iv) because it is desirable to wait for an authoritative ruling by the Privy Council in a Madras case before unsettling the law. In the procedure followed in suits brought against a Hindu

is no legal basis for any distinction between a decree in which there is a direction for the sale of mortgaged property and a simple money decree. The interest that passes by a Court sale must be determined with reference to the decree that led to it, and cannot be determined by a future inquiry as to the character of the debt. The son's interest does not pass by reason of the direction for the sale of the mortgaged property. *Per KRISHNAN, J.*—A sale or mortgage by a father alone of ancestral property after the birth of a son, for the purpose of raising money, not for family necessity or benefit, but to

ance, not of contract. According to the true doctrine of the Hindu law, the obligation of the son to pay his father's debt does not arise until the

decree against the father for debts which were neither immoral nor illegal, and ancestral immovable property has been sold in execution of such decree or under pressure of such execution, the son cannot recover against a *bond fide* purchaser for value. The decision in *Girdharee Lall v. Kantoo Lall* should not be carried beyond the circumstances upon which the decision was passed. *PONNAPPA PILLAI v. PAPPAYANGAR*. I. L. R. 4 Mad. 1

55. Alienation for family purposes—Sale in execution of decree against father.—Sue by son to set aside sale. When a mortgage-debt has been contracted for family purposes by the father, and a decree passed against him and family property sold in satisfaction of the decree, the son cannot sue for his share of the property sold on the ground that he was no party to the suit. The ruling in *Girdharee Lall v. Kantoo Lall*, 4 B. L. R. 187, affirmed in *Suraj Bunsai Koer v. Sheo*

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*Prasad Singh, I. L. R. 5 Calc. 113*, must be followed in accordance with the decision in the Full Bench ruling in *Ponnappa Pillai v. Pappuayyengar, I. L. R. 4 Mad. 1*. *Sundraraja Ayyangar v. Jagannada Pillai, I. L. R. 4 Mad. 111*

56. ————— *Sale in execution of decree against father—Right of son to set aside sale.* Per CURRIE (JESSES and MUTHUSAMI AYYAR JJ., dissenting).—In the Madras Presidency, where ancestral property has been bought at a sale in execution of a decree against the father of a Hindu family, the purchaser is not bound to go further back than to see that there was a decree against the father, and that the property was property liable to satisfy the decree if the decree had been properly given against the father. A *bona fide* purchaser for valuable consideration of an estate purchased in execution of a decree against the father under such circumstances is protected against the suit of the sons seeking to set aside all that has been done under the decree and execution, and to recover back the estate as part of ancestral property. *Girdharee Lall v. Kantoo Lall, 14 B. L. R. 187*, followed *SIVASANKARA MUDALI v. PARVATI ANNI, I. L. R. 4 Mad. 98*

57. ————— *Sale of family*

co-parcener not a son, but a nephew (the sale-deed having been presented by the uncle and his mother

time of the sale, that the debts were such as it was incumbent on the minor to discharge. *GANGULU v. ANCHA BAPULU, I. L. R. 4 Mad. 73*

58. ————— *Alienation for family purposes—Sale in execution of decree against father—Right of son to have sale set aside.* Where a judgment creditor of a Hindu father has purchased the right, title, and interest of the judgment-debtor in family land at a Court-sale in execution of his decree and been put in possession of the whole of the

GOPALASAMI PILLAI v. CHOKALINGAM PILLAI  
I. L. R. 4 Mad. 320

59. ————— *Sale of family property in execution of decree.* Per MUTHUSAMI AYYAR, J.—The decision in *Girdharee Lall v. Kantoo Lall, I. L. R. 1 I. A. 321*, does not declare that a Court is to sell the son's property in satis-

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

faction of a decree against the father during the father's life. *GURUSAMI CHETTI v. SAMERTA CHINNA MANNAR CHETTI, GURUSAMI CHETTI v. SADASEIVA CHETTI, I. L. R. 5 Mad. 37*

60. ————— *Right of son to set aside in execution of decree against father.* The result of the Full Bench decisions in *Ponnappa Pillai v. Pappuayyengar, I. L. R. 4 Mad. 1*, and in *Gangulu v. Ancha Bapula, I. L. R. 4 Mad. 73*, is that—

been placed in possession of the entire mass of the property advertised for sale, instead of the mere interest of the judgment-debtor in the property, which was all that was advertised to be sold, a son, desiring to obtain his share of the property (which by an error of execution has thus got into the possession of the purchaser), cannot avail himself of the decision of the Judicial Committee in *Deendyol Lall v. Jugdeep Narain Singh, I. L. R. 3 Calc. 198*, and is not entitled to recover his share unless he can show that the debt for which a decree was obtained against his father alone was an illegal or immoral debt. *VELLIYANDIAL v. KATHA CHETTI, I. L. R. 5 Mad. 61*

BEER PERSHAD v. DOORGA PITSHAD  
W. R. 1864, 510

61. ————— *Decree for partition and mesne profits against father—Son's liability, suit to declare.* T, a member of an undivided Hindu family, sued K, the manager, to obtain his share of the family estate without making the sons of K parties to the suit. K offered to abide by the oath of T, and a decree was passed in T's favour declaring him entitled to a one-sixth share of the land, jewels, and money, and to mesne profits and interest. In execution of his decree, T attached lands belonging to K and his sons who had remained in union. The attachment was raised on the intervention of the sons of K. Held, in a suit to declare the shares of the sons of K liable for the decree against K, that the rule in *Girdharee Lall v. Kantoo Lall, 14 B. L. R. 187*, *L. R. 1 I. A. 321*, was not applicable, and that the suit would not lie. *TIMBAPPA v. LAKSHMINARAYANA, I. L. R. 6 Mad. 284*

62. ————— *Mortgage by*

sed father  
It was  
incurred  
for the benefit of the family, nor was it proved that it was incurred for immoral or illegal purposes by the father. Held, that the mortgage was only binding on the father's one-fourth share, and that the

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plaintiff was entitled to recover one-fourth of the property mortgaged from the mortgagee. *YENAMANDRA SITARAM ASAMI v. MIDATANA SANYASI*

**I. L. R. 6 Mad. 400**

**63.**

*Burden of proof.*

Where the holder of a decree against the father of an undivided Hindu family, obtained upon a bond

**I. L. R. 7 Mad. 50**

**64.**

*Debt properly*

*contracted—Usurious rate of interest—Purchaser at execution sale of joint family property.* In a suit by a Hindu subject to the Mitakshara law, against certain auction-purchasers at a sale in execution of a decree against the father, to recover a portion of the ancestral estate by cancellation of the sale, it appeared that the property which was mortgaged by the bond upon which the decree was passed was not put up for sale. The decree provided "that the plaintiff recover the amount with

construction of the Privy Council ruling in *Muddun Thakoor v. Kantoo Lall*, 11 B. L. R. 187, the decree under which the property had been sold was an improper one. *Held*, that, under the Privy Council ruling, the purchaser is not bound to look beyond the decree. *Held*, also, that an usurious rate of interest cannot be treated, within the principles of

**W. R. 421**

**65.**

*Son's interest in*

*ancestral property—Mortgage by father during minority of sons.* A Hindu, subject to the Mitakshara law and forming with his sons a joint Hindu

cumbrant upon the plaintiff to show for what purpose the loan was contracted, and that that purpose was one which justified the father in charging or which the plaintiff had at least good grounds

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for believing did justify the father in charging, the sons' interests in the ancestral immovable property.

*BHEKNARAIN SINGH v. JANUK SINGH*

**I. L. R. 2 Cal. 438**

**66.**

*Alienation by*

*father to pay off antecedent debt.* An alienation of joint family property made by a father under the Mitakshara law for the purpose of paying off an antecedent debt is binding upon the sons, unless they show that the debt was contracted for immoral purposes. The case of *Bheknarain Singh v. Januk Singh*, 1. L. R. 2 Cal. 438, being opposed to the decision of the Privy Council in the case of *Girdharree Lall v. Kantoo Lall*, L. R. 11 A. 321, as explained by that of *Ram Sahai v. Sheo Prasad Singh*, 1. L. R. 5 Cal. 148; L. R. 6 I. A. 88, cannot now be followed. *GUNDA PRASAD v. SHYAMAL SINGH*

**5 C. L. R. 224**

**67.**

*The manager of*

a joint Mitakshara family (the family consisting of the father and minor son) raised money on the mortgage of certain family property, it not being proved, on the one hand, that there was legal necessity for raising the money, nor, on the other hand, that the money was raised or expended for improper purposes, or that the lender made any enquiry as to the purpose for which the money was required. *Held*, that, under such circumstances, a mortgagee could not enforce, by suit against the father and son, the mortgage itself during the father's lifetime, but the debt being an antecedent one, he would simply be entitled to a decree directing the debt to be raised out of the whole ancestral estate, including the mortgaged property. He would, assuming the minor to be the only son, also be entitled to a similar decree against the son after the father's death. Supposing the mortgagee under the above circumstances, to have obtained a decree against the father alone for payment and sale of the property, and at the sale to have himself become the purchaser, he could not be considered a *bona fide* purchaser for value, and would not be

former, being the managers, raised money by executing a *zurpeshgi* lease of specific family property the lender making no enquiry as to the necessity for the loan; subsequently such managers took a sub-lease of the same property from the *zurpeshgi*

possession. It was found as a fact that the *zurpeshgi* and the sub-lessee were merely a device by

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

the managers to raise money and to continue in possession of the property, but it was not shown for what purpose the money was raised. *Held*, that the minor sons, not having been made parties to the mortgage, would be entitled to

Lucknow

I. L. R. 473

66. *Mitakshara law*

the mortgagee is not bound to see that the money is

the mortgagee is not bound to see that the money is

property. In a suit upon a mortgage by the father alone, where the sons are made parties, the decree would be good as against the sons, even though they may have been adult when the debt (assuming it was not for immoral purposes) was incurred, and the whole property would be bound, notwithstanding v. 29, chap I, s 4, and v 10, chap I, s vi of the *Mitakshara*. In respect of ancestral property the

gaged to take and remain in possession for upwards of eleven years and to go to expense in paying off encumbrances on the estate, it was, in a suit by the son to recover his share of such ancestral property, *held* that he was not entitled to succeed. Under the circumstances, the son ought to have been made a party to the suit brought by the mortgagee. The principles laid down by the Privy Council and in

69. *Mitakshara law*

—Mortgage of ancestral estate by father for family purposes—Attachment of property in execution of decree—Death of judgment-debtor prior to sale.

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

family property for a part of the debt.

son already dead and his sons, and that the whole of the ancestral property was liable for the mortgage-debt, the only declaration to which the plaintiffs could be entitled being that they were not liable to pay the debt. *GOURDHUN LALL v. SINGESSUR DUTT KOER*

I. L. R. 7 Calc. 52; 8 C. L. R. 277

70. *Mitakshara law*

—Ancestral property—Right of mortgagee to sell. A Hindu governed by the *Mitakshara* law mort-

ther the property was the self-acquired property of the mortgagor or ancestral property. The High Court remanded the case for the trial of an issue upon this point. The lower Court found that the property was ancestral, and affirmed the original

property of the father and the sons, because, supposing that the debt was contracted for personal purposes of the father, still the ancestral property in the hands of the sons was liable for the debt, it being not proved to have been contracted for immoral purposes. *Luchmun Dass v. Giridhar Choudhry*, I. L. R. 5 Calc. 855, followed. *GUNOA PRASAD v. AJUDHYA PERSHAD SINGH*

I. L. R. 8 Calc. 131

9 C. L. R. 417

71. *Sale or mortgage*

of joint family property—Suit by son to recover possession of share—Limitation—Parties—Right of purchaser at execution-sale. A suit by a Hindu

him for purposes not immoral or immoral, is not

from disputing its validity. These propositions apply to a mortgage, so as to place the purchaser at an execution-sale under a decree upon a mort-



HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

gage-bond in the position of an alienee by private sale. If the son has been a party to the suit in which the decree upon the mortgage-bond was obtained, he is concluded; but if he has not been a party to the suit he is not concluded, but must show that the original debt was contracted for illegal or immoral purposes, in order to recover his share of the property from the purchaser. Where the father has neither aliened nor mortgaged the family property, but it is sought by suit to make that property liable to satisfy a debt incurred by the father, the son as well as the father must be a party to the suit. When the creditor sues the father alone for a debt contracted by him alone, and in execution sells the right, title, and interest of the father only, the purchaser at this sale does not take the son's interest. *RASIPHUL SINGH v. DEGNARAIN SINGH*. I. L. R. 8 Cal. 517; 10 C. L. R. 489.

72. *Joint family—Sale in execution of money-decree against father of Mitakshara family* The mere fact of a decree being passed against the father only of a joint family governed by the Mitakshara law will not lead necessarily to the conclusion that what was sold in execution of that decree is only the father's interest in the joint family property. Notwithstanding the decree being against the father only under certain circumstances, there may be a valid sale of a joint property belonging to the family in execution thereof. In execution of two money-decrees against A alone, the right, title, and interest of A in certain joint family property was sold, and the entire share of the joint family was taken possession of by the auction-purchaser. In a suit by the minor son and the wife of A, who with A constituted a joint family governed by the Mitakshara law, to recover possession of their shares in the property sold. *Held*, that, although the plaintiffs were not parties to the decrees in execution of which the sales took place, the mere fact of A being sued alone was not sufficient to justify the finding that only his right, title, and interest passed under the sales; and that, as the facts of the case showed that the decrees were passed with reference to transactions which clearly concerned the joint family, the whole of the share of the joint family in the properties sold passed to the auction-purchaser; the plaintiffs having failed to show that the debts, which were the foundation of the decrees in the execution of which the sales were held, were contracted for immoral purposes. *Umbla Prasad Tewary v. Ram Sahay Lal*, I. L. R. 8 Cal. 893, and *Ponnappa Pillai v. Pappayyengar*, I. L. R. 4 Mad. 1, followed. *Ramphul Singh v. Degnarain Singh*, I. L. R. 8 Cal. 517, dissented from. *Suro Prasad v. Jyoti Bahadur*.

I. L. R. 9 Cal. 389; 12 C. L. R. 494

73. *Mitakshara law—Decree against the father of a joint family for lawful debts—Sale of the whole joint estate in execution of decree against one co-sharer.* A, a judg-

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ment-creditor, having obtained a decree against B, the father of a joint Hindu family governed by the Mitakshara law, in a suit to which the sons of B were not parties, but in which it was proved that the debt had been incurred for lawful purposes, proceeded to execute his decree by attaching and selling the joint family property. Thereupon the sons came in and objected to their interest in the property being sold in execution of a decree in a suit to which they were not parties, and, on their objection being disallowed, filed a suit against A and B to have it declared that their interest in the property was not liable to be sold to satisfy the decree. *Held*, that the debt in respect of which the decree had been passed having been contracted for lawful purposes, the judgment-creditor was entitled to execute his decree against the whole of the joint family property. *Held*, also, that the ruling in the case of *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R. 3 Cal. 108, had no application to the facts of this case. *RANDUT SINGH v. MAHENDER PRASAD*.

I. L. R. 9 Cal. 432

12 C. L. R. 47

74. *Sale by one of several co-sharers in a joint estate—How far alienation by father of joint family property is binding on sons—Antecedent debts.* Although no member of a joint Hindu family governed by the Mitakshara or Mithila law has authority, without the consent of his co-sharers, to sell or mortgage even his own share in order to raise money on his own account, and not for the benefit of the joint family, yet if a father does alienate even the whole joint property of himself and his sons, in order to pay off antecedent personal debts, the sons cannot avoid such alienation, unless they prove that the debts were immoral. But to make the alienation to this extent binding upon the sons who did not consent to it, it must be shown that it was made for the payment of antecedent debts, and not merely in consideration of a loan or of a payment made to the father on the occasion of his making the alienation. In the case of a voluntary sale, the purchase-money does not constitute an antecedent debt such as to render that sale binding on the sons, unless they prove the transaction to have been immoral. *HANUMAN KAMAT v. DOWLAT MUNDAR*.

I. L. R. 10 Cal. 528

75. *Suit by sons to set aside alienation to alienate—Suit by sons to set aside alienation.* A Hindu governed by Mitakshara law devised an 8 annas 11½ gundas share of his ancestral estate to his son A, and the remainder to another son B, subsequently becoming much involved, borrowed Rs. 45,000 on a usufructuary mortgage by two deeds in favour of C and D respectively, the transaction being one and the same and the money borrowed being to pay off antecedent debts. The mortgagees, having been ejected, brought a suit to recover possession with mesne profits and obtained a decree against A, in execution of which "the 8 annas 11½

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gundasshare of the judgment-debtor " was attached and sold and purchased by the defendant, who was

*Supra* followed. **HARDAY NARAIN v. HARICK DHARI SINGH** 12 C. L. R. 104

76. *Mitalshara*—  
Suit by sons to set aside alienation by father—  
Necessity—Debt due by father—Purchase-money  
treated as debt due by father—Refund of whole  
of purchase-money when necessary before sons are  
entitled to have sale by father set aside—Objection

the debts were contracted for an immoral purpose.

whole of the joint family property, including the property sold, would be liable in the hands of A and B, the sons. In such a suit, if it be treated as one for partition, the objection that the whole of the joint family property is not included in it is by no means a technical one, inasmuch as it is open to the Court to hold that the property sold should fall entirely within the father's share, and to allot it to the purchaser accordingly. **HASHMAT RAI v. SUNDER DAS** 11 C. L. R. 11 Cal. 396

77. *Ancestral estate*—  
Son's interest in *Mitalshara* law. Under the

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

**KOOLDEEP KOOR v. RUNJEET SINGH** 24 W. R. 231

78. *Sale of ancestral property by father for debts incurred for immoral purposes—Son's interest in ancestral estate.* The plaintiffs (two of whom were minors) sued to set aside the sale and recover possession of certain

between the plaintiff's father and the father of the

incurred for immoral purposes, although it was in

by the Assistant Judge in appeal was whether there was any necessity for the sale of the property by

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had applied the sum of Rs 235 to the payment of

the release of the pre-existing debts for  
Rs 4,000-15-0: KASTUR BHAVANI v. APPA

I. L. R. 5 Bom. 621

79. ———— *Alienation of ancestral property by father—Son's interest in ancestral estate—Debt incurred for immoral or illegal purposes. Subject to certain limited exceptions (as, for instance, debts contracted for immoral or*

party of D, were sold under a decree passed against D, and were bought by J. These lands had been mortgaged in 1863 by D to N, in which transaction D had been principal and J his surety. In 1866, N sued on his mortgage, and on the 21st January 1868 a decree was made. Under the terms of J were

On afterwards from the lands to M. In the present suit the plaintiffs (D's sons) sued D and M for possession of their two-thirds shares, alleging that the land was ancestral, and that the whole of it had been illegally sold under the decree of the 21st January 1868. Both the lower Courts held that

it; that they  
The lower  
plaintiff's claim.  
It affirmed the

decree of the Courts below on the grounds mentioned above. SIDDASHV JOSHI v. DINKAR JOSHI  
I. L. R. 6 Bom. 520

80. ———— *Father's authority to bind the interests of his sons in an ancestral property—Mortgage by father of ancestral property—Rights of a purchaser at Court sale of an undivided share of a co-parcener—Decree against father upon a mortgage of family property—Effect of decree ordering sale of mortgaged property—Purchaser at Court sale when bound to go behind decree and enquire as to whether the debt was properly incurred. D, the father of the defendants, by a mortgage dated October 1869, mortgaged a house together with other property to B, the father of the plaintiff. B sued D upon the mortgage and obtained a decree directing the sale of the mortgaged property. The execution sale took place in July 1877, and the plaintiff (the mortgagee's son) became the purchaser of the house. On attempting to take possession, he was resisted by the defendants*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

(sons of the mortgagor), who alleged the house to be ancestral property, and denied the plaintiff's right to more than the third share to which the father had been entitled. Held by the High Court on appeal, upon the authority of *Gridharellal v. Kantoo Lal*, 14 B. L. R. 187, as explained in *Suraj Bansi Koer v. Sheo Prasad*, I. L. R. 5 Calc. 143, that the shares of the defendants were validly bound by their father's mortgage, as it had been found by the lower Court that the debt, in respect of which the mortgage had been executed, had not been contracted by their father for improper or immoral purposes; but that, as the purchaser at the execution sale (the plaintiff) was the mortgagee's son, the question arose whether he could be held to be stranger to his father's suit on the mortgage, and as such not bound to go behind the decree and make enquiry as to whether the debt had been improperly incurred. This would depend on the circumstances under which he and his father were living and the relation existing between them. The case was accordingly remanded for a determination of the question whether the plaintiff was a stranger to his father's suit. Held, that the defendants, not being joint with their father at the date of the

MOODAR I. L. R. 6 Bom. 124

81. ———— *Mitalshara law—Mortgage by father of joint ancestral property—Sale of joint ancestral property in the execution of a decree against father. The undivided estate of a joint Hindu family, consisting of a father and his*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

must be regarded as against the father as representing the joint family, and the whole of the family estate was saleable in execution of such decree. *Bhassur Lal Sahoo v. Luchmessur Singh*, I. L. R. 6 I. A. 233, followed. *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R. 3 Cal. 198, distinguished. *DEVA SINGH v. RAM MANOHAR*

I. L. R. 2 All. 748

82. *Mitakshara law*  
—*Mortgage by a father of ancestral property—Sale of father's rights and interest in the execution of decree.* The undivided estate of a joint Hindu family consisting of a father and his minor sons and grandsons, while in the possession and management of the father, was mortgaged by him as security for the repayment of moneys borrowed by him. The lender of these moneys sued the father to recover them by the sale of the family estate, and obtained a decree against him directing its sale. The right, title, and interest of the father only in the family estate was sold in the execution of this decree. The auction-purchasers having

had only acquired by their auction-purchase the rights and interests of the father in the estate, and that for the same reason it was unnecessary

I. L. R. 4 All. 600

83. *Joint Hindu*

person, such person sued him for damages for such

debt, but a personal claim against the father, who was alone represented in that suit, and the decree in that suit was against him personally, and it was

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only his rights and interests that were put up for sale and purchased by C, the sons were entitled to recover from C their shares of the family property. *Suraj Bansi Koer v. Sheo Persad Singh*, I. L. R. 5 Cal. 148, distinguished. *Per STRAIGHT, J.*, that the sons were entitled to recover their shares of the family property, the decree being purely a personal decree against the father, and his rights and interests only in such property having been put up for sale and purchased by C. *CHANDRA SEN v. GANGA RAM* . . . I. L. R. 2 All. 899

84. *Mitakshara law*  
—*Mortgage of joint ancestral property by father—Sale of property in execution of a decree against father—Son's right.* The ancestral estate of a joint Hindu family, consisting of a father and his minor

minor son to protect his share in the estate from sale in the execution of such decree, that the suit in which such decree was made, and such decree,

v. RAJ BANSI KUAR . . . I. L. R. 3 All. 191

85. *Joint Hindu family property—Right of son B*, a member of a joint undivided Hindu family consisting of himself and his son R, as the manager of the family, bor-

with the knowledge and approbation of R. The obligee of such bond sued B thereon and obtained a decree, which directed the sale of such share, and such share was put up for sale and was purchased by C. B. personally sued R and his wife

R's grandmother, who claimed to share equally with the other members of the family in such property. *Held*, that it must be presumed that B was sued on such bond, and that the decree in such suit was made against him as the head of the family, and R could not recover from C the share of mouzah B. *ADRA KISHEN MAN v. BACHHA MAN*  
I. L. R. 3 All. 116

86. *Adult son—Mortgage of family property by father—Decree*

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HINDU LAW—ALIENATION—*contd.*4 ALIENATION BY FATHER—*contd.*

against father—Right of son. The father in a joint

being attached in execution of the decree, the son

mortgagee for a declaration that such share was not liable to be sold in execution of the decree,

to succeed in such suit merely because, although

he been a minor at the time the mortgage was made and the decree was passed, and was therefore only entitled to succeed if he showed that the debt incurred by his father was incurred for immoral purposes of his own. *Held*, further, that, inasmuch as the debt in question was incurred for necessary

*v* MAN SINGH . . . I. L. R. 4 All. 309

87. *Alienation of ancestral property by father—Suit by son to recover his interest—Burden of proof.* Where a Hindu, a minor, governed by the law of the Mitakshara, sued to set aside an alienation of ancestral property by his father, on the ground that such alienation was made to satisfy a debt contracted for immoral purposes:—*Held* by STRAIGHT, J., that the burden of proving that the debt was contracted for such purposes, and that the defendant had notice that it was contracted for such purposes, lay on the plaintiff, and that the plaintiff was not discharged from such burden because he had proved generally that his father had been in the habit of contracting debts

had been contracted for immoral purposes. *Per*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

STUART, C.J., that the plaintiff's father having been guilty of extravagant waste of the ancestral property, the burden of proof in this case lay on the defendant. As, however, there was reason to suspect that the debt was a gambling one, brought

the plaintiff a decree HANUMAN SINGH *v* NANAK CHAND . . . I. L. R. 8 All. 193

88. *Mitakshara and Mithila law—Execution of decree—Sale of ancestral estate in satisfaction of father's debt—Parties to proceedings.* There is no conflict of authority as to the principle that sons cannot set up

the Mitakshara shasters. From the above must be distinguished the question how far the joint sons can be precluded from disputing the liability attaching to their shares, where proceedings have been taken by or against the father alone. If the father's debt, not having been contracted for an immoral purpose, is such as to support a sale of the entirety of the joint estate, either he may sell the latter without suit, or the creditor may obtain a sale of it by

the sons from the proceedings may be a material consideration. But if the purchaser has bargained and paid for the entirety, he may defend his title upon any ground which would have justified a sale, inter

*Law*  
I. L. R. 8 Cal. 200, was not an invariable rule that co-parcenary interests will not pass by an execution sale unless the co-parceners are joined in the suit, or that only the father's interest passes to the purchaser where the suit is against the father alone. The debt being one though  
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family

estate having passed by the sale. NANONI BASTA-  
SIN *v* MODHUN MODHUN . . . I. L. R. 13 Cal. 21  
I. L. R. 13 I. A. 1

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

89. *Effect of sale in execution of mortgage-decree and of money-decree against the father—Transfer of Property Act, s. 85.* Where the property of an undivided Hindu family, consisting of father and sons, has been sold in execution of a decree obtained against the father only for a debt contracted by him for purposes neither immoral nor illegal, the sons cannot recover their shares from the purchaser, if the decree has been obtained upon a mortgage or hypothecation of the property directing such property to be sold to realize the debt. It is otherwise if the decree in execution of which the sale takes place is a mere money-decree. *Per KERNAN, J.* It will still be

followed. *Ponnappa Pillai v. Pappurayyengar, I. L. R. 3 Mad. 1, modified. Ponnappa Pillai v. Pappurayyengar, I. L. R. 9 Mad. 343*

90. *Decree against father—Sale of ancestral estate in execution of money-decree.* A sale of ancestral property in execution of a money-decree obtained against a Hindu father will, if the debt was neither immoral nor illegal, pass to the purchaser the entire interest of which the father could dispose, i.e., his son's as well as his own share. *modified the purchaser has*

the debt was not such as to justify the sale, he cannot succeed. The revised ruling of the Full Bench in *Ponnappa v. Pappurayyengar, I. L. R. 9 Mad. 343*, as to sales in execution of money-decrees against the Hindu father has been overruled by the decision of the Privy Council in *Nanomi Babuasin v. Madun Mohun, L. R. 13 I. A. 1 : I. L. R. 13 Calc. 21. NARAYANA v. GURAPPA, I. L. R. 9 Mad. 424*

91. *Power of the father to alienate ancestral property for pious purposes.* According to the Hindu law, the power of the father to make alienations of joint ancestral estate without his son's consent extends to provision of a permanent shrine for a family idol. *Gopal Chand Pande v. Babu Kanwar Singh, S. D. A.*

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faction of the idol and the benefit of the donor's soul, or from motives of spite against the plaintiff. *RAGHUNATH PRASAD v. GOMID PRASAD, I. L. R. 8 All. 79*

92. *Joint Hindu family—Liability of ancestral estate for satisfaction of father's debt, when not incurred for immoral purposes.* A suit was brought against *O*, the head of a joint Hindu family, by *S*, to whom he had mortgaged ten biswas of ancestral estate as security for a loan, to recover the amount of the loan by enforcement of the mortgage against the entire ten biswas. During the pendency of the suit, *O* died

red by *O* was of such a character that, according to the Hindu law, his son *Z* was under a pious duty to discharge it out of his own estate. It was found that, although the father was grossly extravagant and selfish in his expenditure, there was no evidence that the proceeds of the particular loan in question were applied to any special pious purpose, but that the money was not borrowed to meet any family

93. *Suit by sons to set aside alienation—Burden of proof.* The rule enunciated by the Privy Council in *Muddun Thakoor v. Kanoo Lall, 11 B. L. R. 187*, and *Suraj Buns Koer v. Sheo Pershad Singh, I. L. R. 5 Calc. 113*, "that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debt, cannot recover that property, unless they show that the debts were contracted for

cases where a person buys ancestral estate, or takes a mortgage of it from the father, whom he knows to have only a limited interest in it, for a sum of

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

ready money paid down at the time of the transaction, such person, in a suit by the sons to avoid

ing member, could deal with and dispose of the joint ancestral estate. *LAL SINGH v. DRO NARAIN SINGH*, I. L. R. 8 All. 279

94. *Creditor's remedy against sons how affected by reason of his having sued the father separately.* Although a decree may have been obtained against the father of a joint Hindu family for a debt incurred by him, a

secured by a mortgage and a simple money debt. *Lachmi Narain v. Kunj Lal*, I. L. R. 16 All. 449; *Balmakund v. Sangari*, I. L. R. 19 All. 379; *Bhawani Prasad v. Kallu*, I. L. R. 17 All. 537; *Ramasami Nadan v. Ulaganatha Goundan*, I. L. R. 22 Mad. 49; *Ariabudra v. Dora Sanni*, I. L. R. 11 Mad. 413, and *Nanomi Baluasin v. Modhun Mohun*, I. L. R. 13 Cal. 21, referred to. The

*Nislett, L. R. (1891) 1 Q. B. 781*, referred to. *DHARAM SINGH v. ANGAN LAL*

I. L. R. 21 All. 301

95. *Joint family property sold in execution of a decree on a mortgage against the father alone—Decree satisfied—Subsequent recovery by the sons of part of the mortgaged property—Remedy of mortgagee.* A mortgagee held a mortgage of joint family property given by the father alone. He sued on his mortgage without making the sons parties to the suit,

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HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

a suit against the sons to recover from them a share of the mortgage-debt proportionate to the share in the joint family property owned by them. *Held*, that the original mortgage having become extinct, the plaintiff was entitled to a decree for one-fourth of the price realized by the mortgaged property at auction-sale and to recover the same by sale of the interest of the sons in the joint family property. *Bhawani Prasad v. Kallu*, I. L. R. 17 All. 537, referred to. *Dharam Singh v. Angan Lal*, I. L. R. 21 All. 301, followed. *LACHMAN DAS v. DALLU*, I. L. R. 22 All. 394

96. *Joint family—Decree against the father alone—Attachment of family property in execution of such decree—Son's interest in the family property when bound by decree against the father or by sale effected by the father.* Where in a joint Hindu family the father disposes of family property, the son's interest is bound, unless the son can show, in proceedings taken for that purpose, that the disposal of the property by his father was made under circumstances which deprived his father of his disposing power. So also, where family property is sold under proceedings taken against the father alone, the son's interest is bound unless the son can show that the sale was on account of an obligation to which he was not subject. The father is, in fact, the representative of the family both in transactions and in

97. *Joint family—Mortgage by father—Decree subsequently to father's death against eldest son as heir of father—Minor sons not parties—Sale in execution of family property other than that comprised in mortgage—Subsequent suit by minor sons to recover their shares—Minor sons when bound by decree against eldest son as heir of father.* One K mortgaged certain land to

cient, from the other estate of the deceased. The minor sons were not made parties to that suit, nor was R sued as representing the joint family. In execution of the decree, B attached and sold the whole of the joint family property,

suit to recover some of the property, contending that their shares were not bound by the sale. *Held*, on the authority of *Bisessar Lal Shahao v. Luckmessur Singh*, I. L. R. 6 I. A. 233, and rever-

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

should lie upon the plaintiffs. *JAYRAM BAJARA-SHET v. JOMA KONDIA*. I. L. R. 11 Bom. 361

99. *Mortgage of family property by father—Decree against father enforcing mortgage—Decree for money against father—Sale in execution of decrees—Rights of sons.* The members of a joint Hindu family brought suits in which they respectively prayed for decrees that their respective proprietary rights in certain

ditor had no means of knowing that the money advanced by him were likely to be applied to any other purpose than that for which they were professedly borrowed, namely, for the purpose of an indigo factory in which the family had an interest. *Held*, that the plaintiffs were not entitled to any

of the decree-holder. The suit terminating in the decrees was brought against the father alone, and the debt was treated as his separate debt. *Held*, that the creditor's remedy was to have brought his suit, if he desired to obtain a decree which he could

BALDEB SINGH v. AJUDEHA PRASAD  
I. L. R. 9 All. 142

99. *Son's liability for father's debts in lifetime of father—Suit against father and sons—Right in suit to decree against sons.*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

A creditor of a Hindu brought a suit against him and his sons whom it was sought to make liable on the ground that the debts were incurred for

100. *Decree against father for money due, the sons not being joined as defendant's—Death of father after original debt barred by limitation, the decree subsisting—Suit against the sons on the decree—Period of limitation how calculated—One cause of action.* Certain creditors, having in 1882 obtained a decree, kept alive that decree until 1897, when the judgment debtor died. They then sought to make liable the property of the deceased in the hands of the defendants, his sons and representatives, stating the cause of action against the said defendants as having arisen in 1897 the date of the father's

of the plaintiff has a further right to sue the son for his father's debt on the death of the father, apart from the right to sue him in the father's lifetime for such debt." *Held*, that in such a case there are not two causes of action, and such a creditor has not a further right to sue the son for his father's debt on the death of the father, apart from the right to sue him in the father's lifetime for such debt, and that, in consequence, the suit was barred by limitation. *Arunachala v. Zamindar of Sivagiri*, I. L. R. 7 Mad 328, *Natasayyan v. Ponnusami*, I. L. R. 16 Mad 99, *Ramayya v. Venkataratnam*, I. L. R. 17 Mad 122, considered. *MALLESAN NAIDU v. JUGALA PANDA* I. L. R. 23 Mad. 292

101. *Joint Hindu family—Mortgage by father—Suit to enforce the mortgage against son's shares—Legal necessity—Burden of proof.* As a general rule, a creditor endeavouring to enforce his claim under a hypothecation bond given by a Hindu father against the estate of a joint Hindu family in respect of money lent or advanced to the father having only a limited interest should, if the question is raised, prove either that the money was obtained by the father for a legal necessity or that he made such reasonable inquiries as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt, or for the other legal necessities of the family. There is a distinction between such cases as this and cases in which a decree has been obtained against the father and the property sold, or cases in which the sons come into Court to ask for relief



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In a suit against the members of a joint Hindu family upon a bond given by their father, and in which family property was hypothecated, no evidence was given on either side as to the circumstances in which the bond was given. There was no evidence to show that any inquiry had been made by the plaintiff as to the objects for which the bond was executed by the father. *Held*, that the burden of proof was upon the plaintiff to show either that the money was obtained for a legal necessity or that he had made reasonable inquiries and obtained such information as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt or for the other legal necessities of the family, and that no evidence having been given, the suit must be dismissed. *JAMNA v. NARAYAN* . . . **I. L. R. 9 All. 493**

**102.** ——— *Sale of joint family estate in execution of decree upon the father's debt—Exoneraton of son's share only where debt has been incurred for an immoral or illegal purpose—Burden of proving the nature of the debt. The*

that the debt has been contracted for an immoral or illegal purpose. The son's position is distinct in this respect from that of other relations in the

to show affirmatively that the debts were contracted for an illegal or immoral purpose, and that to establish general extravagance against the fathers was insufficient. It was not necessary for the purchaser to show that there had been a proper inquiry as to the purpose of the loan or to prove that the money was borrowed for family necessities. *BRANDT PERSHAD v. GIRJA KOFF*

**I. L. R. 15 Cal. 717**  
**I. L. R. 15 I. A. 97**

**103.** ——— *Joint family—Mortgage by a father—Decree against father on*

**HINDU LAW—ALIENATION—*contd.*****4. ALIENATION BY FATHER—*contd.***

*mortgage giving possession with interest and costs—Son's liability to satisfy the decree as to interest and costs.* The plaintiff's father mortgaged certain ancestral property for a limited term. A suit was brought on the mortgage against the father, and a decree was passed, directing the mortgaged property to be handed over to the mortgagee for a certain time, and awarding payment of interest and costs by the father. In execution of this decree, the mortgagee sought to recover the costs by sale of the property in question. Thereupon the plaintiffs sued for a declaration that the property was not liable to be sold in execution of the decree against the father, on the ground that the debts contracted by the father were for immoral purposes, and that therefore the estate could not be bound by the decree at all. The Court of first instance found that the debts had not been incurred for any immoral purpose, and dismissed the suit. On appeal to the High Court:—*Held*, that under the decree passed against the father the interest and costs became a debt upon the whole estate, from which it could not escape, unless it was clearly made out that the debt was the result of fraud or immorality. Although the father alone was primarily liable for the fulfilment of the decree, still the debt was one which was rightly chargeable to the whole estate, and the sons would be liable, just as they would have been liable if the father had compromised the suit, unless the transaction were tainted with fraud or immorality. In a united family the father is capable of acting as the representative of the family, except in the case of borrowing for fraudulent or immoral purposes. In this case he entered into litigation, which resulted in loss to himself and the family which he represented, and he could make the family responsible for any loss so incurred. The judgment-creditor could also make them liable, although where the father desires to represent the whole estate he can do so yet he is not necessarily bound to do so, nor is the whole estate liable where he explicitly or impliedly binds only his own portion. *NARAYAN RAY DASODAR v. JATHERVANU*

**I. L. R. 12 Bom. 431**

**104** ——— *Ancestral property—Joint family—Alienations by father—Purchaser—Notice.* Where a Hindu governed by the Mitakshara law seeks to set aside his father's alienations of ancestral property, if the alienances are purchasers at Court-sales held in execution of decrees against the father, it is not enough for him to show that the debts for which the decrees were passed were contracted by the father for immoral purposes; it must also be shown that the auction-purchasers had notice that the debts were so contracted. The points to be determined—

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for which the decrees were obtained, under which the property was sold, contracted for immoral purposes ? and (iii) Had the purchaser notice that the debts were so contracted ? *Suraj Bansi Koer v. Sheo Prasad Singh*, L. R. 6 I. A. 88 : I. L. R. 5 Calc. 148, and *Nanami Babuasin v. Modhun Mohun*, L. R. 13 I. A. 1 : I. L. R. 13 Calc. 21, followed. The plaintiff sued in 1883 for partition of ancestral property consisting (*inter alia*) of certain thikans which had been sold in execution of decrees passed against his father. The plaintiff, though an adult at the time, was not a party to the suits in which the decrees were passed against the father, nor to the execution-proceedings. In the certificates of sale granted to the different purchasers

ing to show that the purchaser bargained for and paid for the entire family estate. Moreover, the plaintiff's possession and enjoyment of the thikans in question was never disturbed, though the sharera had each a separate possession of distinct portions of the ancestral property. *Held*, that, under the circumstances, the father's interest alone passed to the auction-purchasers *KRISHNAJI LAKSHMAN v. VITHAL RAJJI RENGE* I. L. R. 12 Bom. 625

105. ———— *Joint family—Money-decree—Decree against father alone—Purchaser at execution-sale under such decree—How far such sale binding on the interest of the sons not parties to the suits or execution-proceedings* In the case of a joint Hindu family, whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property or only his interest in it passes by the sale is to enquire what the parties contracted about in the case of a conveyance or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money-decree. In the case of an execution-sale, the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit for the realization of a mortgage-security directing the property to be sold, is not a complete test. The plaintiff claimed certain property from the defendant,

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the question in the case exclusively on the ground that the property had been purchased in execution of a money-decree without referring to the execution-proceedings. *KACAL GANPAYA v. MANJAPPA* I. L. R. 12 Bom. 691

106. ———— *Ancestral zamindari sold in execution of decree for money against the father, including the son's right of succession—Debt not immoral.* A sale in execution of

debt having been one which the son was bound to pay. *Bards Narain Sahu v. Ruder Perlash Meher*, I. L. R. 10 Calc. 626 (where the sale was only of

I. L. R. 16 I. A. 1

107. ———— *Money-decree against father—Attachment of ancestral estate.*

I. L. R. 12 Mad. 500

108. ———— *Liability of ancestral estate for father's debts—Improper and immoral debts of father—Evidence of general immoral character of father—Burden of proof—Pensioner Act, Certificate of Collector under The power of the father, as representative of the family, to bind the son's interests in the family estate,*

alleged to have been executed in 1878 by the defendant's father (since deceased) to the plaintiff's

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

father. The defendant pleaded, *inter alia*, that the loan was contracted without his knowledge and for immoral purposes, and that his share in the mortgaged property was not answerable for the debt. He also contended, as to a sum of R109-8-0 claimed by the plaintiff, that this sum was claimed in respect of saranjam, and was not recoverable by the plaintiff without a certificate under the Pensions Act. The lower Court found that the defendant's father had been a man of extravagant and

on the defendant of proving that the loan to the father secured by the mortgage-bond in the suit was for an illegal or immoral purpose, and that the defendant had not discharged this burden. The mere proof that his father had been a man of extravagant and immoral habits was not enough. *Held*, also, that, as no certificate from the Collector had been produced, as required by the Pensions Act, the claim to R109-8-0 should be disallowed. CHINTAMANRAY MEHENDALE v. KASHINATH

I. L. R. 14 Bom. 320

109. ———— Debts contracted for immoral and improper purposes—Burden of proof—Proof of immoral habits. In execution of a decree against the estate of V, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser, who sued for partition. It was contended that the decree was in respect of debts contracted by V for immoral and improper purposes. *Held*, that proof of immoral habits in the father did not establish that the debts were for immoral and improper purposes.

110. ———— Mortgage effected by and decree passed against father only—Father's debt—Effect of mortgage and decree on son's rights and interests. Where a Hindu son comes into Court to assail either a mortgage made by his father, or a decree passed against his father, or a sale held or threatened in execution of such decree—whether it be upon a mortgage-security or in respect of a simple money-debt—where there is nothing to show any limitation of the extent of interest sold or threatened with sale or charged in a security or dealt with by a decree, it rests upon him, if he seeks to escape from having his interest affected by the sale to establish that the debt he desires to be exempted from paying was of such a character that he, as the son of a Hindu, would not be under a pious obligation to discharge it, or that his interests in the property were not covered by the mortgage or touched by the decree, or affected by

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

the sale certificate. BENI MADHO v. BASDEO PATAK

PEM SINGH v. PARTAB SINGH

I. L. R. 14 All. 179

111. ———— Joint Hindu family—Money-decree against father alone for his personal debt—Attachment of joint-family property—Suit by sons to set aside attachment. Where in execution of a simple money-decree obtained

and which therefore could not be attached under it, and that they were in a position to ask to have those interests exempted from the threatened sale in execution. RAM DAYAL v. DURGASINGH

I. L. R. 12 All. 209

112. ———— Decree against father how far binding against sons—Question of fact—Acquiescence by sons in father's defence. In a suit against a Hindu father a decree had been obtained, the execution of which interfered with

funds being spent in its defence. On their suing for an injunction to restrain the decree-holder from

113. ———— Liability of member of joint family, though not made a party to the suit—"Personal" decree, meaning of. Where a decree provided for the sale of specified property of a joint family and, in the event of the amount of the decree not being thereby satisfied, for the realization of the balance from the defendants personally—*Held*, that a junior member of the joint family, who

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was liable for his share of a debt sued on, but who was not made a party to the suit, could not successfully plead that, the decree being a personal one in regard to the unsatisfied balance, he was not liable in regard to such unsatisfied balance. *Beni Madho v. Basdeo Patal*, I. L. R. 12 All. 99, and *Bhawani Prasad v. Kellu*, I. L. R. 17 All. 537, referred to. *HARI RAM v. BISHNATH SINGH*  
I. L. R. 22 All. 408

114. ———— Mortgage executed by father on the whole joint family property in respect of his own debts—Liability of sons—Burden of proof. The father of a joint and undivided Hindu family executed a mortgage over the whole immovable property of a joint family. The

discharge. *Held*, that the burden of proving that the debts in question were contracted for the purposes alleged lay on the plaintiffs. *Beni Madho v. Basdeo Patal*, I. L. R. 12 All. 99, followed. *Lal Singh v. Deo Narain Singh*, I. L. R. 8 All. 279; *Basa Mal v. Maharaj Singh*, I. L. R. 8 All. 205; *Subramanya v. Sadaniva*, I. L. R. 8 Mad. 75; *Hanooman Persaud Panday v. Munraj Kooniceree*, 6 Moo. I. A. 393; and *Bhagbut Pershad Singh v. Girja Koor*, I. L. R. 15 Calc. 717, referred to. *BHAWANI BAKSH v. RAM DAI*  
I. L. R. 13 All. 216

115. ———— Hypothecation by father of joint ancestral estate—Property described as "hag haquq zamindari apna"—Decree enforcing hypothecation—Attachment of estate—Suit by son for declaration that only father's interest is affected by hypothecation—Burden of proof. In a suit by the sons of a Hindu for a declaration that certain joint ancestral property was

decree were limited to the father's own interest:—*Held* by the Full Bench, that, if the plaintiffs could not show that the interest which was hypothecated was a limited interest, the Court must take it, as against the plaintiffs, that the family property was hypothecated. *Beni Madho v. Basdeo Patal*, I. L. R. 12 All. 99, and *Bhawani Baksh v. Ram Dai*, I. L. R. 13 All. 216, approved. *PEN SINGH v. PARTAB SINGH*  
I. L. R. 14 All. 178

116. ———— Simple money-decree against father how far binding upon son's interests in the joint family property. With reference to the question whether the whole joint-

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

family property or only the interest of the father therein is liable under a decree obtained against a Hindu father:—*Held*, that where there is nothing to show any limitation of the extent of the interest sold, whether the sale took place in execution of a

referred to. *MUHAMMAD HUSAIN v. DICHAUD*  
I. L. R. 14 All. 180

117. ———— Immoral origin of debt—Suit by a decree-holder against the sons of deceased judgment-debtor whose property had passed to them. A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it. The judgment-debtor

118. ———— Liability of sons during their father's lifetime for his antecedent debts—Form of decree—Transfer of Property Act, 1882. *Held* by the Full Bench, that the

purported to mortgage the joint family property,

purposes which, if the father was dead, would exonerate the sons from the pious obligation of paying such debts of the father. *Held*, also, that the decree in such a suit should be a decree for sale of the mortgaged property under a. 83 of Act No IV of 1882. *BADRI PRASAD v. MADAN LAL*  
I. L. R. 15 All. 75

119. ———— Mortgage-bond

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

*I. L. R. 17 Mad. 192*, distinguished. *Gurdhara Lal v. Kantoo Lal*, 22 W. R. 56; *Suroj Bansi Koer v. Sheo Persad Singh*, I. L. R. 5 Calc. 148; *Laljee Sahoy v. Fakar Chand*, I. L. R. 6 Calc. 135; *Khalil-ul-Rahman v. Gobind*, I. L. R. 20 Calc. 328, approved of. The liability of the sons in a Mitakshara family to discharge the father's debt is not limited, with regard to interest, by the provision of the Hindu law, which does not authorize the taking of interest exceeding the principal in amount, the provision being inapplicable to the *modus* where the amount of the father's debt must be determined with reference to the law of the land. *Deen Doyal Poramanick v. Keylas Chawder*, I. L. R. 1 Calc. 92; *Luchman Das v. Khanna Lal*, I. L. R. 19 All. 26, referred to. **PEAN KRISHNA TEWARY v. JADU NATH TRIPATHY**

2 C. W. N. 803

120. *Mitakshara family—Liability of son to pay father's debt incurred during son's minority—Representative capacity of father—Antecedent debt—Mortgage—Suit for sale on mortgage by father without joining sons—Non-joinder of parties—Transfer of Property Act (IV of 1882), s. 85—Notice of interest in mortgaged property—Civil Procedure Code (Art. XIV of 1882), ss. 28, 42.* In the case of a joint Mitakshara family consisting of a father and minor son where the father executed a mortgage-bond hypothecating ancestral family property during the minority of his son, and the mortgagee, with notice of the interest of the son in the mortgaged property, brought a suit against the father alone to enforce the mort-

incurred for illegal or immoral purposes:—*Held, per GROSS, J.*—That the share of the son in the ancestral property was liable for the satisfaction of

the suit in which the said decree was passed through the representation of his father. S. 85 of the Transfer of Property Act lays down only a rule of procedure; and the words "all person" in the section could have hardly been intended to include a Mitakshara son—much less a minor son—in a suit where the father is sued in his representative capacity. *Suroj Bansi Koer v. Sheo Persad Singh*, I. L. R. 5 Calc. 148; I. L. R. 61 A. 88; *Bhivessur Lal Sahoo v. Mahor Singh Luchmessur Singh*, I. L. R. 61 A. 233; 5 C. L. R. 477; *Nanomi Babuam v. Madan Mohan*, I. L. R. 13 Calc. 21; I. L. R. 13 I. A. 1; *Doulat Ram v. Mehr Chand*, I. L. R. 15 Calc. 70; I. L. R. 14 I. A. 187; *Purnod Narayan Singh v. Nonomoni Sahai*, I. L. R. 5 Calc. 845; *Bhagbut Pershad v. Girji Koor*, I. L. R. 15 Calc. 717; I. L. R. 15 I. A. 99; *Maharaj Prasad v. Maheswar*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

*North Sahai*, I. L. R. 17 Calc. 584; I. L. R. 17 I. A. 11; *Jagabhai Lalubhai v. Vijubhai Das*, I. L. R. 11 Bom. 37, relied on *Bhuvani Prasad v. Kallu*, I. L. R. 17 All. 537, dissented from. *Syad Emam Momtazuddin Mahomed v. Raj Coomar Das*, 23 W. R. 187; *Ramasamayyan v. Virasami Ayyar*, I. L. R. 21 Mad. 222; *Palani Goundan v. Eangayya Goundan*, I. L. R. 23 Mad. 207, referred to. *Semble*: (a) In the case of a joint Mitakshara family consisting of a father and minor sons, the father is "necessarily" the manager of the joint family, and as such, for all purposes, is the representative of the family. (b) And where the father, the managing member, mortgages family property for an antecedent debt, and a suit is brought and decree obtained against the father, such suit and decree should be regarded as instituted and pronounced against him in his representative capacity. (c) And that if a son, after a decree being obtained against the father upon a mortgage executed by the latter, sues to have it declared that his share is not liable to satisfy the said decree, or after a sale in execution thereof sues to recover possession of his share, he cannot succeed unless he

genuinely is not the manager of the family of the mortgaged property. *Bhuvani Prasad v. Kallu*, I. L. R. 17 All. 537, followed. *Rothschild*

in the mortgaged property. *Bhuvani Prasad v. Kallu*, I. L. R. 17 All. 537, followed. *Rothschild*

SUREJA PRASAD v. GOLIB CHAND

I. L. R. 27 Calc. 724  
4 C. W. N. 701

121. *Mitakshara family—Alienation of ancestral property by father—Liability of sons for father's debts—Mortgage—Suit by mortgagee against son for sale of ancestral property—Antecedent debt—Legal necessity—Illegal or immoral purpose—Money-decree—Limitation Act (XV of 1877), Art. 116, Sch. II.* In the case of a joint Mitakshara family where the father raised money on a mortgage hypothecating certain ancestral family property, and it was not proved that the money was required for payment of any antecedent debt, or that the money was raised or expended

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

gage is not binding on the son, but the debt not

PROSAD v. GOLAB CHAND

I. L. R. 27 Calc. 762

122. *Mitakshara law*

—Ancestral property, alienation of—Suit by mortgage against father and minor son for sale of ancestral property—Antecedent debt—Interest, rate of In the case of a Mitakshara family consisting of a father and minor sons, where the father hypothecates ancestral property, there being no proved necessity, but, on the other hand, no proof of immoral or illegal purposes, and no proof that the lender made any enquiry as to the purpose, the

estate inclusive of the mortgaged property. Debts incurred in transactions the character of which is no more than imprudent or unconscientiously imprudent or unreasonable, are debts to which a pious duty attaches under the Mitakshara law. *Luchmun Dass v. Girdhar Choudhry*, I. L. R. 5 Calc. 855, explained and followed *Gunga Prasad v. Ajaydin Pershad Singh*, I. L. R. 8 Calc. 131, followed. *Semble* That "antecedent debt" in

*Dipan Rai*, I. L. R. 8 All. 185, applied as to the rate of interest. *KHALILUL KARIM v. GOBIND PERSHAD* I. L. R. 20 Calc. 328

123. *Execution of*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

shara law. *Held*, that, inasmuch as there was an attachment subsisting at the time of the application, the estate of the judgment-debtor under attachment at the time of his death was liable after his death, even though it had passed to the surviving members of the joint Mitakshara family. *Suraj Bansi Koer v. Shro Persad Singh*, I. L. R. 5 Calc. 148; I. R. 6 I. A. 88, relied on. *Karnataka Hanumantha v. Anjukuri Hanumyya*, I. L. R. 5 Mad. 232, distinguished. *BENI PERSHAD v. PARBATI KOER* I. L. R. 20 Calc. 598

124. *Conditional contract to sell family lands—Birth of vendor's son before fulfilment of condition—Vendor and purchaser—Sale while vendor is out of possession—Suit by son to set aside alienation* A Hindu entered into a contract to sell certain land, being family property, of which he was not in possession, as soon as possession should be obtained. Before possession was obtained, a son was born to him. A decree for specific performance was passed and executed against him, the son not being brought on to the record. In a suit by the son for partition of the property in question.—*Held*, that the plaintiff had an existing right in the property which was not bound by the decree and the subsequent proceedings, and that he was entitled to the relief sought. *Semble* That a contract for sale of land made by a Hindu before a son is born to him is not binding on the son born before the transfer of the property takes place. *PONNAMBALA PILLAI v. SUNDARAPPAIYAR* I. L. R. 20 Mad. 354

125. *Suit to set aside alienation—Cause of action—Limitation* A son under the Mitakshara law, whatever right he may have during his father's lifetime, may, within twelve years from his father's death, sue to recover ancestral property improperly alienated by the father. *PROFAPNABAIN SINGH v. MONOHUR DOSS*

W. R. 1864, 98

128. *Cause of action—Limitation Act (XIV of 1859), s. 1, cl. 12—L's father, a Hindu, living under the Mitakshara law, alienated in 1843 ancestral immovable property by*

that L's cause of action accrued when possession was taken under the deed of sale, and not at the father's death. R's birth did not create a new right of action in L either alone or jointly with R. The suit, therefore, was barred by lapse of time. Where the alienation was by deed of conditional sale, followed by decrees for foreclosure and possession to which L and R were not parties.—*Held*, that the cause of action accrued when possession was taken under the decree. *RAJA RAY TR. WARI v. LUCHMUN PRASAD*

B. L. R. Sup. Vol. 731; 2 Ind. Jur. N. 8, 218  
8 W. R. 15

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

BEER KISHORE SURYE SINGH v. HUK BULLUR  
NARAIN SINGH . . . . . 7 W. R. 503

127. *Ancestral property—Cause of action.* According to the Mitakshara law, a son has a right, during the lifetime of his father, to set aside alienations of ancestral property made without his consent. His cause of action arises from the date when possession is taken by the purchaser. AGHOBI RAMASARAO SINGH v. COCHRANE . . . . . 5 B. L. R. Ap. 14

In such a case the cause of action arises at the date of the alienation. BEER PERSHAD v. DOORGA PERSHAD . . . . . W. R. 1864, 215

SEETUL PERSHAD SINGH v. GOUD DIAL SINGH . . . . . 1 W. R. 283

128. *Alienation by father without son's consent—Enquiry as to legal necessity by mortgages.* A mortgagee acquiring by operation of law the possession of an estate mortgaged by a Hindu father without the son's consent is bound to enquire whether the debt on account of which the mortgage was given was a legally necessary one or not, otherwise it will not avail him that the Court has on his application declared the mortgage foreclosed, or the conditional sale rendered absolute. PURMANUND v. ORUMBRAH KOER . . . . . W. R. 1864, 143

129. *Sale effected to pay ancestral debt—Obligation on purchaser to enquire whether it could have been paid from other sources.* Under Hindu law, where there is found to be an ancestral debt, and a sale is effected to pay it, the purchaser at such sale is not bound to enquire whether the debt could have been met from other sources. ASKY RAM v. GIRDHAREE 4 N. W. 110

130. *Obligation on purchaser to show necessity for sale—Onus probandi.* Where a son under the Mitakshara law sued to set aside sales by his father.—*Held*, that the purchasers were not bound to show an absolute necessity for the sales, it being sufficient if they have acted *bona fide* and with due caution, and were reasonably satisfied, at the time of their respective purchases, of the necessity of the sales in order to meet debts which the father had right to discharge. The onus probandi in such cases will vary according to the circumstances. BHUVRAM KOER v. SURESHCHANDER . . . . . 6 W. R. 149

131. *Onus probandi.* In a suit brought by a Hindu to contest an alienation of family property made by his father, the onus of proving that the alienation is binding on the son lies upon those who claim the benefit of the alienation. SUDRAMANIA v. SADAVILA . . . . . I. L. R. 8 Mad. 75

132. *Mitakshara law—Ancestral property—Refund of purchase-money.* Under the Mitakshara law, when a sale of ances-

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tral property by the father has been set aside in a suit by the son on the ground that there was no such necessity as would legalize the sale, and that the son had not acquiesced in the alienation, the son is entitled to recover the property without refunding the purchase-money, unless such circumstances are proved by the purchaser as would give him an equitable right to compel a refund. MODHOO DYAL SINGH v. KOLBUR SINGH . . . . . B. L. R. Sup. Vol 1018

S.C. MODHOO DYAL SINGH v. KOLBUR SINGH . . . . . 9 W. R. 511

133. *Mitakshara law—Legal necessity—Ancestral property—Refund of purchase-money.* A, a Hindu, subject to the Mitakshara law, sold his right and interest in the undivided ancestral estate of his family without the consent of his co-sharers, and not for the benefit of the estate, but in order to pay off a personal debt. The sale was by auction to an innocent purchaser for value. *Held*, that, in a suit brought within twelve years from the date on which the purchaser obtained possession, the sons and grandsons of A, deceased, were entitled to recover possession without making any refund of the purchase-money. NATHO LAL CHOWDRY v. CHAUDI SAHU . . . . . 4 B. L. R. A. C. 15; 12 W. R. 446

134. *Bona fide purchaser from vendee of father—Refund of purchase-money.* In a suit by some members of a joint family under Mitakshara law to set aside an alienation of some of the joint family property effected by their father, it appeared that ten years had elapsed since the alienation; and that about six years before the suit was brought, the purchaser from the father sold again to the principal defendants for valuable consideration, and there was no suggestion that these defendants did not purchase *bona fide*, the plaintiffs apparently acquiescing in the sale, and not interrupting during that time the enjoyment of the property by the father's vendee. The Court refused to set aside the alienation. The alienation would not have been set aside at any rate without a refund of the purchase-money to the defendants. SURUB NARAIN CHOWDARY v. SHEW GOVIND PANDEY . . . . . 11 B. L. R. Ap. 28

135. *Rights of minor son—Letters Patent—Transfer of Property Act (IV of 1882), s. 35—Mitakshara—Mortgage—Karta—Decree—Statutes, interpretation of—Notice—Civil Procedure Code (Act XIV of 1882), ss 437, 675—Jouder of parties—Redemption.* In a joint Mitakshara family, consisting of a father and a minor son, the father, as Karta of the family, by a mortgage bond hypothecated the joint property. The mortgagee sued the father alone, on the mortgage bond, without making the minor son a party, although he (the mortgagee) had notice of the son's interest in the mortgaged property at the time. The mortgage-debt was not found to have been contracted for illegal or immoral purposes. *Held*, [dissenting

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*Devji v. Sambhu, I. L. R. 24 Bom. 135, referred to*

*Devji v. Sambhu, I. L. R. 24 Bom. 135, referred to*  
*LALA SUBRAJ PRASAD v. GOLAB CHAND (1901)*  
 I. L. R. 28 Calc. 517  
 s. c. 5 C W. N. 640

1882), s. 31. By a written agreement dated 9th March, 1900, the first and second defendants (a son and his mother) contracted to sell to the plaintiff certain land which was ancestral property. The plaintiff stated that he subsequently discovered that the first defendant had a minor son whom he made a defendant in the suit (defendant 3), and he sued all three defendants for specific performance of the agreement, contending that the minor's interest was bound, inasmuch as the property was sold in order to pay family debts. *Held*, that no decree could be made against the minor defendant (defendant 3). No doubt, in order to satisfy such of his debts as would be binding on his heirs, a Hindu father can sell the property of the family mortgage

I. L. R. 24 Bom. 135

137. ——— Rights of son—*Mitakshara*—*Joint Hindu family*—*Mortgage by father*—*Suit for sale on mortgage, son not being made a party*—*Subse-*

HINDU LAW—ALIENATION—*contd.*4. ALIENATION BY FATHER—*contd.*

quent suit by son for declaration that his share is not liable under the mortgage decree against father—*Further plea that mortgage-debt was contracted for immoral purpose*—*Transfer of Property Act (IX of 1882), s. 83. The mortgagees to a mortgage of joint family property made by the*

The son sued the mortgagees for a declaration that his share was not bound by the decree, first, because he was not made a party to the mortgagee's suit for sale, and, secondly, because the mortgage-debt was contracted by his father for immoral or impious purposes. It was found in that suit that the mortgagees had at least constructive notice of the son's existence, and ought to have made him a party to their suit for sale. But

a moiety of the mortgaged property, and had

138. ——— *Mitakshara family*—*Liability of son for father's debt*—*Alienation of family property by father*—*Mortgage*—*Antecedent debt*—*Suit by mortgagee against father and sons for sale of mortgaged property*—*Limitation*—*Limitation Act (XV of 1877), Art. 132, Sch. II* Where a debt has been incurred by the father of a *Mitakshara* family for family purposes and the property of the family has been alienated to defray the debt, the sons cannot set up their rights against the purchaser, unless they are able to prove that the money in respect of which the alienation was made, was borrowed for immoral purposes, there is no distinction between debts incurred to pay off antecedent debts and those incurred to meet present necessities. The principle is applicable to partial alienations, such as mortgages. In a joint *Mitakshara* family composed of father and sons, the former executed a mortgage bond receipt of a loan, which the sons failed to prove to have been taken for immoral purposes. *Held*, that the mortgage bond was binding on the sons and that the



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limitation applicable to a suit on the bond in respect of the sons as well as in respect of the father was that provided by Art. 132, Sch. II of the Limitation Act. *Nanami Babuadas v. Modhwa Mohun*, 1 L. R. 13 Calc. 21 : L. R. 13 I. A. 1, *Bhagbut Pershad Singh v. Gurja Koer*, 1 L. R. 15 Calc. 717 : L. R. 15 I. A. 99, referred to *Luchmun Dass v. Giridhar Choudhry*, 1 L. R. 5 Calc. 855; *Surya Prasad v. Golab Chand*, 1 L. R. 27 Calc. 762, and *Venkataramanaya Pantulu v. Venkataramanna Doss Pantulu*, 1 L. R. 29 Mad. 200, not followed. **MAHESWAR DUTT TEWARI v. KISHUN SINGH** (1907) 1 L. R. 34 Calc. 184

139. — *Mitakshara family*—Alienation of family property by father—Liability of son for father's debt—Mortgage of joint-family property—Suit by mortgagee against father and son for sale of mortgaged property—Decree, form of. In a joint Mitakshara family consisting of a father and his minor son, the father mortgaged property belonging to the joint family. It was not proved that there was any legal necessity for the loan or any inquiry by the lender, nor that the loan was contracted for illegal or immoral purposes. In a suit by the mortgagee against the father and the son to enforce the mortgage, commenced within six years from the due date fixed by the mortgage: *Held*, that the mortgagee was entitled to have the security enforced as against the share of the mortgagor and also to a decree which would enable him to realise the debt by the sale of the share of the son in the ancestral property. *Luchmun Dass v. Giridhar Choudhry*, 1 L. R. 5 Calc. 855; *Khalilul Rahman v. Gobind Pershad*, 1 L. R. 20 Calc. 323, followed. The decision in *Luchmun Dass v. Giridhar Choudhry*, 1 L. R. 5 Calc. 855, is binding on the Court. There is a distinction between the position of the son in a suit in which a mortgage by his father is sought to be enforced against his share in the property, and his position after the alienation has been completed by an execution sale. *Nanami Babuadas v. Modhwa Mohun*, 1 L. R. 13 Calc. 21 : L. R. 13 I. A. 1, *Bhagbut Pershad Singh v. Gurja Koer*, 1 L. R. 15 Calc. 717 : L. R. 15 I. A. 99, *Surya Prasad v. Golab Chand*, 1 L. R. 27 Calc. 762, *L. R. 6 I. A. 38*, *Giridhar Lal v. Kantoo Lal*, 14 B. L. R. 187 : L. R. 11 I. A. 321; *Jamna v. Nain Suth*, 1 L. R. 9 All. 493, referred to. **MAHESWAR DUTT TEWARI v. KISHUN SINGH**, 1 L. R. 34 Calc. 184, dissented from. **KISHUN PERSHAD CHOWDHURY v. TIRAP PRSHAD SINGH** (1907) 1 L. R. 34 Calc. 735

140. — *Mitakshara*—Alienation—Right of son to contest validity of alienations of ancestral property made by father or grandfather prior to son's birth—Mortgage of ancestral property—Son's right of redemption. Under the Mitakshara school of Hindu Law, a member of a joint family can contest the validity of the alienation by his father or grandfather only of such an interest in the

## HINDU LAW—ALIENATION—contd.

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ancestral property as existed at his birth and vested in him by his birth. Where there is a complete transfer of property by mortgage by the father or grandfather prior to the birth of such member, the only interest that may vest on birth is the equity of redemption. **BHOLANATH KHETTRY v. KARTICK KISHEN DASS KHETTRY** (1907)

1 L. R. 34 Calc. 372

141. — Self-acquired property—Request of self-acquired property by a testator to his sons—Intention expressed by will that property should be taken in severalty, but its terms otherwise consistent with ordinary rules of inheritance—Birth of grandson and subsequent alienations by gift—Validity of alienations—Property having quality of ancestral property though taken under the will—Intention—Presumption in favour of ancestral nature of estate. A Hindu father possessed of self-acquired property may deal with that property as he pleases, either by gift or by testamentary disposition; and his sons cannot dispute the disposition, even though it be in favour of a stranger. Any of the observations made in *Tara Chand v. Reeb Ram* (3 M. H. C. R. 50) which conflict with this proposition cannot now be regarded as good law. A father may leave his self-acquired property to descend to his sons as ancestral property, or, if he makes any disposition of it in favour of a son, he is at liberty to preserve for it the quality of ancestral property. Whether in any given case the property was intended to pass to the son as ancestral or as self-acquired property is a question of intention, turning on the construction of the instrument of gift. If there are no words indicating the contrary intention, the natural inference should be that the father intended the sons to take his property as their ancestral estate. If partition is made by the father on the footing that the property is partible property, although there is in point of law a disposition made by the father, the intention of the father will be taken to be that the quality of the ancestral property shall remain. Plaintiff's father made voluntary gifts of certain property to the defendant after the date of plaintiff's birth. Plaintiff now sued to set these alienations aside, and to recover the property, one ground being that the property alienated was ancestral property in the hands of his father, in which plaintiff had acquired an interest by birth, and that his father had, in consequence, no power to make the alienations. The whole of the property in question had been self-acquired, originally, by plaintiff's paternal grandfather, who had disposed of it by will to his three sons, of whom plaintiff's father was one. Plaintiff, however, contended that, notwithstanding this fact, the property had the quality of ancestral property in his father's hands. From the terms of the will it appeared that the testator intended his sons to take the property in severalty, but in other respects the dispositions contained in the will were consistent with the ordinary rules of inheritance under the Hindu law. There were no

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words in the will indicating any intention that the sons should hold their shares free from the incidents of ancestral property. *Held*, that plaintiff was entitled to recover. **NAGALINGAM PILLAI v. RAMACHANDRA TEVAR (1901)**

I. L. R. 24 Mad. 429

142. ——— *Alienation by father—Ancestral and self-acquired property—Onus of proof—Suit to set aside alienation as being made without legal necessity—Conjecture and positive proof.* In a suit to set aside a deed of sale of immoveable property executed by the plaintiff's father, who had succeeded to it (*inter alia*) as the next reversionary heir on the death of the widow of the last male owner, the plaintiff alleged that the land sold was ancestral property, and that the alienation had been made without legal necessity and was therefore void. The evidence showed that the last male owner had acquired some lands in the district by purchase and others on abandonment by collateral relatives, but there was no evidence defining the boundaries of these portions respectively, that being merely a matter of conjecture. *Held*, that the onus was on the plaintiff to show that the property alienated was not

I. L. R. 30 Cal. 1039  
S.C. I. R. 35 I. A. 206  
12 C. W. N. 104

## 5 ALIENATION BY MOTHER

1. ——— *Mortgage by a married woman of property inherited from her father—Legal necessity—Expenses of daughter's marriage.* Ordinarily it is the duty of the father in a Hindu family to provide for his daughter's marriage, but whether the father was not possessed of sufficient means to do so, and the mother, to raise money to meet the expenses of the daughter's marriage, mortgaged property of her own which had come to her from her father; *Held*, that the mortgage was made for legal necessity, and was a valid mortgage. **RUSTAM SINGH v. MOTI SINGH**

I. L. R. 18 All. 474

2. ——— *Woman's estate—Power of alienation—Gift of land on daughter's marriage*

marriage with her daughter. The gift was not found to be otherwise than reasonable in extent. *Held*, that the gift was binding on the reversioner. **RAMASAMI AYYAR v. VENKATESAMI AYYAR**

I. L. R. 23 Mad. 113

HINDU LAW—ALIENATION—*contd.*5. ALIENATION BY MOTHER—*contd.*

3. ——— *Minor's estate—Guardian—Adopted son—Sale by adoptive mother—Suit by son to set aside sale—Purchase money paid by vendee to mother not recoverable from the son.* A Hindu mother, while her adopted son was a minor and had a guardian of property appointed to him by the Court, alienated some of the minor's property, treating it as her own. The adopted son, on attaining his majority, sued to set aside the sale. *Held*, that the mother had no power to alienate

had thereby benefited, yet the defendant was not entitled to recover the purchase money from the plaintiff. The debts had been paid, not as the plaintiff's debts, but as the debts of the father, who claimed adversely to her son. **NATHU PIRAJI MARWADI v. BALWANTRAO BIN YESHWANTRAO (1903)**

I. L. R. 27 Bom. 390

## 6. ALIENATION BY DAUGHTER.

——— *Legal necessity—Alienation—Hindu daughter's right to alienate property—Onus of proof—Sradh ceremony—Government revenue—Succession Certificate, costs of—Property sold for arrears of Road cess, recovery of.* A Hindu widow died leaving her surviving a daughter as life-tenant to the estate of her deceased husband which was in involved circumstances. The daughter executed a *kobala* and a mortgage of the properties, and out of the moneys thereby obtained she paid for the *sradh* ceremony of her mother, the Government revenue, the costs of a succession certificate and a rent-decree. She also executed another mortgage and used the money obtained to recover the property sold for arrears of road-cess. In a suit brought by the reversionary heir after the death of the life-tenant to set aside the *kobala* and the mortgages as having been made by the life-tenant in excess of her power of alienation—*Held*, that it was for the defendant to show that these alienations had been made for legal necessity. *Held*, further, that the expenses of the

recover the property sold for arrears of road cess was not so made. **Raj Chandra Deb Bhas v. Sheeshoo Ram Deb, 7 W. R. 146, Shekhat Hosain v. Sassi Kar, I. L. R. 19 Cal. 783, Mahanand Chuckerbutty v. Banimadhub Chatterjee, I. L. R. 24 Cal. 27. Rupram Namasudra v. Iwar Namasudra, 6 C. W. N. 202. v. Jiban tinguahed (1903).**

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW.***See HINDU LAW—***STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.****I. L. R. 25 ALL 478****WILL—CONSTRUCTION OF WILLS.****I. L. R. 28 CALC. 499****WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION****(a) ALIENATION OF INCOME AND ACCUMULATIONS.**

1. ——— **Alienation of income—Accumulations.** A Hindu widow can alienate the income of the husband's property, it forming no part of his estate; but income and accumulations are not the same thing; therefore, *quere* whether she can so deal with accumulations. In the goods of HARENDRA NARAYAN, KALASHNATH GHOSE v. BISWANATH BISWAS . 4 B. L. R. O. C. 41

2. ——— **Accumulations—Purchase of property out of income for maintenance of family—Reversioners.** A Hindu widow cannot alienate moveable or immovable properties acquired by her out of the funds derived from the income of her husband's estate. Such properties descend to the heirs of the husband, and not of the widow. Where, however, a widow held under a deed which conveyed the property to her to enjoy for her lifetime and to incur all needful expenses:—*Held*, that she was entitled to invest some out of the income for the benefit of her daughter and granddaughter in the purchase of immovable property for their maintenance. CHOWDEY BROLANATH THAKOOR v. BHAGABUTTI DEBI. BHAGABUTTI DEBI v. CHOWDEY BROLANATH THAKOOR . 7 B. L. R. 93; 15 W. R. 63

Reversed on the merits by the Privy Council  
I. L. R. 1 CALC. 104

3. ——— **Accumulations.** It being doubtful whether the purchase of the land in dispute by the plaintiff's mother was made out of the current income (in which case it is her self-acquired property) or out of accumulations of her husband's estate.—*Held* (broadly following the principle laid down in *Scorpemonee Dasse v. Denobundo Mullick*, 9 Moo. I. A 13), that the purchase being made with moneys derived from the income of her husband's estate then lying in her hands, she was competent to alienate her right and interest in whole or in part to reconvert them into money and expend it as she choose. *Gross v. Amritamayi*, 4 B. L. R. O. C. 1, explained and reconciled; and *Gonda Koor v. Oodey Singh*, 14 B. L. R. 19, distinguished. **PDDDA MONEE DOSSIE v. DWARKANATH BISWAS**

**25 W. R. 335**

4. ——— **Alienation of property purchased with funds derived from husband's estate.** A widow is not competent to alienate property which she has purchased with funds derived

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(a) ALIENATION OF INCOME AND ACCUMULATIONS—contd.**

from her husband's estate after his death, and purchases with such funds would not belong to the widow otherwise than as the land from which the money arose belonged to her. **NIHAL KHAN v. HURCHURN LALL** . 1 Agra 219

5. ——— **Alienation of house erected by widow out of savings of land inherited from husband.** A Hindu widow has no power to sell a house erected by her out of savings of her income on land inherited from her husband. **FARRA DOBEY v. GORI LALL** . 8 C. L. R. 89

6. ——— **Alienation of property purchased with accumulations derived from husband's estate—Income—Accumulations. Quere** Whether a Hindu widow has power to alienate, beyond her own life-interest, property which she has purchased from accumulations of income derived from her late husband's estate, made after his death, and while she was entitled to a Hindu widow's interest in such estate? **HUSSABUTTI KORRAIN v. ISRI DUTT KOER**

**I. L. R. 5 CALC. 512; 4 C. L. R. 511**

In the same case in the Privy Council it was held that a widow's savings from the income of her limited estate are not her stridhan; and if she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. But it is not always possible to fix the line which separates accretions to the husband's estate from income held in suspense in the widow's hands, as to which she has not determined whether or not she will spend it. Where, however, both the family property and property purchased by the widow out of savings from her income were alienated by her, with the object of changing the succession:—*Held*, that accretion was clearly established, and that the after-purchases were inalienable by her for any purpose that would not justify alienation of the —

A daughter's —  
lath,  
not  
title  
—collateral heirs expectant on the deaths of the widows **ISRI DUTT KOER v. HAKSABUTTI KORRAIN**

**I. L. R. 10 CALC. 324; 13 C. L. R. 418  
I. R. 10 I. A. 150**

7. ——— **Widow's power over land purchased out of income of husband's estate. Descent of lands purchased by widow out of income of life-estate.** Land purchased by a Hindu widow with money derived from the income of her life-estate passes, when undisposed of by her, to the heirs of her husband as an increment to the estate, and not to her heirs as property over which she had absolute control. **ANGUD CHENDRA MONDAL v. NIRMALY JOURDAR**

**I. L. R. 9 CALC. 756; 12 C. L. R. 352.**

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(a) ALIENATION OF INCOME AND ACCUMULATIONS—contd.**

8. ——— *Inheritance to property purchased by Hindu widow out of the income of her estate.* When a widow, not spending the income of her widow's estate in the property which belonged to her husband when living, has invested such savings in property held by her without making any distinction between the original estate and the after-purchases, the *prima facie* presumption is that it has been her intention to keep the estate one and entire, and that the after-purchases are an increment to the original estate. The authority upon this matter is found in *Iridut Koer v. Hansbutti Keerani*, I. L. R. 10 Cal. 324: L. R. 10 I. A. 150, where a widow having made no distinction between the original estate and the after-purchases, the latter were held inalienable by her for any purpose not justifying alienation of the former. *SHEOLOCHUN SINGH v. SANEH SINGH*, I. L. R. 14 Cal. 387

L. R. 14 I. A. 63

9. ——— *Accumulations by Hindu widow—Accumulations—Period up to which they may be dealt with—Legacy to Hindu widow.* The right of a Hindu widow to the income and accumulations of her husband's estate arising subsequently to his death is absolute, and is not affected by the fact that she may receive them in a lump sum; but whether she receives them as they fall due or after they have accumulated in the hands of others, her right is the same. The question to be sought for in determining her right to deal with such income and accumulations of income is one of intention. If she has invested her savings in such a manner as to show an intention to augment her husband's estate, she cannot afterwards deal with such investments, except for reasons which would justify her dealing with the original estate; but if she has evinced no such intention, she can, at any time during her life, deal with the profits. Where she invests her income, making a distinction between the investments and the original estate, she can at any time thereafter deal with such investment, save in the case of the purchase of other property as a permanent investment. But should she invest her savings in property held by her without making any distinction between the original estate and the after-purchases, the *prima facie* presumption is that it has been her intention to keep the estate one and entire, and that the after-purchases are an increment to the original estate. *GIRISH CHUNDER ROY v. BROUGHTON*

I. L. R. 14 Cal. 861

10. ——— *Hindu widow's estate—Her right to dispose of accumulated income not made part of the inheritance—Intention of the widow in regard to it.* The executor of the will of a Hindu testator made over to the widow of the latter an aggregate sum consisting of accumulations of income accrued during eight years from her hus-

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(a) ALIENATION OF INCOME AND ACCUMULATIONS—contd.**

The widow did not act showing an intention on her part to make this sum of money, the greater part of which she invested in Government securities, part of the family inheritance for the benefit of the heirs. After the lapse of about twenty years, she disposed of it as her own. *Held*, that the money so invested by the widow belonged to her as income derived from her widow's estate, and was subject to her disposition. *SADAMINI DAS v. ADMINISTRATOR-GENERAL OF BENGAL*, I. L. R. 20 Cal. 433

L. R. 20 I. A. 12

**(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS.**

11. ——— *General power of widow to alienate—Status of widow as distinguished from that of manager—Liabilities of alienes.* A widow stands in a different position from that of a manager of a joint family. The latter can act only with the consent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her. She can therefore do what the body of co-parceners can do, subject always to the condition that she acts

*NAJI GOVIND GODBOLE v. DENKAR DRONDEV GODBOLE*, I. L. R. 11 Bom. 320

12. ——— *Legal necessity—Necessity, evidence of.* A sale by a Hindu widow of land inherited by her from her husband is valid only when

have been required. *RANGASWAMI AYYANAR v. VANJULATAUNAL*, 1 Mad. 28

13. ——— *Suit by reversioner—Cause of action.* A Hindu widow, obtained a loan of a sum of money by mortgage of a certain parcel of property belonging to her husband.



HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—*contd.*

mouzahs. In the proceedings taken in execution of that decree *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had, on the 8th November 1890, purchased five out of the seven mouzahs at a sale in execution of certain decrees against *R*. On the 29th February 1884 *L*'s claim was allowed, and on the 11th August 1894 *M* brought this suit against *L*, *S*, *R*, and *D*, and the decree-holders in the suits against *R*, for a declaration of his right to follow the mortgaged property in the hands of *S*. It was found as a fact that the adoption of *D* was invalid ;

estopped from denying the validity of *D*'s adoption, and thus having been a party to *M*'s first suit, the question as to the liability of the mouzahs to satisfy the mortgage-lien was *res judicata* as against him. It was also contended that the five mouzahs should not be saddled with the whole of the mortgage-debt, but that the mouzah in the hands of *M* should bear its proportionate part thereof. *Held*, that, though *B* purported to execute the mortgage as guardian for *D*, though *D* was not the adopted son of *A*, the substance of the transaction and not the form had to be looked at, and as *B* had full power to alienate for legal necessity, the mortgage was still binding on the estate of *A*, and,

but that the mouzah in the hands of *M* must bear its share of the mortgage-debt, and that the decree of the lower Court was wrong in declaring that the five mouzahs in suit were to bear the whole amount of the debt. *LALA PARSHU LAL v. MYLNE*

I. L. R. 14 Calc. 401

22. — Adopted son's right to impeach alienation unnecessarily made by his adoptive mother before his adoption—Widow, alienation by—Alienee from widow bound to inquire if legal necessity for alienation—Evidence. Onus of proving necessity for alienation by the widow. The plaintiff claimed, as the adopted son of one *K*, to recover possession of his adoptive father's property which had been mortgaged by his (*K*'s) widow *R* (defendant No. 1) to the third defendant *B* prior to the plaintiff's adoption by her. The property had come into *R*'s possession

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—*contd.*

incumbered with a mortgage effected by her husband, and, in order to redeem that mortgage, she

brought this suit to recover the property. He contended that *R* had no power to alienate or mortgage the ancestral immovable property of her deceased husband, and he claimed, as the adopted son of *K*, to be entitled to the property free from the mortgages or other incumbrances with which *R* had attempted to charge it. For the defendants it was contended, *inter alia*, that the plaintiff could not impeach transactions effected by his adoptive mother prior to his adoption. *Held*, that the plaintiff

*R* to her husband, who was the last owner of this ancestral property. The plaintiff at once succeeded to that property upon his adoption, and as holder of his adoptive father was entitled to object to any alienation made by *R*, on the principle that the restrictions upon a Hindu widow's power of alienation are inseparable from her estate, and their existence does not depend on that of heirs capable of taking on her death. *Held*, also, that the plaintiff was entitled to redeem the property on payment of such amount only as was raised by *R* for the purpose of meeting expenses necessarily incurred by her. *Held*, further, that the onus of proving the necessity for alienation lay upon *B*. The Court found that there was no evidence that any sum beyond Rs. 622, the amount of *Y*'s mortgage,

instead of Rs. 999. *LAKSHMAN BHAI KHOPKAR v. RADHABAI* I. L. R. 11 Bom. 609

23. — Responsibility of lender—Power of Hindu widow to alienate—Qualified title to alienate in contracting debt by manager of estate charging it in the hands of heir—Date of interest, as regards necessity, distinguishable. A suit was brought by a creditor who had advanced money for the payment of Government revenue upon an estate under the management of a Hindu widow. The plaintiff's agent had received rents to a certain amount from part of the estate. *Held*, that the plaintiff ought to have taken care that this sum was applied in part reduction of the debt to him, and that it must be deducted from the amount chargeable to the estate in the hands of the



**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.**

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might have been made liable beyond the widow's lifetime, if in fact no instrument charging the property beyond the widow's lifetime has been executed by the widow. *Shiamanand v. Har Lal*, I. L. R. 18 All. 471; *Ramayami Mudaliar v. Sellattammal*, I. L. R. 4 Mad. 375, referred to. *Rameeswar v. Sitter v. Ichamoyi Das*, I. L. R. 6 Cal. 36, dissented from. *Dhiraj Singh v. MANGA RAY* . . . I. L. R. 19 All. 300

28. ——— Estate of Hindu widow or daughter—Powers to alienate family estate—Ancestral family trade—Powers of manager The estate of a Hindu family in which, after the death of the father and his widow, a daughter held an interest for life, comprised a family trade carried on by a manager on her account. Held, that the restriction upon her power to alienate remained

The case of a widow or of a daughter, under such circumstances, differs from that of the manager or head of an undivided family who manages an

estate has devolved, has no larger power to pledge the ancestral assets than his principal. It is not incumbent on the defendant who relies on the absence of legal necessity for the borrowing by a woman holding her limited estate to plead or to prove such absence; but it is for the plaintiff to state and to prove all that will give validity to the charge. *Amarnath Sah v. Achhan Kunwar*, I. L. R. 14 All. 426 I. R. 19 I. A. 196, referred to and followed. *SHAM SUNDAR LAL v. Achhan KUNWAR* . . . I. L. R. 21 All. 71 I. R. 25 I. A. 183 2 C. W. N. 729

Upholding decision of High Court in *ACHHAN KUNAR v. THAKUR DAS* . I. L. R. 17 All. 125

29. ——— Power of alienation under will—Mortgage taken from Hindu widow—Unpaid interest claimed on her deceased husband's mortgages—Will, construction of. A parlanashin widow executed a mortgage of part of the family estate to secure payment of the balance of interest alleged to be due on three previous mortgages which had been executed by her

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.**

- (b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—contd.

husband in his lifetime Justifying necessity for her to encumber was not shown, nor enquiry by the mortgagee as to her authority. Even if the

circumstances, the mortgage executed by her was invalid. Notes promising to pay interest, additional to that contracted for in the mortgages had

30. ——— Gift by Hindu widow after mortgage—Equity of redemption, alienation of.

31. ——— Alienation by widow as

that the sale must be taken to be proper and valid, unless it appeared that to the purchaser's knowledge she was for an unlawful purpose converting the estate. Held, also, that, she having the right to sell as administratrix, it could not be presumed that she sold as a widow. *LOGANADA MUDDALI v. RAMASWAMI* . . . 1 Mad. 384

32. ——— Grounds supporting charge on inheritance by a widow for her debt—Obligation of purchaser to show nature of transaction—Necessity. In transactions such as the alienation by the widow of her estate of inheritance derived from her husband, any creditor seeking to enforce a charge on such estate is bound at least to show the nature of the transaction and to show credit on the money necessities.



**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.**

- (b) **ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—contd.**

laid down in *Hunooman Persaud Panday v. Bobooee Munraj Koonverree*, 6 Moo. I. A. 392, in regard to the manager for an infant has been applied also to alienations by a widow of her estate of inheritance and to transactions in which a father, in derogation of the rights of his son, under the Mitakshara law, has made an alienation of ancestral family estate. *KAMESWAR PERSHAD v. RUM BAHADUR SINGH*

I. L. R. 8 Calc. 843; 8 C. L. R. 381  
L. R. 8 I. A. 8

**33. ——— Purchaser, obligation of—**  
*Alienation for sum larger than necessity required. Semble* In purchasing from a Hindu widow the purchaser is not bound to look to the appropriation of the money, nor is he affected by the fact that the alienation was made for a larger sum than the necessity of the case required. *KANIKRASHAD ROY v. JAGADAMBA DAS*

5 B. L. R. 508

**34. ——— Consent of reversioners—**  
*Movable and immoveable property—Alienation for worship of idol.* A Hindu widow has power,

to permit the male heirs of her late husband to receive the rents:—*Held*, that such heirs were en-

S. B. L. R. C. C. 50

**35. ——— Gift of immoveable property inherited from husband.** A Hindu widow who has inherited immoveable property from her husband, though possessed of a limited power of alienating portions of such property for necessary purposes or spiritual uses, cannot dispose by a gift in dharam or Krishna-pau of the whole of such immoveable property without the consent of the heirs of her husband. *BRASKAR TRINBAK ACHARYA v. MAHADEV RAMJI*

6 Bom. O. C. 1

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.**

- (b) **ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—contd.**

**36. ——— Necessity—**  
*Recital in deed of sale.* A recital in a deed of sale by a Hindu widow of her deceased

Such a transaction may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events, there ought to be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and justified by Hindu law. *RAS-LAKSHI DEBI v. GOKUL CHANDRA CHOWDHRY*

3 B. L. R. P. C. 57; 12 W. R. P. C. 47  
13 Moo. I. A. 209

**37. ——— Want of consent of remote reversioners.** *Semble:* An alienation by a widow and next reversioner without the consent of subsequent reversioners is not binding on such reversioners. *Per PIGOT, J. GOPFENKATH MOOKERJEE v. KALLY DOSS MULLICK*

I. L. R. 10 Calc. 225

**38. ——— Effect of sale**

**39. ——— Right of rev.**

lifetime. Only immediate reversioners are entitled to impeach a sale by a widow. *RADHA v. KOAR*

W. R. 1854, 148

*CHUNDER MONEE DOSSEE v. JOYKISHIN SINGH*

1 W. R. 107

**40. ——— Consent of next reversioner, effect of, as to others.** A grant by a Hindu widow, with the sanction and concurrence of the next reversioner, is valid and creates a title which cannot be impeached on the death of the

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**41. ——— Consent of heirs—**  
*Legal necessity.* An alienation by a Hindu widow of immoveable property inherited from her husband is invalid in the absence of legal necessity, but the invalidity can be removed by the con-

## HINDU LAW—ALIENATION—cont'd.

## 7. ALIENATION BY WIDOW—cont'd.

## (b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—cont'd.

sent of all the heirs of the widow's husband who are likely to be interested in disputing the transaction. *Raj Lukhee Deba v. Gokool Chunder Choudhry*, 13 Moo I. A. 207-3 D. L. R. P. C. 57, followed. A sale made conjointly by a Hindu widow and her daughter, who subsequently predeceased her mother, of immovable property inherited by the widow from her husband, in the absence of legal necessity, was ordered to be set aside; and the grandsons of the second cousins of the widow's husband held entitled to recover the property on recouping the vendee the expenses incurred on improvements. *VARJIVAN RANGU v. GHELI GOKALDAS*. I L R. 5 Bom. 563

42. ———— *Alienation made with consent of next reversioner—Remoter reversioners.* A gift by a Hindu widow, who has succeeded to the separate estate of her deceased husband, of such estate is not valid, and does not create a title which cannot be impeached by the remoter reversioner, because it has been made with the consent of the next reversioner. *Raj Bullubh Sen v. Gomeesh Chunder Roos*, I. L. R. 5 Calc. 44, and *Noferdoss Roy v. Modhoo Soondari Burmonia*, I L. R. 5 Calc. 732, dissented from *Raj Lukhee Deba v. Gokool Chunder Choudhry*, 13 Moo I. A. 209, and *Collector of Masulipatam v. Cawal Pencala Narrainapah*, 8 Moo I. A. 829, referred to. *Sia Das v. Gur Sahai*, I L. R. 7 All. 362, and *F. A. No 116 of 1882 distinguished* *RAMPAL Rai v. TULA KUMAR*. I L. R. 6 All. 118

*MADAN MOHAN v. PURAN MAL*

I. L. R. 6 All. 268

*See BHAGWANT v. SUEHI*

I. L. R. 22 All. 33

43. ———— *Evidence of necessity.* The consent of a former reversioner to a sale by a Hindu widow, though not binding evidence on a subsequent heir, is strong presumption of the existence of necessity at the time of sale, to be rebutted only by proof of fraud and collusion, or of the absence of necessity. *KALEE MOHAN DEB ROY v. DHUNJOY SHAH*. 6 W. R. 51

44. ———— *Attestation by reversioner.* Where certain landed property in the

not conclusive in law as to the necessity for the sale,

45. ———— *Attestation of conveyance by reversioner—Waste.* The fact of a

## HINDU LAW—ALIENATION—cont'd

## 7. ALIENATION BY WIDOW—cont'd.

## (b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—cont'd.

reversioner being an attesting witness to a convey-

48. ———— *Widow's estate—Conveyance by presumptive heir—Ratification by widow—Effect of witnessing deed on rights of witness—Evidence of consent.* During the lifetime of a Hindu widow, her son, the then presumptive heir to the property of which she was in possession, conveyed it to purchasers by deeds to which she was not a party. Subsequently she by separate deed ratified the conveyances. This deed was witnessed by a more remote reversioner. The son died during the lifetime of his mother, and the witness to the deed of ratification became the next reversionary heir. *Held*, in a suit by him after the widow's death for possession, that at the time of the conveyances the son had a mere contingent reversionary interest in expectancy, and that the subsequent ratification by his mother could not operate as a surrender of her estate so as to change the conveyances, and make them enure as absolute conveyances, but could only amount to a conveyance of her interest. *Held*, also, that the fact that the reversionary heir witnessed the deed of ratification did not in itself amount to evidence of consent to it on his part. *RAM CHUNDER PODDAR v. HARI DAS SEN*. I L. R. 8 Calc. 463

47. ———— *Effect of partition by Hindu widows of their husband's estate.* Two Hindu widows, after a compromise between themselves reciting that each had obtained absolute proprietary right in her share of the husband's estate, mortgaged certain properties forming portion thereof. *Held*, that the mortgage did not bind the husband's estate in the absence of proof both of legal necessity and of bona fide inquiries by the mortgagee. *DHARAM CHAND LAL v. BHAWANT MISRAIN*. I L. R. 24 I. A. 183  
I. L. R. 25 Calc. 189

48. ———— *Consent of reversioner—Alienation by widow of land inherited from her husband—Reversioner—Consent of reversioner to alienation—Subsequent claim by son of consenting reversioner to set aside alienation.* One Gobind Bhagwant died, leaving him surviving a widow, Radhabai, a sister, Bibimbai, and her son, Venkatesh. Radhabai alienated to the defendant five plots of land inherited by her from her husband.

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—*contd.*

were received by Venkatesh, and the sale-deed was attested by him. The other three plots (Nos 497, 498 and 499) were relinquished by Radhabai in favour of the defendant, as she was unable to pay the Government assessment. The plaintiff was the son of Venkatesh, and was born after these transactions. After the sale and relinquishment in favour of the defendants Bhimabai died, then Venkatesh, and in 1889 Radhabai died. In 1897 the plaintiff brought the present suit, as reversionary heir of Govind Bhagwant against the defendant, to recover possession of the five plots of land alienated to him by Radhabai. *Held*, that the sale of the two plots Nos. 495 and 496 by Radhabai to the defendant was good, and the plaintiff was not entitled to recover them. The consent given by Venkatesh, the plaintiff's father, who was at the time the only male reversioner in existence, validated the sale. As to the remaining three plots (Nos. 497, 498 and 499), the plaintiff was entitled to recover them. There was no consent given or legal necessity for their alienation proved. *VINAYAK VITTHAL BHANOE v. GOVIND VENKATESH KULKARNI* (1900)

I. L. R. 25 Bom. 129

49. ———— *Lease by a widow—Consent of next female reversioner, how far binding on next male reversioner—Ratification* Where a Hindu widow, with the consent of the next female reversioner, granted a lease, and subsequently, during the minority of the son of the latter, who came into possession on their death, the manager of the minor under the Court of Wards brought a suit for rent against the lessee, and also executed an *ekarnama* confirming the lease: *Held*, that such confirmation was sufficient to render the lease valid as against the minor, at least during his minority. *Quare*: Whether an alienation by a widow with the consent of the next female reversioner is valid against the next male heir. *WALIUL HASSAN v. GOPAL SAKUN NARAIN SINGH* (1902) 6 C. W. N. 905

50. ———— *Duty of alienee—Alienation for legal necessity—Duty of person advancing money to Hindu widow—Burden of proof.* If a mortgagee advances money to a Hindu widow holding a widow's estate in the property mortgaged, after making proper inquiry for the purpose of ascertaining that the money is required for legal necessity, it is not incumbent on him to see that the money he ad-

14 All. 420, referred to. *GHANSHAM SINGH v. BADIYA LAL* (1902) I. L. R. 24 All. 547

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—*contd.*

51. ———— *Widow, alienation by—Putni lease—Legal necessity—Consent of reversioner—Delegation by reversioner of his power to consent to his executor.* The power reposed in the reversioner of validating an invalid alienation by a Hindu widow is one, which he is not competent to delegate to his executor. An alienation made by a Hindu widow without legal necessity is not void, but only voidable, and may be validated by the consent of the reversioner. *Modhu Sudan Singh v. Kooke*, I. L. R. 25 Cal. 1; I. L. R. 24 I. A. 161, followed. *HAYES v. HARENDRA NARAIN* (1904)

I. L. R. 31 Cal. 696

52. ———— *Costs of litigation—Widow—Alienation—Arrangement between co-widows—Adopted son—Right of the adopted son to set aside the alienation.* A Hindu died leaving him surviving two widows, C and B. The two widows after a time found that they could not agree. C (the senior widow) passed a document to B (the junior widow) on the 17th July 1879, whereby C gave B possession of certain lands, houses, etc.,

death be entitled to "whatever mortgage and immovable property there is" In 1883 and again in 1885 B sold portions of this property to meet certain expenses necessarily incurred by

possession of the property alienated by B. *Held*, that, under the agreement of 1879, B had authority from C to do any act necessary for the due and proper management of the property and one of those acts was to pay the costs of the litigation

I. L. R. 29 Bom. 346

53. ———— *Suit by reversioner—Ali-*

of  
II.  
re-  
diate reversioner can bring a declaratory suit that an alienation by a Hindu widow is not for legal necessity and that the purchase from the widow cannot be in force beyond the lifetime of the widow; but this rule has no application where the immediate reversioner is herself only the holder of

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—contd.**

a life estate. Although the right of the nearest reversioner, for the time being, to contest an alienation or an adoption by the widow may have been barred by limitation against him, this will not bar the similar rights of subsequent reversioners. *Bhagvanta v. Sukhi, I. L. R. 22 All. 33*, rehed on.

sioner became entitled to maintain the suit. *Gorinda Pillai v. Thayammal, 14 Mad. L. J. 209*, followed. *ABINASH CHANDRA MAJUMDAR v. HARI NATH SARA (1905) I. L. R. 32 Cal. 62 s.c. 9 C. W. N. 25*

**54. ———— Alienation by Hindu widow—Limitation—Suit by reversioner for possession—Limitation Act (XV of 1877), Arts. 91, 141.** Where a reversioner sued to recover certain property, which had been alienated by a

*Singh v. Rook, I. L. R. 25 Cal. 1*, and *Narmada Devi v. Shashidhuran Bui, 3 C. W. N. 802*, referred to. *HARILAL OJHA v. DASARATHI MISRA (1905) I. L. R. 33 Cal. 257*

**55. ———— Legal necessity—Alienation by widow—Order for interest or decree in execution where decree did not allow interest—Sum for interest made part of consideration for sale deed—Res judicata—Decision in suit for pre-emption—Civil Procedure Code, s. 13.** A Hindu widow in possession of her husband's immoveable property for a widow's estate executed, on 22nd December 1868, a deed of sale of it in favour of a creditor of her husband under a decree, dated 12th July 1861. No future interest was allow-

consideration for the deed of sale, which was

reversionary heir of the husband brought a suit

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against the vendee for redemption, but that

profits from her death. The defendants were the Deputy Commissioner as representing the Court of Wards, into whose charge the vendee's estate had come, and the purchaser from the Court of Wards of the greater portion of the property in suit. The defence was that the alienation was made for legal necessity, and that the suit was barred by the decision in the pre-emption suit, which operated as *res judicata*. Both Courts below found on the facts that the item of Rs. 17,080 was justified by legal necessity, and that the advance of the sum in cash as part of the consideration was not proved. *Held*, by the Judicial Committee, that the defendants claiming as they did under the vendee, and standing therefore in no higher position than his, were not entitled to base a claim to the property upon an order made in the vendee's favour, but subsequently set aside; under the circumstances the doctrine of legal necessity could not be extended to the item for interest. There should be a decree for possession and for the balance of mesne profits after deducting the Rs. 17,080 for which the property was liable. *Held*, also, that all that was in issue in the former suit was the right of pre-emption as to the widow's interest only in the property, and that the effect of the deed of sale on the reversion could not properly have been made a ground of attack in that suit; the present suit was therefore not barred by s. 13 of the Civil Procedure Code. *DEPUTY COMMISSIONER OF KHERI v. KHANJAN SINGH (1907) I. L. R. 29 All. 331 L. R. 34 I. A. 164*

**56. ———— Hindu woman—Limited interest.** One who claims a title under a conveyance from a Hindu woman with the usual limited interest, which a Hindu woman takes, and who seeks to enforce that title, cannot say

he alleges to have been adverse to that owner. Ratification in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier; and this rule is recognised in s. 196 of the Contract

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*

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Act. Where the defendant held possession of properties under deeds of sale from a limited owner, which were found to have been executed without legal necessity, the plaintiff's claim for mesne profits was allowed. *BHAGWAT DAYAL SINGH v. DEBI DAYAL SINGH* (1908) I. L. R. 35 Cal. 420 s.c. 12 C. W. N. 393 I. R. 35 I. A. 48

57. ———— *Widow's estate—Alienation of husband's estate without legal necessity—Consent of reversioners—Consent ex post facto—Bhale Sultan Chattri tribe of Oudh—Custom excluding daughter and her issues from inheritance—Proof—General custom—Evidence Act (I of 1872), s. 48* In the absence of legal necessity a Hindu widow can alienate property to which she has succeeded on the death of her husband with the consent of the nearest reversioners for the time being. Ordinarily the consent of the whole body constituting the next reversioner should be obtained, though there may be cases in which special circumstances may render the strict enforcement of this rule impossible. The consent of the reversioner is effective even when given after the execution of the deed of transfer. *Radha Sayam v. Joy Ram* (1908) I. L. R. 35 Cal. 908 s.c. 12 C. W. N. 400

*Govind, I. L. R. 25 Bom. 129*, referred to. *BAJRANGI SINGH v. MANOKARNIKA BAKSHI SINGH* (1907) I. L. R. 30 All. 1 s.c. 12 C. W. N. 74 I. R. 35 I. A. 1

58. ———— *Alienation of portion of estate with consent of the reversioner—Validity* The alienation by a Hindu widow of a portion of her husband's estate without legal necessity is void.

*Srinivasa Pillai, I. L. R. 21 Mad. 128*, dissented from. *Behari Lal v. Madho Lal, I. L. R. 19 Cal. 236, Nabo Kishore v. Harinath, I. L. R. 10 Cal. 1102; Vinayak Vishal v. G. bind I. L. R. 25 Bom. 129, Bayrangi v. Manokurnika, 12 C. W. N. 74; I. R. 35 I. A. 1, Annada Kumar v. Indu Bhawan, 12 C. W. N. 49*, relied on. *PULIN CHANDRA MANDAL v. BALAI MANDAL* (1908) I. L. R. 35 Cal. 939 s.c. 12 C. W. N. 837

59. ———— *Consent of female reversioner, if passes absolute title—Propriety of transaction—Presumption of law.* An alienation of her husband's estate by a Hindu widow—without legal necessity, but with the consent of the next

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reversioners, who, if they had succeeded to the estate, would themselves have been entitled to the limited estate of a Hindu widow, does not pass an absolute estate to the transferee. No presumption of the propriety of the transaction arises from such consent. *BEPIN BEHARI KUNDU v. DURGA CHURN BANDOPADHYA* (1908) I. L. R. 35 Cal. 1086 s.c. 12 C. W. N. 914

80. ———— *Payment by wife of husband's debts during his lifetime—Voluntary payment—Joint Hindu family—Sale of property belonging to one member of a joint family—Separation—Sale set aside—Rights of persons entitled to such property after separation. Held, that the payment by the wife of a separated Hindu*

death, of the estate, which has descended to her from him. *Held*, also, that the members of a joint Hindu family must be regarded, so far as concerns the dealings of the family, with persons outside it, as but one juristic person. The managing member of a joint Hindu family sold a property exclusively belonging to one member of the joint

recover the whole property on payment of the whole purchase money, but that he could not claim to have it by paying only a share of the purchase money proportionate to his share in the joint family property on partition. *Sudarsanam Maistri v. Narasimhulu Maistri, I. L. R. 25 Mad. 149, Appovier v. Rama Subba Aiyar, 11 Moo I. A. 75, and Hamal Rai v. Sunder Das, I. L. R. 11 Cal. 396*, referred to. *HIMMAT BAHADUR v. BHAWANI KUNWAR* (1908) I. L. R. 30 All. 353

81. ———— *Widow's estate—Alienation of a portion of estate without legal necessity—Consent of next reversioner.* Alienation by a Hindu widow of a portion of her husband's estate, without legal necessity, but with the consent of the next reversioner, is valid.

*Vithal Bhang v. Govind Venkatesh Amlakurika, I. L. R. 25 Bom. 129; Bayrangi Singh v. Manokar-*

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*nila Balsh Singh, I. L. R. 30 All. 1, L. R. 35 I. A. 1, and Annada Kumar Roy v. Indra Bhusan Mukhopadhyay, 12 C. W. N. 49, followed. PULIN CHANDRA MANDAL v. BOLAI MANDAL (1908)*

*I. L. R. 35 Calc. 939  
s.c. 12 C. W. N. 637*

62. ———— *Widow's estate—Alienation by widow without consent of male reversioner—Presumption of necessity from consent of direct female reversioners—Evidentiary value of such consent. The consent of the daughters to the alienation of immovable property by the widow does not suffice.*

whose interest was the limited one of Hindu widows cannot bind or affect the male reversioners, who take an absolute estate. *Jari Dutt Koer v. Hanbhatti Korrain, I. L. R. 10 Calc. 324, L. R. 10 I. A. 159, Duli Singh v. Sundar Singh, I. L. R. 14 All. 377; and Bhupal Ram v. Lachmi Kuar, I. L. R. 11 All. 253, referred to. Koor Golab Singh v. Rao Kurun Singh, 14 Moo. I. A. 176, Farjiban Rangji v. Ghely Gokaldas, I. L. R. 5 Bom. 563, Vinayak Vitthol Bhangre v. Gobind Venkatesh Kulkarni, I. L. R. 25 Bom. 129, and Abinash Chandra Marumdar v. Hari Nath Shaha, I. L. R. 32 Calc. 62, followed. Collector of Masulipatam v. Cavalry Venkata Narainappa, 8 Moo. I. A. 529, 2 W. R. P. C. 61; Raj Lukhee Dabee v. Gokool Chunder Chowdhry, 13 Moo. I. A. 209; Nobi Kishore Sarma Roy v. Hari Nath Sarma Roy, I. L. R. 10 Calc. 1102, and Bajrangji Singh v. Manokarnika Balsh Singh, I. L. R. 30 All. 1, L. R. 35 I. A. 1, followed.*  
BENEFIT  
(1909)

63. ———— *Alienation by widow of part of her widow's estate, validity of—Consent of reversioners—Transfer by reversioner of reversionary interest—Effect of actual reversioner*

*v. Munakurnia Das Singh, I. L. R. 30 All. 1, referred to. A conveyance during the widow's life by a reversioner of his reversionary right is inoperative. A consent given by a reversioner,*

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS OR REVERSIONERS—*contd.*

reversioners then in existence. *MUTHUYEERA MUDALIAR v. VYTHILINGA MUDALIAR (1908)*

*I. L. R. 33 Mad. 206*

64. ———— *Debt justifying alienation—Alienation by Hindu widow—Legal necessity—Transfer to satisfy decree—Construction of—Preservation of family estate—Nature of estate taken by daughters through father with imperfect title. The plaintiffs were the sons of the sole*

her husband. The defendants were purchasers from the same creditor to whom, in 1867, the mother of the plaintiffs, in satisfaction of a decree obtained against her on the bond as representing her father's estate, transferred the property in suit. In her petition to the court for permission to settle the

in a case like the present, where, but for the debts, the estate would have been lost to the plaintiffs.

and the two daughters of a son, who predeceased him, whereby certain shares of the estate were allotted to each of them; and on the death of her sister in 1866, the surviving daughter (the mother of the plaintiffs) succeeded to her share by survivorship.

*Held*, on the construction of the compromise, that the granddaughters acquired under it only a life interest in the property, their right to which must be taken to have been derived through their father, notwithstanding that his own father survived him, his title, in whatsoever way it was defective, being *pro tanto* cured by the agreement.

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(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS AND REVERSIONERS—contd.

of compromise. *KARINUDDIN v. OOVIND KRISHNA NARAIN* (1909) . I. L. R. 31 ALL. 457

**65. ——— Legal necessity—**

*Burden of Proof.* A mere recital in a mortgage-deed executed by a Hindu widow with a qualified interest as to the existence of necessities is not enough. It is for the creditor to show either that there was legal necessity or at least that he was led on reasonable grounds to believe that there was necessity for the alienation. *ABUDHA v. RAM SUMER SINGH* (1909) . I. L. R. 31 ALL. 454

**66. ——— Widow's estate—Alienation**

*by widow—Consent of reversioner—Attestation of deed, if amounts to consent—Indian Limitation Act (XV of 1877), Sch. II, Art. 140—Idid, IX of 1871 and XIV of 1859—Ouster of a widow—Reversioner's right, if affected by—Onus of proof, on whom lies—Transfer of Property Act (IV of 1882), s. 51—"Belief in good faith"—Enquiry by purchaser, absence of, effect of—Immovable property in Calcutta—Crown as landlord, effect of—Compensation for improvement—Damages.* Where there was no question of legal necessity, the only way in which a widow could have transferred an absolute estate was by a sale with the consent of the next reversioner. *Nobo Kishore Sharma Roy v. Harinath Sharma Roy, I. L. R. 10 Calc. 1102* (1884), followed. *Scoble v. Attestation by the next reversioner of a deed by*

(plaintiff) sought to recover the same from the purchaser (defendant). The defendant contended that under the Limitation Act (XIV of 1859) if

she was not ousted: *Held*, that the widow could not possibly be ousted after she had sold all her interest

widow would affect the right of a reversioner, who can bring a suit within 12 years. *ABHOY CHURN GHOSH v. ATTARVONI DASSEE* (1908)

13 C. W. N. 931

**67. ——— Mortgage by widow—Hindu**

*Law—Widow, mortgage by, without legal necessity but with immediate reversioner's consent—Validity—Doctrine of surrender* The doctrine of surrender upon which the validity of a sale out and out of

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.**

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the whole or any portion of the inheritance with the consent of all the immediate reversioners is based, cannot legitimately be extended to the case of a mortgage where *ex-hypothesi* the widow still retains the ownership of the estate though subject to the liability created by the mortgage. *Bajrang Singh v. Manoharlal Baksh Singh, 12 C. W. N. 74 s.c. L. R. 31 I. A. 1; I. L. R. 30 ALL. 1*, referred to. When a sale by a Hindu widow is found to be partially invalid owing to the absence of legal necessity the whole sale must be set aside, the purchaser accounting for the mesne-profits and the sums expended for legal necessity being set off against them. *Deputy Commissioner of Kheri v. Khanjan Singh, 11 C. W. N. 471. s.c. L. R. 34 I. A. 72*, followed *HARI KISSEN BHAGAT v. BAJRANG SAKAL SINGH* (1909) . 13 C. W. N. 544

**68. ——— Legal necessity—Alienation by Hindu widow—Alienation of a limited estate.** Where the estate which a Hindu widow purports

estate only. *PROSUNNO KUMAR NANDI v. UNEDER RAJA CHOWDERY* (1908) . 13 C. W. N. 353

**69. ——— Power to grant lease for**

*60 years by way of family arrangement—Prudent management—Terminating litigation—Legal necessity—Concurrence of husband's relations—Ratification or election by reversioner—Right of some of several reversioners to sue for their shares.* Where a Hindu widow after protracted litigation with her husband's relations, in the course of which she incurred heavy expenses, and liabilities, obtained a decree for possession of her husband's estate, and with a view to secure a prudent and effective management of the estate, the greater portion of which was still out of her

course of management indicated. *DOUGLAS v. Srinibhar Kundu, I. L. R. 33 Cal. 842*, and *Venkaji Shridhar v. Bishnu Babaji Beri, I. L. R.*

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(b) ALIENATION FOR LEGAL NECESSITY, OR WITH OR WITHOUT CONSENT OF HEIRS AND REVERSIONERS—contd.**

18 Bom. 531, relied on. *Gobind Krishna Narain v. Khunni Lal*, I. L. R. 29 All. 487, and *Amrit Kona*.

her husband with the consent of the reversioners. She can make such an alienation by the entire surrender of her own interest and thereby

*Rooke*, I. L. R. 25 Calc. 1, referred to. As a reversioner sues to recover possession from alienees from a Hindu widow and not to set aside the alienation, he can maintain a suit to recover his share only of the estate and is not bound to sue to recover the whole estate. *Bijoy Gopal Mukerji v. Krishna Mohishi Debi*, 11 C. W. N. 621; see I. L. R. 34 Calc. 329 referred to. *SANKAR NATH MUKERJI v. BIJOY GOPAL MUKERJI* (1908) 13 C. W. N. 201

**(c) WHAT CONSTITUTES LEGAL NECESSITY.**

70. ————— *Pious purposes—Legal necessity.* Hindu law does not regard "pious purposes" as the only "necessary purposes" which justify alienation of inherited property by Hindu ladies. Self-maintenance, discharge of just debts, protection or preservation of the estate, may be regarded as such "necessary purposes" also. *SOORJOO PERSHAD v. KRISHNAN PERTAB BHADOOR* 1 N. W. 49, Ed. 1873, 46

71. ————— *Gift for pious and religious purposes.* An alienation by a Hindu widow of her deceased husband's estate for pious and religious purposes, made for her own spiritual welfare, and not for that of her deceased husband, is not valid. The power of a Hindu widow to alienate her deceased husband's estate for pious

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(c) WHAT CONSTITUTES LEGAL NECESSITY—contd.**

and religious purposes defined. *Collector of Masulipatam v. Caval Venkata Narainapah*, 8 Moo I. A 529, referred to. *PURAN DAI v. JAI NARAIN* I. L. R. 4 All. 482

72. ————— *Endowment of idol by Hindu widow.* A Hindu widow cannot endow an idol with her husband's property or a portion thereof, to the detriment of the reversioners. *KARTICK CHANDER CHUCKERBUTTY v. GOUR MOHEN ROY* . . . . . 1 W. R. 48

73. ————— *Pious purposes—Spiritual necessities.* Although pilgrimages and sacrifices performed by a Hindu widow may be indirectly beneficial to her deceased husband, they are not ceremonies indispensable for his spiritual benefit. A sale by a Hindu widow to raise money for pious acts, not in the nature of spiritual necessities, unless such sale is reasonable in the circumstances of the family and the property sold is but a small portion of the property inherited from her husband, is invalid. *RAMA v. RANGA* I. L. R. 8 Mad. 552

74. ————— *Pilgrimage.* Where a Hindu, by will, directed that his widow should have power to sell his property for the pur-

purpose, is not bound to give back the property at the suit of the reversioner, if there is any evidence that the widow did really go on the pilgrimage. *PER GARTH, C.J.* In such a case the purchase would be good even if there were no evidence that the widow had gone on a pilgrimage. *RAM KANT CHUCKERBUTTY v. CHANDER NARAIN DUTT* . . . . . 2 C. L. R. 474

75. ————— *Pilgrimage to Benares.* A pilgrimage to Benares is not a legal necessity to justify a sale by a Hindu widow. *HUNROMOHUN AUDHAKAR v. AULUCK MOHEL DOSSEE* 1 W. R. 252

76. ————— *Expenses of* amount expended was Rs. 1,700 and the property was sold for Rs. 1,000.—*Held*, in a suit by the heir against the purchaser to have the sale set aside, that the plaintiff not having offered to repay Rs. 1,700 and interest, his suit must be dismissed. *MUTTERAM KOWAR v. GOPAL SAHOO*

11 B. L. R. 418 : 20 W. R. 187

*CHOWDREY JUMBEJOY MULLICK v. RUSSONOTZ DASSIE* 11 B. L. R. 418 note : 10 W. R. 209



**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(c) WHAT CONSTITUTES LEGAL NECESSITY—contd.**

77. ———— *Pilgrimage never carried out—Debt barred by limitation.* The payment by a Hindu widow of her husband's debts, though barred by limitation, is a pious duty for the performance of which a Hindu widow may alienate her property. *Chimnaji Gobind Godbole v. Dinkar B. B. & Co.*

the alienation is sufficiently protected if he satisfies himself by *bona fide* inquiries of the existence of

husband's *sraddh* ceremonies, but the pilgrimage was never made, the debt was held to be recoverable out of the estate. *UDU CHUNDER CHUCKREBUTTY v. ASHTOSH DAS MOZUMDAR*

I. L. R. 21 Cal. 190

78. ———— *Sraddh of husband—Perform-  
ance of husband's debts.*

11 B. L. R. 118; 19 W. R. 426

79. ———— *Sraddh of husband—Marriage of daughter—Maintenance of grand-  
sons—Payment of husband's debts.* The *sraddh* of the widow's husband, the marriage of his daughter the

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16 W. R. 52

80. ———— *Sraddh of mother.* According to Hindu law, the *sraddh* of a mother is not a legal necessity, as that of the father is, to justify a sale by a daughter to the prejudice of the daughter's son. *RAJ CHUNDRA DEB BISWAS v. SHEESHOO RAM DEB*

7 W. R. 146

81. ———— *Loan for grand daughter's marriage expenses—Liability of reversioner.* A Hindu widow borrowed a sum of money for the purpose of defraying the marriage expenses of a grand daughter, the child of a son who had predeceased his father. Held that

the widow, succeeded to the possession of such estate. *RAMCOONAR MITTAR v. ICHAMYOI DAS*

I. L. R. 6 Cal. 36; 8 C. L. R. 429

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(c) WHAT CONSTITUTES LEGAL NECESSITY—contd.**

82. ———— *Loan for investiture of minor.* Held (by GLOVER, J.) that where the family property was small, there was no reasonable necessity for contracting a large loan to provide for the minor's investiture according to the Hindu religion. *DOORHYAR ROY v. DULSINGAR SINGH*

12 W. R. 387

83. ———— *Joint debt of husband and wife.* For a debt contracted jointly by a Hindu wife and her husband the husband's property is liable, and therefore the wife could be

needed

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9 W. R. 316

84. ———— *Payment of debts of husband.* Debts due by the husband justify alienation by the widow. *KOOL CHUNDER SURMA v. RAMJOY SURMONA*

10 W. R. 8

85. ———— *Bond executed by wife to pay husband's debts.* A wife and her husband's brothers jointly executed a bond for the repayment of moneys borrowed to pay a debt due by her husband and his brothers, and to carry on the cultivation of lands held by her husband and his brothers, and hypothecated the family house as collateral security for the repayment of such money. Held, that the wife was not justified in borrowing money to pay her husband's debt, and the want of money for cultivation of his lands

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86. ———— *Debt provided for by lease of ancestral property.* The existence of a debt the liquidation of which is provided for by lease of ancestral property is no justification for alienation of such property by a Hindu widow during her life-tenancy. *THUCK ROY v. PHOOLMAN ROY*

7 W. R. 450

87. ———— *Existence of debts—Re-  
purchase of family property.* Where the Court has

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creditors  
of itself  
A sale of

ancestral property merely for the purpose of procuring funds for the re-purchase of other property formerly belonging to the family cannot of itself be considered as a sale for any of the necessary purposes sanctioned by law. *KANHU SINGH v. ROOP SINGH*

3 N. W. 4

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88. ——— Time-barred debt. The payment of a time-barred debt of her deceased husband is not a valid cause for the absolute alienation by a Hindu widow of her deceased husband's immovable estate. *MELAIRAPPA BIN SOLAIRAPPA TELI v. SHIVAPPA BIN ERAPPA* 6 Bom. A. C. 270

89. ——— Alienations by a widow of her husband's estate in order to pay his time-barred debts. According to the Hindu law, a widow is competent to alienate her husband's estate for the purpose of paying his debts, even though they may be barred by the law of limitation. Her alienation for such a purpose is legal and binding on the reversionary heirs. *CHIMNAJI GOVIND GODBOLE v. DINKAR DHONNEY GODBOLE* I L R. 11 Bom. 320

90. ——— Revival of a barred debt by the widow of a deceased Hindu.

I L R. 13 Mad 189

81. ——— Debt of widow's own

92. ——— Judgment-debt—Evidence of necessity. A judgment-debt is *prima facie* proof of necessity. *BIJOWRA v. ROOP KISHORE* 6 N. W. 89

93. ——— Decrees—Debts, evidence of nature of. Mere production of decrees will not establish the propriety and necessity of a sale of an ancestral property. There should be evidence of the nature of the debts in which such decrees originated. *REOTER SINGH v. RAMJEET* 2 N. W. 50

94. ——— Sales of ancestral property. The mere fact that sales of ancestral property took place in execution of decrees against the ancestor does not of itself show that the sales were for necessary or justifiable purposes. *BRUJO KISHORE GUGENDAR MOHAPATRA v. HIREZ KISHAN DOSS* 10 W. R. 57

95. ——— Father-in-law's debts—Obligation of widowed daughter-in-law in possession of father-in-law's estate to pay his debts—Sale of part of estate by her for that purpose—Suit by rever-

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(c) WHAT CONSTITUTES LEGAL NECESSITY—*contd.*

sioner to have sale declared void beyond her lifetime—Widow not availing herself of protection of the Dekkan Agriculturists' Relief Act. A childless Hindu widow, having succeeded to the estate of her father-in-law, sold a portion of it in order to pay off his debts. The estate was situate in a district in the Presidency of Bombay subject to the Dekkan Agriculturists' Relief Act (XVII of 1879). The plaintiff as reversioner sued for a declaration that the sale was void beyond the lifetime of the widow. Both the lower Courts made the declaration prayed for by the plaintiff, on the ground that there was no necessity for the sale, as the widow might have availed herself of the provisions

to avail herself of the relief afforded by the Dekkan Agriculturists' Relief Act any more than of the provisions of the Limitation Act. The moral obligation which rested upon her to pay the debts of her father-in-law justified the sale. *BHAG BABAJI v. JOPALA MANIPATI*

I L R. 11 Bom. 325

96. ——— Decree for arrears of revenue—Right of widow to usufruct for her own purposes. Where an estate devolved to a widow

widow was held not to be justified by any legal necessity in alienating the estate in the absence of any actual pressure, such as an outstanding decree or impending sale for arrears of revenue. *LALLA BURNATH PERSHAD v. BISSEY BEHARR SANYO SINGH* 19 W. R. 80

97. ——— Expenses of litigation—Fraudulent assignment—Suit to declare deed binding on reversioner. A Hindu, R. C., died leaving five She in The be- re-  
contd a bond and warrant of attorney to confess judgment. The suit failed. In order to obtain the means of bringing another suit, B, by deed dated to be 10-half ereout  
what he might advance to her for maintenance and for the costs of suit with interest at 12 per cent. and to pay her the residue. In November 1859, G by deed sub-assigned to H S, in consideration

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that *H S* should undertake the maintenance of *B* and the management of the suit, retaining only

to all profits made on such accumulations since her husband's death. In September 1861, *G R* caused judgment to be entered on the bond and execution to be issued, and the sheriff seized and was about to sell *B*'s interest in the estate of her husband. Thereupon, *B* being entirely without means, *P S*, brother of *H S*, paid off *G R*, and in consideration thereof took an assignment by deed, dated 18th December 1861, in the name of one *I S*, from *B*, of five-eighths of the half share reserved to her by the deed of 4th April 1850, but subject to the assignment by that deed to *G*. On 20th December 1869, Rs. 4,635 were paid into Court as *B*'s husband's share of the accumulation on *R C*'s property at the date of his death, and Rs. 1,55,255 as the profits made thereon since her husband's death. *P S* now sued for a declaration that the deed of 18th December 1861 was binding upon *B* and the reversionary heirs, and for an order that the precise amount due to him be ascertained

paid out of the Rs. 1,55,255 in Court. **PARNALAL SEAL v. BHANUSUNDARI** . . . 6 B. L. R. 732

98. ———— *Litigation—Reversioner—Mitakshara law.* *R*, a Hindu widow, who had succeeded to the estate of her deceased husband, mortgaged a portion of it to *L* as security for the repayment of money which she borrowed from him for the purpose of suing for an estate to which her deceased husband had an alleged right of succession, which he had not, however, himself sought to enforce. This suit was dismissed. *R* subsequently transferred her deceased husband's estate to his daughter *I*. *L* sued *R* and *I* to enforce the mortgage made to him by *R* by cancellation of such transfer. *Held*, that the mere fact that the mortgaged property had been transferred to *I* did not preclude her from contending, as next reversioner, that the mortgage of such property by *R* was void for want of "legal necessity," that under the circumstances stated above there was not any "legal necessity," within the meaning of the Hindu law, for such mortgage, and such suit not having been for the benefit of the estate of *R*'s deceased husband, consequently such mortgage

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(c) WHAT CONSTITUTES LEGAL NECESSITY—*contd.*

able property, her power of alienation generally and her power of alienation in particular for the purposes of litigation, discussed. *Hunoomanpersaud Pandey v. Babooe Munraj Koonweree*, 6 Moo. I. A. 323; *Collector of Masulipatam v. Narrain-apah*, 8 Moo. I. A. 529; *Grose v. Amirtamayi Dasi*, 4 B. L. R. O. C. 1; *Phool Koor v. Dabee Pershad*, 12 W. R. 187; *Roy Mahun Lal v. Stewart*, 18 W. R. 121; *Nugenderchunder Ghose v. Kaminee Dossee*, 11 Moo. I. A. 241; and *Baijun Doobey v. Brij Bhokun Lal Aunsi*, L. R. 2 I. A. 275, referred to. **INDAR KUAR v. LALTA PRASAD SINGH** . . . I. L. R. 4 All. 532

99. ———— *Litigation, Expenses of—Raising funds to carry on appeal to Privy Council.* A judgment debtor who had been

guilty. *Held*, that, as she was under no legal necessity to carry on the appeal to the Privy Council and did not do so for the benefit of the estate, she could not bind the estate as against the reversioner for the purpose of raising the necessary funds. **PHOOL KOOR alias KUNRA KOOR v. DABEERESHAD** . . . 12 W. R. 187

100. ———— *Legal expenses—Maintenance—Re-marriage of widow.* Legal expenses incurred by a Hindu widow in defending her life-estate in her husband's property constitute such a charge on the property as to make a sale

101. ———— *Necessity to provide main-*

**ROOHOREER** . . . 3 N. W. 344

102. ———— *Digging tank.* The digging of a tank, though a meritorious act and a great convenience to the public, is not a legal necessity for which a widow can alienate property left to her for life only. **RUNJEET RAM KOOLAL v. MAHOMEN WARIS** . . . 21 W. R. 49

103. ———— *Declaration of legal necessity—Consent of husband.* A deed of gift of ancestral property not being valid under Hindu law, without the consent of all the heirs, a wife is

**HINDU LAW—ALIENATION—contd.****7. ALIENATION BY WIDOW—contd.****(c) WHAT CONSTITUTES LEGAL NECESSITY—contd.**

to be presumed by being in possession. A mere declaration of necessity is not sufficient to justify a purchase from a Hindu widow. *GUNGOORIND BOSE v. DRUNNEZ* . . . . . 1 W. R. 80

104. ———— **Loan while administering estate of husband.** Where a plaintiff alleged that *M*, the deceased widow of *S*, a Hindu, while administering the estate of her deceased husband, borrowed money from plaintiff for purposes binding on the estate, and executed a promissory note to secure the payment of the same; and that the first and second defendants, as reversionary heirs of *S* and the third defendant, were in possession of the estate of *S* and refused to pay the debt incurred by *M*. —Held, that the plaintiff was properly rejected as a defendant.

*I. L. R. Bcr v. Ichamoyi* . . . . .  
from. *RAMASANI MUDALI v. SELLATTANMAL*  
I. L. R. 4 Mad. 375

105. ———— **Loan for supplying necessities.** Plaintiff sought to recover land sold by the first defendant, the widow of an undivided member of a Hindu family, and part of the consideration was the amount of a mortgage-deed executed for the purpose of supplying the necessities of the husband of the first defendant. In

*NAIKAN v. APPAYU NAIKAN* . . . . . 2 Mad. 394

106. ———— **Loan by mother—Liability of adopted son or of the estate in his hands for a loan raised by his mother for the benefit of the estate.** *H*, a widow, who, in default of issue to her husband, was in possession of his *desagati* *nam*, borrowed money from the plaintiff on an ordinary bond for the purpose of paying the Government assessment thereon. She subsequently adopted a son (the defendant) and died. The plaintiff sued

I. L. R. 3 Bcm. 237

107. ———— **Mortgage by widow—Legal necessity—Loan, raising of.** A Hindu

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widow, with other persons, was interested in an estate as the representative of her deceased husband. In order to meet the expenses incidental to the defence of criminal proceedings brought by a tenant alleging that his landlord had forged a *kabuliyat*, the lady, with her co-sharers, raised a loan on a promissory note. Her property was sold in execution of a decree for the money. In order to have the sale set aside, she executed a mortgage of the property, and got the sale set aside by deposit of the money so raised under a 310A, Civil Procedure Code. Held, that the loan and the mortgage, having been made in the interest of the estate, were justified by legal necessity. *Semble* Even if the loan had been raised for the protection of her person from the consequence of such a charge, the loan would be regarded as arising out of legal necessity. *NOBIN CHANDRA CHAUDHURI v. KREODE NATH SUR* (1902) . . . . . 6 C. W. N. 646

**(d) SETTING ASIDE ALIENATIONS, AND WASTE.**

108. ———— **Suit to set aside alienation by widow as tenant for life—Effect of petition on passing property.** By a petition filed in 1830, *N*, a Hindu, asked that certain property specified in a schedule to the petition which had up to date been in possession of himself and his ancestors, should be placed in the Collectorate hook in the

instrument. *D* sold the shares in *mouzah K*, and invested the proceeds in another *mouzah*. In a suit by a son of *D*'s daughter against the purchaser to set aside the sale by *D*, the Subordinate Judge held that he was bound, in the first instance, to repay the whole of the purchase-money to the de-

property. *SHEWAK RAM v. BHOWANI BIKSH SINGH*  
6 C. L. R. 140

109. ———— **Suit to set aside alienation—Validity of alienation.** Where a Hindu brought

from her husband, and in either case she was

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HINDU LAW—ALIENATION—*cont'd.*

## 7. ALIENATION BY WIDOW—contd.

(2) SETTING ASIDE ALIENATIONS, AND WASTE—  
contd.

competent to transfer it to the son, and under such circumstances the transfer made by her was not illegal under the Hindu law. NOWBUT RAI v. BHAGMANEE . . . . . 2 AFB 5

110. ——— Alienation in contemplation of adoption. The power of a Hindu widow with authority from her husband to adopt, to make *bona fide* alienations which would be binding on the reversioners if no adoption took place, is not affected or curtailed by the fact that it is exercised in contemplation of adoption and in defeasance of the right of the son who is about to be adopted.

LAKSHMANA RAU v. LAKSHMINNAMAL.

I. L. R. 4 Md. 160

111. ——— Alienation by conditional sale.—*Right to question validity of sale.* A conditional sale is an alienation, the validity of which a reversioner to a Hindu widow is by Hindu law entitled to question. OBIT NARAIN SINGH v. DHARMARTOON W. R. 1884. 263

112. Sals without legal necessity—Reversioners. *R*, a Hindu, had two daughters by his wife *K*. One daughter married *S* and died in *K*'s lifetime, leaving two sons, the defendants. The other daughter was alive at the date of suit. On the death of her husband, *K* succeeded to his estate and sold some land to *S* without adequate necessity. *S* mortgaged this land to *T*. Held in *favor of S*.

The restrictions on the father's power to alienate ancestral property are incidents of co-pancenary, whereas the right to sell possessed by a widow is but a qualified power given for certain specified purposes over the estate.

113. Form of alienation—Sale or mortgage—Necessity. There is no rule of Hindu law which compels a widow alienating a part of her property for the maintenance of herself and her minor children to execute a deed of gift. The necessity of the case does not depend upon the necessities of the case. NABAKTIVAR HALDAR v. BHARASUNDARI DESI. 3 B. L. R. A. C. 176

114. \_\_\_\_\_ Suit by reversioners to set aside deed of sale.—Necessity.—Selling larger part of estate than necessity justifies.—Sale where mortgage could suffice. In a suit by reversioners to set aside a deed of sale by Hindu widow of part of her husband's estate, on the ground that the money which it was necessary to raise could have been raised by other means, it was held that, if the widow sold a larger portion of the estate than was

## HINDU LAW--ALIENATION--contd.

### 7. ALIENATION BY WIDOW—*contd.*

(d) SETTING ASIDE ALIENATIONS, AND WASTE—  
contd.

necessary to raise the amount which the law authorized her to raise, the sale would not be absolutely void as against the reversioners who could not get it -

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LILL v. RUGHOORUN SCHATHE . 8 W. R. 107

115. ----- Re-payment of purchase-money to set aside sale A sale by a Hindu widow of her husband's estate under legal necessity, cannot be set aside upon payment of the amount which it was necessary for the widow to raise, or in the proportion which that sum bears to the amount for which the estate was sold. *SUGRAMAM BEAMU v. JUDGOBUNUS SRAVE*. 9 W. R. 284

116. ———— Re-payment of sum spent for legal necessity.—*Suit to set aside mortgage* ———— *Alienation by daughter—Legal necessity.* The daughter of a Hindu, while in possession of the paternal estate, borrowed a large sum of money under a mortgage. She used the mortgage to recover the property mortgaged, and to set aside the mortgage-deed. The Courts below gave a decree for possession to the plaintiff upon repayment of the amount actually spent in the relief of legal necessity. Such decree upheld on appeal. **LALIT PANDAY v. SRINIVAR DEO NARAIN**

5 B L. R. 176:13 W. R. 457

117. Suit to set aside sale--Sale for more than amount of necessity--Ancestral debt--Necessity. A died leaving B, a grandson by a son deceased C. The sale was set aside because the sale was made by C. Held that C had no authority to set aside the sale.

118. Suit for rent by allenees of widow.—Suit for rent.—Title.—Possession by widow. In a suit for rent by a patnidar, who claimed under a lease granted to him by a Hindu widow whose husband had died leaving a will which gave the widow no power to alienate the property. Held, that the suit was properly dismissed, and that there was no necessity for the Judge to enter into any question of possession by the widow.

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BANEE MADHUB GHOSE v. THAKOOR DOSS MUNDUL

B. L. R. Sup. Vol. 588: 6 W. R., Act X, 71  
TILLESUREZ KOER v. ASHMEET KOER

24 W. R. 101

119. ———— *Waste—Reversioners—Manager.* Waste on the part of a Hindu widow in possession being proved, it is not competent to the Court to put the reversioner in possession, assigning maintenance to the widow. A manager should be appointed to the estate accountable to the Court. The reversioner may be appointed such manager. *MAHARANI v. NUNNOLAL MISSEK*

1 B. L. R. A. C. 27: 10 W. R. 73

120. ———— *Reversionary heirs.* A conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste which destroys the widow's estate and vests

ing beyond the widow's life; nor will the reversionary heirs be deprived, during the widow's life, of their remedy against the grantee to prevent waste or destruction of the property, whether moveable or immovable. *GOSINDMANT DAS v. SHANILAL BYSAK, KALIKUMAR CHOWDHURY v. RANDAS SHAHA, GAURHARI GUI v. PEARL DAS, MACDOONAM SEN v. GAURHARI GUI*

B. L. R. Sup. Vol. 48: W. R. F. B 165

LALLA CHUTTUR NARAIN v. WOOMA KOOWAREE  
6 W. R. 273

121. ———— *Attempt at false adoption.* An attempt at a false adoption of a son is not an act of waste such as would render a widow liable to the penalty of absolute forfeiture of the property for the benefit of reversioners. *KOMUL MONKEE DOSSEE v. ALHADMONKEE DOSSEE*

1 W. R. 256

122. ———— *Extravagance of widow—Necessity, proof of.* Mere extravagance on the part of a Hindu widow will not affect the rights of one advancing money to her on the security of her husband's property if it be proved that the loans were advanced for necessary purposes. *MATA PERSHAD v. BRAGEZUTINE*

2 N. W. 78

123. ———— *Reversioners—*

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(d) SETTING ASIDE ALIENATIONS, AND WASTE—*contd.*

DHRAIN v. JUMOONA CHOWDHRAIN

24 W. R. 86

124. ———— *Reversioner or purchaser—Allegation of waste.* Where moneys

which represented that property ought to be acted up as to prevent defendant from wasting it. *Held* (following a decision of the Privy Council in *Hurrydoss Dutt v. Uppoorah Dossee*, 6 Moo I A. 433), that it was not sufficient to allege that defendant was committing waste; the suit would not lie, unless some act of waste threatening the corpus of the property were proved. *BUDDHUN v. FEZLOOR RUHMAN*

9 W. R. 362

125. ———— *Reversioners—Payment of money out of Court to Hindu widow.* A decree was made in favour of K, a Hindu widow,

if the money were allowed to be taken out of Court,

Dasi ———— *Widow refusing to have anything to do with property—Appointment of manager.* A Hindu widow held her husband's property till within twelve years of the date of suit.

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At that time one of the defendants claimed the property as belonging to his own separate talukh; and she thereupon gave it up, and ever since refused to enter on it. In a suit by the reversionary heir of the husband to have the title declared and to obtain possession of the property:—*Held*, that the possession of the defendant was adverse to the

the Court to adopt was to appoint a manager to collect the assets of the estate, who should account for them to the Court; and the Court should hold them for the benefit of the reversionary heir. *RADEA MOHUN DHAR v. RAM DAS DEY*

3 B. L. R. A. C. 362; 24 W. R. 86 note

See *GUNESH DUTT v. LAL MUTEE KOER*  
17 W. R. 11

127. ——— Suit by reversioner to set aside deeds. A Hindu widow executed deeds of gifts, in which her late husband's mother, the nearest reversioner, concurred. After the death of the widow, but in the lifetime of the mother the next presumable reversioner sued to set aside the deeds and for possession. *Held*, that the suit was good so far as it sought to set aside the deeds; and the mother having died before decree, that no objection could be taken to the suit on the ground that the decree gave possession to the plaintiff. *GOLAB SINGH v. RAO KURUN SINGH*.  
*RAO KURUN SINGH v. MAROHAD FYEZ ALI KHAN*  
10 B. L. R. P. C. 1

14 Moo. I. A. 178, 187

128. ——— Suit by reversioners to set aside alienation—Necessity. A Hindu

another brother, brought a suit for partition; but subsequently, by the consent of all parties, the matters in dispute were referred to arbitration, and an award was made as follows: "Selling their (the widows') respective riyati land, bati, or house they will pay the costs of their respective vakels; in that way the land, bati, or house that shall remain, with the proceeds belonging to their respective shares, the raiment and food of *CD* (the widow of another brother) and *JD* will be supplied during their lives; they will be unable to make a gift, sale, etc., should the proceeds of the land, bati, or house not be sufficient for their food and

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raiment and for the purity of their respective husbands.

which directed a partition according to the terms of a chumtnamah, or written description of the land, which was executed by all the parties, was made a rule of Court on 28th July 1858. *JD* took possession of her husband's share of the estate some portion of which she alienated. In a suit brought by the reversionary heirs against *JD* and the purchasers of what she had sold, it was alleged that the alienations were without necessity and contrary to the award, and it was prayed that they might be declared void as against the reversionary heirs, and that *JD* might be restrained from further alienations. *Held*, that the suit could be maintained in the lifetime of *JD*. As there was no waste proved, the prayer for an injunction to restrain further alienation was refused. *KANIKHAPRASAD ROY v. JAGADAMBA DAS* . . . 5 B. L. R. 508

129. ——— Specific Relief Act (I of 1877), s. 42—Suit to set aside a mortgage

especially when there is a dispute as to who the nearer reversionary heirs are, is premature, and is not maintainable. A Civil Court has ample discretion, under s. 42 of the Specific Relief Act, to exercise jurisdiction vested in it, and to decline to set aside, during her lifetime, an alienation made by a Hindu widow, when no proper case has been made out by the party seeking to have such alienation set aside. *Upendra Narain Mityi v. Gope-nath Bera*, I. L. R., 9 Cal. 317, and *Isri Dutt Koer v. Hansbulla Koerani*, I. L. R. 10 Cal. 321, distinguished. A declaration affecting the plaintiff in a suit which is dismissed is not legal. *CHHOTU MANTON v. SHROBATHI KOER* (1901)

5 C. W. N. 445

130. ——— Sale by widow—Sale by

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(d) SETTING ASIDE ALIENATIONS, AND WASTE—*contd.*

erty sold by her from the vendee on payment of such portion of the consideration as represented moneys borrowed by the widow for legal necessity. *Phool Chand Lal v. Rughoobun Sukaye*, 9 W. R. 108, and *Muttee Ram Kowar v. Gopaul Sahoo*, 11 B. L. R. 415, referred to *GOBIND SINGH v. BALDEO SINGH* (1903) I. L. R. 26 All. 330

131. ——— Suit by a reversioner to set aside a sale by a widow—Alienation by a widow—Limitation Act (XV of 1877), Sch II, Arts. 91, 141—Question of law—Admission by a pleader on a question of law, effect of—Appeal—Practice. When upon the death of a Hindu widow

any such ratification or consent by the reversioners the title passed *ipso facto* ceases upon the death of the widow and it is not necessary to set aside such alienations within the meaning of Art 91 of the Second Schedule to the Limitation Act. *HANIHAR OJA v. DASARATHI MISHRA* (1905) 9 C. W. N. 636

132. ——— Gift by widow—Widow, alienation by—Reversioners—Declaratory decree, suit  
Arts 91, 141  
Hindu  
to had,  
jointly  
with her mother-in-law a deed of gift purporting

*Gobindo Joardor*, I. L. R. 30 Calc. 433, relied upon.  
*CHORAMANI DASI v. BAIDYA NATH NAIK* (1905)  
I. L. R. 32 Calc. 473

133. ——— Alienation of temple property by widow—Suit to declare alienation

HINDU LAW—ALIENATION—*contd.*7. ALIENATION BY WIDOW—*contd.*(d) SETTING ASIDE ALIENATIONS, AND WASTE—*contd.*

public by one Jagayya, who acted as trustee of it during his lifetime. He died childless and his widow succeeded him as trustee. She continued to manage the affairs of the temple until October 1885, when she transferred the right of trusteeship together with certain temple properties to the first defendant. In 1897 the widow died. The plaintiffs as the persons entitled to be trustees in succession to her brought this suit in December 1900.

Art. 124 of the Limitation Act. The property transferred with the trusteeship was only recoverable by the plaintiffs in their right as trustees,

defendants during the lifetime of the widow was adverse to the plaintiffs who derived their title "from and through" the widow notwithstanding the fact that they are not her heirs in the strict sense of the word. *PYDIGANTAM JAGANNADIA ROW v. RAMADOSS PATNAIK* (1905)

I. L. R. 28 Mad. 197

134. ——— Suit by reversioner—Widow—Alienation—Suit by reversioner to set aside the alienation—Limitation—Limitation Act (XV of 1877), Sch II, Art 91. The plaintiff sued in 1904, as a reversioner, to recover possession of property from the defendant to whom it had been given by way of gift in 1894 by the widow of a preceding owner. It was found by both the lower Courts that the alienation was not justified by any necessity recognized by Hindu law. The defendant pleaded that the suit was barred by limitation. Held, that it was not open to the defendant to rely on Art. 91 of

135. ——— Alienation by a Hindu widow—Suit by reversioner—Limitation Act (XV of 1877), Sch II, Art 91



**HINDU LAW—ALIENATION—*contd.*****7. ALIENATION BY WIDOW—*contd.*****(d) SETTING ASIDE ALIENATIONS, AND WASTE—*contd.***

the widow. *MESHAU v. GIRJANUNDAN TEWARI* (1908) 12 C. W. N. 557

136. ———— *When sale by a limited owner for purposes binding on the reversion, sale not to be set aside, unless purchase money refunded—Right of presumptive reversioner to set aside such sale—Widow not trustee for reversioners. Where a Hindu widow, with a limited interest in property, sells the property under circumstances, which render the purchase binding on the reversion the actual reversioner after her death or the presumptive reversioner during her lifetime, cannot have the sale set aside without refunding the purchase money. Obiter a suit to set aside such sale will be liable to be dismissed, if the plaintiff does not contain an offer to refund. Where a presumptive reversioner sues to set aside such a sale during the lifetime of the widow without offering to refund the purchase money, it is not competent to the Court to pass a decree that, upon the widow's death, the sale should be set aside on the person then entitled to the reversion refunding the purchase money. *Phool Chand Lall v. Raghubans Suhayer*, 9 W. R. 109, followed. A widow is not a trustee for the reversioner, and, in the absence of other ways of paying off debts binding on the property, is not bound to raise money on her personal security to discharge such debts, neither is she bound to mortgage the property for that purpose, if such a course would be more prejudicial to her than a sale. *SIRGAM SETHI SANJIVI KONDAYA v. DRAUPADI BAYAMMA* (1907)*

I. L. R. 31 Mad. 153

**8. ALIENATION OF IMPARTIBLE ESTATE**

1. ———— *Sale in execution of decree—Sale of "right, title and interest" of holder of impartible zamindari and member of joint family governed by Mitakshara law—Subsequent reversal of interpretation of law under which sale was held—Change in nature of interest owned by holder of impartible estate—Change of law whether retrospective—Effect of sale under new interpretation of law. In execution of a decree against the holder (by custom of primogeniture) of an impartible zamindari, who was a member of a joint family governed by the Mitakshara law, his "right, title and interest" in the estate was sold in 1876. By the law as then interpreted such a holder had only a limited interest, and, except for special justifiable causes (of which the debt on which the above decree was obtained was not one), no power of alienation beyond his lifetime. Subsequently this interpretation of the law was reversed by the Judicial Committee in the cases of *Sartaj Kuari v. Deoraj Kuari*, L. R. 15 I. A. 51; *I. L. R. 10 All. 272*, and *Rao Venkata Suya Mahipati v. Court of Wards*, L. R. 26 I. A. 83; *I. L. R. 22 Mad. 383*, which decided*

**HINDU LAW—ALIENATION—*contd.*****8. ALIENATION OF IMPARTIBLE ESTATE—*contd.***

that the holder of an impartible estate had an absolute interest in it, and made it alienable, unless a custom against alienation were proved. In a suit by a purchaser at the sale against the successor by survivorship to the interest sold, for possession, the holder of the interest in it accepted the sale.

*NAICKER* (1904) I. L. R. 27 Mad. 131  
s. c. I. L. R. 31 I. A. 1  
8 C. W. N. 186

2. ———— *Alienation of impartible Raj—Mitakshara—Legal necessity, debt for—Custom—Successor, liability of—Pachis sawal, authority of. Alienation by the proprietor of an impartible Raj, which is inalienable by custom, is valid if made for legal necessity; and his successor, who takes the Raj by right of survivorship, is, under the Mitakshara law, liable for the debts proved to have been contracted for legal necessity. The Pachis sawal is a work of authority in respect of customs prevailing among the Rajas of the Tributary Mehals of Cuttack. *Nutanund Mundiraj v. Sreekrishna Juggernath*, 3 W. R. 116, referred to. *GOPAL PRASAD BHARAT v. RAGHUNATH DEB* (1905) I. L. R. 32 Cal. 158*

**9. ALIENATION OF PATIA RAJ.**

——— *Patia Raj—Right of alienation—Mortgage—Succession by survivorship—Pachis sawal—Legal necessity. It is contrary to the custom of the Patia Raj for the holder of the Raj to alienate the property of the Raj, when he has a brother as his heir. The expression *prodhan uttaradikari* in the Pachis sawal includes a brother and is not confined to a son. When the brother of the last proprietor succeeded to the Raj by survivorship, he did not inherit the Raj.*

*RAJAH DEEYA SINGH DEB* (1905) 9 C. W. N. 330

**HINDU LAW—BABUANA GRANT.**

See "BABUANA" GRANT.

See HINDU LAW—MAINTENANCE.

——— *Babuana grant—Alienability—Hindu Law—Mitakshara—Babuana property, if ancestral in the grantee's hand—Interest of co-partener, attached before death—Claim—Release*

# HINDU LAW—BABUANA GRANT— concl.

from attachment—Right of decree-holder to follow property—Civil Procedure Code (Act XIV of 1882), s. 230—Regular suit. Property granted as babuana in accordance with the kulachar of the Durbhanga Raj to junior members of the family for their maintenance is alienable, subject only to the ultimate reversion to the senior members of the family.

property is ancestral property in the hands of the grantee, and a son of the grantee acquires an interest in it at his birth. When the undivided property of a joint Mitakshara family was attached in execution of a decree against a co-parcener, the fact that the property was, before the judgment-debtor's death, provisionally released from attachment under s. 230, Civil Procedure Code, does not prevent the decree-holder from working out his rights acquired by virtue of the attachment if subsequently to the judgment-debtor's death the order under s. 230, Civil Procedure Code, is set aside in a regular suit. *Suroj Buns Koer v. Shea Prasad Singh*, L. R. 6 I. A. 88; *Bonomali Roy v. Prasunno Narayan Choudhry*, I. L. R. 23 Cal. 529, relied on. *RAM CHANDRA MARWARI v. MUDRESHWAR SINGH* (1906)

I. L. R. 23 Cal. 1158  
ac. 10 C. W. N. 978

# HINDU LAW—BANDHUS.

1. — *Bandhus, preference among—Male Bandhus entitled to preference over female Bandhus though nearer in degree—Accretions, what are—Accretions pass with estate—Adverse possession, title acquired by—Party holding under a deed or will, which is invalid, cannot set up a higher right than that claimable under the deed or will. It is settled law in this Presidency that a male Bandhu is entitled to preference over a female Bandhu.*

disposal. Where a female, having the limited interest of a daughter or widow in an estate, spends the income, which is her absolute property, in the erection of buildings on lands belonging to the estate, it must be presumed that she intends the buildings to be an accretion to the estate and to devolve, as such, on the persons, who would be entitled to succeed to the estate. A person holding land under a deed or will which however,

# HINDU LAW—BANDHUS—concl.

karta, gave his widow B. by will, the estate because according to the law (Dharma Sastra) the karta'ship

deed or will. *VENKATA NARASIMHA APPA RAO v. SURENANI VENKATA PERUSHOTHAMA JAGANNADHA GOPALA ROW* (1908) I. L. R. 31 Mad. 321

2. — *Daughter's daughter's son—Mitakshara—Dhinna gaura Sapinda Bandhu. A daughter's daughter's son is a bandhu, and in the absence of any other heir he is entitled to succeed to the estate of the last owner. AJUDHIA v. RAM SUMAR SINGH* (1909)

I. L. R. 31 All. 454

# HINDU LAW—CHARITABLE TRUSTS.

*Charitable trusts*

be nominal only, when no charity or trust is brought into existence, when there is no proof of the application of the alleged endowments for the maintenance of the temple and the whole conduct of the temple.

are already impressed with the trust, the appointment of the father as sole trustee is no such advantage as such a right exists under the Hindu law,

two executants of a deed cannot, after the death of

## HINDU LAW—CHARITABLE TRUSTS

—concl'd.

claries by other means. *Per SANKARAN NAIR, J.*—The provision that the public shall have no interest in the trust converts it into a private trust, if any trust is created, which can be put an end to at any time; and the right to change the properties and to exclude or withdraw them as conferred by the deed

trust cannot, after his death, be enforced at the instance of a volunteer even so far as the properties as he may not have disposed of are concerned. A trust will be void, if the subject of it is uncertain, as when it is to attach to such properties as the author should not dispose of during his life. The doctrine applied by Courts of Equity in regard to transactions between persons standing in the fiduciary relation of father and child will apply even when the father takes only as trustee. The ground of interference in such cases is not any benefit derived by the father, but the presumption that the son was not a free agent. The rule will apply when the person claiming is a volunteer with notice of the confidential relation; and the burden will be on such person to show that the son understood the terms and did form an independent opinion on the matter. Recitals in the deed calculated to produce irresistible moral pressure, as the alleged wishes of ancestors, etc., will be evidence of an improper exercise of parental influence, when such recitals are not true. *Per Curiam S. 575 of the*

I. A. M. 100 M. 11

## HINDU LAW—CONTRACT.

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## HINDU LAW—CONTRACT—concl'd.

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*See VENDOR AND PURCHASER—CAVEAT*  
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## 1. ASSIGNMENT OF CONTRACT.

2. *Small Cause Court, Madras.* According to Hindu law, not only is the beneficial interest in the subject-matter of the

*GEZ JANAKKE ANNAL v. MOONESWAMY CHETTY*  
4 Mad. 178

## 2. BILLS OF EXCHANGE.

1. *Notice of dishonour—Suits between endorser and endorsee, Semble :* Notice of dishonour as between endorsee and endorser on bill transactions among Hindus is not necessary, unless by want of it the endorser would be prejudiced. *SOMARINULL v. BRAIRO DAS JOHURRY*

7 B. L. R. 431

GOPAL DAS v. ALI . . . 3 B. L. R. A. C. 198

S.O. after remand. *ALI v. GOPAL DAS*  
13 W. R. 420

*See ANUNT RAM AGURWALLA v. NUTHALL*  
21 W. R. 62

2. *Evidence of custom. Quere :* Whether notice of dishonour of a bill of exchange is necessary as between Hindus *Semble :* It is a point to be determined by evidence of custom. *SUMBOONATH GHOSH v. JUNDONATH CHATTERJEE*

Cor. 88

*See PIGUE v. GOLAB RAM* . . . 1 W. R. 75

3. *Omission to give notice—Discharge of drawer.* The omission by the holder to give notice of dishonour discharges the drawer of a hundi from liability. *JREETUN LALL v. SNEO CHURN*

2 W. R. 314

4. *Rules of English*

himself against the claims of subsequent endorsers. *TULSHI SAHU v. NERSINGRAM* . . . 12 C. L. R. 333

## 3. BREACH OF CONTRACT.

*Action for breach of contract—Act XIV of 1840. Act XIV of 1810 did*

**HINDU LAW—CONTRACT—*contd.*****3. BREACH OF CONTRACT—*contd.***

not apply to contracts between Hindus. By Hindu law a purebaser may recover in an action for breach of contract to deliver goods, not only double the earnest-money, but also damages for the non-delivery. **ALVAR CHETTI v. VAIDILANOA CHETTI**

1 Mad. 9

**4. GRANT OF LAND.**

8 Moo. I A. 267

See **HARISH CHUNDER CHOWDERY v. RAJENDRA KISHORE ROY CHOWDERY** . . . 18 W. R. 293  
and **ANONYMOUS** . . . 1 Ind. Jur. O. 8, 135

**5. HUSBAND AND WIFE.**

See **HINDU LAW—RESTITUTION OF CONJUGAL RIGHTS.**

1. **Liability of wife for debt contracted during coverture—Widow—Remarriage—Liability of widow who has re-married for debt contracted during widowhood—Stridhan.** A Hindu woman who was a widow when she executed a money bond, but has subsequently re-married, is personally liable for the debt. Her liability is not restricted merely to her stridhan. **NAHALCHAND v. BAI SHIVA** I. L. R. 6 Bom. 470

2. **Liability of wife, extent of—Stridhan** A Hindu married woman who contracts jointly with her husband is liable to the extent of her stridhan only, and not personally. **NAROTAM v. NANKA** I. L. R. 6 Bom. 473

3. **Liability of wife for necessities—Presumption of agency for husband.** In case of husband and wife living together, the

this presumption is not so strong as it is by English. **VIRASVAMI CHETTI v. APPASVAMI CHETTI** 1 Mad. 375

4. **Liability of wife for debt—Wife voluntarily separated from husband.** Under

**HINDU LAW—CONTRACT—*contd.*****5. HUSBAND AND WIFE—*contd.***

251 of 1881 (decided 2nd February 1863), and *Bom. Sp. Ap. 461 of 1869* (decided 17th January 1870), approved and followed. **NATHURAI BHAILAL JAYNEA RAJJI** I. L. R. 1 Bom. 121

5. **Hindu married woman, effect of joint and separate contract by—Stridhan—Separate property.** A contract entered into by a Hindu married woman jointly with her husband and separately for herself must, in the absence of special circumstances, be considered as entered into with reference to her stridhan, which is analogous to a woman's separate property in English. **GOVINDJI KIMJI v. LAKSHMIDAS NATHUBHOY**

I. L. R. 4 Bom. 318

6. **Liability of husband for wife's debts.** A husband (Hindu) is not liable for a debt contracted by his wife, except where it has been contracted by his express authority, or under circumstances of such pressing necessity that his authority may be implied. **PRASAD v. MAHADEO PRASAD** I. L. R. 3 All. 122

7. **Coverture, effect of—English law.** The proposition that everything acquired by a woman during coverture is the property of her husband has no foundation in Hindu law. **RAMASAMI PADEYATCHI v. VIRASAMI PADEYATCHI**

3 Mad. 272

8. **Hindu wife—Transaction in her own name—Wife's right to sue without joining husband—Presumption as to separate property.**

**MANARA SUNDARI DABI v. MAHANANDA SARNAKAR** 2 C. W. N. 367

9. **Deed of separation—Agreement without consideration—Contract Act (IV of 1872), s. 25 (1).** By a registered deed executed by the defendant in favour of the plaintiff, his wife,

for arrears of maintenance due:—*Held*, that there was no consideration moving from the wife, for the promise by the husband; it was a voluntary arrangement on the part of the husband, and the present suit could not be maintained. That s. 25 of the Contract Act did not apply, the consideration of natural love and affection being directly opposed to the recitals in the document. **RAJLUKHY DABEE v. BHOOTNATH MOOKERJEE**

4 C. W. N. 488

HINDU LAW—CONTRACT—*contd.*

## 6. LIEN.

Deposit of title-deeds of land in Island of Bombay—*Creation of lien.* Alien created by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu upheld. *JIVANDAS KESHAVJI v. FRANZI NANAHAI*

7 Bom. O. C. 45

## 7. MONEY LENT.

Demand, money payable on—*Limitation—Cause of action* Where a sum was lent at interest, the principal to be payable on demand:—*Held per NORMAN, J.*, that by Hindu law a demand will be necessary, and limitation would run from the date of the demand. *BRAMMANAYI DAS v. ARHAI CHARAN GROWHRY*

7 B. L. R. 489 : 16 W. R. 164

(*Contra*) *PARBATI CHARAN MOOKERJI v. RAM-NARAYAN MATILAL*

5 B. L. R. 396 : 16 W. R. 164 note

## 8 MORTGAGE.

1. Mortgage of future crops—*Validity of mortgage. Quare.* As to the validity in Hindu law of a mortgage of future crops. *KZ-DANI BIN RAJU v. ATMARAKSHAT*

3 Bom. A. C. 11

2. Mortgage without possession—*Validity of mortgage.* A mortgage without possession is not by Hindu law absolutely invalid, but is binding between the mortgagor and mortgagee. *GHINTAMAN BHASKAR v. SIVRAM HARI*

9 Bom. 304

See *KRISHNAJI NARAYAN v. GOVIND BHASKAR*

9 Bom. 375

3. Law in Guzerat—*Priority—Registration—Notice.* The rule of Hindu law that a mortgage with possession takes precedence of a mortgage of a prior date, but unaccompanied by possession, does not apply to Guzerat. Where in Guzerat the defendant, a paise mortgagee, in possession had notice of plaintiff's prior mortgage, the defendant was held not entitled to claim the benefit of the above rule of Hindu law. Registration could not of itself alter this rule of Hindu law except so far as effect may be given to it by statute, and registration secures the same object which the Hindu law intended to secure by requiring possession, viz., notice to subsequent incumbrancers of the existence of a prior incumbrancer. *ITCHARAM DAYARAM v. RAJJI JAGA*

11 Bom 41

## 9. NECESSARIES

Power of widow entitled to maintenance to bind heir for necessities. There is no rule of Hindu law which recog-

HINDU LAW—CONTRACT—*contd.*9. NECESSARIES—*concl'd.*

nizes any authority in a widow entitled only to maintenance to make contracts for necessary supplies binding upon the heir in possession of the family property and liable to maintain her. *RAMASAMY AYYAN v. MINAKSHI AMMAL*

2 Mad. 409

## 10. PLEDGE.

1. Accidental destruction of property pledged. By the Hindu as well as by the English law, a creditor in whose hands a pledge has accidentally perished is notwithstanding entitled to recover his debt in the absence of an agreement to the contrary. *VITHORA VALAD URBA v. CHOTA LAL TUKARAM*

7 Bom. A. C. 116

## 11. PRINCIPAL AND SURETY.

2. Suit against surety—*Principal not sued.* A suit may be maintained against a surety, according to Hindu law, although the principal debtor has not been sued. *TOTAKOT SHANOUNNI MENON v. KURUSINGAL KARU VAND*

4 Mad 190

## 12. PROMISSORY NOTE.

1. Consideration—*Document not importing consideration.* In a suit under the Bills of Exchange Act to recover Rs. 200 on a promissory note:—*Held per PEACOCK, C. J.*, that the suit, being between two Hindus, must be decided by Hindu law. By Hindu law a promissory note does not import consideration, and therefore, where it was proved that the defendant actually received only Rs. 700, that sum was all the plaintiff was allowed to recover. *RAMLAL MOOKERJEE v. HARAN CHANDRA DHAR*

3 B. L. R. O. C. 130

2. Liability of minor—*Suit on promissory note executed by mother of a minor, as his guardian, in respect of a debt for which the minor's share in the ancestral estate was liable—Liability of minor to the extent of his share in the ancestral estate.* The mother of a minor executed, as his guardian, a promissory note in respect of a debt for which the

(1902)

## 13. SALE.

Validity  
w an  
sale.

528

HINDU LAW—CONTRACT—*concl'd.*

## 14. TRANSFER OF PROPERTY.

See LEASE—CONSTRUCTION.

I. L. R. 28 Calc. 720

1. ——— Exchange of land—Necessity of written exchange. By Hindu law an exchange of lands followed by possession need not be evidenced by writing. *Sembé*: In no case does the Hindu law appear absolutely to require writing, though as evidence it regards and inculcates a writing as of additional force and value. *MANTENA RAYAPPAJ v. CHEKURI VENKATARAJ* . . . 1 Mad. 100

CRINIVA SAMMAL v. VIJAYANMAL . . . 2 Mad. 37

PALANYAPPA CHETTI v. ARUMGAN CHETTI . . . 2 Mad. 26

KRISHNA v. RAYAPPA SHANBHAGA . . . 4 Mad. 88

ROOKHO v. MADHO DOSS . . . 1 N. W. Ed. 1873, 58

2. ——— Mode of transfer—Verbal transfer of property. No special mode of transfer is required by the Hindu law; even a verbal transfer is sufficient. *HURPURSHAD v. SHEO DYAL. RAM SAHOY v. SHEO DYAL. BALMOKAND v. SHEO DYAL. RAM SAHOY v. BALMOKAND* . . . L. R. 3 I. A. 258; 28 W. R. 55

## 15. VERBAL CONTRACTS.

Verbal contract, validity of —Registration Act. There is nothing in the Registration Act which renders verbal contracts void.

DOE D. SEEBERISTO v. EAST INDIA COMPANY . . . 8 Moo. I. A. 267

## HINDU LAW—CONVERSION.

*Change of religion—Effect of conversion of a member of a joint Hindu family to Muhammadanism—Regulation*

version was to make the son sole owner of the property which up to that time had belonged jointly to him and his father. *Held*, also, that a compro-

sioners can only be found by a decree made after

HINDU LAW—CONVERSION—*concl'd.*

*Imrit Konieur Sheo Narain 337; Jeram Sant Kumar v. Deo Saran, I. L. R. 8 All. 365; Ram Sarup v.*

## HINDU LAW—CUSTOM.

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See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.

I. L. R. 27 Bom. 492

See, also, THE PARTICULAR HEAD OF HINDU LAW WHICH IS APPLICABLE.

See MALABAR LAW—CUSTOM.

inheritance and succession—

See LETTERS OF ADMINISTRATION.

I. L. R. 28 Calc. 608

## I. GENERALLY.

1. ——— Nature of custom—*Requisites of custom.* A custom is a rule which in a particular

*HURPURSHAD v. SHEO DYAL. RAM SAHOY v. SHEO DYAL. BALMOKAND v. SHEO DYAL. RAM SAHOY v. BALMOKAND* . . . L. R. 3 I. A. 258; 28 W. R. 55

2. ——— Origin and force of customary law. The question of the origin and binding

**HINDU LAW—CUSTOM—*contd.*****1. GENERALLY—*concl'd.***

force of customary law discussed, and the authority upon the subject cited and commented upon. *TARA CHAND v. REEB RAM* . . . 3 Mad. 50

3. ——— Operation of Custom—Custom not judicially recognized, Authority of. A custom which has never been judicially recognized cannot prevail against distinct authority. *NARASAMAL v. BALARAMA CHARLU* . . . 1 Mad. 420

4. ——— Effect of custom when proved to exist. Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom. *SARTAJ KUARI v. DEOBAJ KUARI*

I. L. R. 10 All. 272  
L. R. 15 I. A. 51

5. ——— Usage different from normal law and custom—*Onus of proving usage.* When amongst Hindus (and Jains are Hindu dissenters) some custom different from the normal Hindu law

in ordinary way set up. *BRAGVANDASS TEJMAL v. RAJMAL alias HIRALAL LACHMANDAS*

10 Bom. 241

6. ——— Evidence of custom varying

enforced their right under the general law. *RAMA NAND v. SUBJIANI* . . . I. L. R. 18 All. 231

7. ——— Evidence of custom—Judicial

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tion are  
custom.  
I. L. R.  
Chunnee

*Hoolas Kae v. Bhowani*, unreported, referred to in 6 N. W. 396, and *Behari Lal v. Sookbasi Lal*, unreported, referred in 6 N. W. 395, commented upon. *SHIMBHU NATH v. GAYAN CHAND*

I. L. R. 16 All. 379

**HINDU LAW—CUSTOM—*contd.*****2. ADOPTION.**

1. ——— Custom not allowing adoption governing a family not subject to Hindu law—Construction of gift—Burden of

who alleged it to be so; whereas, if the family had been generally governed by Hindu law, the onus would have been on those who alleged the exclusion of the right to adopt. *Rajah Bishnath Singh v. Ram Churn Maymoadar*, S. D. A. 1850 p. 20, referred to, as showing that even in a Hindu family there might be a custom which barred inheritance by adoption. *FANINDRA DEB RAJEAT v. RAJESWAR DAS* . . . I. L. R. 11 Cal. 483  
L. R. 12 I. A. 72

2. ——— Adoption by untensured widow—Evidence of custom—Custom of caste—Opinion of caste expressed at meeting—Validity of adoption. For the purpose of proving that

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HINDU LAW—CUSTOM—*contd.*2. ADOPTION—*contd.*

their heads, and that it would prove nothing more; and with regard to the opinion of the caste, that such opinion, even if expressed by a majority at

## 3. ——— Plurality of adoption—

*Dancing girl caste—Immoral or illegal purpose of adoption* As a matter of private law, the class of dancing women being recognized by Hindu law as a separate class having a legal status, the usage of that class in the absence of positive legislation to the contrary regulates rights of status and of inheritance, adoption, and survivorship. A dancing woman adopted two daughters, of whom the latter was adopted in the year 1854. It was found that the custom obtaining among dancing women in Southern India permits plurality of adoptions.

I. L. R. 13 Mad. 214

## 4. ——— Adoption by temple dancing

*woman—Right of adopted daughter—Right of suit—Adoption made with intention of prostituting minor—Penal Code, s. 373.* Suit by the adopted daughter of a temple dancing woman, deceased, to compel the trustees of the temple to permit the per-

## 5. ——— Adoption for illegal purpose

*Devadasi.* The plaintiff sued as the adopted daughter of a dancing woman to recover a

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temple

even during her minority. *Held*, that an adoption was invalid. *SANJIVI v. JALAJAKSHI*

I. L. R. 21 Mad. 229

8. ——— Adoption among Saraogi Agarwallas of Barh—Jains. Customs of, and law governing. Where a custom to the effect that the widow of a sonless intestate (amongst the Saraogi Agarwallas of Barh) takes an absolute inter-

parties resided. *Held*, in this case, that no such

HINDU LAW—CUSTOM—*contd.*2. ADOPTION—*contd.*

tinguished. *MANDIT KOER v. PHOOL CHAND LAL*  
2 C. W. N. 154

7. ——— Adoption by widow of  
Oswal Jain sect without authority of husband—Customs regulating personal rights and status of family—Effect of conversion from one sect of Hinduism to another. The adoption of the tenets of another sect of Hinduism will not necessarily affect the laws and customs by which the personal rights and status of the family are regulated.

affected by the conversion of the family to Vaishnavism. *Padmakumari Devi Choudhrani v. Court of Wards*, I. L. R. 8 Calc. 302, L. R. 8 I. A. 229, distinguished *Dhobun Moyee Debia v. Ramakishore Acharjee*, 3 W. R. P. C. 15; 10 Moo. I. A. 279, and *Puddo Kumaree Debee v. Juggut Kishore Acharjee*, I. L. R. 5 Calc. 615, referred to. *MANIK CHAND GOLECHIA v. JAGAT SETTANI PRAN KUMARI DEBI*  
I. L. R. 17 Calc. 618

8. ——— Adoption, Caste custom prohibiting—*Kadwa Kunbi caste at Ahmedabad—Conscience of the members of the caste—Nature of proof required—Uniform and permanent usage*

held that there had been, as a matter of fact, two previous adoptions by widows which were not

*PATEL VANDRAVAN JEKISAN v. PATEL MANILAL CHUNILAL*  
I. L. R. 16 Bom. 470

9. ——— Power of sonless widow to adopt a son without permission of husband—Jains—Saraogis. Judicial decisions recognizing



HINDU LAW—CUSTOM—*contd.*2. ADOPTION—*contd.*

the existence of a disputed custom amongst the Jains

I. L. R. 2, Cal. 300

## 3. AFFILIATION OF SON (ILLATAM).

1. ——— Status of affiliated son—*Illatam* or affiliation of a son—Districts of Bellary and Kurnool. The custom of *illatam* (affiliation)

power may be exercised by a surviving paternal grandfather; and (iii) whether the affiliation is effect-

I. L. R. 4 Mad. 572

2. ——— Rights of succession in his natural family. Under the custom of *illatam* (affiliation of a son-in-law) which obtains amongst the Reddis or Pedda Kapu caste of Vellore, the *illatam* son-in-law does not thereby lose his rights of succession to the estate of his natural father's divided brother. BALABANI REDDI v. PERA REDDI. I. L. R. 6 Mad. 287

3. ——— *Illatam* adoption—*Inher.* *illatam* adoption exists among the Kondarazu caste

HINDU LAW—CUSTOM—*contd.*3. AFFILIATION OF SON (ILLATAM)—*contd.*

of the Vizagapatam district. NARASIMHA RAO v. VEERABHADRA RAO. I. L. R. 17 Mad. 287

## 4. APPOINTMENT OF DAUGHTER.

Power to appoint daughter—*Onus of proof* Delegation of power. The custom of Hindu law, under which a father, in default of male issue, might appoint a daughter to be as a son, or appoint her to raise a son for him, if not absolute, as appears to be the opinion of the text-writers is one which in modern times does not seem to have been brought under the consideration of the Courts of justice in India. Assuming the custom to exist,

Affirming case in High Court.

5 B. L. R. 442; 14 W. R. 117

## 5. ASSAM, LAW IN.

Similarity to Bengal law—*Absence of proof of custom* In the absence of any proof or custom to the contrary, the Hindu law in Assam is similar to that prevalent in Bengal. DEEBO DABEA v. GOBINDO DEB

11 B. L. R. 131 note

16 W. R. 43

## 6. CASTE.

mistaken belief that he had committed a caste offence, the expulsion was illegal and could not affect his rights. *Per KERNAN, J.*—A custom of usage of a caste to expel a member in his absence without notice given or opportunity of explanation offered is not a valid custom. KRISHNASAMI CHETTI v. VIRAYANI CHETTI. I. L. R. 10 Mad. 133

2. ——— Power of the head of a caste in respect of caste customs—*Jurisdiction of Civil Court.* In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A guru as head of a caste

**HINDU LAW—CUSTOM—contd.****6. CASTE—concl.**

Regulation to deal with all matters relating to

cited and followed. **GANAPATI BHATT A BHARATI SWAMI**. I. L. R. 17 Mad. 223

**7. DISHERISON.**

**Dieherison in favour of son.**

**CHETTI**. 1 Mad. 51

**8. ENDOWMENTS.**

1. ——— Principle to be observed in dealing with Hindu endowments—*Evidence of custom.* The important principle to be

whose affairs have become the subject of litigation and to be guided by them. The custom and practice in such matters is to be proved by testimony. A

**PATI v. PERIANATAGUM PILLAI**

I. L. R. 11 A. 209

2. ——— Dancing girls attached to a temple inheritance—*Temple endowment—Succession to the office of a dancing girl connected with such temple—Public policy—Right of suit.* The existence in India of dancing-girls in connection with Hindu temples is not to the detriment

management, and if it was the custom of the temple that the actual incumbent of the office of dancing girl in the temple should nominate her successor,

**HINDU LAW—CUSTOM—contd.****8. ENDOWMENTS—concl.**

the Courts of law could not refuse to recognize it, such custom being recognized in the country. **TARA NAIKIN v. NANA LAKSHMAN**

I. L. R. 14 Bom. 90

**9. FAMILY, MANAGEMENT OF.**

1. ——— Right to manage family—*Family compact, power of revocation of—Allyasantana law—Yajaman.* The question whether, according to the Allyasantana usage obtaining in South Canara, the senior member, male or female, or only the senior female, is the *de jure* yajaman (manager) of the family, is not concluded by authority and cannot be determined without evidence of usage. By a family compact (between all the

senior female, assuming that she was *de jure* yajaman, could not arbitrarily revoke this arrangement. **DEVU v. DEVI**. I. L. R. 8 Mad. 353

2. ——— Allyasantana law—*Yajaman—The rights of the senior member of this family being a female.* The senior member of an Allyasantana family of female is the *de jure* yajaman.

sufferance of the yajaman for the time being. **MAHALINGA v. MARIYAMMAH**

I. L. R. 12 Mad. 462

**10. IMMORAL CUSTOMS.**

1. ——— Usages among dancing girls (naikins)—*Usage as a source of law—Functions of Courts of law and of the Legislature in*

The practices of an abandoned class are, no doubt, a usage in the sense of a tolerably uniform series of acts, but they do not therefore spring from a consciousness of compulsion, but rather from mere habit, imitation, and ignorance. Such usage is not a law, for over it premed

recognize certain principles as essential to the common welfare, it will no longer lend its sanction to sectional practices at variance with the principles thus recognized. It is only according to the standards of the Hindu law that a usage has coercive force amongst Hindus; and what the Hindu law is,

HINDU LAW—CUSTOM—*contd.*10. IMMORAL CUSTOMS—*contd.*

must, for the purposes of secular justice, depend on the general sense of the Hindu community. Although at one time in India the existence of companies of temple women may have been thought not so repugnant to the essential principles of the Vedic Code as to prevent their recognition as a source of law for themselves, it is not so at pre-

not by repetition become a customary law. A custom, in order not to constitute it such, but to

requisite degree of maturity. It is the function of the State to enforce it when it is ascertained and pronounced upon by the Courts of law. Judicial decisions by which customs in India have been recognized are not to be regarded in precisely the same way as judicial decisions with reference to customs in England. In England what the Courts have definitely propounded becomes by that very process a part of the common law, that is, of the law deriving its force from the custom of the realm or of the whole community. But in India it is usage, as such, to which the Courts are commanded to give effect. A custom, however, may be a usage and abandoned and its recognition a usage can community the commi changing phases, or else the behest of the sovereign will eventually be defeated. As the mind of the community becomes enlightened, its legal convictions will change, and this will constitute a change in its common law, as that law must from time to time be recognized and recorded in the Courts. *MATHURA NAIKIN v. ESU NAIKIN*  
I. L. R. 4 Bom. 545

2. ————— *Immoral custom, suit to declare existence of—Public policy, custom contrary to.* In a suit by the dancing girls of a temple claiming to have by custom a veto upon the introduction of any new dancing girls into the ser-

HINDU LAW—CUSTOM—*contd.*10. IMMORAL CUSTOMS—*contd.*

vice of that temple, and praying for an inquiry as to whether the dharmakarta of the temple was a fit

be recognizing an immoral custom, viz., for an association of women to enjoy a monopoly of the gains of prostitution, a right which no Court could countenance. *CHINNA UMMAI v. TEGARAI CHETTI*  
I. L. R. 1 Mad. 188

3. ————— *Immoral custom, suit to declare existence of—Hereditary office with endowments or emoluments attached, suit to establish right to.* The suit was brought by a dancing girl to establish her right to the mirasi of dancing

*Chetti, I. L. R. 1 Mad. 188.* On second appeal—

\* 4. ————— *Marriage by permission of caste without divorce—Natra marriage—Immoral custom.* A custom which authorizes a woman to contract a natra marriage without a divorce, on payment of a certain sum to the caste to which she belongs, is an immoral custom, and one which should not be judicially recognized. *URI v. HATHI LALA*  
7 Bom. A. C. 133

5. ————— *Custom of divorce—Caste custom.* There is nothing immoral in a caste custom by which divorce and re-marriage are permissible on

6. ————— *Custom recognizing heirship in illegitimate son—Son by adulterous*

## U LAW—CUSTOM—contd.

## II. IMPARTIBILITY.

**Impartible estate—Parti-**  
*Alto* A custom of impartibility must be proved in order to control the operation of any Hindu law of succession. The fact estate has not been partitioned for six or generations does not deprive the members of it to which it jointly belongs of their right of partition. **DURRAYO SINGH v. DARI SINGH**

13 B. L. R. 105 : 16 W. R. 142

L. R. 11 A. 1

**Custom as to succession.** That an estate is impartible implies that it is separate and so to be governed by the law applicable to separate succession. The general status of a Hindu family being divided, property which is joint will follow the course of succession. Since in documents a Hindu and in the Mitakshara itself it is usual to find the leading members of a class mentioned when it is intended to comprehend the whole class, a written statement of a family whereby an impartible estate passes, in the hands of the holder dying without issue, to his brother or his eldest son, need not be considered as limiting the collateral succession to the two named, but as providing generally that on the death of the holder the estate shall pass to his brother or his eldest son.

L. R. 2 I. A. 263

reversing the decision of the High Court in **HEE KOERI v. CROWDERY CHINTAMUN**

20 W. R. 247

**Mitakshara law.** The plaintiff with *B. S.*, the father of the defendant, who was in possession of an estate in which the defendant had a share, died without issue.

It was held that all his property should be forfeited to the Government. On the 16th April 1858, *B. S.* was arrested and was tried and convicted on a charge of rebellion, and sentenced to death. The sentence was carried out on the 21st April 1858, and an order was made on the same day by the Government that the estate should be granted to the Government for his maintenance, and was, by the terms of the order, to be distributed on the death of the defendant.

It was held that the estate was granted to the Government for his maintenance, and was, by the terms of the order, to be distributed on the death of the defendant.

## HINDU LAW—CUSTOM—contd.

## II. IMPARTIBILITY—contd.

which the estate was impartible and descendible, according to the law of primogeniture, on the male heirs of the original grantee; and that, by the Mitakshara law as modified, the plaintiff became on his birth co-owner with his father in the estate, and on his father's death became entitled to it, notwithstanding the sentence of confiscation pronounced against *B. S.* Held, on the case made by the plaintiff, that the estate was not shown to be inalienable; the fact that the grant was for maintenance, and to the male heirs of the original grantee, would not render it so. Held, on the case made in the written statement, that the Mitakshara law did not apply to the case; that law by which each son has by birth a property in the paternal or ancestral estate is inconsistent with the custom that the estate was impartible and descended to the eldest son. **KAPILNATH SINGH v. DEO R. GOVERNMENT**

13 B. L. R. 445 : 22 W. R. 17

**4. — Presumption as to impartibility—Burden of proof—Deshgat vatan held by desai.** In a suit for the partition of part of a deshgat vatan, brought by the younger brothers of a joint Hindu family against their eldest brother, the presumption is that the vatan is impartible, and that the estate is to be divided among the brothers.

It was held that the vatan had, contrary to the general Hindu law, been inherited by him alone. It was for the desai to show by evidence of the nature of the tenure of the vatan that it was impartible, or to show by evidence of family custom or of district, i.e., local custom, that impartibility attached to it, such evidence being strong enough to rebut the presumption of the prevalence of the general Hindu law. Where the defendant in a suit for the partition of a deshgat vatan held the hereditary office of desai, and the vatan was properly appertaining to the office, the decree for partition was accompanied by a decree for the appointment of a desai.

L. R. 7 I. A. 182

**5. — Alienation not**

**KUARI**

**6. — Custom, usage modifying the ordinary law**

HINDU LAW—CUSTOM—*contd.*11. IMPARTIBILITY—*contd.*

17 W. R. 553

14 Moo. I. A. 570

SERUMA UMAH v. PALATHAN VITIL MARYA  
COOTHY UMAH 15 W. R. P. C. 47LUGHVAN LALL v. MORUN LALL BHAYA GAYAL  
16 W. R. 179

7. ——— Customary law of inheritance of certain zamindaris in and about Madura—Impartible rap. The principal issue on this appeal was whether the defendant was entitled to succeed to the zamindari.

the Saptur, zamindar in preference to the plaintiff. Both the parties were sons of the late zamindar, being half-brothers, sons of their father by different mothers. The plaintiff was the elder of the two, but the mother of the younger had been married by the zamindar before his marriage with the mother of the elder. In virtue of his seniority the elder brother claimed. The younger defended the suit on the title that his mother's marriage with the raja had preceded the marriage of the plaintiff's mother, alleging the custom to prevail in the zamindarias above stated. The Courts below, having considered the evidence, found that the custom was proved in

I. A. 570, as to the requisites for the proof of such a custom, the findings below were conclusive as to its existence, SUNDARALINGASAMI KANAYA NAIK v. RAMASAMI KANAYA NAIK

I. L. R. 22 Mad. 516

I. L. R. 26 I. A. 55

8. ——— Right of possessor of impartible estate to alienate. There is no such

no custom of impartibility, the raja's power over the estate would have been restricted by the law declared in Mitakshara, Chap. I, s. 1, v. 27, and the

HINDU LAW—CUSTOM—*contd.*11. IMPARTIBILITY—*contd.*

gift would have been void. But, there being the above custom, the question was how far the general law was superseded, and whether the right of the son to control the father's act in this respect was beyond the custom. *Held*, that in regard to impartible estate the son's right at birth did not exist where there was no right on his part to partition; also, that inalienability depended on custom or on the evidence.

estate was  
KUARI I. L. R. 10 All. 212  
I. L. R. 15 I. A. 51

9. ——— Impartible zamindari—Alienation by the owner by his will. A zamindari in

which must be proved, or in some cases upon the evidence, that the custom was proved in

law not there a zamindari estate, that I

VENKATA SURYA MAHIPATI IVAMA JESUDHAN LAA  
COURT OF WARDS I. L. R. 22 Mad. 383  
I. L. R. 26 I. A. 83  
3 C. W. N. 415

10. ——— Impartible estate—Power of sons to question the acts of their father when holder. Where an estate is impartible, the sons of the present holder have, since the decision in *Sarda Kuari v. Deoraj Kuari*, L. R. 15 I. A. 51; I. L. R. 10 All. 272, recently affirmed as to this Presidency in *Venkata Surya Mahipati Rama Krishna Rao v. Court of Wards*, L. R. 26 I. A. 83; L. L. R. 22 Mad. 383, no locus stands to question the acts of their father. VENKATA NARASIMHA NAIDU v. BHASHTAKARLU NAIDU I. L. R. 23 Mad. 538

11. ——— Family custom—Rajputs—Primogeniture—Evidence of converging

HINDU LAW—CUSTOM—*contd.*11. IMPARTIBILITY—*contd.*

*probabilities.* In a Rajput family, of a clan named

their ancestral property descended as an impartible estate, to be possessed by the eldest son of the last inheritor, or descended as an ordinary estate, under the Hindu law, to be held jointly by the sons, each having the right to claim partition. The second of a joint family of three sons now sued the elder, the youngest being a co-defendant, but not taking either side. The evidence established a family custom that the ancestral property should descend as an impartible estate, and should be possessed by a single heir at a time, who should be the eldest son. All the lines of evidence, of differing degrees of value, converged towards the same result, the existence of this custom of impartibility, and of primogeniture. Perhaps no one of these lines, taken alone, would have been conclusive in favour of this right being established in the eldest son. But when the whole evidence was considered, the converging probabilities were conclusive to maintain the right claimed by the eldest son to exclusive possession. NITB PAL SINGH v. JAT PAL SINGH

I. L. R. 10 All. 1  
I. L. R. 23 I. A. 147

12. ———— *Iluvans of Palghat—Custom relating to partibility of property—Tiyans.* In a suit for partition amongst parties belonging to the caste of Iluvans of Palghat it having been contended that the ordinary Hindu law relating to partibility of property had no application: *Held*, that *Raman Menon v. Chathunni*, I. L. R. 10 All. 1, 147, was not applicable.

adduced to the effect that the former class had for long been treating themselves as separate from the latter and that partition was enforced as a matter of right amongst the Iluvans, the Courts were entitled to find the custom relating to partibility among the Iluvans proved. VELU V. CHAMU

I. L. R. 22 Mad. 297

13. ———— *Impartible raj—Custom of inalienability, evidence of—Right of possessor of impartible estate to alienate—Dayad pottam.* The

HINDU LAW—CUSTOM—*contd.*11. IMPARTIBILITY—*contd.*

under this rule to inherit on the death of the transferor was one of the plaintiffs in the suit. It was contended that the palayagar had no proprietary right in the estate, but held the office of manager merely; but this contention was overruled. It was further contended that the estate admittedly impartible was by custom inalienable also. *Held*, on the oral and other evidence adduced in the case, and with reference to admissions made by the transferor and to his conduct, and on its appearing that eight out of the nine predecessors of the transferor had left either sons or widows, but nevertheless that for three centuries there had been no sale or gift, that the custom of inalienability was established, and that the gift in question was accordingly invalid as against the plaintiff. *Sartaj Kuari v. Deoraj Kuari*, I. L. R. 10 All. 272, discussed and explained. SIVASUBRAMANIAM NAICKER v. KRISHNAMMAL I. L. R. 18 Mad. 287

14. ———— *Impartible raj not necessarily inalienable—Mitakshara law* If

alienability depends upon special custom, or, in some cases, upon the special tenor of the deed, and in

I. L. R. 20 All. 537

15. ———— *Impartible Raj—Custom—Onus of proof—Raj seized by Government—Subsequent re-grant effecting division of the estates—Grant to heir of former holder—Custom of exclusion of females.* The East India Company

cumstances, be treated as proceeding from the

ble Raj *Beer Pertab Sahoe v. Rajender Pertab Sahoe*, (1867) Moo. I. A. 1, followed. There is no inconsistency between a custom of impartibility and the right of females to inherit; and the general law must prevail, unless it is proved that the custom extends to the exclusion of females. The onus of proving that they are excluded lies on the party alleging it. RAM NUNDEN SINGH v. JAT PAL SINGH (1902) I. L. R. 29 Cal. 868; C. C. F. I. 67; I. L. R. 29 I. A. 275

HINDU LAW—CUSTOM—*contd.*11. IMPARTIBILITY—*contd.*

16. *Impartible raj*—*Family custom*—*Separate acquisitions of holder of impartible raj*—*Presumption*. One Raja Fateh Sahi was the owner of a "raj-rasat," to which by family custom the incidents of primogeniture and impartibility applied, the younger sons receiving portions of the estate by way of "babuai" allowance. The bulk of the property of the *raja* was situated in the *raja*...

but the Gorakhpur property was then in territory belonging to the Nawab Wazir of Oudh, which was not ceded to the British Government, until 1801. *Held*, that the application of the customs of primogeniture and *raja*... Gorakhpur... if (w. case) acqui these the f. prope they

...out of it to the *raja* heir, there being otherwise clear and consistent evidence of the existence of the custom. A compromise between members of a Hindu family whereby "babuai" allowance is fixed and a dispute with regard to the family property is terminated will, if just and legal, be binding on the minor children of the parties thereto. *Patan Singh v. Ujagar Singh*, I. L. R. 1 All 651, and *Chandrapati v. Dhanu*, I. L. R. 19 Bom 593, referred to. If the owner of an estate, the devolution of which is governed by family custom, acquires separate property, but does not in his lifetime alienate the property so acquired...

...estate. *Lakshminarayana v. Kandasami*, I. L. R. 16 Mad 54, and *Ramasami Komaya Naik v. Sundara Lingasami Komaya Naik*, I. L. R. 17 Mad 422, referred to. *SARADJIT PARTAP BHADUR SAHAI v. INDRAJIT PARTAP BHADUR SAHAI* (1905) I. L. R. 27 All 203

## 12. INHERITANCE AND SUCCESSION

1. *Inheritance*—*Property descend*—*in other than ordinary way*—*Onus probandi*...

HINDU LAW—CUSTOM—*contd.*12. INHERITANCE AND SUCCESSION—*contd.*

Where ancestral property has apparently descended in the ordinary way of Hindu property, first to the son and thence to the mother, it lies on those who say it is confined to the direct descendants of the original donee to prove their case and show by some custom that that was the proper construction of the grant. *MAHENDRA SINGH v. JOSHIA SINGH*

19 W. R. P. C. 211

2. *Onus probandi*—*Customs varying ordinary course of descent*. An action was brought by the members of a junior branch of the family of the Maharaja of Chota Nagpore to recover...

...member of the family, for his maintenance by a former Maharaja. On A's death, the eldest of his surviving sons... thakoor... the admit... tained a p... including person... until her death was L S as the representative of her deceased husband D N. The plaintiffs' case was that D N having died without issue, all the properties ought, "according to the Hindu shasters and the custom of the family," to be divided equally between all the surviving male descendants of the common ancestor, defendant's answer being that, "according to the long established custom of the family of B S, he (the defendant) as the representative of the eldest branch thereof was entitled solely and exclusively to the...

...and, that, as according to the custom...

...must be presumed to obtain in both until the contrary was proved. *JEETNATH SAHAI DEO v. LOKENATH SAHAI DEO* 19 W. R. 239

3. *Alienation*—*Law*—*acqui*—*Alia*...

...upon his death not upon the family, but upon his immediate representatives. *ANTANNA v. KAVARI* I. L. R. 7 Mad. 675

4. *Custom contrary to general rule as to inheritance of daughters*. The general rule of Hindu law being that if a man dies separate in estate...

HINDU LAW—CUSTOM—*cont.*12. INHERITANCE AND SUCCESSION—*cont.*

any particular kind of property must be proved by ample and satisfactory evidence before the Courts will admit it as established. *NARAYAN BARAI v. NANA MAHDHAR* 7 Bom. A. C. 163

6. — Custom of bogam or dancing-girl caste in Godavari—*Gains of prostitution—Property left by mother.* A pauper sued his sister for the partition of property valued at a large sum. The parties belonged to the bogam caste, residing in the Godavari district. The defendant pleaded that the property had been acquired by her as a prostitute, and denied the plaintiff's claim to it. The plaintiff obtained a decree for 1100, being a moiety of the property found to have been left by their mother. *Held*, on the evidence as to the local custom of the caste, that the decree was right. By the custom of the bogam caste in the Godavari district property left by a mother is divisible between sons and daughters. *CHANDREKA v. SECRETARY OF STATE FOR INDIA*

I. L. R. 14 Mad. 163

relations, the issue was fixed with the assent of the pleaders on both sides, whether the plaintiff, as a female, was excluded from inheriting by the custom of the family or tribe. *Held*, that this was substantially a question of fact, and that on the evidence, which included the village wajib-ul-ur, the customary exclusion of females was not proved. *BURJORE v. BHAGAYA* I. L. R. 10 Cal. 567

L. R. 11 I. A. 7

7. — Utpat families of Pandharpur—*Proof of family custom.* Among the members of the Utpat families of Pandharpur in the Sholapur district, daughters are excluded from succession by a long and uniform family usage. Under Hindu law, a family usage or custom, when clearly proved, outweighs the written text of the law. But the greatest care must be exercised in accepting the alleged usage or custom as proved. When it is a family custom, the evidence must clearly show that it has been submitted to as legally binding, and not as a mere arrangement by mutual consent for peace or convenience. Any special rule of inheritance proved to exist in a Hindu family, and which is ancient, uniform, and reasonable, and not repugnant to the fundamental principles of Hindu law, should not be refused recognition. Origin and growth of the rights of inheritance of the widow and daughter by general Hindu law considered. *BHAT NARAYAN UTPAT v. SUNDARAI* 11 Bom. 249

8. — Exclusion of females—*Custom excluding women from succession, proof of—Gohel Girasias—Variance between pleading and proof—Limitation.* H, a Gohel Girasia, died in or about 1866, leaving a widow M and daughter B, and possessed of certain lands. M died in 1887,

HINDU LAW—CUSTOM—*cont.*12. INHERITANCE AND SUCCESSION—*cont.*

In 1820, the plaintiff, who were divided collaterals of H, sued to recover the lands alleging that they succeeded thereto on the death of H, widows and daughters being excluded from inheritance according to the custom among the Gohel Girasias. The lower Courts found that the lands were never in plaintiff's possession; that M held them till that December 1892, since which time defendants 1—3 had them in their enjoyment as purchasers from her; that the custom proved excluded daughters, but not widows, from inheritance; and that the claim was within time, having been made within twelve years of the death of M. *On appeal* (allowed by the High Court). *Held* (affirmed)

and daughters to one which only excluded daughters, (iii) that since limitation must be applied to the plaintiff's claim as they made it, and tried to prove it, M's possession was adverse to them, and, being for more than twelve years, barred the suit. *Basava v. Lingannaada*, I. L. R. 19 Bom. 428; *Bhagandas v. Raymal*, 10 Bom. 241; *Shidhojir v. Naikjir*, 10 Bom. 228; and *Neeliso v. Beerchunder*, 12 Moo. I. A. 523, referred to. *DESAI RANCHODAS VITHALDAS v. BAWAL NATHURAI KESABHAI* I. L. R. 21 Bom. 110

9. — Jain law—*Proof of custom of inheritance.* When a question of inheritance arises,

whether the custom be at variance or in accordance with Hindu law, the Court is bound to give effect to the custom. *SHRO SINGH RAI v. DAKHO*

8 N. W. 392

s.c. Affirmed by Privy Council.

I. L. R. 1 All. 688

L. R. 5 I. A. 87

10. — Khoja Mahomedans—*Law applicable to Khoja Mahomedans, Bombay.* It must be considered as the settled rule in Bombay that in the absence of sufficient evidence of usages to the contrary the Hindu law is applicable in matters relating to property, inheritance, and succession among Khoja Mahomedans, and this rule was held to apply in a case of Khojas at Thana, no evidence having been given in that case to show its inapplicability to the Khojas of that place. *SHIVJI HASANI v. DATU MAJI KHOJA* 12 Bom. 281

11. — Khoja Mahomedans—*Succession—Letters of administration.* In the



HINDU LAW—CUSTOM—*contd.*12. INHERITANCE AND SUCCESSION—*contd.*

alleged to exist amongst Khojas, the burden of

sub-division, and being partly regulated by Mahomedan law, partly by Hindu law, and partly by custom, occupy a position so peculiar that the Courts do not apply to them, when seeking to prove a custom of inheritance or succession, differing from the Hindu law, the stringent rule that the custom must be proved to be ancient, inviolable, and sub-

of his estate and therefore to letters of administration in preference to his wife or his sister *HIRABAI v. GARBAI* 12 Bom. 294

12. ————— *Khoja Mahomedans* In order to prove a custom of inheritance among Khoja Mahomedans at variance with the

*MATBAI v. HIRBAI* I. L. R. 3 Bom. 34

13. ————— Succession to raj—*Impartible estate*. A raj is not necessarily impartible. In every case in which a departure from the ordinary law of succession and inheritance is relied on, a particular custom must be proved *COURT OF WARDS v. RAJKUMAR DEO NANDUN SING*

9 B. L. R. 310 note

14. ————— *Proof of indivisible nature of raj*. Where a party alleges a raj to be indivisible, and that he is as heir entitled to succeed to the whole, the onus of proof is on him. *GIRDHAREE SINGH v. KOOLAHUL SINGH*

6 W. R. P. C. 1 : 2 Moo. I. A. 344

15. ————— *Raj of Keonghur*. According to the family custom, the sons of a Rajah of Keonghur, by wives of a lower caste than the raja, rank after the sons by wives of the same caste as the raja *HISTOOPREA PATSHOHARDEA v. BASOODEE DUL BEWATTEE PATNAIK* 2 W. R. 233

16. ————— *Appointment of jubaraj—Qualifications for rajahship*. Where in a question as to the right of inheritance to a raj, it was admitted that there was a custom that the reigning raja should name a jubaraj and a burra thakur, of whom the first succeeds to the throne, and the latter to the office of jubaraj; but it was contended, on the one hand, that if the reigning raja had appointed a jubaraj his choice should have been guided partly

HINDU LAW—CUSTOM—*contd.*12. INHERITANCE AND SUCCESSION—*contd.*

controlled by the wishes of the former raja;—*new*, that, where there was evidence of a power of selection, the actual appointment of a particular son is

he does not entitle himself to succeed. Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom. *NILKRISTO DES BARNOKO v. BIR CHANDRA THAKUR*

3 B. L. R. P. C. 13 : 12 W. R. P. C. 21  
12 Moo. I. A. 523

Affirming the decision of the High Court in *BEEN CHUNDER JOOBRAJ v. NEELEKISSEN THAKOOR* 1 W. R. 177

17. ————— *Hosapoor raj—Confiscation of estate by Government*. On the accession of the British Government to the Dewanny, Rajah Futtah Sahib in 1767, having refused to acknowledge allegiance to, and having openly rebelled against, the Government, was expelled from his estate of Hosapoor. The Government retained the estate in its own possession until 1790, when, setting aside the sons of Futtah Sahib, it conferred the estate upon Chutterdhar, at that time the eldest surviving member of the younger branch of the family. Two of the grandsons of

virtue of which Chutterdhar acquired the estate, and that he having acquired the estate subject to a particular custom and having himself done nothing destructive of that custom, his heirs were bound by the same custom, to the exclusion of the ordinary law of Hindu inheritance. *TELUCUDHAREE SAHIB v. RAJENDER PRATAPO SAHIB. RAM GOPAL SINGH v. TELUCUDHAREE SAHIB* W. R. F. B. 97

18. ————— *Succession, family usage regulating—Discontinuance of family custom—Beng. Regs. XI of 1793 and X of 1800*. In a suit to recover possession of an estate by virtue of an alleged family custom, under which the estate was descendible to the eldest son to the exclusion of the other sons, and was impartible and inalienable, it

HINDU LAW—CUSTOM—*contd.*12. INHERITANCE AND SUCCESSION—*contd.*

was uncertain what the nature or origin of the tenure of the estate was, but there had been admitted a custom of the Government at the time of the

implicity at an end, but the Government was not to itself operate to destroy the family usage, even

that had treated the estate as an ordinary estate held under the Government, and subject to the ordinary law of succession. Assuming the custom to have existed, it was of a nature which could, without any violation of law, be put an end to. There appears to be no principle or authority for holding that a

19 W. R. 8

Affirming decision of the High Court in *RAMJOY SURNIA v. FRANKISHEN SINGH* 2 W. R. 80

19, *Mitalshara and Mayukha Schools of Hindu law—Proof of family*

brothers take equally without reference to their nearness to the common ancestor, was held by the

s.c. I. R. 29 I. A. 70; 6 C. W. N. 425

## 13. MAHOMEDANS.

20. ——— Mahomedan family adopting Hindu customs—*Discretion of Judge.* A Mahomedan family may adopt the customs of Hindus, subject to any modification of those customs which the members may consider desirable. A Judge is not bound, as a matter of law, to apply to a

HINDU LAW—CUSTOM—*contd.*13. MAHOMEDANS—*contd.*

Mahomedan family living jointly all the rules and presumptions which have been held by the High Court to apply to a joint Hindu family. It rests with him to decide in any particular case how far he should apply those rules and presumptions. *SUBBETONKESHA v. MAJADA KHATOON*

I. L. R. 3 Cal. 804  
2 C. L. R. 308

## II. MARRIAGE.

1. ——— Marriage, suit to declare validity of—*Proof of custom—Necessity to raise express issue as to custom.* Where a suit to have it declared that defendant was plaintiff's wife, and was bound to live with him, was dismissed on the ground that custom required that in order to constitute such a right there should have been a second marriage:—*Held*, that an issue should have been framed as to whether or no such a custom existed. *BOOL CHAND KALTA v. JAYOREE* 24 W. R. 228

2. ——— Grandharb form of marriage—*Legitimacy of children—Entry in village register.* D died in 1860 leaving him surviving his first wife G, his second wife B, his mother H, and J,

I. L. R. 3 All. 100

3. ——— Dissolution of marriage at will—*Illegal custom.* A custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has first been married, and to contract a second marriage (*natra*) with another man in the lifetime of her first husband and without his consent, was invalid, as being entirely

HINDU LAW—CUSTOM—*contd.*14. MARRIAGE—*concl'd.*

opposed to the spirit of the Hindu law. *REG. v. KARSAN GOJA. REG. v. BAI RUPA*  
2 Bom. 124 : 2nd Ed. 117

4. ——— Marriage of female member of family of Rajah of Tipperah—*Family custom.* A female member of the family of the Raja of Tipperah by custom does not cease to be a member of the family by marrying into another Roor Munjooree Kootree v. BEER CHUNDER JOORRAJ  
8 W. R. 308

5. ——— Sudra marriage—*Ceremony of panyam or betrothal—Illegitimate son of a Sudra—Inheritance.* The widow of a shrotrnemdar, who was a Sudra, brought a suit for a declaration of their title by inheritance to his lands against his illegitimate son, who had been registered as shrotrnemdar in lieu of his deceased father, and to whom certain of the rayats had attorned. The defendant claimed to be legitimate according to the customary law governing the family, although his parents might not have been married at the time of his birth, by reasons of his parents having performed the ceremony of panyam before his birth. Held, that the performance of such ceremony did not make a legal marriage, that the defendant was illegitimate, and that the plaintiffs were accordingly entitled to one-half of the lands in question, and the defendant was entitled to the other half. Observations on the allegation and proof of a custom in derogation of the general Hindu law of inheritance. CHINNAXMAL v. VARADARAJULU  
I. L. R. 15 Mad. 307

## 15. MIGRATING FAMILIES.

——— Presumption as to migrating family. Hindu law is in the nature of a personal

4. HIRAMANI BURBIONI

I. E. L. R. F. C. 26 : 10 W. R. P. C. 35  
12 Moo. I. A. 81

## 16. PRIMOGENITURE.

1. ——— Custom of Primogeniture—*Descent of ancestral estate—Thakurs of Bombay Presidency.* A custom in the case of a petty Hindu family that the family estate shall descend to the eldest son, the second and other sons being entitled  
Sembel :  
Custom pre-  
Bombay  
v. MAN-  
TAPPA KIDINGAPPA  
1 Bom. Ap. 42

2. ——— Custom superseding general law. A custom of primogeniture in the family of a Desoh in the Southern Mahratta

HINDU LAW—CUSTOM—*contd.*16. PRIMOGENITURE—*contd.*

country supersedes if clearly proved the general Hindu law of descent. SHIDJOIRAV v. NAIKJOIRAV  
10 Bom. 228

3. ——— Proof of custom. Custom of primogeniture not proved. AMBIT NATH CHOWDHRY v. GAURI NATH CHOWDHRY  
6 B. L. R. 232 : 15 W. R. P. C. 10  
13 Moo. I. A. 542

4. ——— Suit by younger brother for partition. In a suit by younger brothers against the eldest brother for a partition of the ilaka of Rawalpore, the family usage and custom for

5. ——— Partition of deshpande vatan—*Presumption as to impartibility of vatan—Cessation of duties attached to a vatan.* It had been the practice in a deshpande vatan's family, extending over a century and a half, without interruption or dispute of any kind whatever, to leave the performance of the services of the vatan and the bulk of the property in the hands of the elder branch, and to provide the younger branches

to be recognized and acted upon as a legal and valid custom. RANRAO TRIMBAK DESHPANDE v. YESHAVANTRAO MADHASAVRAO DESHPANDE  
I. L. R. 10 Bom. 327

6. ——— Deshmukhi vatan, impartibility of—*Partition, suit for, of such vatan.* In the middle of the seventeenth century one Vedup, the ancestor and founder of the family of the parties to the suit, then called the Mhaske family, acquired a deshmukhi vatan originally consisting of eight chavurs of inam land, which was afterwards equally divided between the two sons of Vedup, who became the heads of separate branches of the family, called, respectively, the Pimparne and the Jakhori-lar branches, of which the former was the elder.

to receive  
penses of

HINDU LAW—CUSTOM—*contd.*16. PRIMOGENITURE—*contd.*

but should have nothing further to do with the vatan, which, with the "right of eldership," was to be enjoyed by the sons, grandsons and descendants of Trimbakrav in succession. The subsequently acquired six chavurs of land, two of which were situated at Pimparne and the remaining four at Amlhora, described as *deshmukhl*, had been always spoken of and dealt with as connected with the vatan and the original eight chavurs, and had been enjoyed for a hundred or hundred and fifty years by Trimbakrav and his ancestors free from any right of the *lhaubands*, and this mode of enjoyment was recognized and affirmed by the authorities in the sanada, and also, subsequently, by the British Government. The plaintiff, who was one of the three sons of Gopalrav, now deceased, sued his eldest brother, Trimbakrav, *alias* Bajrav, and his second brother, Bhantrav, for partition into three equal shares of the property appertaining to the *deshmukhl* and *patiki* vatan. Trimbakrav, the first defendant, resisted the suit on the ground that by the custom of the family he as the eldest son took the vatan and the property appertaining to it, subject only to allotments for maintenance of the younger brothers. *Held*, that the plaintiff's claim to partition of the

the Peshwa's decree related to the original eight chavurs only, and not to the subsequently acquired six chavurs, and that the younger members of the Pimparne branch were not bound by that decree. *Held*, that the plaintiff's claim to partition of the

as other evidence—a custom which the Jakhori-kar branch unsuccessfully endeavored to repudiate, but which the younger members of the Pimparne branch had throughout recognized until the present suit; and the fact that the assessment and other dues, as well as all the allotments, had been always paid by the eldest member of the Mhaske family

first defendant as established by custom. *Held*, also, that plaintiff's claim to the *miras* land and the *patiki* vatan should be allowed, there being no evidence of a custom of primogeniture as regards them, nor were they connected with the *deshmukhl* vatan. Decree varied by directing the partition of the *miras* land and *patiki* vatan. GOPALRAV v. TRIMBAKRAV. I. L. R. 10 Bom. 508

7. ——— Evidence and proof of custom of primogeniture—*Enjment of property consistent with alleged custom.* *Held*, on the

HINDU LAW—CUSTOM—*contd.*16. PRIMOGENITURE—*contd.*

evidence, reversing the judgment of the High Court, that the appellants had satisfied the serious burden of proving a special family custom of descent by primogeniture. The appellants showed that

ancestor as the parties to the suit, the alleged custom prevailed. GARUDHWAJA PARSHAD SINGH v. SARAFUDHWAJA PARSHAD SINGH. I. L. R. 23 All. 37

I. L. R. 27 I. A. 238

Reversing judgment of High Court in SARAFUDHWAJA PARSHAD v. GARUDHWAJA PARSHAD. I. L. R. 15 All. 147

8. ——— Raj zamindari of Tirhoot—A family usage for fourteen generations, by which the succession to the raj zamindari of Tirhoot had uniformly descended entire to a male male heir.

8 Moo. I. A. 184

9. ——— Mitakshara law—*Joint and separate property—Impartibility* Although an estate be not what is technically known in the north of India as a *raj*, or what is known in the south of India as a *pollam*, the succession thereto may, in the absence of family custom, be

KONWARI

I. L. R. 1 Calc. 153; I. L. R. 2 I. A. 263  
24 W. R. 253

Reversing the decision of the High Court in NATUKKE KOERI v. CHOWDREY CHINTAMUN SINGH. 20 W. R. 247

10. ——— Mitakshara family—*Debt of father—Liability of son* Where the right of primogeniture exists in a *Mitakshara* family, the son who takes the estate by descent by virtue of that right does not become a co-sharer in the estate, and does not take by survivorship, and such an estate is not *prima facie* inalienable. The son takes the estate with the burden of the decree obtained

**HINDU LAW—CUSTOM—contd.****15. PRIMOGENITURE—contd.**

against the father, and is liable to be proceeded

**11. ——— Proof of custom—Lineal primogeniture—Proof of such custom as the rule of succession to an impartible Raj—Effect of decrees not inter se as evidence.** To prove the custom of

branches were exhausted though

same part of the country; and (c) evidence that in the family the

**MOHESH CHUNDER DHAL v. SATROGHAN DHAL** (1901-1902) **I. L. R. 29 Cal. 343**  
**e. c. 8 C. W. N. 459; L. R. 29 I. A. 62**

**12. ——— Custom—Primogeniture, rule of—Orissa and Cuttack, Land Tenure in—“Paharaj” “Choudhan” “Wardhan” land attached to XII of 1805.**

ments of deceased persons—**Succession Act (I of 1812)** s. 21 and 32, cl. (5)—**Proof of Custom** The appellants and respondents were members of a Brahmin family long established and possessed of an estate in Cuttack. To a suit by the appellants for partition of the estate on the ground that it was joint family property governed by the ordinary Hindu law of the Mitakshara School, the defence was that a custom of lineal primogeniture prevailed in the family by which

**HINDU LAW—CUSTOM—concl.****16. PRIMOGENITURE—concl.**

not don to im-  
mutee reversing the decision of the High Court, that the evidence fell far short of establishing the custom during the period of

was changed in the courts and the migration invariably ended in a compromise under which the

the alleged custom the character of certainty which was essential to its validity **RAMAKANTA DAS MOHAPATRA v. SHAMANAND DAS MOHAPATRA** (1909) **I. L. R. 38 Cal. 590**

**17. TRUSTEE, SUCCESSION TO**

**Inheritance to deceased trustee.** By usage of Hindu law in Tinnevely district, the eldest male heir of a deceased trustee succeeds as trustee to him from whom he inherits. **PUSAPPANALINGAM CHETTI v. NALLASIVAN CHETTI** **1 Mad. 415**

**18. UNCERTAIN CUSTOM.**

**Uncertain and unintelligible custom—Custom as to certain property descending to females—Sale in execution of decree** **ULL** that a custom in fact

here, was a custom uncertain and unintelligible and not one which would be upheld by the Court. Such property was not therefore exempt from sale in execution of a decree against the husband of one of the ladies who claimed it. **BRAGAWAN DAS v. BALGOBIN SINGH** **1 B. L. R. S. N. 9**

**HINDU LAW—DAMDUPAT.**

**See HINDU LAW—USURY.**

**HINDU LAW—DAYABHAGA.**

**1. ——— Ayautuka stridhan—Dayabhaga—Succession—Stridhan of childless married wo-**

**HINDU LAW—DAYABHAGA—contd.**

man—*Ayastula*—*Putridatta*—*Inuvadhya*—*Mother or husband, preferential heir*. Where a father granted to a married daughter a *mourasi* and *mukurasi* lease of lands, reserving an annual rent of 111 *1*—*Held*, that the interest conveyed to the daughter was her *anuvadhya ayastula stridhan*, within the meaning of the *Dayabhaga*. On her death her mother was entitled to succeed to the property in preference to her husband. The rule of succession under the *Dayabhaga* law in regard to the *putridatta Ayastula stridhan* property of a childless married woman discussed. *Jadoo Nath Sircar v. Basant Kumar Chowdhury*, 11 B. L. R. 256; s.c. 19 W. R. 261; *Hurry Mohan Shaha v. Shonattun Shaha*, 1. L. R. 1 Cal. 275; and *Gopal Chandra Pal v. Ram Chandra Pramanik*, 1. L. R. 25 Cal. 311, referred to. *RAM GOPAL BHATTACHARJEE v. NARAYAN CHENNER BANDAPADHYA* (1905) . 1. L. R. 33 Cal. 315 s.c. 10 C. W. N. 510

2. ——— **Self-acquisition—Dayabhaga—Father's right in property acquired by son—Ancestral property—Father's right to eject son from ancestral property—Improvement by son, effect of—Injunction—Decree—Form of decree—Injunction—Estoppel by conduct**. Under the *Hindu law*, as expounded in the *Dayabhaga*, the father always takes a double share in acquisitions made by a son; if they have been made by the use of joint funds the father and the acquirer take two shares each and the rest of the brothers one share each; but if made without the use of joint funds the acquisitions are divided half and half between the father and the son; a father claiming a share of property acquired by his son is not bound to allow the son any share of the ancestral property in his hands. Where the defendant had made improvements and substantial additions to ancestral buildings standing on ancestral land belonging to his father, the plaintiff *Held*, that, even if the improvements and additions were effected under circumstances, which entitled the son to their value and to a charge upon the land to the extent of such value, the plaintiff would be under no legal obligation to pay for them as a con-

*house v. Waterhouse*, 22 Times L. Rep. 195, not followed. Where the defendant was fully aware

only indirectly in issue, the injunction, which was granted, was directed to remain in force only, until the defendant obtained, if he could, a decree for possession of the property either in whole or in

**HINDU LAW—DAYABHAGA—concl'd.**

part. *DHARMA DAS KENRU v. AMULTABHAY KENRU* (1906) . 1. L. R. 33 Cal. 1119 s.c. 10 C. W. N. 785

3. ——— **Property—Dayabhaga—School of Hindu law**. The *Dayabhaga* school of *Hindu law* which had migrated into another Province is presumed to have carried with it the customs and the law of that school. The presumption, however, is rebuttable, and the onus lies on the person alleging that another school of *Hindu law* is in force in that Province. A person claiming a share of property under the *Dayabhaga* school of *Hindu law* governed by that school to prove the existence of an original nucleus with the aid of which the property sought to be partitioned has been increased and amplified. *Sarada Prasad Ray v. Mahananda Ray*, 1. L. R. 31 All. 477, followed. *GOVIND (HARMA) DAS v. MADHA KRISTO DAS* (1909) . 1. L. R. 31 All. 477

4. ——— **Joint property—Dayabhaga—Land belonging to father—House built thereon with money furnished by son, if joint property—Equity**. A son who found the money with which a house was built on a plot of land belonging to his father, is entitled to a share in the house.

**HINDU LAW—DEBTS.**

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR. 1. L. R. 28 Mad. 686

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. 6 C. W. N. 223

See HINDU LAW—

ALIENATION:

CUSTOM—PRIMOGENITURE;

6 C. W. N. 879

JOINT FAMILY—

DEBTS AND JOINT FAMILY BUSINESS;

POWERS OF ALIENATION BY MEMBERS—MANAGER 6 C. W. N. 429-

See INSOLVENCY ACT, ss. 7 AND 30.

1. L. R. 28 Mad. 214

See REPRESENTATIVE OF DECEASED PERSON.

HINDU LAW—DEBTS—*contd.*

1. ———— Liability for debts—*Liability of property for debts of ancestor* According to Hindu law, a man's property is liable for his debts, and the debts of an ancestor must be satisfied before the heir has any interest in ancestral property. *GUNGA NARAIN PAUL v. UMESH CHUNDER BOSE* W. R. 1864, 277

2. ———— Liability of property for debts of ancestor—*Liability of property for debts of ancestor* A Hindu is liable for the debts of his ancestor. *SAKHA VAMAN LUKSHIT* 10 Bom. 360

3. ———— Liability of son for father's debts. The freedom of a son from obligation to pay the debts of his father is not of an immoral kind, a judgment creditor of a deceased father can proceed against the inherited property in execution of decree, and follow any assets which can be traced to the son's hands. *OMTHOONISSA v. PORESMON NARAIN SINGH* 25 W. R. 202

*See GRIDHARTE LALL v. KANTOO LALL*  
14 B. L. R. 187; 22 W. R. 56  
L. R. 1 I. A. 321

4. ———— *Malabar Brahmans*—*Nambudris*—*Musavars*—*Hindu law, how far applicable*—*Liability of sons for father's debt*. The doctrine is that the property of a Hindu is liable for the debts of his ancestor. *The doctrine is that the property of a Hindu is liable for the debts of his ancestor.*

5. ———— Debts of testator—*Charge on specific property* Though the payment of debts is a charge on the property of a testator, it is not a charge on any specific portion of the property. *NILKANT CHATTERJEE v. PEARY MOHAN DAS* 3 B. L. R. O. C. 7; 11 W. R. O. C. 21

*See GUPAL NARAIN MOZOONDAAR v. MOD-DOONITY GUPTEE* 14 B. L. R. 21

6. ———— Liability of son not inheriting. According to Hindu law, a son who has not inherited his father's estate is not liable for his father's debts. *DHARAJ MAHATAB CHAND v. HERRON MOHAN ACHARYEE* W. R. 1864, Mis. 1

*JUSUVAL ALI v. TIRUPPEE LALL DOSS*  
12 W. R. 41

7. ———— Liability of heirs for debts of ancestor. The liability of an heir for

*MOOKTOKESHEE DEBIA I. WOONA CHURN BHUT-TACHARJEE* 12 W. R. 233

8. ———— Liability of heirs for debts of ancestor. The liability of an heir for

HINDU LAW—DEBTS—*contd.*

the debts of his ancestor is only to the extent of the inheritance which he has received. If he has waived all his rights to the inheritance, his property acquired *aliunde* is not liable. *JOOMAI v. WAHID ALI* W. R. 1864, Mis. 33

9. ———— Liability of son for father's debts—*Representative of deceased Hindu*—*Civil Procedure Code, 1877, s. 234*. Though a son is liable for the debts of his father, his liability is limited to the amount of assets of the father in his hands. *VIRAJ-ANGAR.*

10. ———— *Joint Hindu family*—*Liability of grandsons for debts*. The grandson of a Hindu is bound to pay the debts of his grandfather, independent of assets, but without interest, according to the doctrine of the Maharashtra school. *NARASIMHARAY KRISHNARAY v. ANTAJI VIRUPAKSHI* 2 Bom. 64; 2nd Ed. 61

But see *Bombay Act VII of 1860*, the Hindu Heirs Relief Act, which alters the law in this respect. That Act, however, does not apply to any case in which judgment had been pronounced before its enactment. *SAERABAI RANCHANDRA DIESMIT v. GOVIND VAMAN DIESMIT* 10 Bom. 361

11. ———— *Joint Hindu family*—*Liability of grandsons to pay interest on their grandfather's debts*—*Execution of decree on mortgage*. The mortgagee from a Hindu of the joint ancestral property of the latter can enforce his mortgage against the property of the latter. *See GURDHARTE LALL v. KANTOO LALL* L. R. 1 I. A. 321; 14 B. L. R. 187, referred to. *LACHMAN DASS v. KHUNNU LALL* I. L. R. 19 All 26

12. ———— *Joint Hindu family*—*Liability of joint estate for separate debts*—*Assets in hands of heir*. The divided share of a Hindu in property which previously belonged to the united family is after his decease and while yet in the hands of his heirs liable for the debts of the deceased. *See GURDHARTE LALL v. KANTOO LALL* L. R. 1 I. A. 321; 14 B. L. R. 187, referred to. *LACHMAN DASS v. KHUNNU LALL* I. L. R. 19 All 26

*FRANKISIDNA TEWARY v. JADUNATH TRIVEDI*  
2 C. W. N. 603

13. ———— *Joint Hindu family*—*Liability of joint estate for separate debts*—*Assets in hands of heir*. The divided share of a Hindu in property which previously belonged to the united family is after his decease and while yet in the hands of his heirs liable for the debts of the deceased. *See GURDHARTE LALL v. KANTOO LALL* L. R. 1 I. A. 321; 14 B. L. R. 187, referred to. *LACHMAN DASS v. KHUNNU LALL* I. L. R. 19 All 26

father, and previously to the passing of Bombay Act VII of 1860, the sons and grandsons were personally liable for the debts of the father and grandfather, whether they received assets or not. But there is no authority for the converse, viz., that the father or

HINDU LAW—DEBTS—*contd.*

grandfather is responsible for the debts of his son or grandson independently of the receipt of assets, unless he promise payment. The proposition of Hindu law that debts follow the assets into whose-soever hands they come must, generally speaking, be confined to separate estate, and the liability of undivided ancestral estate in the hands of sons and grandsons to the debts of the father or grandfather is exceptional. **UDARAM SITARAM v. RAXT PANDIT** . . . . . 11 Bom. 70

13. ———— *Inheritance—Minor—Liability of son for father's debts—Bom. Act VII of 1864.* In the Presidency of Bombay under the provisions of Bombay Act VII of 1864, where a Hindu dies intestate leaving property, his son is liable to his (the father's) creditors to the extent of the value of the property, although the property may not have come into the son's possession, but remains in the hands of third person. The

14. ———— *Son's estate*

the Contract Act. **SITARAMAYYA v. VENKATRAMANNA** . . . . . I L. R. 11 Mad. 373

15. ———— *Suit against sons of Hindu debtor on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father.* In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's sons defendants along with the father and a decree was passed against the father and sons jointly for payment of the debt. *Held*, by the Divisional Bench, that the decree against the sons was bad. **NARASIMHA v. SUBBA** . . . . . I L. R. 12 Mad. 139

16. ———— *Son's liability for father's debts—Decree against legal representa-*

*v. Umedbhai, 8 Bom. A. C. 245, followed.* **LALLU v. TRIBHUVAN MOTIRAM** . . . . . I L. R. 13 Bom. 653

17. ———— *Father's liability as surety—Liability of his sons for the debt for which he was surety.* Ancestral property in the hands of sons is liable for a father's debt incurred

HINDU LAW—DEBTS—*contd.*

as a surety. **TUKARAMBHAT v. GANDHAM MICHAND GUJAR** . . . . . I L. R. 23 Bom. 454

18. ———— *Debt incurred for aradh of father.* The payment of a debt incurred in conducting the aradh of a father is incumbent upon a son, whether he is of age or a minor or a posthumous son. **SEKTYNAAH BASOO v. HERO CHURN RUDU** . . . . . 6 W. R. 34

19. ———— *Liability of son to pay barred debt of father.* *S. sued N, a Hindu, to recover Rs30 secured by a promissory note ex-*

father received by him **NARAYANASAMI v. SAMIDA** . . . . . I L. R. 8 Mad. 293

20. ———— *Liability of polliam in hands of son for debts of possessor.* In a suit to recover from the minor son of the late possessor of a polliam, of which the guardians of the minor were in possession by virtue of a fresh grant made by the Government to the minor after the death of his father, the late possessor, money lent to the father of the minor to pay off arrears of polliush for, which the polliam was about to be attached, and for reproductive work done upon the land:—*Held*, that the income of the polliam was not liable for the debt. **ARBUTHNOT v. OOLUGAPPA CHETTY** . . . . . 5 Mad. 303

*s.c. on appeal to Privy Council.* **OOLUGAPPA CHETTY v. ARBUTHNOT** . . . . . 14 B. L. R. 115  
I. R. 1 I. A. 282

21. ———— *Personal debts—Charge on estate.* Debts undertaken by the holder of an ancestral and immoveable estate in respect of which the holder is not by law liable, are not by law chargeable on the estate. **PILLAI v. . . . .** . . . . . ad. 189

22. ———— *Loan incurred to pay ancestral debt.* Where money was borrowed by a near relative of a joint Hindu family, holding part of the ancestral property and appearing before the world as a co-parcener of the family, to pay off a bond side ancestral debt, the loan was held to be a family and not a personal debt. **BULDEO RAY TEWABEE v. SOMNATH PAURAY** . . . . . 7 W. R. 491

23. ———— *Liability of heir for debts.* According to Hindu law, a creditor cannot follow the property of a deceased debtor, but he may hold the heir personally liable. **UNKOPPOBNA DASSEA v. GANGA NARAYN PAL** . . . . . 2 W. R. 296

24. ———— *Liability of heir—Lien of creditor for debts.* When a Hindu dies indebted, his estate does not in whole or in part vest in the creditor as if by hypothecation, but the entire estate absolutely passes to the heirs with full power to deal the debt preferer



HINDU LAW—DEBTS—*contd.*

they receive by inheritance. **ZUBBURDUST KHAN v. INDURMUN**. 1 Agra F. B. 71; Ed. 1874, 55

25. ———— *Power of heir to dispose of estate—Creditor's right to follow assets of deceased Hindu into hands of purchaser for value*  
Under the Hindu law the property of a deceased Hindu is not so hypothecated for his debts as to prevent his heir from disposing of it to a third party or to allow a creditor to follow it into the hands of a person who has purchased it from the heir of the deceased in good faith and for valuable consideration. **Sunbussapa v. Moodkapa**, 8 Harr. 232 and **Naroo Huree v. Konbier Munohur**, 8 Harr. 289, followed. **JAMHYATRAM RAMCHANDRA v. PARBHU-DAS HATH**. 9 Bom. 116

28. ———— *Liability of heir—Certificate to collect debts—Alienation of the estate of a deceased person for the payment of his debts—Succession.* Where a person to whom a certificate had been granted under Act XXVII of 1860 to collect the debts due to the estate of a deceased Hindu, but who had no share or interest in such estate contracted a debt for the purpose of paying debts due from such estate, and charged such estate with the payment of such debt;—*Held*, that the creditor could not, by virtue of the acts of such person, claim to recover the moneys advanced by him to such person from the heirs and estate of the deceased, even though such moneys had been applied to the liquidation of the debts of the deceased. **MUNTA v. BALAK RAM**

I. L. R. 2 All. 513

See also **HASAN ALI MEHDI HASAN**

I. L. R. 1 All. 533

27. ———— *Widow, liability of, for debts of husband.* A widow is liable for a debt contracted by her husband. Such debt may be set off against any debt due to her. **GRISH CHUNDER LAHOORY v. KOOMAREE DABEA**

1 W. R. M. 24

28. ———— *Repairs to houses*

HINDU LAW—DEBTS—*contd.*

lifetime, or in the alternative that the lady's personal estate might be held liable. On a reference being made to a Full Bench as to whether the plaintiff could enforce his claim against the estate of the husband.

**WILSON, J.**, dissenting, that the plaintiff was certainly entitled to be paid out of the arrears of rent since collected, but that he also was entitled to enforce his claim against the heirs of the last full owner of the estate generally. **HURRY MOHUN RAI v. GONESH CHUNDER DOSS**

I. L. R. 10 Cal. 823

29. ———— *Trade debts incurred by*  
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of the assets of the business to which she has succeeded as the heiress of her deceased husband, are recoverable, after her death, out of the assets of the business, as against the reversioners who have succeeded thereto, even in the absence of a specific charge. **SAKRABHAI NATHUBAI v. MAGANLAL MURCHAND** (1901)

I. L. R. 28 Bom. 208

30. ———— *Decree—Mitakshara joint family—Decree against one member, whether binding on the others, and when.* A member of a Mitakshara joint family may be bound by a decree and a sale thereunder of the family property, although he is not a party. The sons of the judgment-debtors are bound, unless the debt he proved by them to have been for immoral purposes. The other co-parceners will be bound, if the creditor or the purchaser can prove that the debt was contracted for their benefit, and if the decree is substantially against them, though in form it might be against the head member or members of the family. **Hari Vishal v. Jaiaram Vishal**, I. L. R. 14 Bom. 597; **Sakkaram v. Denji**, I. L. R. 23 Bom. 372; **Sheo Pershad Singh v. Sahab Lal**, I. L. R. 20 Cal. 453, and **Daulat Ram v. Mehir Chand**, I. L. R. 15 Cal. 70, referred to **BULDOE SONAR v. MOHARAK ALI** (1902)

I. L. R. 29 Cal. 583 s.c. 6 C. W. N. 370

31. ———— *Devolution of stridhanam property of a woman on her sons, who are members of an undivided family with their father at the time—Estate taken as co-owners or tenants-in-common.* When the stridhanam property of a woman devolves on her sons who, with their father, form an undivided Hindu family at the time of the mother's death, the sons take it as co-owners or

**HINDU LAW—DEBTS—*contd.***

the Mitakshara, no distinction is made between

it is used in English Law as nearly equivalent to the "propositus" and as co-relative of "heir." In the Hindu Law it is used only as signifying a direct ascendant in the paternal or maternal line, and, more technically, as signifying the paternal grandfather and his descendants in the male line.

NARAYANAN CHETTY (1904)

I. L. R. 27 Mad. 300

32. — — — Execution of decree application for, against heirs of judgment debtor—*Notice—Code of Civil Procedure (Act XII of 1882), s. 215—Waiver of objection against execution—Estoppel—Hindu Law—Mitakshara school—Debt, father's not immoral—Objection to execution*

objected to the execution going, on the ground that the properties attached were joint family properties of a Mitakshara family, that they were in possession by right of survivorship and not as heirs of their father, and that such properties could not be sold after the death of the father in execution of a

**HINDU LAW—DEBTS—*contl.***

questioning the validity of the sale orders. *Munjal Prasad Dahi v. Girija Kanta Lahori, I. L. R. 81 A. 123; Lakshman Chetti v. Kuttiam Chetti, I. L. R. 21 Mad. 669; Bhola Nath Das v. Profulla Nath Koondou Choudhury, I. L. R. 28 Calc. 122; and Sherraj Singh v. Kameshwar Nath, I. L. R. 24 All. 262, followed. COVENTRY & TULSI PRASAD NARAYAN (1904) 8 C. W. N. 673*

33.

*Father's debt binding on sons even during father's lifetime—Alienations for its discharge binding on sons—Nature of mortgage debt—No distinction between mortgage given for antecedent debt and mortgage given for debt then incurred* It is established by a uniform course of decisions under the Hindu law that a debt incurred by the father, which is not shown to be illegal or immoral, is, even during the lifetime of the father, binding on the son's interest in the family property, and that any alienation, voluntary or involuntary, made to

in the case of a son, his discharge is enforceable on the son from her by to dis.

exonerates the son from the burden of his father's debts. *CHIDANBARA MEDALIAR & KOOTRAPURU MAL (1904) I. L. R. 27 Mad. 326*

34.

— — — *Father's liability*

35.

— — — *Husband's debt—Husband's*

were binding on the applicants also on the principle of *res judicata* and they were precluded from

**HINDU LAW—DEBTS—contd.**

from the heirs, nor can be, after the alienation thereof by heirs for a *bona fide* and valuable consideration, follow it in the hands of the alienee. He has merely

25. ————— *Power of heir to dispose of estate—Creditor's right to follow assets of deceased Hindu into hands of purchaser for value.* Under the Hindu law the property of a deceased

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26. ————— *Liability of heir—Certificate to collect debts—Alienation of the estate of a deceased person for the payment of his debts—Succession.* Where a person to whom a certificate had been granted under Act XXVII of 1860 to collect the debts due to the estate of a deceased Hindu, but who had no share or interest in such estate contracted a debt for the purpose of paying debts due from such estate, and charged such estate with the payment of such debt—*Held*, that the creditor could not, by virtue of the acts of such person, claim to recover the moneys advanced by him to such person from the heirs and estate of the deceased, even though such moneys had been applied to the liquidation of the debts of the deceased. *MUNIA v. BALAK RAM*

I. L. R. 2 All. 513

See also *HASAN ALI MENDI HASAN*

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27. ————— *Widow, liability of, for debts of husband.* A widow is liable for a debt contracted by her husband. Such debt may be set off against any debt due to her. *GRISH CHUNDER LAHOORY v. KUMAREE DABE*

1 W. R. Mis. 24

28. ————— *Repairs to houses held by a Hindu lady having a life-interest—Credit—Death of life-tenant before payment—Liability of estate for the debt.* A daughter succeeding to the estate of her father ordered a quantity of lime for the purpose of making repairs to certain houses on the estate; the repairs were completed, but the lady died before the debt contracted by her for the lime had been paid off. At the time of her death there remained outstanding a large sum due as rent,

**HINDU LAW—DEBTS—contd.**

lifetime, or in the alternative that the lady's personal estate might be held liable. On a reference being made to a Full Bench as to whether the plaintiff could enforce his claim against the estate in the hands

McDONELL, and PRINSEP, JJ. (GARTH, C.J., and WILSON, J., dissenting), that the plaintiff was certainly entitled to be paid out of the arrears of rent since collected, but that he also was entitled to enforce his claim against the heirs of the last full owner of the estate generally. *HURRY MOHUN RAI v. GONESH CHUNDER DOSS*

I. L. R. 10 Calc. 823

29. ————— *Trade debts incurred by Hindu widow—Widow carrying on business of husband—Death of widow—Liability of reversioners to trade debts properly incurred.* Trade debts properly incurred by a Hindu widow, on the credit of the assets of the business to which she has succeeded as the heiress of her deceased husband, are recoverable, after her death, out of the assets of the business, as against the reversioners who have succeeded thereto, even in the absence of a specific charge. *SARRADHAI NATHUBAI v. MANGANLAL MUL CHAND (1901)*

I. L. R. 26 Bom. 208

30. ————— *Decree—Mitakshara joint family—Decree against one member, whether binding on the others, and when.* A member of a Mitakshara joint family may be bound by a decree and a sale thereunder of the family property, although he is not a party. The sons of the judgment-debtors are bound, unless the debt be proved by them to have been for immoral purposes. The other co-parceners will be bound, if the creditor or the purchaser can prove that the debt was contracted for their benefit, and if the decree is substantially against them, though in form it might be against the head member or members of the family. *Hari Vidyal v. Jairam Vitkal, I. L. R. 14 Bom. 597; Sakkaram v. Dey, I. L. R. 23 Bom. 372; Shro Pershad Singh v. Sakeb Lal, I. L. R. 20 Calc. 453, and Daulat Ram v. Mehur Chand, I. L. R. 15 Calc. 70, referred to. BULDOE SONAR v. MOBARIK ALI (1903)*

I. L. R. 29 Calc. 563 a.c. 6 C. W. N. 370

31. ————— *Devolution of stridhanam property of a woman on her sons, who are members of an undivided family with their father at the time—Estate taken as co-owners or tenants-in-common.* When the stridhanam property of a

spring, females having precedence over male spring. It is only in default of the daughter's line that sons succeed to their mother's stridhanam. *Venkyamma Garu v. Venkalaramanayyamma Bahadur Garu, I. L. R. 25 Mad. 678, explained. In*

only, he asked for a decree—(i) against the estate in the hands of the reversioners, and (ii) sought for payment out of the rents uncollected in the lady's

**HINDU LAW—DEBTS—contd.**

the Mitakshara, no distinction is made between

it is used in English Law as nearly equivalent to the "propoutus" and as co-relative of "heir." In the Hindu Law it is used only as signifying a direct ascendant in the paternal or maternal line, and, more technically, as signifying the paternal grandfather and his ascendants in the male line.

owners of tenants-in-common without benefit of survivorship. *KARUPPA NACHIAN v. NAKKARARAYANAN CHETTY* (1904)

I. L. R. 27 Mad. 300

32. — Execution of decree application for, against heirs of judgment debtor—*Notice—Code of Civil Procedure (Act XVI of 1852), s. 248—Waiver of objection against execution—Estoppel—Hindu Law—Mitakshara school—Debt, father's not immoral—Objection to execution on ground of joint property and devolution by the rule of Survivorship—Jurisdiction of Court to decide question—Res judicata. Where a decree holder*

objected to the execution going, on the ground that the properties attached were joint family pro-

were binding on the applicants also on the principle of *res judicata* and they were precluded from

**HINDU LAW—DEBTS—contd.**

*Koond Choudhury, I. L. R. 28 Cal. 122; and Sheeraj Singh v. Kamashwar Nath, I. L. R. 24 All. 252, followed—COVENTRY v. TULSI PRASAD NARAYAN (1901) S. C. W. N. 672*

33. — *Father's debt binding on sons even during father's lifetime—Alleviations for its discharge binding on sons—Nature of mortgage debt—No distinction between mortgage given for antecedent debt and mortgage given for debt then incurred. It is established by a uniform course of decisions under the Hindu law that a debt incurred by the father, which is not shown to be illegal or immoral, is, even during the lifetime of the father, binding on the son's interest in the family property, and that any alienation voluntary or involuntary made by*

by enforcement on the father by means of other family property. There is no distinction in principle, between a mortgage given for an antecedent debt and a mortgage given for a debt then incurred, for in either case the debt is binding on the son and the enforcement of the security exonerates the son from the burden of his father's debts. *CHIDAMBARA MUDALIAR v. KOTHAPERUMAL* (1904) I. L. R. 27 Mad. 326

34. — *Father's liability*

35. — *Husband's debt—Husband's debts binding on widow in respect of assets come to her hands as legal representative—Widow's right to reside in husband's house. Under the Hindu Law, the maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relation and quite independent of the possession by the husband of any property, ancestral or acquired, and his debts take precedence of her claim for maintenance. Where the family consists of only the husband and the wife, all debts which would bind the husband personally will necessarily be binding on the widow in respect of all the assets*

HINDU LAW—DEBTS—*contd.*

which have come to her hands as his legal representative. Where a debt has been incurred by a son by

Where an undivided Hindu family consists of two or more males, related as father and sons, or otherwise, and one of them dies leaving a widow, she has a right of maintenance against the surviving co-parcener or co-parceners *quoad* the share or interest of her husband.

Where such right does not in itself form a charge upon her husband's share or interest in the joint family property, yet, whenever it becomes necessary to enforce or preserve such right effectually, it may be made a specific charge on a reasonable portion of such joint family property, such portion not exceeding her husband's share or interest therein. Such right may also, in certain cases, be enforced against the transferee of joint family property. *Manilal v. Baitara*, I. L. R. 17 Bom. 393, discussed. The deceased husband of defendant executed a promissory note as a surety, and after his death a decree was obtained against the defendant, his widow, on the promissory note. The decree-holder attached a house, which had belonged to the deceased and in which the widow was residing, brought it to sale and purchased it. On his endeavouring to obtain possession the widow resisted on the ground that she had a right of residence in the house during her lifetime and could not, therefore, be ejected. *Held*, that the decree-holder was entitled to be given possession of the house and that the widow had no right of residence therein. *JAYANTI SUBBIAH v. ALANIEL MANOJAMA* (1904)

I. L. R. 27 Mad. 45

**36. Son's liability—Money due by and decree against father—Execution of decree after death of father—Liability of party in decree against father—Limitation Act (XV of 1877), Sch II, Arts 52, 120**

—Limitation for suit on original debt or on decree. Plaintiffs in 1896 obtained a decree against the father of the present defendants, who died in 1897. Execution of that decree was refused as against the family property in the possession of the defendants. Plaintiffs in 1899 instituted the present suit against defendants and obtained a decree. Questions having been referred to the Full Bench: *Held*, (1) that independently of the debt arising from the original transaction, the decree against the father by its own force created a debt as against him, which his sons, according to the Hindu law, were under an obligation to discharge, unless they showed that the debt was illegal or immoral; (2) that if the suit had been brought on the original cause of

HINDU LAW—DEBTS—*contd.*

action, the article of limitation applicable would have been the same as against the father, namely, art 52; but as the suit had been brought on the cause of action arising from the decree against the father, the article applicable was art 120. Observations by BRASHYAM AYYANGAR, J., on the obligation of a son, under the Hindu law, to discharge debts, incurred by his father. *PERIASAMI MUDALIAR v. SEETHARAMA CHETTIAR* (1904)

I. L. R. 27 Mad. 243

**37. Father's debts—Son's liability to pay.** Under Hindu law the pious obligation of a son to pay his father's debts exists whether the father is living or dead. The mere fact that a father is alive does not prevent a son from paying his father's debts.

A son cannot obtain by suing his interest in the family property, however, the debt is not obtained by or immoral is not binding in a suit. *NAKHARAYAN* (1904) I. L. R. 28 Bom. 383

**38. Mitakshara—Debts—Surety—Grandson's liability to pay debts contracted by the grandfather as a surety.** Under Hindu law as laid down in the Mitakshara, a grandson is not liable to pay a debt which his grandfather contracted as a surety, unless the latter in accepting the liability of a surety received some consideration for it. A party is not bound, generally speaking, by a pleader's admission in argument on what is a pure question of law amounting to no more than his view that the question is unarguable. *NARAYAN v. VENKATACHARYA* (1904)

I. L. R. 28 Bom. 408

**39. Joint Hindu family—Personal debts against father—Liability of son's interests in the joint family property—Liability of the joint family property against sons sale, of which the son is not the owner.**

Where a son is not the owner of the joint family property, he is not liable to pay. *Ram Dayal v. Durga Singh*, I. L. R. 12 All. 209, overruled. *Bens Madho v. Bando Patol*, I. L. R. 12 All. 99; *Meenakshi Naidu v. Immudi Kanaka Ramaya Kounden*, I. L. R. 16 I. A. 1, and *Mussamut Nanonni Babuvasin v. Modun Mohun*, I. L. R. 31 A. 1, referred to. *KARAN SINGH v. BHUP SINGH* (1905)

I. L. R. 27 All. 18

**40. Liability of undivided son for surety debt contracted by father.** Where a Hindu father having undivided sons incurs an obligation as surety for the payment of a debt and not for keeping the peace or for good behaviour, the whole ancestral property including the shares of the sons is liable for the discharge of

## HINDU LAW—DEBTS—contd.

such obligation. *Sitaramaya v. Venkatramanna*, I. L. R. 11 Mad. 373, and *Tukarambhat v. Gangaram*, I. L. R. 25 Bom. 454, followed. *CHETTIKULAM VENKITACHALA REDDIAR v. CHETTIKULAM KUMARA VENKITACHALA REDDIAR* (1905)

I. L. R. 28 Mad. 377

41. Liability of son

ing prior to and independently of the sale or mortgage. Where the debt is incurred at the time of sale

from; *Sami Ayyangar v. Ponnammal*, I. L. R. 21 Mad. 28, approved. *VENKATARAMANAYA PANTULU v. VENKATARAMANA DOSS PANTULU* (1905)

I. L. R. 29 Mad. 200

42. Policies—Im-

as "the right, title and interest of the defendant alone" in accordance with the form in force prior to the passing of Act X of 1877, the mere use of such words, which were omitted in the Act of 1877, does not necessarily imply that the interest sold is less than the full proprietary interest. That the law as then established by judicial decisions recognised only a limited interest in the owner, does not of necessity raise the implication in such cases. The nature of the debt and other circumstances may show that the full interest including that of the

urchased.

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I. L. R. 29 Mad. 484

43. Liability of sons for their father's debts—Debts incurred for immoral purposes—Money borrowed to discharge such debts—Burden of proof—Minority—Mortgage executed by a minor. One Shanker Singh, the owner of considerable property, both moveable and immoveable, incurred heavy debts for immoral objects and without any necessity. He died on the 24th of August, 1901, leaving two sons, Sheoraj Singh and Maharaj Singh, him surviving. Shankar Singh and

## HINDU LAW—DEBTS—contd.

his sons were members of a joint Hindu family. To pay off his father's debts, Sheoraj Singh, procuring himself to be sole owner of his father's property, mortgaged a large part thereof to the Bank of Upper India to secure a loan of Rs. 3,00,000. Maharaj Singh, the younger brother, joined in the mortgage, admitting his elder brother's right to the property mortgaged; but, at the date of the execution of the mortgage, Maharaj Singh was a minor. Subse-

in which ancestral property had passed out of the hands of the joint family, incumbent upon him to go further and show that when the debts were contracted his father's creditors were aware, or might have been aware, of the immoral purposes for which the money was borrowed. *Quare*: Whether the

I. L. R. 13 All. 216, *Pem Singh v. Partab Singh*, I. L. R. 14 All. 179, *Musammal Jannuk Kishore Koonwur v. Baboo Raghunandan Singh*, 1 S. D. A. L. P. (1861) 6, 213, *Musammal Nanomi Babuain v. Madan Mohun*, L. R. 13 I. A. 1, *Jamna v. Nann Sukh*, I. L. R. 9 All. 413, *Bhogbut Parshad v. Gria Korr*, I. L. R. 15 Cal. 1717; *Chintamanrav Mehenale v. Kashinath*, I. L. R. 14 Bom. 30, *Badri Prasad v. Madan Lal*, I. L. R. 15 All. 15, and *Debi Dasi v. Jadu Das*, I. L. R. 24 All.

**HINDU LAW—DEBTS—contd.**

459, referred to. Where debts have been incurred for immoral purposes by the father in a joint Hindu family and then money is borrowed from a third party to pay off such debts, and such third party seeks to recover from the son the money so borrowed, the son is competent to put forward as a defence the immoral character of his father's original debts. He is not confined in his pleadings to the circumstances of the loan taken to pay off those debts. *Saravana Tevin v. Mutayi Ammal*, 6 Mad. H. C. Rep. 371, followed. *MAHARAJ SINGH v. BALWANT SINGH* (1906) . I. L. R. 28 ALL 508

44. ————— Decree for mesne profits. Under the Mitakshara, a son is under a y a person possession & Ponn. PEARY LAL

I. L. R. 163

45. ————— Son's liability to pay father's debts—Decree for damages resulting from a wrongful act committed by the father—Ancestral estate in the hands of the son not liable under the decree. The plaintiff obtained a decree against the defendant's father for damages to the plaintiff's property caused by a dam erected by the latter, which obstructed the passage of water thereto. On the latter's death the decree was sought to be an

His father's act in obstructing the passage of water to the decree-holder's lands may not have been illegal in the usual sense of the term, that is to say, it may not have been committed in contravention of any express provision of the law; but the result of the suit showed that it was wrongful, and for a liability so incurred the son could not be held answerable when the estate that had come to his hands had derived no benefit from the act.

the debts lawfully incurred by his father.

46. ————— Son's liability for father's debt incurred in transaction amounting to criminal offence Where an undivided Hindu father acting as the administrator of a certain estate was made liable in respect of monies received by

particular amounts claimed, the father had made himself amenable to the Criminal Law by doing or omitting to do anything. Proof of mere omission to account, without anything more, will not suffice to exempt the son from liability. *McDowell & Co. v.*

**HINDU LAW—DEBTS—concl.**

*Raghava Chetty, J. L. R. 27 Mad. 71*, distinguished. *Natasayyan v. Ponusami*, I. L. R. 16 Mad. 93, followed. *ERASALA GURUNATHAN CHETTY v. ADDEPALLY RAGHAVALU CHETTY* (1903)

I. L. R. 31 Mad. 472

47. ————— Son's liability for father's debts—Son liable for father's misappropriation, when such misappropriation amounts only to a breach of civil duty Where an undivided Hindu

person entitled to be paid. *McDowell & Co. v. Raghava Chetty*, I. L. R. 27 Mad. 71, distinguished. *KANEMAR VENKAPPAYYA v. KRISHNA CHARIYA* (1907) . I. L. R. 31 Mad. 161

48. ————— Debts—Son's liability to pay father's debts—Attachment of son's share in family property—Father's power to deal with the attached share—Civil Procedure Code (Act XIV of 1882), s. 276. When the right, title and

276 of the Code of Civil Procedure, his father is deprived of the power of alienation of that interest in satisfaction of his own debts. *SUBBAYA v. NAGAPPA* (1903) . I. L. R. 33 Bom. 264

**HINDU LAW—ENDOWMENT.**

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I. L. R. 13 Bom. 323  
I. L. R. 23 Cal. 536  
I. L. R. 19 Mad. 243  
I. L. R. 23 Mad. 271, 430

See LIMITATION ACT, 1877, SCH. II, ARTS. 120 AND 141 . I. L. R. 28 Mad. 113

See MALABAR LAW—ENDOWMENT.

alienation of endowed property —

See ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY . I. L. R. 28 Cal. 470

## 1 CREATION OF ENDOWMENT.

1. ——— Creation by deed of gift—Object of endowment—*Sheba* Presumption. The presumption is that the object of an endowment by a Hindu for the worship of idols is to preserve the *sheba* in the family, rather than to confer a benefit

18 W. R. 321

COLLECTOR OF MOORSHEDABAD v. SINDHESWAR DABEA . 11 B. L. R. P. C. 86  
18 W. R. 228

2. ——— Creation of religious endowment—Charity—Family idols—Sale of trust property in execution—Suit by trustee to recover the property—Limitation. The Hindu law, unlike the English law with respect to charities, makes no distinction between

HINDU LAW—ENDOWMENT—*contd.*1. CREATION OF ENDOWMENT—*contd.*

applicable. RUPA JAGSHET v. KRISHNAJI GOVIND . I. L. R. 9 Bom. 189

3. ——— Form of creation—Perpetuity—Trust—*Gift* and *inoperative devise*. A Hindu by will devised certain property, consisting of a family dwelling-house and land, to trustees for ever, for the residence, maintenance, and performance of the worship of certain family idols, and appointed his sons and their descendants in the strict male line to be shebais of the idols for ever, making provision for their residence in the family dwelling-house; the will also contained a clause restraining any partition, division, or alienation of the property so dedicated to the worship of the idols. The testator appointed the trustees executors of his will, and by a codicil bequeathed legacies to various members of his family. In a suit against the executors to recover a legacy so bequeathed—*Held*, that the devise of the property to the idols was void and inoperative as being a settlement in perpetuity on the male descendants of the testator and for their use, and not a real dedication for the worship of the idols. PROMOTHO DOSSEZ v. RADHAKA PERSHAD DUTT . 14 B. L. R. 175

4. ——— Devise for worship of idol—Right to refund of money expended. Devise upon trust for the use of a *thakoor*, with direction that the wife, daughter, and daughter-in-law of testator be allowed to live in the house for their lives and perform the worship of the idol, with limitation over to others on the decease of the survivors of them, and a sum of Rs 16 allowed to the survivor of the first legatee for the purposes of the idol, and after her death that the same sum be applied to the expenses of the idol. When the legatee has for a time at her own expense kept up the service, she is not entitled to have the money refunded. ROYMOND DOSSEZ v. ROGHUNATH SEN . 1 Ind. Jur. N. S. 14

5. ——— Public charity—Trust—Public charitable or religious trust—Offerings made to an idol—Liability of persons in possession of an idol's property—Account. A trust for a Hindu idol and temple is to be regarded in India as one created "for public charitable purposes" within the meaning of s. 539 of the Code of Civil Procedure (Act X of 1877). The Hindu law recognizes not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical per-



HINDU LAW—ENDOWMENT—*contd.*1. CREATION OF ENDOWMENT—*contd.*

accepted a trust; and a remedy may be sought against them for maladministration by a suit open to any one interested as under the Roman system in a like case by means of a *popularis actio*. **MAHOMMED GANESH TAMBEKAR v. LAHMIRAM GOVINDRAM**  
I. L. R. 12 Bom. 247

6. ———— *Gift to Hindu*

tion of names in the idol's favour and an acknowledgment of the person whom they nominated as agent or manager. *Held*, by the Full Bench, that the gift made by the defendants constituted a trust for the purpose of the temple. *Pes Edge, C J*, and *TYNALL, J.*—That the defendants before the Court did not constitute themselves trustees in any sense.  
**RAGUBHAR DIAL v. KESHO RAMANUS DAS**  
I. L. R. 10 All 18

7. ———— *Dedication to idol*  
—*Mode of dedication.* Under Hindu law, an idol as

**Ganesh Tambekar v. Lahmiram Gobindram**, I. L. R. 12 Bom. 247, approved *Sonatin Bysack v. Juggisondree Dossee*, 8 Moo I. A. 16, and *Ashutosh Dutt v. Durga Churn Chatterjee*, I. L. R. 5 Cal. 433. I. L. R. 6 I. A. 187, distinguished *Bhugobutty Prasunno Sen v. Gooloo Prasunno Sen*, I. L. R. 25 Cal. 112

8. ———— *Gift of idol and debutter land—Private endowment—Benefit of idol—Shebaita—Debutter property.* A gift of an idol and of the lands with which it is endowed (being a private endowment) made with the concurrence of the whole family to another family for the purpose of carrying on the regular worship of the idol, if made for the benefit of the idol, is not invalid, and is one binding on succeeding shebaita. **KHETTER CHUNDER GHOSE v. HARI DAS BENDOPADHYA**  
I. L. R. 17 Cal. 557

9. ———— *Invalid endowment—Deeds made without intention that they should be acted upon—Donor not divesting himself of dedicated property.* Case in which a good title was made, by her transfer of her inheritance, through the daughter and heiress of a deceased member of a joint family of brothers, under the Dayabhaga, although her father had executed deeds dedicating his share of the family property to trustees, for the

HINDU LAW—ENDOWMENT—*contd.*1. CREATION OF ENDOWMENT—*contd.*

worship of the family deity; this dedication having been inoperative, because it was neither his nor his brother's intention that the deeds should be acted upon, and he had never divested himself of his share.  
**WARSON & Co. v. RAMCHUND DUTT**  
I. L. R. 18 Cal. 10  
L. R. 17 I. A. 110

10. ———— *Mode of dedication—Debutter property—Idol—Partition subject to trust for idol.* In a suit for possession by partition the plaintiff stated that the common ancestor of the plaintiff and the defendant and his five sons ac-

the profits thereof paid the expenses of the rish, dola, etc., festivals, and the worship of the deity, all of which were alleged to be patrimonial, and divided the balance. The defence substantially was that the whole of the immoveable land was the property of the idol. It was found in the lower Court that a certain portion of the land was debutter and not partible, and a decree was made for partition of the land. On appeal that as it

but subject to a trust in favour of the idol.  
**COOMAR PAUL v. JOGENDER NATH PAUL**  
I. L. R. 4 Cal. 58  
2 O. L. R. 310

11. ———— *Religious endowment—Endowment to take effect after a life estate.* *Held*, that there is no objection to the limitation by a Hindu testator or settlor of a life estate followed by an endowment of property to religious or charitable purposes. **GORIND PRASAD v. GOMTI** (1908)  
I. L. R. 30 All 238

12. ———— *Endowment—*

by Goswamis among whom the office of *Shankar* had descended for more than 100 years by the rule of lineal primogeniture, in the following terms:—

HINDU LAW—ENDOWMENT—*contd.*1. CREATION OF ENDOWMENT—*contd.*

in *pargunnab Pandra* . . . By bestowing your blessings on us you do enjoy and possess the same with fresh felicity. If I or any of my heirs ever dispossess you, the dispossession shall be ineffectual." The evidence in the case showed that the donee received the gift as one for the service of the particular idols whose *sebat* he was, and that the income of the *monzah* had ever since been entirely appropriated for that service. In 1860 the then *Mohant* describing himself as "brittighori-hofder of *debuttar*," granted to the predecessor in title of the defendants a *mokurari pottah*, or permanent lease,

tended by the defendants that though the grant was to the *Mohant* and "by way of *lakhera* *debuttar*," there was no complete or specific dedication of the

evidence in, the case, the *monzah* was *debuttar* property in the sense of having been dedicated to the worship of the idols represented by the *Mohant* to whom it had been originally granted

intention of the founder had to be gathered from an ancient document expressed in ambiguous language. *Muddun Lall v. Komul Dibee*, 8 W. R. 42, followed. There was no allegation of any special

argument: *nam*, that the power of a *Mohant* to alienate *debuttar* property being, like the power of a Manager for an infant heir, limited to cases of unavoidable necessity (*Prosunno Karmari Debnya v. Golab Chand*, 14 B. L. R. 450; L. R. 21 A. 145), a permanent lease at a fixed rent, though adequate at the time, was "a breach of duty in the *Mohant*" and on the most favourable construction could only enure for the life of the grantor and was not binding on his successors. *Shibessourie Debia v. Mothooranath Acharya*, 13 Moo. I. A. 270, followed. It was also contended that a *mokurari* lease was tantamount to a conveyance in fee simple, and that the

HINDU LAW—ENDOWMENT—*contd.*1. CREATION OF ENDOWMENT—*concl.*

transferred from the vendor to the purchaser in consideration of the price. But a lease in perpetuity left some interest in the lessor, and such a lease, though permanent, was forfeitable: *Kally Das Ahin v. Manmohini Dass*, 1. L. R. 24 Calc. 440. The purchaser must be the purchaser of an absolute title. The defendants were, therefore, not purchasers under Article 131, and the suit was not barred. *ABHIRAM GOSWAMI v. SHYAMA CHARAN NANDI* (1909) 41 C. W. I. L. R. 36 Calc. 1003

13. ——— Indirect dedication—Custom and usage—Moral obligation. When there has been

*LALL SEN v. HUNGSOONDHY (GOOTRA)*

1 Ind. Jur. N. S. 38; 5 W. R. 29

## 2. PROOF OF ENDOWMENT.

1. ——— Gift by person at point of death—Proof of gift to idols. Clear proof is ne-

2. ——— Debuttar property, proof of ancient and hereditary character of. Land granted to an idol cannot be held to be *debuttar* unless it is found to be ancient hereditary *debuttar*, publicly assigned as such prior to the donor's incumbency. *SOSHIKISHORE BUNDOPADHYA v. CHOORAMONEE PUTTO MOHADABEE*

W. R. 1884, 107

3. ——— Treatment of, by founder and his descendants. *Protestation of endowment*

4. ——— Proof of actual assignment to idols. *Protestation of endowment*

but the fact of the assignment to the idol must be specifically proved. *NARAIN PERSAD MYTEE v. ROODUR NARAIN MUNOLE* . . . 2 Hay 490

5. ——— Proof of expenditure for long time of proceeds of land on worship of idol—Documentary evidence. Documentary proof is not absolutely necessary to prove an endowment. The mere fact of the

existence, going back 101 more than half a century that the land was given for the support of an idol

# HINDU LAW-ENDOWMENT—*contd.*

## 2. PROOF OF ENDOWMENT—*contd.*

proof that from that time the proceeds had been so expended would be strong corroboration. **MUDDUN LALL v. KOMUL BIBEK** . . . 8 W. R. 43

6. ——— Use of proceeds of land for worship of idol—*Evidence of dedication.* The mere fact that a portion of the profits of land in the possession of a party had been for some time used for the worship of an idol is no proof of an endowment and cannot impose on such party the liabilities attaching to the office of a shebait. **RAM PERSHAD DASS v. SRECHUREE DASS**

18 W. R. 399

7. ——— Release of land by Government on ground of its appropriation to idol—*Evidence of permanent dedication.* The mere fact of land having been released by Government on the ground of its being appropriated to the services of an idol does not impose on it the character of a religious endowment so as to exempt it permanently from being attached and sold in satisfaction of decrees against a person who may hold it. **NIMAYE CHURN PUTETUNDEE v. JOGENDRO NATH BANERJEE** . . . 21 W. R. 365

8. ——— Purchase in name of idol—*Alienation.* The plaintiff sued as the shebait of a certain idol to recover possession of a zamindari by setting aside an alienation thereof effected by his grandmother, on the ground that it was debutter property. *Plaintiff failed to show that the property was dedicated to the idol.*

his private worship in his own house without any priests to perform regularly any religious service for the public benefit of Hindus, and that the property had been dealt with all along as his own private property. *Held*, that this was a mere nominal endowment, and consequently the alienation thereof was not invalid. *Held*, also, that a property purchased by a man in the name of his own idol, which no one except himself has the power or right to worship, is not the property of the idol, but the property of the person who purchased it. **BROJOSODHARY DEBIA v. LUCHMEE KOWAREE**

15 B. L. R. P. C. 178 note : 20 W. R. 95

Affirming the decision of the High Court

3 B. L. R. A. C. 155 : 11 W. R. 13

9. ——— Land dedicated to idol—

in could not recover the land without the idol and replace the latter, treating it as lost or destroyed, by a new one, inasmuch as, according to Hindu law, when an idol has once been consecrated by appropriate ceremonies, the deity of which the idol is the visible image resides in it, and not in any sub-

# HINDU LAW-ENDOWMENT—*contd.*

## 2. PROOF OF ENDOWMENT—*contd.*

stituted image. **DOORGA PERSHAD DOSS v. SHEO PERSHAD PANDAN** . . . 7 C. L. R. 278

10. ——— Land enjoyed as private property, though attached to karnam—*Suit to recover after ejectment.* Plaintiff brought a suit to recover land which had been enjoyed by her husband, the karnam of a village, but which on his death had been given to the defendant, with the office of karnam. The land had been originally attached to the office, but the plaintiff's husband for a long time before his death was enjoying the land as his private property. *Held*, that the muns of the land continued to be attached to the office, notwithstanding that it may have been for some time enjoyed as private property; that the property, being annexed to the office, was indivisible, and as the Collector, in ejecting the plaintiff, appropriated the land to the office by putting it in the possession of the karnam whom he appointed in place of his plaintiff's husband, the plaintiff had no right to recover. **SESHAIYA v. GAURAMDA**

4 Mad. 338

## 3. NON-PERFORMANCE OF SERVICES.

1. ——— Non-performance of conditions of trust—*Effect of, on trust.* If a trust or endowment be created *bona fide*, the mere fact that the parties in possession of the trust or endowed property do not carry out the conditions of the trust does not invalidate the transactions. **KASHERUTREE DASSEE v. KRISHNAKAMINEE DASSEE**

2 May 557

2. ——— Failure to perform services of idol—*Result of refusal to perform—Suit for khas possession.* A party holding land assigned for the support of an idol subject to the performance of the ceremonies of worship of the idol, who fails to perform the required service, may be compelled to do so, and on refusal may be removed; but such refusal would not enable a party claiming the land under a fresh assignment from a descendant of the original grantor to recover possession by a suit. **MOHESR CHUNDEA CRUKERBUTTY v. KOTLASH CHUNDEA CRUKERBUTTY** . . . 11 W. R. 443

3. ——— *Suit for khas possession.* Where land has been given as debutter land and the requisite services are not performed, all that the donor can do is to take steps to have the services performed; he cannot recover it in a suit for khas possession. **GORENATH CROWDURY v. GOOROO DOSS SUBBA**

18 W. R. 472

See **RAM NABAIN SING v. RAMDOON PAUREY**  
23 W. R. 79

## 4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

1. ——— Principles to be observed in dealing with endowments—*Mad. Rep. VII*

**HINDU LAW—ENDOWMENT—contd.****4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—contd.**

of 1817. The important principle to be observed by the Courts in dealing with the constitution and rules of religious brotherhoods attached to Hindu temples is to ascertain, if possible, the special laws and usages governing the particular community whose affairs have become the subject of litigation and to be guided by them. The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government, and Madras Regulation VII of 1817 merely defined the manner in which that power was to be thenceforth exercised. **METTU RAMALINGA SATHUPATI v. PERIANAYAGUM PILLAI** L. R. 11 A. 200

2. — Mode of holding office and management, proof of—*Gift of an idol—Evidence of conditions of gift.* The mode in which the offices of priest and manager have been held for many generations is material evidence of the conditions on which the original gift of an idol was made. **NIMAYE CHURN POOJAREE v. MOORGOOLEE CHOWDHURY** 1 W. R. 108

3. — Power of control of *odhikaree* by general body of *bhukuts*—*Power of odhikaree to remove bhukuts.* In a suit by the *bhukuts* of the Komolabari Shaster in Assam for

duties as the religious head of the Komolabari Shaster or in the management of its revenues. *Held*, that the *odhikaree* could not turn the *bhukuts* out of the shaster without just cause. **DOOTERAM SURMA DOOREE v. LUCKEE KANT GOSSANEE** 12 W. R. 425

4. — Proprietorship of endowed property—*Religious communities at Benares and Tirpatal, Status of* The mohunt of the muth at

recover property belonging thereto, and to have an account of receipts and disbursements relative to the same; such relief being claimed by virtue of his proprietary right as mohunt and guddensashin of the head-quarters muth at Tirpatal under whose jurisdiction and power the chutter institution at Benares had continued from time immemorial. The defendant denied the plaintiff's claim to the immovable property and endowment which he represented as acquired by his ancestors, the mohunt guddensashins at Benares and himself. He denied that he was so agent, and claimed to be the real proprietor in possession and occupation by right of

**HINDU LAW—ENDOWMENT—contd.****4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—contd.**

accession to his ancestors. The first Court decreed the plaintiff's claim. The High Court modified the decree, giving the plaintiff possession of certain chutters and gardens built or purchased out of funds remitted from Malirra, and declaring him entitled to an account of a sum admitted to have been remitted from Tirpatal, but holding that he had failed to make out possession of the muth, temple,

and religious duties there, raised a presumption that the establishment at Tirpatal was subordinate to that at Benares. And that it was not shown that any change had been effected in the original constitution of the community. *Held*, that the nature of the relation between the muths at Tirpatal and Benares was that the former fed the establishment at the latter, the object of which was to afford facilities to pilgrims and others wishing to pay their devotions at Benares. The result was that the establishment at Tirpatal collected alms and remitted them to Benares, producing complicated exchange transactions between the two establishments. *Held*, that the plaintiff had failed to establish either that he was the

decree. **KASHI BASHI RAMLING SWAMEE v. CHILUJIBERNATH KOOMAR SWAMEE** 20 W. R. P. C. 317

5. — Mode of enjoyment of endowed property—*Decree or agreement made to bind successive owners.* A court has no power to bind in perpetuity all the successive owners of an endowment as to the mode in which their property should be managed; and the sherebait of a debutter endowment may make such arrangement for its management as is consistent with their duties, but they cannot make it binding for ever upon all their successors. **BUNWARIE CHAND THAKOOR v. MOHDEN MOHUN CHITTORAJ** 21 W. R. 41

6. — *Repairs of temple—Kattais or distinct endowments—Liability for repairs—Proof of custom in absence of endowment-deeds.* The *yachayatdars* or managers of a temple, being directed by a Magistrate to repair the gateway of a store-house within the temple precincts and under their immediate control spent Rs 108 in so doing from the funds of a *kattai* or endowment of which they were managers. They were re-able to fell upon the use of *kattais*. *Held*, that, in the absence of any endowment or trust-deed regarding the *kattais*, the decision must be found in the usage

HINDU LAW—ENDOWMENT—*contd.*4 DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—*contd.*

of the temple, upon proof of which judgment was given for the plaintiffs, and a declaration added to the effect that the defendants were liable for repairs to the temple so far as the surplus funds of their katalis should permit. **VYTHILINGA PANDARA SANNADHI v SOMASUNDARA MUDALIAR**

I. L. R. 17 Mad. 189

7. — *Shebait, suit by, for recovery of advances made by him—Divestiture by co-shebait—Limitation Act (XV of 1877), Sch. II, Arts 36, 120—Parties J, the grandfather of the plaintiffs and of some of the defendants, and great-grandfather of the remaining defendants, established certain idols and dedicated certain properties for their worship, etc., and prescribed a certain order in which his descendants were to become shebait. When the office of shebait devolved upon plaintiff's father B, he was kept out of possession by defendant P of a portion of the debutter estate; and, in a suit by B against P and certain other persons, B having*

plaintiffs brought the present suit, as heirs and legal representatives of B, for recovery of the said money, as also for money realised by P out of the debutter estate. The plaintiff stated that, as it was not certain who amongst the defendants was entitled to be shebait, all of them were made parties, but the Court was not asked to determine who was entitled to be shebait. *Held*, that the plaintiffs, as creditors of the debutter estate, were not entitled to

advances were made, but from the time when the plaintiff's father B died, and Art. 120 of Sch II of the Limitation Act applied to the case. Also, that the suit was not maintainable inasmuch as it was not stated in the plaint who the person was that was entitled to represent the estate as shebait, and the plaintiffs had not asked for the determination of the question as to who was the shebait for the time being. **PEARY MOHAN MUKHERJEE v. NARENDRA KRISHNA MUKERJEE (1900)**

S. C. W. N. 273

8. — *Endowment—Complete and partial dedication. Where there is no evidence as to who founded a religious endowment or as to the terms or condition of the foundation, the legal inference is that the title to the property or to the management and control of the property, as the case may be, follows the line of inheritance from the*

HINDU LAW—ENDOWMENT—*contd.*4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—*contd.*

founder. **Goswamee Sree Greedharjee v. Raman-laljee Goswamee, I. R. 18 J. A. 137**, relied upon. **JAGADINDRA NATH ROY v. HEMANTA KUMARI DEBI (1904)** S. C. W. N. 809 S. C. L. R. 31 I. A. 23

9. — *Religious endowment—Trustee, creation of tenure by—Cancellation by succeeding Trustee—Notice to tenure-holder—Tender of patta at end of fasli not reasonable notice. A trustee of a religious endowment cannot, except*

however, a long succession of trustees had acquired, a succeeding trustee cannot sue to eject the tenure-holder without giving him reasonable notice of the determination of the tenure; and the tender of a patta at the end of a fasli for which it is tendered is not a reasonable notice. **NARASIMHA CHARI v. GOPALA AYYANGAR (1903)**

I. L. R. 28 Mad. 391

*Endowment—Hereditary managers or trustees—Right of management vested by descent in two branches of a family—Relinquishment of right by junior branch to member of senior branch—Allotment thereby of turns of management—Continuous usage by senior branch—*

terest in the endowed property or income, the other devolved on his male descendants by his two wives, there being four in each branch. Until 1831-32

settled order of succession amongst the members of the senior branch, the plaintiff, in each period of about seven years taking five turns (one in his own right

turns of management on 13th July 1899 he made over the temple to the plaintiff, but retained the endowed property. In a suit brought on 3rd September 1900 to recover possession of it: *Held*,

continued was conclusive evidence that the defendant of a family arrangement to which the Court was bound to give effect, until it was validly altered, or superseded by a new scheme effected with

**HINDU LAW—ENDOWMENT—contd.****4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—contd.**

the concurrence of all parties interested. It was one, which those parties were competent to make, without applying to the Court; and it was not for the defendant at his will and pleasure to disturb an arrangement of which he had on more than one occasion taken the benefit: nor could he in this suit set up the rights of the junior branch against the plaintiff. The manager of the temple was by virtue of his office the administrator of the property attached to it.

vested by descent in more than one person. In such a case in order to avoid confusion it was not unusual and certainly not improper, for the interested parties to arrange amongst themselves for the due execution of the functions belonging to the office, in turn, or in some settled order and sequence. There was no breach of trust in such a case.

I. L. R. 20 Mad. 283  
s.c. 10 C. W. N. 825

**11. — Public religious endowment—Shelou, how far trustee—Office or dignity, holder of—Delegation of office—Palis or turns of worship—Family arrangement—How altered—Proof of.** The manager of a Hindu temple is by virtue of his office the administrator of the property attached to it. As regards the property

it has been originally conferred on a single individual, but which, in course of time, has become vested by descent in more than one person. In such a case,

the parties interested in the property have themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence. There is no breach of trust in such an arrangement nor any improper delegation of the duties of a trustee. The parties interested are competent to make such an arrangement without applying to the Court. A family arrangement so arrived at must hold good, until altered by the Court or superseded by a new scheme effected with the concurrence of all parties interested. Unbroken usage for a period of 19 years was held to be conclusive evidence of a family arrangement to which the Court was bound to give effect. **RAMANATHAN CHETTI v. MURUGUPPA CHETTI** (1906)

I. L. R. 29 Mad. 283  
s.c. 10 C. W. N. 825

**12. — Right to appoint manager—Religious endowment.** According to Hindu law,

**HINDU LAW—ENDOWMENT—contd.****4. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—contd.**

when a religious endowment has been founded, the right to appoint a manager or superintendent remains in the founder and his descendants, unless there is evidence to show that the founder or his descendants have made any inconsistent disposition. **Gowimmie Sree Greedharjee v. Ruman Laljee Goomanve**, L. R. 16 I. A. 137; **Shewraon Kasevans v. Ram Pargah**, I. L. R. 18 All. 227, and **Mussumat Jai Bansi Kunwar v. Chatter Dhari Singh**, 5 B. L. R. 191, followed. **SHED PRASAD v. AYA RAM** (1907) I. L. R. 29 All. 683

**5. SUCCESSION IN MANAGEMENT.**

having done so for a long period creates no right in his favour. **INDRJEET KOONER v. CHUNDREEM NISHER** 18 W. R. 99

**2. — Succession to managership—Devolution of property of idol on death of mohunt.** The general principle regulating this devolution of property belonging to a muth, on the death of the mohunt, is that a virtuous pupil takes the property. In some instances the mohuntship descends to a personal heir, and in others to a successor appointed by the existing mohunt; but the ordinary rule is that muths of the same sect in a district, or of different sects associated together,

**GEERA** 19 W. R. 215

**3. — Death of mutwahi without nominating successor.** Where the mutwahi of an endowment dies without nominating a successor, the management must revert to the heirs of the person who endowed the property. **PEET KOONWAR v. CHUTTER DHAREE SINGH** 13 W. R. 396

**4. — Trustee with power of appointment—Failure to appoint.** A Hindu, by a deed of wukdnama (deed of endowment),

(B) the manager and mutwahi (trustee) of the same,

right of appointing successive mutwahs. To these his heirs should not have right to prefer any claim,

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

*etc.* *B died without issue* ————

MUNWAR v CHATTER DHARI SINGH

5 B. L. R. 181

5. ———— Custom or practice of sect. When the property is of the nature of

widow, by the custom or practice of the sect. GOOSALEN SHREE CHUNDRAWALEE BAROJEE v. GIBHARJEE 3 Agra 228

Affirmed by Privy Council in GOOPER LALL v. CHUNDRAOOLEE BAROJEE 11 B. L. R. 391

6. ———— Succession to hereditary office. J held the office of *batil* more

descended from a common ancestor and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by J. J., having died in 1824, was succeeded by his son T without any opposition from the two other branches T was temporarily displaced from the office by O, who represented the two other branches, but recovered it in 1830. In an action brought by the plaintiff as representative of O in 1873 to establish his claim to the office held by T's sons, it was contended on behalf of plaintiff in answer to defendant's plea of limitation, that in the absence of evidence of the circumstances under which T succeeded to the patilship, T must be presumed to have been nominated to that office by all the members of the watandar family jointly, or with their assent sought and granted, and was consequently the representative of all of them. *Held*, that the

7. ———— Temple—Hereditary trustee—Title—Proof—*Mad. Reg. VII of 1817*. The mere succession of a son to a father in a trusteeship of a temple does not create an hereditary right. *Quare* Whether a temple of 1817 was in fact imposed on it. *Nayudu v S* observed on. *APPASANI v. NAGAPPA* I. L. R. 7 Mad. 489

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

8. ———— Succession to office and property of deceased mohunt—Custom of institution ————  
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proved by evidence. On the death of a mohunt, the right to succeed to his landed and other property was contested between two goshaish. *Held*, that the claimant, in order to succeed, must prove the custom of the math entitling him to recover the office and the property appertaining to it. The evidence showed the custom to be that the title to succeed to the office and property was dependent on the successor's having been the chela approved and nominated as such by the late mohunt, and also after the death of the latter installed or confirmed as mohunt by the other goshaish of the sect. *Held*, that a claimant who failed to prove his installation or confirmation was not entitled to a decree for the office and property against a person alleging himself to have been a chela who, whether with or without title, was in possession. *GENDA PURI v. CHATAR PURI* I. L. R. B. All. 1 L. R. 13 I. A. 100

9. ———— Religious institution—Succession in religious houses and among ascetics. This was a suit brought in 1881 by the head of an adhinam for declarations that a muth was subject to his control; that he was entitled to appoint a manager; that the present head of the muth was not a member of the muth.

claim extended also to religious establishments at Benares and elsewhere connected with the muth. The muth was founded by a member of the adhinam. Many members of the muth were also members of the adhinam.

entitled to an order for delivery of the property of the muth to himself or to his appointee; (ii) that on the evidence as to the usage in the establishments in question, the head of the muth was entitled to appoint his successor, but his election was limited to members of the adhinam; and the head of the adhinam was entitled to enforce this rule, though he was bound to invest a disciple properly nominated by the head of the muth; (iii) that the defendant not being a disciple of the adhinam, his appointment was invalid, and the head of the adhinam

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

was entitled to see that a competent member of the adhinam was appointed in his stead. *GITANA SANBANDHA PANDARA SANNADHI v. KANDASAMI TAMBIRAN* . . . I. L. R. 10 Mad. 375

10. ———— *Construction of will—Right of shebaitship of a family deb-shebait under a will.* A testator, who died leaving widows and a daughter and also three surviving brothers, bequeathed all the residue, after certain legacies, of his acquired estate to maintain the worship of a . . .

estate as shebait, and the survivor of them was succeeded by his son, one of the defendants in the present suit, which was brought by the testator's only daughter as heiress to his estate, claiming that the Court should determine "those provisions which were valid and lawful, and those which were invalid and illegal." She claimed possession and an account, and also to be the shebait. *Held*, that the plaintiff's claim to a preferential title to this office depended on a sentence in the will constituting, as construed by the Courts below, to be shebait the

I. L. R. 16 Calc. 103  
L. R. 16 I. A. 159

11. ———— *Hereditary right to be shebait and to have possession of property dedicated to religious purposes—Primogeniture.* According to Hindu Law, when the worship of a thakur has been founded, the office of a shebait is held to be vested in the heir or heirs of the founder, in default of evidence that he has disposed of it other-

founded by the plaintiff's grandfather, it followed that the plaintiff was by inheritance the shebait of that worship, there being no proof of any usage at variance with this presumption, but the custom appearing to be in accordance with it. *Held*, that the plaintiff, as such representative of the founder, was entitled, in preference to a collaterally-descended member of the founder's family, to claim the shebaitship. Also that the plaintiff was entitled, in

been given by one of the worshippers ("for the location of the Sri Sri Iswar Jioa") with the condu-

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

tion appeared that the defendant should be entitled to

with any reference to the question who was to be shebait. *GOSSAMI SRI GRIDHARAJI v. ROMANLALJI GOSSAMI* . . . I. L. R. 17 Calc. 3  
L. R. 16 I. A. 137

12. ———— *Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor.* The pandaram of a muth, being empowered under a decree to nominate a person to be the head of a subordinate muth subject to the approval of the subordinate Court, made a nomination and died before the subordinate Court had come to a determination as to the fitness of his nominee. His successor in office was brought on to the record and revoked his nomination, and made a fresh nomination. The

VALINGA . . . I. L. R. 16 Cal. 100

13. ———— *Succession to a jheer of a muth—Nomination requiring assumption of the character of a sannyasi—Time fixed by decree for assumption of that character—Enlargement on appeal of that time—Evidence of custom.* The plaintiff sued for a declaration of his right as jheer of a muth and for possession of the property of the muth. The plaintiff alleged that the immemorial custom with reference to the succession to the office of jheer was that the jheer for the time being nomi-

tion alone. The plaintiff's case was that he was nominated by the late jheer, although the nomination was not concurred in by the disciples, and that the late jheer had initiated him and directed him to become a sannyasi a day or two after his initiation, and that he was accordingly entitled to the rights and privileges of jheer. The plaintiff obtained a decree, which was, however, made contingent upon his assuming the character of a sannyasi within the period of four months. The defendant preferred an appeal against this decree, and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a sannyasi pending the disposal of the appeal preferred by the defendant. On the plaintiff's appeal: *Held*, that the Court had power to extend



HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

etc." B died without having appointed any mnt-wali (trustee) to succeed her in the management of the trust. In a suit by the heir of B to obtain possession of the property covered by the deed against the heirs of A. *Held*, that the managership, on failure of appointment of a trustee, reverted to the heirs of the person who endowed the property. JAI BANSY KUNWAR v. CHATTER DHARI SINGH

5 B. L. R. 181

5. ——— *Custom or practice of sect.* When the property is of the nature of an endowment, a claim to succeed under the ordinary Hindu law of inheritance was not maintainable. Plaintiff might have sued to get the management of the property in preference to the defendant, a widow, by the custom or practice of the sect. GOOSAEN SREE CHOUDAWALEE BAHOOJEE v. GIRDHARJEE

3 Agra 226

Affirmed by Privy Council in GOOREE LALL v. CHUNDRAOOLLE BAHOOJEE

11 B. L. R. 391

6. ——— *Succession to hereditary office.* J held the office of patil more than fifty years ago as representative of two branches descended from a common ancestor, and then united in interest, there being two other branches descended from a common ancestor and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by J. J. having died in 1824, was succeeded by his son T without any opposition from the two other branches. T was temporarily displaced from the office by G, who represented the two other branches, but recovered it in 1850. In an action brought by the

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succeeded to the patilship, T must be presumed to have been nominated to that office by all the members of the watandar family jointly, or with their assent sought and granted, and was consequently the representative of all of them. *Held*, that the succession of a son to his father in an hereditary

12 NOV. 1872

7. ——— *Temple—Hereditary trustee—Title—Proof—Mad. Reg. VII of 1817.* The mere succession of a son to a father in a trusteeship of a temple does not create an hereditary right. *Quare* Whether, as long as Regulation VII of 1817 was in force, it was competent to Government absolutely to divest itself of the obligations imposed on it by that Regulation. *Venkatesa Nayudu v. Shri Shatagopaswami*, 7 Mad. 77, observed on. APPASAMI v. NAGAPPA

I. L. R. 7 Mad. 489

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

8. ——— *Succession to office and property of deceased mohunt—Custom of institution.* In determining the right of succession to the property left by the deceased head of a religious institution, the only law to be observed is to be found in custom and practice, which must be proved by evidence. On the death of a mohunt, the right to succeed to his landed and other property was contested between two goshains. *Held*, that the claimant, in order to succeed, must prove the custom of the math entitling him to recover the office and the property appertaining to it. The evidence showed the custom to be that the title to succeed to the office and property was dependent on the successor's having been the chela approved and nominated as such by the late mohunt, and also after the death of the

or nomination was not entitled to a decree for the office and property against a person alleging himself to have been a chela who, whether with or without title, was in possession. GENDA PURI v. CHATAR PURI

I. L. R. 9 All. 1  
L. R. 13 I. A. 100

9. ——— *Religious institution—Succession in religious houses and among ascetics.* This was a suit brought in 1881 by the head of an adhinam for declarations that a muth was subject to his control; that he was entitled to appoint a manager; that the present head of the muth was not duly appointed, and his nomination by his predecessor was invalid; and for delivery of possession of the moveable and immovable properties of the muth to a nominee of the plaintiff. The claim extended also to religious establishments at Benares and elsewhere connected with the muth. The muth was founded by a member of the adhinam. Many previous heads of the muth had agreed to be "slaves" of the head of the adhinam, but for over 60 years the head of the adhinam had exercised no management over the endowments belonging to the muth; and in a suit (compromised) of the year 1874 the present pretensions of the head of the adhinam had been denied *in toto*. The defendant had succeeded in 1880 to the management of the muth under the will of his predecessor, dated the

**HINDU LAW—ENDOWMENT—contd.****5. SUCCESSION IN MANAGEMENT—contd.**

was entitled to see that a competent member of the adhinam was appointed in his stead. *GIYANA SAMBANDHA PANDARA SANNADHI v. KANDASAMI TAMBIAN*. I. L. R. 10 Mad. 375

10. — *Construction of will—Right of shebaitship of a family deb-shelab under a will.* A testator, who died leaving widows and a daughter and also three surviving brothers, bequeathed all the residue, after certain legacies, of his acquired estate to maintain the worship of a family deity, appointing his three brothers and his

estate as shebait, and the survivor of them was succeeded by his son, one of the defendants in the present suit, which was brought by the testator's only

depended on a sentence in the will constituting, as construed by the Courts below, to be shebait the

*MUKERJI ASUTOSH MUKERJI v. KAMINI DEBI*  
I. L. R. 16 Calc. 103  
L. R. 16 I. A. 159

11. — *Hereditary right to be shebait and to have possession of property dedicated to religious purposes—Primogeniture.* According to Hindu Law, when the worship of a thakur has been founded, the office of a shebait is held to be vested in the heir or heirs of the founder, in default of evidence that he has disposed of it otherwise, provided that there has not been some usage, course of dealing, or circumstance, showing a different mode of devolution. *Peel Koonwar v. Chatter Dharee Singh*, 13 W. R. 296, referred to. It having been established that a particular worship had been

plaintiff, as such representative of the founder, was entitled, in preference to a collaterally-descended member of the founder's family, to claim the shebaitship. Also that the plaintiff was entitled, in

**HINDU LAW—ENDOWMENT—contd.****5. SUCCESSION IN MANAGEMENT—contd.**

latter did not know of it, or had paid their money with any reference to the question who was to be shebait. *GOSWAMI SRI GHOSHARAJI v. ROMANALAJI GOSWAMI*. I. L. R. 17 Calc. 3  
L. R. 16 I. A. 137

12. — *Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor.* The pandaram of a muth, being empowered under a decree to nominate a person to be the head of a subordinate muth subject to the approval of the subordinate Court, made a nomination and died before the subordinate Court had come to a determination as to the fitness of his nominee. His successor in office was brought on to the record and revoked his nomination, and made a fresh nomination. The subordinate Court treated the fresh nomination as a

by the appellant should be investigated by the Subordinate Judge. *GNANASAMIDANDA v. VISVALINGA*. I. L. R. 13 Mad. 338

13. — *Succession to a sheer of a muth—Nomination requiring assumption of the character of a sannyasi—Time fixed by decree for assumption of that character—Enlargement on appeal of that time—Evidence of custom.* The plaintiff sued for a declaration of his right as sheer of a muth and for possession of the property of the muth. The plaintiff alleged that the immemorial custom with reference to the succession to the office of sheer was that the sheer for the time being nominated his successor, and that, failing such nomination the disciples assembled at the place where he died elected his successor, and that the person so nominated became sheer by virtue of such nomination alone. The plaintiff's case was that he was nominated by the late sheer, although the nomination was not concurred in by the disciples, and that the late sheer had initiated him and directed him to become a sannyasi a day or two after his initiation, and that he was accordingly entitled to the rights and privileges of sheer. The plaintiff obtained a decree, which was, however, made contingent upon his assuming the character of a sannyasi within the period of four months. The defendant preferred an appeal against this decree, and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a sannyasi pending the disposal of the appeal preferred by the defendant. On the plaintiff's appeal: *Held*, that the Court had power to extend

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

the time as prayed. On the defendant's appeal :

that the plaintiff had established merely an imperfect nomination which could not be upheld on the principles deducible from the known cases of succession. *RANGACHARIAR v YEGNA DIKSHATUR*

I. L. R. 13 Mad. 524

14. ——— Succession to management of muth—Want of asceticism of *paradesi*—Removal of *paradesi*—Form of decree The plaintiff, the zamindar of Sivaganga, sued in a subordinate Court to remove the defendant from the office of head of a muth. The defendant was a married man living with his wives and children, whom he maintained with the produce of the property of the muth, and it appeared that he had

guru for the erection and maintenance of a muth and the performance of certain religious exercises in perpetuity, and provided that the head of the muth should be of the line of disciples of the original grantee whose spiritual family he desired to perpetuate. In 1867 a predecessor in title of the plaintiff had sued unsuccessfully to recover certain property of the muth from the defendant, alleging another cause of action than his status as a married man and his misappropriation of the muth property; and in that suit it was established that the head of the muth for the time being had the right to appoint his successor, and that such appointment was not subject to confirmation by the zamindar. It appeared that the trusts of the muth had been violated and the income misapplied, and that there was no qualified disciples in whom the right of succession had vested, and that the members of the plaintiff's family were the only persons interested

appointment were confirmed, the property should be directed to be delivered to the person appointed, to be administered in accordance with the trusts and usage of the muth. *Scilicet* That the *paradesi* or head of the muth might be a married man, provided he had been duly initiated. *SATHAPPA YAR v PERIASAMI*

I. L. R. 14 Mad. 1

15. ——— Succession to the office of *dharmakarta*—Act XX of 1863, s. 14—*Reli-*

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

*gious endowments*—Custom and usage. On a question of the right of succession to the office of *dharma*-*makarta* of a *devasthanam* or temple at *Rames-*

succession was provided for by each successive *dharma*-*makarta* initiating a *pandaram*, and, whilst in office, appointing him as his successor. It followed that the appointment of a *dharma*-*makarta* by one who had already ceased to hold the office (having been removed under Act XX of 1863, s. 14) was not in accordance with usage, and was therefore invalid. The persons whom the displaced *dharma*-*makarta* had attempted to appoint was head of the muth from which preceding *dharma*-*makartas*, as it appeared, had been taken. Besides the above cause of invalidity

well as to the office of *dharma*-*makarta*. *RAMALINGAM PILLAI v VITHALINGAM PILLAI*

I. L. R. 16 Mad. 400

L. R. 20 I. A. 150

16. ——— Succession to *mohant*—Succession to the "gaddi" of a temple—

ence as to the customs relating to succession observed by the particular sect to which the deceased *mohant* belonged. It is necessary for the person

was "*nihang*," as distinguished from "*grihast*," which he failed to do. Meaning of the terms "*nihang*" and "*grihast*" explained. *Genda Puri v. Chhatar Puri*, I. L. R. 9 All. 1 : L. R. 13 I. A. 100, referred to. *BASDEV v. GHARIS DAS*

I. L. R. 13 All. 256

tested the right to succeed to the office of *mouana* of a *mouana* muth under a customary rule of succession. Both the Courts below found that the *mohant* for the time being had power to appoint his successor from among his *chelas*; that, in the absence of appointment, a *chela*, or, if there should be more than one, the eldest *chela*, would succeed; and that, should there be no *chela*, then a *gurubhai*

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

or chela of the same guru with the deceased mohant would succeed. The plaintiff's case was that he had been duly taken as a chela and appointed by the last mohant, whose title was not disputed. The defendant, who was in possession, denied that the plaintiff had ever been such a chela, alleging that he had attempted to take

chela by the mohant who had preceded the last, and had been in a position to dispute the right of succession, but had yielded it when the last mohant had taken office. He put forward an alleged will of the latter, which stated that he was to succeed and relied on his possession approved by other mohants. *Held*, that only a leprosy of virulent form could have disqualified the last mohant. As to it, there was no medical evidence; but on the facts the conclusion was that there had been no such disqualification. The statements in the alleged will were not true and it was ineffectual to

DAS v. RAM PRAPARNA RAMANUS DAS  
I. L. R. 22 Cal. 843  
L. R. 22 I. A. 64

18. ———— Fort pagodas at Tanjore—Right of management on death of the senior widow of the late Moharaja of Tanjore. After

cease; they will accordingly be handed over to Her Highness Kamakshi Bai Saheba. The pagodas and their endowments were handed over in pursuance of that order, and were held by the senior widow till her death in 1892. On her death, Government ordered that they should be placed

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

19. ———— Right of females—Right of females to succeed to polliam—Custom. Females are not precluded by any rule of descent, custom, or usage of the Cumbala Tottier caste from succeeding to a polliam. COLLECTOR OF MADURA v. VERRIAMMOO UMMAI. 9 Moo. I. A. 448

20. ———— Right of female to perform services—Appropriation of annuity of endowed property. In a suit by the widow of one of the descendants of the grantee of a varshasan annual allowance paid from the Government treasury for the performance of religious service in a Hindu temple to recover arrears due to her husband's branch of the family from another descendant who had received the whole stipend; and where it was found by the Court below that by the

private property is justified by Hindu law. *Quare*: Whether a Hindu female is competent to perform, either in person or vicariously, the services for the maintenance of which a religious endowment has been granted. KESHAVBHAT v. BHAGIMATHURAI. 3 Bom. A. C. 76

21. ———— Liability of officiating priest to account for fees—Sole of hereditary office—Females. Where a priest wrongfully

where the purchasers are the next in succession from the vendor to such office. *Semble*. That a hereditary priestly office descends in default of males through females. SITARAMBHAT v. SITARAM GUNESH. 6 Bom. A. C. 250

22. ———— Right of female

23. ———— Right of female to be adhkaree—Vyavasthas. A woman who has given mantras which have been accepted and was nominated by her deceased husband to be adhkaree, is not prevented by the Hindu law from being so. Vyavasthas need not be called for, nor local testimony relied on, to prove the doctrines of Hindu law. POORUN NARAIN DUTT v. KASHEESURJE DOSSEE. 3 W. R. 180

24. ———— Succession of Hindu widow as shebail—Custom. In a suit by a Hindu widow to recover possession of certain property dedicated to idols, as heir to her deceased

a widow was entitled to succeed. KALIANA SUNDARAM AYYAR v. UMAMBA BAI SAHEB. I. L. R. 20 Mad. 421

**HINDU LAW—ENDOWMENT—contd.****5. SUCCESSION IN MANAGEMENT—contd.**

husband, the last shebait, it appeared that the plaintiff's husband was an adopted son of his predecessors in office, and that he was the eldest son of the first defendant who was the nearest male cognate of the adoptive father. On behalf of the defendant it was contended that the right of succession to a shebaitship was not governed by the ordinary rules of inheritance, and that the plaintiff had no title thereto. *Held*, that a Hindu widow could not succeed to a shebaitship as heir to her husband without proof of special custom. In this case there was no sufficient proof of such custom.

**JANKEE DAREA v GOPAL ACHARJEA**  
**I. L. R. 2 Cal. 365**

... must be proved by evidence what is the usage. In the present instance, the usage did not support the claim; and, upon the evidence, the claimant, who was out of possession, failed to make a title.

**JANKEE DEBI v GOPAL ACHARJEA GOSWAMI**  
**I. L. R. 8 Cal. 766; 13 C. L. R. 30**

**25. Mohunt—Appointment of successors—Conditional appointment invalid.** A mohunt by his will appointed L, his spiritual brother, to be his successor, and after

might probably be competent. Wherefore I direct that you will keep G with you, and initiate him

first, that a mohunt may appoint a spiritual brother,

tions to the interest his appointee should enjoy in the mohunt. For a person having a fee simple in an estate, with the power of appointing to the succession, has no right to annex to it conditions which the person who gave him the power of appointment never gave the power to annex. In the absence of such power, therefore, a mohunt who once nominates his successor has no right to give directions to his successor, when his turn to nominate comes, as to whom he should nominate. *Fourthly*, that the testator having no power to give any directions as to the person who should be L's successor, L was entitled, after he had succeeded to

**HINDU LAW—ENDOWMENT—contd.****5. SUCCESSION IN MANAGEMENT—contd.**

the guddi, to appoint as his successor a person other than G. *Fifthly*, that even if by custom a power to appoint two mohunts in succession had

claims to be mohunt, but does not show that he was elected, but merely that the defendant was not elected as his successor.

appears, that the will did not give G an absolute positive, unqualified right at any time to the mohuntship.

on the evidence, that G had failed to establish his own title to be mohunt, and that the suit was so framed that in it he could not recover the mohuntship on the mere infirmity of defendant's title. The only law as to mohunts and their offices is to be found in custom and practice which is to be proved by evidence. There cannot be two existing mohunts, and the office cannot be held jointly. **GREEN DHAREE DOSS v NUNDORISHORE DOSS**

**Mahr. 373; 2 Hay 633**

And on appeal to Privy Council.

**6 W. R. P. C. 25; 11 Moo. I. A. 405**

**26. Succession to mairasi mohunt—Appointment of mohunt—Ceremonies—Revocation of nomination of chela—Disqualification of mohunt.** In the cases of a mairasi muth, the investiture by the leading neighbouring mohunts, at the Bandhara ceremony, of one who cannot prove that he was actually appointed by the last mohunt, is not sufficient, in the absence of

of succession prescribed by the mairasi in the institution, and if this rule cannot be discovered from the original deed of gift or other documentary evidence, it must be proved in each case by showing what the usage has been on the occasion of each succession. A mohunt of a mairasi muth, by a deed of gift in 1849, made over all the property of the muth to his senior chela and invested him with the chudder of mohunt; but subsequently a dispute having arisen on account of the immoral life led by the appointee, a compromise was effected by which the former mohunt was permitted to take back the muth and the property belonging to it, the other being allowed merely to retain possession of a subordinate muth. In 1873 the mohunt died, leaving

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

of gift should not be considered to have been cancelled by the compromise or by the will. Questions as to whether a claimant to a muth is a Sun-jogi, or whether from his conduct and mode of life he is disqualified for the office, may be determined by a Civil Court. *SITAPESHAH DASS v. THAKURDAS* 5 C. L. R. 73

27. ————— *Succession to Managrrship—Chela, right of, to succeed ascetic or sanyasi—Ekarnama by mohunt—Succession, altering of—Mohunt.* A chela is primarily entitled to succeed a mohunt of the sanyasi sect who has to follow a life of celibacy; but, where there are more chelas than one, custom and practice intervene. *Ganes Gir v. Umroo Gir* (1897), 1 S. D. A. 291; *Mahanth Rammooy Dass v. Mahanth Debnaj Dass*, 6 S. D. A. 262; *Mohunt Shro Prokash Dass v. Mohunt Joyram Dass*, 5 W. R. M. 57; *Genda Puri v. Chatar Puri*, 1 L. R. 9 All 1; and *Janaki Debi v. Gopal Acharya Goswami*, 1 L. R. 9 Cal. 766, referred to. An ascetic is a mere life-tenant, and cannot alter the succession to the trust by an act of his own, in connexion with the status under which he originally acquired the trust. *Mohunt Rumun Dass v. Mohunt Ashul Dass*, 1 W. R. 160, and *Rup Narain Singh v. Jumbo Bye*, 3 C. L. R. 112, referred to. One J, who was the mohunt of a religious institution known as the Barhampore Patia Asthal, belonging to a sect of Vishnavas of the Ramanandi class, initiated one A, who had been his chela, with the chadar, kanthi and tilak of mohuntship, thereby nominating and installing him as his successor. A, after succeeding to the mohuntship, executed an ekarnama in favour of the mohunt of Mirzapur, giving him the right of naming or appointing his own successor. *Held*, that the mode of appointment, by a mohunt, of a successor from out of his chelas was well known, and the manner of A's own appointment to the gaddi indicated that such was the custom and practice of the Barhampore Patia Asthal; also that A had no power to ignore this custom and practice and give away the right of appointment to the mohunt of Mirzapur; and that consequently the ekarnama was ultra vires as an exercise of A's right of electing his own successor. *RAJJI DASS v. LACHRU DASS* (1902) 7 C. W. N. 145

28. ————— *Succession to property of Mohunt—Chela—Succession in management of endowed property under deed of endowment—Mortgage by manager—Money advanced out of profits*

HINDU LAW—ENDOWMENT—*contd.*5. SUCCESSION IN MANAGEMENT—*contd.*

*of dedicated property—Right of successor to sue on*

appointed the plaintiff, who was his chela, to succeed him on his death in the trusteeship and

29. ————— *Ascetic—Alteration of succession.* An ascetic, a mere life-tenant, cannot alter the succession to an endowment belonging to ascetics, by an act of his own in connection with the status under which he originally acquired the trust. *RUMUN DASS v. ASHUL DASS* 1 W. R. 160

30. ————— *Decree against muth—Religious endowment—Decree against head of muth binds successor in execution proceedings—Decree on promissory note executed by head of muth binds the muth—Compromise decree, effect of—Parties to suits—Sishyas cannot be made parties.* A decree passed against the head of a muth as representing the muth is binding on his successor, who cannot dispute the validity of the decree in execution proceedings, but can do so only by a properly framed suit. *Sudindra v. Rudan*, 1 L. R. 9 Mad 89, referred to and followed. The head of the muth represents the muth even when the suit is brought on a promissory note executed by him and he cannot therefore question the validity of the transaction. The binding nature of the decree in such cases is not affected by the fact that it is based on a compromise. The sishyas or disciples of a muth are not co-owners with the head of the muth and have no such interest in the muth property as will entitle them to be made parties in a suit to recover property from the head of the muth. *MANICKA VASAKA DESIKAR v. BALAGOPALA KRISHNA CHETTY* (1905) 1 L. R. 29 Mad. 553

## 6 DISMISSAL OF MANAGER OF ENDOWMENT.

1. ————— *Dismissal of servant of pagodas by dharmakarta—Ground of dismissal.* The question whether there was a suffi-

HINDU LAW—ENDOWMENT—*contd.*6. DISMISSAL OF MANAGER OF ENDOWMENT—*contd.*

Nathdwār within the territories of the Rana of Udepur in Mewar. Part of the dedicated property was at Poona. The first four defendants managed this portion of the property for the plaintiff. They collected the rents and transmitted them to him from time to time. In 1876 the Rana deposed the plaintiff for alleged misconduct, deported him from his territories, and proclaimed the plaintiff's son (defendant No 5) as Tekait Maharaj. The defendant having refused to pay over the rents and to deliver the Poona property to the plaintiff, the plaintiff brought the present suit to recover possession. The plaintiff's son was made a co-defendant on his own application. The defendants denied the plaintiff's right to the property on the ground that he had been deposed and banished by the Rana, and the fifth defendant (the plaintiff's son) claimed to be Tekait Maharaj, and as such to be entitled to all the dāsthān property. The lower Court made a decree in favour of the plaintiff. On appeal by the defendants to the High Court: *Held*, that the plaintiff was entitled to the property in dispute. The order of the Rana could not be regarded as a foreign judgment between the parties. That order,

virtue of the custom of primogeniture obtaining in his family. Whether he took it as ruler or as

merely as a trustee, he had not yet been removed from his office by any competent tribunal. *NATHDWAR V. SHRIDHAN GOSWAMI GIRDHARJI*

I. L. R. 12 Bom. 331

3. ——— Dismissal of dharmakarta, grounds for—*Management of temple—Dharmakarta*

ant's part, be dismissed on conditions to be complied with by him. *SIVASANKARA V. VADAKI*

I. L. R. 13 Mad. 6

4. ——— Relation between the founder or a representative and the mohunt—*Agreement by the mohunt on his appointment—Grounds of dismissal* In the absence of a deed of endowment,

HINDU LAW—ENDOWMENT—*contd.*6. DISMISSAL OF MANAGER OF ENDOWMENT—*contd.*

the obligations of the head of a muth to the representative of the founder can only be deduced from the usage of the institution. In a suit by the representative of the founder to remove the defendant from the headship of a muth, it appeared that the usage was for the head of the institution for the time being to nominate his successor, and for the representative of the founder to sanction the nomination and invest the nominee with a gadi on his installation, and that the defendant had asked the plaintiff to appoint him and had undertaken on his appointment to furnish to him accounts of the income and expenditure of the muth. *Held*, that the plaintiff was not entitled to remove the defendant from office on the ground of his refusal to furnish accounts. *QAJAPATI V. BHAGAVAN DOSI*

I. L. R. 15 Mad. 44

5. ——— Deposition of manager by an act of State of foreign power—*Property bequeathed to an idol—Act of Foreign State—Effect of deposition on right to property in Bombay—Trustee—Will—Power of appointment*. Under a power given to her by the will of her husband, C had the right to bequeath a certain house situate in Bombay. She died in 1873, and by her will she bequeathed the house in question to trustees, their heirs, etc., in trust to pay and apply the rents thereof to the shrine or gadi of Shri Nathji for ever, and she gave the trustees

Oodeypore. It is held in great veneration by Varshnav sect of Hindus, and is extremely wealthy. The plaintiff held the position of Maharaja of Nathdwara (Tikait Maharaja) up to the year 1876, and as such sat on the gadi and managed the property of the said shrine. In that year, however, he was deposed from his position by the principal authorities of Oodeypore and deported from Nath-

formed the worship and managed the property belonging to the shrine. The plaintiff, however, claimed in this suit to be still the legal owner and representative of the shrine, and as such entitled to the house in question and to the rents and profits thereof since the death of C. The first defendant was one of the trustees named in the will of C, to whom the house was bequeathed in trust. The plaintiff in this plaint also contended a right to clause in C's will, giving the said trustees a right to

HINDU LAW—ENDOWMENT—*contd.*6. DISMISSAL OF MANAGER OF ENDOWMENT—*contd.*

defendant, in virtue of his position, was entitled to receive the rents, and that this suit should be dismissed. *Held*, that the plaintiff was entitled to the said house. The house was validly bequeathed to the gadi. At the date of the bequest the plaintiff was *de facto* as well as *de jure* in possession of the shrine and of its property. His deposition from

quence of his deposition, and if he was merely a trustee, he had not been removed from his office by any competent tribunal. *Held*, also, that under the will of C the first defendant was entitled to reside rent free in the first storey of the house in question during his lifetime. *GOSWAMI SHRI GMDHARJI v. MADHODAS PREMJI*

I. L. R. 17 Bom. 600

6. ———— Deposition of manager by act of State of foreign power—Effect of such act on title to property outside jurisdiction—Property of idol—Appointment of new manager—Suit by latter for property of shrine For thirty

Vaishnava sect of Hindus, and large bequests and offerings of money, land, etc., are made to it by members of that sect. To facilitate the collection of such offerings and the employment of the funds belonging to the shrine, firms are established in various parts of India, including Bombay. The firm in Bombay was carried on under the name of N P, and the house in which it was carried on was built with moneys belonging to the shrine. On the 8th May 1876, by order of the Political Agent of Meywar and the Maharana of Oodeypore, he was deposed from that office for alleged misconduct and deported from Nathdwara. In his place his son, the plaintiff, was placed on the gadi as high priest. In 1878 the plaintiff brought this suit praying for a declaration that as high priest of the

calling on the defendant to show cause why he

HINDU LAW—ENDOWMENT—*contd.*6. DISMISSAL OF MANAGER OF ENDOWMENT—*contd.*

of the property. His deposition by a foreign power and the election of the plaintiff to the gadi in the place of the defendant did not transfer the title to property in Bombay from the defendant to the plaintiff. As an act of State, it could not be made the basis of an action, and it could not be regarded as a foreign judgment. *GOSWAMI SHRI GOVARDHARLALJI GIRDHARLALJI v. GOSWAMI SHRI GIRDHARLALJI GOVINDRAJI*

I. L. R. 17 Bom. 620 note

## 7. TRANSFER OF RIGHT OF WORSHIP.

1. ———— Right of priest performing *sradh*. The Hindu law does not declare that the priest who performs the *sradh*, however temporary his incumbency may be, is entitled to the land endowed in consideration of the continuous performance of the recurring ceremonies of *sradh* and other rites for the spiritual benefit of the donor. *RAM CHUNDER CHUCKERBUTTY v. GOOROO CHURV CHUCKERBUTTY*

6 W. R. 305

2. ———— Transfer of right of worship to stranger—Duration of assignment The right of worship of an idol, being the joint property of the members of the family of the endower, cannot be transferred to a third party, a stranger to the family, so as to endure beyond the life of the assignor. *UROON DASS v. CHUNDER SEKHAR DASS*

3 W. R. 152

3. ———— Position of trustee of endowment as to transferring his trust—Suit for removal of appointment of trustee—Act XX of 1863. The trustee of an endowment has not as such the power of transferring his trust to any other person. And where a trustee is empowered to appoint another trustee to act for him, he cannot transfer the right of exercising that power to another or others. The mode in which a suit for the removal or appointment of a manager to an endowment not coming within Act XX of 1863 should be brought stated. *Kali Churun Guri v. Golahi*, 2 C. L. R. 129, followed. *RUP NARAIN SINGH v. JUNKO BYE*

3 C. L. R. 112

4. ———— Right to perform service of idol—Sale in execution of decree A judgment-debtor's right as shebait to perform the service of an idol cannot be sold in execution of a decree, nor can his right to the surplus profits of the sheba be sold so long as that right is unascertained and uncertain. *JCOOR NATH ROY CHOWDHRY v. KISHEN PERSHAD SUTRA alias RAJA BABOO*

7 W. R. 266

5. ———— Right of shebait—Transferability of rights of worship in execution of decree. The right of a shebait of a Hindu idol to perform the services and receive the customary remuneration is not transferable, and cannot be sold in satisfaction of a decree against the shebait. *DUBO MISSEE v. SENTIBAS MISSEE*

5 B. L. R. 617



HINDU LAW—ENDOWMENT—*contd.*7. TRANSFER OF RIGHT OF WORSHIP—*contd.*

S C. DROBO MISSEY v. SREYNEBASH MISSEY

14 W. R. 409

8. ———— *Transferability of rights of worship in execution of decree.* Rights of worship of a Hindu idol cannot be sold in execution of a decree for the personal debt of a shebait. KALICHARAN GIR GOSSAIN v. BANGSHY MOHAN DAS . . . 6 B. L. R. 727 : 15 W. R. 339

7. ———— *Alienation of right to officiate in temple—Sale in execution of decree.*

failure of succession in his family, and such rights are therefore not saleable in execution of decree. The principle laid down by the Privy Council in *Rajah Farnah Vali v. Ravi Farnah Vali Mutia*, L. R. 4 I. A. 76, followed. DURGABIBI v. CHANCHAL RAN . . . I. L. R. 4 All. 81

8. ———— *Alienation of religious office—Right to worship idol.* There is no reason why the alienation of a religious office to a person standing in the line of succession, and free from objections relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, should not be upheld. The alienation, therefore, by a divided member of a Hindu family to his sister's son, of the right of worshipping a goddess and receiving a share of the offerings was upheld. MANCHARAM v. PRANSHANKAR

I. L. R. 6 Bom. 209

9. ———— *Illegal transfer*

KUPPA GURUKAL v. DARASANI GURUKAL

I. L. R. 6 Mad. 76

10. ———— *Transfer of religious office—Transferee not solely entitled in succession to transferor.* In a suit against the mookteessers or

next in succession to his transferor, and it was found that he had three brothers. *Held*, that the transfer of the office to the plaintiff's father was

HINDU LAW—ENDOWMENT—*contd.*7. TRANSFER OF RIGHT OF WORSHIP—*contd.*

invalid, and the suit should be dismissed. NARAYANA v. RANGA . . . I. L. R. 15 Mad. 183

11. ———— *Right of suit—Suit to set aside sale in execution of decree of lands belonging to temple.* A hereditary dharmakarta of a temple, who had assigned his office to a zamindar and consented to a decree being passed on the footing of such assignment, is competent nevertheless to bring a suit to set aside a Court sale of temple lands, treating such assignment as a nullity. SUBBARAYUDU v. KOTAYYA . . . I. L. R. 15 Mad. 389

12. ———— *Sale of office and emoluments of attending to idol.* An archaka cannot sell the office and emoluments of parishrakas, inasmuch as they are *extra commercium*. NARASIMHA THATTA ARCHARYA v. ANANTHA BHATTA . . . I. L. R. 4 Mad. 391

13. ———— *Inalienability of*

be transferred either by private sale or by sale in execution of a decree. *Mancharam v. Pranshankar* I. L. R. 6 Bom. 209; *Furnah Vali v. Ravi Kunhi Kutty*, I. L. R. 1 Mad. 235; *Juggernath Roy Choudhry v. Kishen Pershad Surmah*, 7 W. R. 266; *Drobo Missey v. Srinibas Missey*, 5 B. L. R. 617 : 14 W. R. 402; *Kali Charan Gir Gossain v. Bangshye Mohan Das*, 6 B. L. R. 737 : 15 W. R. 339; *Kuppa Gurukul v. Darasani Gurukul*, I. L. R. 6 Mad. 76, referred to. A person is not precluded from raising the question that his priestly office with emoluments are inalienable, because he mortgaged the same. *Juggut Mohinee Doss v. Sookcemonnee Doss*, 10 B. L. R. 19 : 17 W. R. 41, referred to. MALLIKA DASI v. RATAN MANG CHAKRIVARTY . . . 1 C. W. N. 493

14. ———— *Res extra commercium—Custom as to assignability.* The plaintiff

claimed title to the office by purchase, the usual defendants were the trustees of the temple, and they did not appear on appeal. The Court of first instance passed a decree as prayed, which was

temple appeared in the Court of first appeal and raised the question of the inalienability of the office, it would have been necessary for the Court to have determined the question whether by the custom of



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*contd.*—

money for necessary purposes it follows that the moneys obtained of debts so incurred by the debutter principal of the

land, and decided in the suits which led to them. Execution of such judgments should be decreed only against the rents and profits of the debutter property. **PROSUNNO KUMARI DEBYA v. GOLAB CHAND BABOO** 14 B. L. R. 450 23 W. R. 253; L. R. 2 I. A. 145

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9. ———— Purchaser of endowed property, notice to.—Evidence of necessity for alienation. A plaintiff who seeks to set aside an alienation of lands on the ground that they are debutter, i.e., dedicated in perpetuity to support the worship of an idol, must give strong and clear evidence of the endowment. The mere fact that the rents of a particular mehal have been applied for a considerable period to the worship of an idol is not sufficient proof that the mehal is debutter.

the vendor had not applied the whole of the purchase-money to that purpose. There being no evidence of any collusion on the part of the purchaser, or that he was aware at the time of the purchase that the money was to be applied otherwise than the conveyance expressed. Held, that the sale was valid. Even if it had appeared that the purchaser had notice that the whole of the purchase-money was not required for the purposes of the endowment, but that part of it was to be expended on other objects an action —

10. ———— Bond by manager of muth —Right to charge endowed property.—Necessity—Suit on bond A suit to recover on a bond

HINDU LAW—ENDOWMENT—*contd.*8. ALIENATION OF ENDOWED PROPERTY  
*—contd.*

given by the *de facto* manager of a muth as a charge on the — the — had — and — the

position than a trespasser and wrongdoer. Where a bond as a charge on a muth is given for antecedent claims against a muth, of which a portion would, but for the fresh right of suit given by the bond, have been barred by limitation —

11. ———— Alienation of pagoda property by managers.—Purchasers from managers.—duties of. The paid managers of the affairs of a pagoda have no power as such to encumber the pagoda property, or to settle large outstanding demands against it. Persons dealing with such managers are bound to enquire into the extent of their authority. A person bound to make an enquiry, and failing to do so, will be held to have notice of all such facts as that enquiry, if made, would have brought to his knowledge. **SAMBANDA MUDALIYAR v. NANASANDIPANDARA**

1 Mad. 298

12. ———— Sale of religious office.—Alienation of the management of a public charity.—Effect of partial illegality in alienation.—Suit for specific performance of agreement to partition.—Form of decree. In a suit for specific performance of an agreement for partition, it appeared that amongst other property considered liable to partition, was the huk right of a public choultry and certain other lands alleged to belong to the same charity. The said huk right had been sold by auction to that member of the family who bid the highest price, and was purchased by the —

13. ———— Creation of tenure at a fixed rent. Where land is dedicated to the religious services of an idol, the rents of the land constitute in legal contemplation the property of the idol, and the shebait has not the legal property, but only the title of manager of a religious endowment, and cannot alienate the property, though he might create proper derivative tenures and estates conformable to usage. The creation of a tenure at a fixed invariable rent would be breach of duty in a shebait. **SHIBESUREE DABEE v. MOTBOORANATH ACHARJEE** 13 W. R. P. C. 18 13 Moo. I. A. 270

HINDU LAW—ENDOWMENT—*contd.*3. ALIENATION OF ENDOWED PROPERTY  
—*contd.*

14. ——— Portion of profits—*Property of profits of which is charged for religious purposes.*

GEER GOSSAIN . . . . . 13 W. R. 200

15. ——— Lease—*Power of manager to grant patni lease.* It is doubtful whether it is competent to the manager of endowed property to grant a patni thereof. *NOTES DOSS v. MONTMOON-SOODEN CHOWDHURY* . . . . . 1 W. R. 4

16. ——— Power to grant lease of endowed property. The shebait of a religious endowment is competent to lease the endowed lands and to assign the profits thereof.

of the endowed lands *ANRUTH MISSEY v. JAGGURNATH INDRAWAMEE* . . . . . 16 W. R. 439

17. ——— Right of priest to grant lease in his own name. The high priest of a religious endowment in Assam, who was only a nominal holder of the property, was held to be competent to grant a lease in his own name.

18. ——— Power to grant lease of endowed property—*Khadim, tenure of endowed property by* Unless endowed property devolves to the heirs of a deceased holder.

19. ——— Alienation of profits of debutter mehal. The profits of a debutter mehal may be assigned so long as the deb-sheba is duly kept up. *SIRABESSUREE DABEA v. BLACKWIT* . . . . . 3 W. R., Act X, 162

20. ——— Grant to goavri and his disciples—*Power of manager to grant*

HINDU LAW—ENDOWMENT—*contd.*8. ALIENATION OF ENDOWED PROPERTY  
—*contd.*

21. ——— Service land—*Property of a temple—Gurari—Sale of right, title, and interest of holder.* The property of a temple cannot be sold away from the temple; but there is no objection to the sale of the right, title, and interest of a servant of the temple in the land belonging to the temple which he holds as remuneration for his service; the interest sold being subject in the hands of the purchaser to the claims of the temple.

*THE ASSAMIAN S. NAGAR* . . . . . I. L. R. 8 Bom. 596

22. ——— Temporary pledge of income of endowment—*Creation of nibandha. Quare.* Whether a private individual as well as a royal personage may create a nibandha. A Hindu religious endowment cannot be sold or permanently alienated, though its income may be temporarily pledged for necessary purposes, such as the repair, etc., of the temple. *COLLECTOR OF THANA v. HARI SITARAM* . . . . . I. L. R. 8 Bom. 548

23. ——— Mortgages of lands attached to a muth—*Don Act 11 of 1863, s. 8, cl. 3. Effect of declaration by Government under—Power of a jagam guru to alienate land given to muth—How far such alienation is binding on his successor in the office.* The defendant was in possession of three fields (survey Nos 222, 360, and 372) as mortgagor under mortgage deed of 1861, one G, lessor, and one C, priest.

Government to G declaring the land in dispute to be his personal nam, and continuous for ever as transferable private property, subject only to chaotai and nazarana. This sanad was withdrawn in 1863, and another sanad was issued, declaring the land to be service emolument appertaining to the office of jagam, on condition that the holders thereof should perform the usual services to the community, and should continue faithful subjects of the British Government. The sanad stated as follows:—"As this vatan is held for the performance of service, it cannot be transferred, and, in



HINDU LAW—ENDOWMENT—*contd.*8. ALIENATION OF ENDOWED PROPERTY  
—*contd.*

sonal decrees passed against the settlor and another member of his family. The widow of the latter, after the death of the settlor, sued to recover the land from the execution purchaser as heir to the settlor. *Held*, that the plaintiff was not entitled to recover the land. *Rupa Jagshet v. Krishnaji Gorind*, I. L. R. 9 Bom. 162, distinguished. *SCRAMMAL v. COLLECTOR OF TANJORE*

I. L. R. 12 Mad. 387

31. ——— Debt contracted by one claiming to be in possession as head of the institution—“*De facto*” manager, power of—Cost of defending ejectment suit. Suit on a bond in which the obligor was described as the head of a muth, and the debt thereby secured was stated to

who was in possession of the muth under a claim that he was the duly constituted head of the institution for the purposes of defending a suit brought by the head of another religious institution to eject him and to establish certain rights over the muth. A decree for ejectment was obtained, but some of the pretensions of the plaintiff were successfully resisted. The present defendant was a

I. L. R. 10 Mad. 6

32. ——— Alienation by manager—Alienation by *de facto* manager of an endowment—Limitation Act (XV of 1877), *sch II*, *art. 91*. The principles of *Hunooman Persaud Pandey's Case*, 6 Moo I. A. 373, apply to the alienation of property by the *de facto* manager of an Hindu endowment. The possession of such manager cannot be treated as adverse to the endowment. *Semle*. Art 91 of *sch II* of the Limitation Act (XV of 1877) has no application to a suit to set

I. L. R. 24 Cal. 77

33. ——— Alienations by manager—*Mirasi* grant by manager without legal necessity. Grants of permanent under-tenures such as *mirasi*, *patni*, *mokurari*, grants by managers of endowed temple lands, are not void if made for a necessary purpose. Where lands belonging to a temple were granted in *mirasi* by the manager of the temple, but not for a necessary purpose, and the

HINDU LAW—ENDOWMENT—*contd.*8. ALIENATION OF ENDOWED PROPERTY  
—*contd.*

management of the temple lands. *RANCHANDRA SHANKARAYA DRAVID v. KAMINATH NARAYAN DRAVID* . . . I. L. R. 10 Bom. 271

31. ——— Religious endowments—Mortgage of endowed property by *de facto* manager—Debt binding on the institution. In a suit on a mortgage, dated April 1880, and comprising lands forming part of the endowment of a muth, it appeared that the mortgagor had been the rightful manager of the muth until 1876 when he was ousted, and consequently forfeited his office. The present defendant was appointed in 1877 to succeed him in the office of manager, but the mortgagor

defendant had been placed in possession as the result of the suit above referred to. *Per Curiam*.—The mortgagor was not disentitled to incur expenses so as to bind the rightful manager by the mere fact that the former was not *de jure* manager at the time the expenses were incurred, provided they were incurred for the preservation of the trust property or other justifiable purposes. On its appearing

debt. *KASIM SAIBA v. SUDHINDRA THIRUTHIA SWAMI* . . . I. L. R. 18 Mad. 350

35. ——— Hereditary managers—*Poud* alienation—Adverse possession. The hereditary managers of the property with which a religious foundation was endowed, had purported to sell and avow the management and lands of the endowment to the representative of another institution, the first defendant's predecessor. *Held*, that, there not being any custom of the foundation allowing such an assignment, it was beyond their legal competence, conveying no title. *Yarmah Valia v. Ram Yarmah Mutha*, L. R. 4 I. A. 76; I. L. R. 1 Mad. 235, referred to and followed. The possession delivered to the purchaser was adverse to the vendors. After the twelve years' period of limitation, which expired in the lifetime of the vendor, whose son now sued to recover the hereditary managership and possession of the lands of the endowment, the suit was barred under Limitation Act XV of 1877. *Held*, that there was no

for limitation at a date later than that of the transfer, it was contended that the office and title were held in successive life-estates. If that con-

**HINDU LAW—ENDOWMENT—contd.****8. ALIENATION OF ENDOWED PROPERTY**  
—contd.

tention had been right, the period of limitation would have commenced at the death of the plaintiff's father. The judicial committee were of opinion that it must be assumed that the origin of the endowment was by gift from the founder, and that, in accordance with the ruling in *Juttendro mohun Tayore v. Ganendromohun Tagore*, L. R. I. A. Sup. Vol 47 9 B. L. R. 377, heritable estates could not be created to take effect as successive life-estates, and inconsistently with the general law. This applied to both the office and the property. *Held*, that the law of inheritance did not permit the creation of successive life-estates in this endowment, the above ruling being also contrary to the judgment in *Trimbak Bowa v. Narayan Bawa*, I. L. R. 7 Bom 185, and that the plaintiff could not claim to have been entitled otherwise than as heir to, and from, and through his father in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant. **GNANASAMBANDA PANDARA SANKADRI v. VELU PANDARAN** I. L. R. 23 Mad. 271

L. R. 27 I. A. 69  
4 C. W. N. 329

Reversing on appeal. **VELU PANDARAN v. GNANASAMBANDA PANDARA SANKADRI**  
I. L. R. 18 Mad. 243

**36. ——— Charge on offerings—Right of the priest to *charao* (offerings to an idol)—Power of priest to bind successors by *ekar* mixing charge on offerings for maintenance** In a suit upon an *ekar* executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the *charao* (offerings to the idol) and recoverable from the defendant's successors in office: *Held*, upon a review of the Hindu law on endowments, that where an idol is an ancient one permanently established for public worship, and the offerings made to it are more or less of a permanent character, being coins and other metallic articles in the absence of any custom or express declaration by the donor to the contrary, the offerings are to be taken to be intended to contribute to the maintenance of the shrine with all its rites, ceremonies, and charities, and not to become the personal property of the priest. *Monohar Ganesh Tambekar v. Lakshmiram Gorindram*, I. L. R. 12 Bom. 247, approved. *Held*, also, that the *ekar* on which the claim was based could not be said to have been entered into for the benefit of the endowment, and whether the office of the priest was elective or hereditary, no holder of it could bind his successor by any act, unless it was for the benefit of the endowment. **GIRIJANUND DATTA JHA v. SAILAJANUND DATTA JHA**

I. L. R. 23 Cal. 645

**37. ——— Grant to head of muth—Religious endowments—Gosami muth—Grant by the**

**HINDU LAW—ENDOWMENT—contd.****8. ALIENATION OF ENDOWED PROPERTY**  
—contd.

head of the muth to his brother for his maintenance—Sut by a successor to recover the land—Yadasts from revenue officials—Evidence—Limitation Act (XV of 1877), s. 10. In 1544 a village was granted to the head of a Gosami muth to be enjoyed from generation to generation, and the deed of grant provided that the grantee was "to improve the muth, maintain the charity and be happy." The office of head of the muth was hereditary in the grantee's family. In 1886 an *inam* title-deed was issued to the then head of the muth, whereby the village was confirmed to him and his successors tax-free to be held without interference so long as the conditions of the grant were duly fulfilled. Yadasts addressed by talukdars to the then head of the muth in 1872 and 1882 were put in evidence to show what the object of the grant was. It was found, regard being had to usage, that the trusts of the institution were the upkeep of the muth, the feeding of pilgrims, the performance of worship, the maintenance of a watershed and the support of the descendants of the grantee. From before 1840 it had been usual for the head of the muth for the time being to make grants to his brothers or younger sons for their maintenance. In 1842 the father of the present plaintiff, being then the head of the muth granted certain lands in the village above referred to to his younger brother, the deed of grant being in terms absolute. The grantee died about thirty years before the suit and the lands in question came into the possession of his widow (defendant No 1) and a mortgagee from her (defendant No 2), respectively. In 1863 the plaintiff's father placed certain other lands in possession of defendant No 3 who paid rent therefor and received pottahs for some years from the plaintiff. In a suit by the plaintiff for possession of the lands in the possession of the defendants it was pleaded, *inter alia*, that the grant of 1842 was binding on him, and that defendant No 3 had a right of permanent occupancy. *Held*, (i) that the suit was not barred by limitation; (ii) that the yadasts

nected therewith, and not merely a grant of property to the original grantee, on which certain trusts were

plaintiff, although he had issued pottahs, was entitled to recover possession of the lands occupied by defendant No 3 and not to receive rent from him merely. **SATHIANAMA BHARATI v. SARAVANARAJU AMMAL** I. L. R. 18 Mad. 266

HINDU LAW—ENDOWMENT—*contd.*8. ALIENATION OF ENDOWED PROPERTY  
—*contd.*

## 38. — Suit to set aside execution

capacity a certain sum of money from defendant. It was recited in the bond, and found by the Courts below, that the money was required to pay a personal debt, and for supplying the idol with *bhog*. Defendant, having obtained a money-decree, sold in execution thereof the *debutter* property. Plaintiff, in his capacity of *shebait*, brought the present suit to set aside the sale. *Held*, by MACLEAY, C.J. (agreeing with RAMRINI, J.), that the trust property could not be sold in execution in the previous suit, as the decree was against the present plaintiff personally. *Held*, also, that s. 214 of the Civil Procedure Code was no bar to the present suit, inasmuch as it was brought by the *shebait* to set aside a sale of trust property in execution of a money-decree passed against him in his private capacity. *Punchannun Bundopadaya v. Babu Bhu, I. L. R. 17 Cal. 711*, referred to. *RAM KRISHNA MAHAPATRA v. MOHUNT PADMA CHARAN DEB GOSWAMI (1902)* 6 C. W. N. 663

39. — Alienation by manager—*Endowed property*—Powers of alienation possessed by manager of endowed property *Held*, that, with the exception of cases which come under the operation of Bombay Act II of 1863, there is no absolute prohibition against the alienation of endowed property by the manager for the time being; but, for the necessary purposes of preserving or maintaining the endowment, alienation of the endowed property by the manager is lawful. *Hannooan Persaud Panday v. Musunnat Babooe Munraj Koonerjee, 6 Moo. I. A. 393*; *Maharane Shikharsoore Debia v. Mothoorunath Acharyo, 13 Moo I. A. 270*; *Tayyub-un-nissa Bibi v. Sham Kishore Roy, 7 B. L. R. 621*; *Prosunno Kumari Debbya v. Golab Chand Baboo, I. L. R. 2 I. A. 145*; *Koncar Doorganath Roy v. Ram Chander Sen, I. L. R. 4 I. A. 52*; *Sammananthu Pandara v. Selappa Chetti, I. L. R. 2 Mad 175*; *Narayan v. Chintaman, I. L. R. 5 Bom 393*; *Shankar Bharati Swami v. Venkapa Nail, I. L. R. 9 Bom. 422*; and *Sheo Shankar Gir v. Ram Shevak Choudhri, I. L. R. 24 Cal. 77*, referred to. *PARSOTAM GIR v. DAT GIR (1903)* I. L. R. 25 All. 296

40. — Alienation by shebait—*Debutter property*—Succession in management—*Joint Hindu family—Mitakshara—Right of suit.* In

proved, and Gnanasambanda Pandara Samadhi v. Velu Pandaram, I. L. R. 23 Mad 271; I. L. R. 27 I. A. 63, referred to. Wherein a family governed

HINDU LAW—ENDOWMENT—*concd.*8. ALIENATION OF ENDOWED PROPERTY  
—*concd.*

by the Mitakshara law the father and the uncle of the plaintiff had alienated ancestral *debutter* property for their own benefit: *Held*, that the plaintiff was entitled to maintain a suit to have it declared that the alienation was bad and ought to be set aside and possession of the property given to him. *RAM CHATRA PANDA v. RAM KRISHNA MAHAPATRA (1903)* I. L. R. 33 Cal. 507

## 9. SHEBAITSHIP.

1. — Alienation of shebaitship by will—*Hereditary shebaitship—Shebaitship validity of disposal by Will—Usage—Family custom.* *Held*, by MACLEAY, C.J., and MITRA, J.—In the absence of any local usage or family custom and where no case of necessity or clear benefit to the idol has been made out, a *shebait* of a private *debutter* is not entitled to dispose of his office of hereditary shebaitship by his will. *Mancharam v. Pransankar, I. L. R. 6 Bom. 258*, disented from. *Held*, by WOODRUFFE, J.—That the question of usage did not affect the matter and that the office of shebaitship could not be alienated by will. *RAJESHWAR MULLICK v. GOPESWAR MULLICK (1907)* I. L. R. 35 Cal. 226 12 C. W. N. 323

2. — Alienation of shebaitship, *inter vivos*—An alienation (*inter vivos*) of the office of *Shebait*, by an *arpannamah*, to a closely connected member of the family who seems to have more interest in the worship of the idol than any one else, and without any idea of personal gain, is valid under the Hindu law. *Mancharam v. Pransankar, I. L. R. 6 Bom. 293*, followed. *Rajeshwar Mullick v. Gopeshwar Mullick, I. L. R. 35 Cal. 26*, distinguished. *Khetter Chunder Ghose v. Hari Das Bundopadhyay, I. L. R. 17 Cal. 557*, and *Rajaram v. Ganesh, I. L. R. 23 Bom. 131*, referred to. *NIKAD MOHINI DASBI v. SHIBDAS PAL DEWASIN (1909)* I. L. R. 36 Cal. 975

## HINDU LAW—EXECUTOR.

—*Executor de son tort—Hindus*  
The principles of English Law relating to an executor *de son tort* are equally applicable to Hindus. *Jogendra Narain v. Emily Temple, Ind. Jur. 2 N. S. 135*, followed. *Suddasook v. Ram Chander, I. L. R. 17 Cal. 610-9*; *Prasunno v. Kristo, I. L. R. 4 Cal. 312*; *Janaki v. Dhonu Lal, I. L. R. 14 Mad 454*, referred to. *RADHIKA MOHON ROY v. BONNERJEE (1905)* 10 C. W. N. 566

HINDU LAW—FAMILY DWELLING.  
HOUSE.

See EXECUTION OF DECREE—MODE OF  
EXECUTION—JOINT PROPERTY.

See PARTITION—MODE OF EFFECTING  
PARTITION I. L. R. 3 Cal. 514  
I. L. R. 23 Bom. 73  
I. L. R. 28 Cal. 516



# HINDU LAW—FAMILY DWELLING-HOUSE—*contd.*

widow's right of residence in—

See HINDU LAW—WIDOW.

I. L. R. 31 Mad. 500

1. Right of widow to reside in family-house. Maintenance—Obligation of sons to provide her with residence. Although a Hindu widow is not entitled to reside in the family house, she is entitled to reside in a house of her own.

2. Right of son to eject widow—Doctrine of *factum valet*. A Hindu died leaving a widow and an adopted son, who continued, after his death, to reside in the same dwelling-house in which they had resided with the deceased during his lifetime, and which formed a portion of his estate. The son being an infant, the widow had the management of the house, and let a portion of it to tenants at a monthly rent. Subsequently the son sold the house, as his property by

out without a month's notice. It seems that the passage in *Katyayana*, 2 *Colebrook's Digest*, p. 133, is not correct.

3. Co-parcener's widow—Right of co-parcener's widow to live in the dwelling house—Disagreement between widows, no ground for the eviction of either. Under the general rule of Hindu law prevailing in the Bombay Presidency, a co-parcener's widow is, in the absence of any special circumstances, entitled to reside in the family dwelling-house. The plaintiff sued to recover possession of a portion of the family dwelling-house in the actual possession and enjoyment of the defendant, who was the childless widow of his undivided brother. The plaintiff had offered her a residence in another house on condition of her vacating the part of the house in dispute. Pending the suit, the plaintiff died and was subsequently represented by his widow. Both the lower Courts awarded the plaintiff's claim on the ground of disputes between the two widows and also on the ground of the inconvenience and unhealthiness of the part of the house in the defendant's possession. The plaintiff's widow was not entitled to reside in the family house, and that there were no special

# HINDU LAW—FAMILY DWELLING-HOUSE—*contd.*

circumstances exempting the case from the general rule.

I. L. R. 13 Bom. 101

4. Right of a widow to reside in the family dwelling-house—Sale of dwelling-house in execution of a decree obtained against the managing members of family on a debt incurred for family purposes. A house, being ancestral property of a Hindu family, was sold in execution of a decree by which the decree-amount was constituted a charge on such property. The debt sued on had been incurred for the benefit of the family by the co-parceners for the time being, but since the death of such co-parcener's father—*Held*, that the widow of the latter, who resided in the said house during her husband's lifetime, was not entitled as against a purchaser for value in good faith under such decree (but with notice that she resided and during her husband's life had resided in that house, and still claimed to reside there) to continue to reside for life in such portion of the house sold as she resided in subsequent to her husband's death. *Venkatammal v. Andayappa*, I. L. R. 6 Mad 130, distinguished. *RAMANADAN v. RANGAMMAL*. I. L. R. 12 Mad. 260

5. Widow's right of residence in her husband's house after his death—House mortgaged by plaintiff's husband in his lifetime and sold in execution—Auction-purchaser with notice of widow's claim to reside, right of. In execution of a decree upon a mortgage effected by the plaintiff's husband in his lifetime, the house in

dispute was sold to an auction-purchaser with notice of the widow's claim to reside in the house.

6. Right of auction-purchaser to eject widow. A Hindu widow, who resided with her husband and the members of his family in the family dwelling-house while he is alive,

7. Ancestral property—Mortgage—Sale in execution of decree. *L.*, a Hindu, mortgaged the dwelling-house of his family, such dwelling-house being ancestral property. *Held*, in a suit against *L.*'s mother and wife

# HINDU LAW—FAMILY DWELLING-HOUSE—*contd.*

to enforce the mortgage brought after *L's* decease that the mortgage could be enforced. *Mangala Devi v. Dinanath Bose*, 4 B. L. R. O. C. 72, and *Gauri v. Chandramani*, I. L. R. 1 All. 261, distinguished. *BIRKHAM DAS v. PEERA*

I. L. R. 3 All. 141

the purchaser of such house at a sale in execution of a decree against another member of such family. *Gouri v. Chandramani*, I. L. R. 1 All. 262, and *Mangala Devi v. Dinanath Bose*, 4 B. L. R. O. C. 72, followed. *TALEMAND SINGH v. RUKMINA*

I. L. R. 3 All. 353

8. — On the 29th June 1876, the plaintiff obtained a money-decree by consent against *R*, the father-in-law of the defendant. On the 21th of July 1876, the plaintiff attached a house of *R*. On the 12th October 1876, the defendant sued *R* for maintenance, and alleged that the house in question was the property of her deceased husband and *R*, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against *R*, the house was sold under the plaintiff's decree against *R*, and the plaintiff himself became the purchaser. On the 20th of June 1877, the defendant, at a sale in execution of the decree against *R*, obtained possession of the house.

circumstance that the plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime. *PARYATI v. KISANVINO*

I. L. R. 8 Bom. 567

10. — Purchaser from the heir with knowledge - Widow's right of residence a charge on the property. Where a purchaser purchases a house, the property of a Hindu family, from the heir, with full knowledge that the widow is residing and being maintained in it, such purchaser cannot ask for the summary eviction of the widow from the house, even though there may be other property in the hands of the heir out of which her maintenance could be demanded. *THE HINDU LAW—GIFT.*

# HINDU LAW—GIFT—*contd.*

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|---|------|
| 3. POWER TO MAKE AND ACCEPT GIFTS . . . | 4896 |
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## See HINDU LAW—

JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY; 8 C. W. N. 651

MAINTENANCE—RIGHT TO MAINTENANCE—CONJUGAL; I. L. R. 26 Bom. 183

WILL—CONSTRUCTION OF WILLS.

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS. I. L. R. 18 Bom. 177  
I. L. R. 19 Bom. 603

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS. I. L. R. 1 All. 428

See HINDU LAW—WILL—POWER OF DISPOSITION—DISHERISON.  
I. L. R. 1 Bom. 561  
I. L. R. 5 Bom. 48

See MALABAR LAW—GIFT.

— construction of gifts; additions to ornaments, made subsequent to marriage—

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES I. L. R. 28 Calc. 811

## 1 REQUISITES FOR GIFT.

1. — Gift of freehold to heirs—Words of inheritance. By Hindu law no words of inheritance are necessary to pass a freehold interest in land to the heirs *ANUNOMONEY DOSSEE v. DOE D. EAST INDIA COMPANY*  
4 W. R. P. C. 51; 8 Moo. I. A. 43

2. — Gift to wife—Words of inheritance—Husband and wife—Immovable property. It is not necessary in Hindu law, in order that a wife should take an absolute estate in immovable property, that the gift from her husband should be expressed in other ways, and is a matter of construction merely. *Koony Echary Dhur v. Prem Chand Dutt*, I. L. R. 5 Calc. 684 5 C. L. R. 561, distinguished. *RAM NARAIN SINGH v. PEARY BHUGUT*  
I. L. R. 9 Calc. 830; 13 C. L. R. 109

3. — Verbal grant of land with possession. A verbal grant of land followed by possession is valid under the Hindu law. *ANONYMOUS* 1 Ind. Jur. O. S. 135

4. — Possession, necessity of—Seisin, absence of. The absence of seisin is no objection.

## HINDU LAW—GIFT.

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|------------------------------|-----------|
| 1. REQUISITES FOR GIFT . . . | Col. 4890 |
| 2. GIFTS MORTIS CAUSA . . .  | 4885      |

HINDU LAW—GIFT—*contd.*1. REQUISITES FOR GIFT—*contd.*

tion to the validity of a gift by a Hindu. Where a cadet member of the Doornan family gave, for the support of his illegitimate sons, certain properties which he purchased out of the profits of his business.

HOONWAR . . . . . 6 W. R. 245

5. ——— Gift of land. A gift of land is not complete, by Hindu law, without possession or receipt of rent by the donee. *HARJIVAN ANANDRAM v. NARAN HARIBHAI* . . . . . 4 Bom. A. C. 31

6. ——— Gift of land—Receipt of rent. To make a gift of land complete under the Hindu law, there must be either possession or receipt of rent by the donee. The receipt of rent may be by an agent, and if the transaction is *bona fide*, it is immaterial that such agent has before the gift received the rent for the donor. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. PRECHAND RAICHAND. ANNEBILAI HUBBHA v. PRECHAND RAICHAND* . . . . . 5 Bom. O. C. 83

7. ——— Possession retained by donor—Transfer of possession—Symbolical possession. A gift by a Hindu unaccompanied either by possession on the part of the donee or any symbolical act, such as handing over documents of title or permitting the donee to receive rents, is not in itself a valid transaction even though the deed of gift be registered. *DAGAI DABEE v. MOTHURA NATH CHATTOPADHYA* . . . . .

I. L. R. 9 Calc. 854; 12 C. L. R. 530

8. ——— Gift of land—Registration, effect of. The plaintiff sued for possession of certain lands alleging that they had been

gives the donee neither actual, constructive, nor symbolical possession, and therefore cannot be regarded as equivalent to delivery and acceptance. *VASUDEV BHAT v. NARAYAN DAJI DABEE* . . . . .

I. L. R. 7 Bom. 131

9. ——— Want of change of possession—Trust. An instrument was executed by the defendant, a Hindu, to his wife, stipulating that the defendant and his wife should continue to enjoy certain immovable property jointly, with a right of survivorship, and containing a promise by the defendant to surrender the property to his wife if he married again. *Held*, that the instru-

HINDU LAW—GIFT—*contd.*1. REQUISITES FOR GIFT—*contd.*

ment did not operate by way of gift, there being no change in the possession of the property nor as a declaration of trust, and that it did not create a binding obligation which the law would enforce. *Quære*. Whether the Hindu law admits of the applicability of the principle on which Courts of Equity in England hold voluntary declarations of trust to be binding against the declarant. *VENKA. TACHELLA MANIVAKAR v. THATHANMAL* . . . . .

4 Mad. 460

10. ——— Gift not followed by actual possession. A Hindu merchant made an

on the business in his own name, until his death, which happened some time after. *Held*, *v. Kishen* and fol-

3 C. L. R. 247

11. ——— Gift giving right to obtain possession. *Held*, that, consistently with the authorities in the Hindu law, a gift, where the donor supports it, the person who disputes it claiming adversely to both donor and donee, is not invalid for the mere reason that the donor has not delivered possession; and that where a donee, or vendee, is, under the terms of the gift, or sale, entitled to possession, there is no reason why such gift or sale, though not accompanied by possession, whether of moveable or immovable property (where the gift or sale is not of such a nature as

12. ——— Construction of deed of gift—Gift with possession. S, on 23rd September 1874, executed an instrument of gift in favour of his two daughters and his adopted son, whereby he gave them "his houses and shops and other moveable and immovable property and his loan transactions" in equal one-third shares. At this time he was possessed of a one-third share in a

I. L. R. 4 All. 40

13. ——— Delivery of deed of gift of immovable property sufficient to pass title.

HINDU LAW—GIFT—*contd.*1. REQUISITES FOR GIFT—*contd.*

The delivery to the donee of immovable property of the deed of gift is sufficient to pass the title to such property to the donee without actual physical possession of such property being taken by the donee. *Manbhari v. Nannidh, I. L. R. 4 All. 40*, followed. *BALMAKUND v. BHAGWAN DAS*

I. L. R. 18 All. 185

14. *Attestation of deed, effect of.* In 1873, *R*, a Hindu, executed a deed of gift of his immovable property to his daughter *M* (defendant No. 1). The deed was attested by the plaintiff. In 1878 *R* mortgaged to the plaintiff some of the land comprised in the deed of gift. *R* died in that year, and in 1882 his grandson conveyed the equity of redemption to the plaintiff, who was already in possession of the mortgaged land as mortgagee. In the year 1883, the plaintiff being dispossessed by *M* and the second defendant, to whom she had sold the land, he brought the present suit to recover possession. The defendants relied upon the gift. *Held*, that the plaintiff was entitled to possession. At the time of the mortgage to him in 1878 *R* had not completed his gift to *M* by giving possession. He was therefore in a position to give the plaintiff a good title. It had not been shown that *M* had ever been treated as the owner of the equity of redemption. *Held*, also, that the circumstance that the plaintiff attested the deed of gift in 1873 could not affect his title, as the gift had not been completed by delivery of possession. *ABAJI GANGADHAR v. MUKTA*. I. L. R. 18 Bom. 688

15. *Declaration by donor to one in physical possession.* Where one of several joint donees is already in physical occupation of the subject-matter of an intended gift, a declaration by the donor to the donee so in occupation, assented to by such donee, that he has parted with the possession in favour of the donees, converts mere occupation into possession, and amounts to a valid gift under the Hindu law. *BAI KESHAL v. LAKHMA MANA*. I. L. R. 7 Bom. 462

16. *Delivery of possession—Transfer of Property Act, s. 123—Immovable and moveable property.* Assuming that delivery of possession was essential under the Hindu

HINDU LAW—GIFT—*contd.*1. REQUISITES FOR GIFT—*contd.*

directed me (*P*) to execute an instrument according to law. I (*P*) hereby execute a deed of gift to you." Shortly after the execution of this document, the defendant was put into possession of the lands, and she admittedly continued in possession down to the commencement of this suit in 1883. The plaintiff, who were the minor children of *P*, now sought to recover these lands from the defendant, alleging that on the death of their grandfather *G* the lands had devolved by inheritance upon his son *P* (their father), and contending that the latter had no power to make a gift of these to the defendant. The lower Court found that the question of *P*'s competency to give the lands did not arise, as they had already been given to the defendant by his father *G*, and that *P* was simply an instrument in

accompanied by possession as well the gift to be valid. On special appeal to the High Court:—

possession of the lands, and that the plaintiffs had neither by Hindu law nor otherwise any legal or equitable claim to have the deed of gift to the defendant cancelled. *BIJASAR PURSHOTAM v. SARASVATIDAI*. I. L. R. 17 Bom. 486

18. *Gift without delivery of possession—Transfer of Property Act (IV of 1882), ss. 123, 129—Immovable property—Acceptance of gift—Registration.* *P* executed a deed of

ants, and gave possession to them of such portions. *P* died six years after the execution of the deed of gift, and after his death some of the title deeds of the property covered by the deed of gift came into possession of the plaintiff. Both the lower Courts found that there had been no delivery

*NISTARINI DASI*. I. L. R. 14 Cal. 448

17. *Verbal gift of immovable property—Death of the donor—Possession given to the donee by the son of the donor.* *Opo G* being possessed of certain lands which were his

**HINDU LAW—GIFT—*contd.*****1. REQUISITES FOR GIFT—*concl'd.***

ing to the Hindu law, under which some possession or acceptance by the donee was necessary; there being neither possession nor acceptance, the suit should be dismissed. *Dagai Dabee v. Mothuram Chaittopadhyaya*; 1 L. R. 9 Calc. 851; *Kushito Soondery Deba v. Kishlomotee, Marsh* 367; and *Harjivan Anandram v. Naran Haribhai*, 4 Bom. H. C. 31, referred to. *Dharmadas Das v. Nistarini Das*, 1 L. R. 14 Calc. 416, approved. **LAESHMONI DAS v. NITYANANDA DAY**, 1 L. R. 20 Calc. 464

19. ———— *Gift of immovable property without possession—Mutation of names*

*Mullick v. Kanhaiya Lal Pandit*, 1 L. R. 11 Calc. 121, and *Dharmadas Das v. Nistarini Das*, 1 L. R. 14 Calc. 416, referred to. **RAM CHANDRA MUKERJEE v. RUNJIT SINGH**, 1 L. R. 27 Calc. 242  
4 C. W. N. 405

20. ———— *Transfer of Property Act (IV of 1882), s. 123—Gift—Transfer of possession not necessary when gift of immovable property registered—Evidence Act (I of 1872), s. 111—Gift to an agent—Undue influence—Mental capacity of donor.* Held, that, assuming that delivery of possession was essential under the Hindu law to compete a gift of immovable property, that law has been abrogated by s. 123 of the Transfer of Property Act, in cases where the instrument of gift has to be registered. *Dharmadas Das v. Nistarini Das*, 1 L. R. 14 Calc. 416, followed. Held, also, that there is nothing to prevent an agent from being the object of the bounty of his principal. If an agent can clearly show that

1. L. R. 20 AIR 500

21. ———— *Gift of moveable property—Delivery of possession—Registration of deed of gift—Transfer of Property Act (IV of 1882), ss. 123, 129—Registration.* The rule of Hindu law, that delivery of possession is essential to complete a gift, is abrogated by s. 123 of the Transfer of Property Act (IV of 1882). *Dharmadas Das v. Nistarini Das*, 1 L. R. 14 Calc. 416, followed. **BAI RAM-BAI v. BAI MANI**, 1 L. R. 23 Bom. 234

**2 GIFTS MORTIS CAUSA.**

1. ———— *Donatio mortis causa—Gift inter vivos.* A Hindu on his death-bed, a few days before he died, caused certain Government paper to be given to his son in his presence in these words: "Bring out the papers and give them to my son," but he did not make or direct endorsement thereof.

**HINDU LAW—GIFT—*cont'd.*****2. GIFTS MORTIS CAUSA—*concl'd.***

Subsequently, being asked to endorse them, he said, "I am not doing it." What papers? What? PHAR, A do. *ratio mortis causa* has not the same signification here as in England. Held, on appeal by PEACOCK, C.J.—The gift was not governed by the strict principles of English law, but by the Hindu law. By English law there was a valid *donatio mortis causa*, assuming it to be a gift inter vivos, it was a valid gift by Hindu law, and the principal and

8 C. KRISHNA DEB v. WOOLFENDRA KRISHNA DEB 12 W. R. O. C. 4

2. ———— *Giving with intention to pass property.* The Hindu law makes no distinction in favour of gifts in contemplation of death, as respects the legal requisites to constitute a perfect disposition by gift. Those requisites are a giving, either orally or by writing with the intention to pass the property in the thing given, accompanied by its actual delivery and acceptance in the donor's lifetime. When all these requisites have been fulfilled, there is nothing in Hindu law to prevent, effect being given to a gift in contemplation of death. The theory of the *donatio mortis causa* considered. **VISALATCHI ANNAL v. SUBBET PILLAI** 8 Mad. 270

3. ———— *Deed of gift made on death-bed—Proof of such deed.* In establishing the validity of a deed of gift taken from a woman stricken with a mortal disease and in expectation of death, proof at least of equal strictness, as is required to prove a testamentary disposition, must be given, and the proof to support such a transaction ought to be sufficient to establish that she knew what she was about; and intended to make such disposition of her property. **THAKOOR DAYREE v. RAI BALACK RAM** 10 W. R. P. C. 3  
11 Moo I. A. 139

**3. POWER TO MAKE AND ACCEPT GIFTS.**

1. ———— *Self acquired immovable property—Benares law—Gift to one child to exclusion of others.* Under the Benares law, a

2. ———— *Gift of portion of zamindari after marriage to daughter.* A deed of gift of land forming part of a zamindari, executed by the

HINDU LAW—GIFT—*contl.*3. POWER TO MAKE AND ACCEPT GIFTS—*contl.*

zaminar in favour of his daughter five years subsequent to her marriage, is not valid. *SIVANARAYAN PITHMAL SETHURAYAN v. MUTTU RANALINGUA SETHURAYAN ATTILAKSHMI AMMAL v. SIVANARAYAN PITHMAL SETHURAYAN* 3 Mad. 75

3. ——— Gift of separate property to Hindu widow—Interest of Hindu widow—Power of alienation—Gift to agent as reward—*Invalid*

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irath  
J and P, his brothers, sued R for possession of mouzah R as being ancestral property. Their suit was dismissed, the Sudder Court finding it to be separate property. That Court found that R had acquired mouzah R from C by gift, and that R only took under this gift a life-interest in it. J and P having died, R made a gift of mouzah R to her agent as a reward for his faithful services. In a suit by N, son of J, as the heir of his uncle C, to set aside this gift to the agent as illegal, *Held*, on the finding, that R had acquired the property from her husband by gift, that she did not take an absolute interest in the property under the gift, and her husband's heirs

I. L. R. 1 All. 734

4. ——— Gift by married woman to kinsman—Gift of immovable property by woman without consent of her husband Plaintiff sued to enforce a gift to him of immovable property by a woman leaving under his guardianship as against her husband. *Held*, that such taking of the woman's property by her kinsman is wholly repugnant to Hindu law. *Quare* Can a woman, without the consent of her husband, during coverture, absolutely alienate her own landed property? *DANTULURI RAYAPPARAO v. MALAPUDI RAO* 2 Mad. 360

5. ——— Gift among Parsis—Gift to married woman. Among Parsis a gift may be made to the separate use of a married woman or of a woman about to be married. *MERNAT v. PEROZBAI* I. L. R. 5 Bom. 266

6. ——— Leper, gift by By Hindu Law a person becoming a leper is not incapable of making a gift of property to which he had previously succeeded. *SAMACHURN AUDICAREE BYRAGEE v. ROOP DASS BYRAGEE* 6 W. R. 66

7. ——— Gift to one son to exclusion of the other—*Invalid*  
claratory  
father his  
brother,  
perty of

HINDU LAW—GIFT—*contl.*3. POWER TO MAKE AND ACCEPT GIFTS—*contl.*

Hindu law a father is not permitted to make a gift of immovable property to one son to the injury of the other. *Held* (reviewing all the authorities and

to do such acts, those acts, if done, are not necessarily void, and that therefore an exclusive gift to one son by the father of self-acquired immovable property is not illegal. *SITAL v. MADHO* I. L. R. 1 All. 394

8. ——— Gift by co-sharers without consent of others *Held*, that on the Bombay side of India a member of an undivided Hindu family cannot, without the consent of his co-partners, make a gift of his share in the undivided property or dispose of it by will. *GINGEBAI KON SIOHAPPA v. RAMANNA BIN BHIMANNA* 3 Bom. A. C. 66

VRANDANDAS RAMDAS v. YAMUNABAI  
12 Bom. 229

9. ——— Gift of undivided share by a co-parcener—Voluntary alienation—Alienation to strangers and relatives. The rule of Hindu law which forbids voluntary alienations of the family estate by a Hindu co-parcener applies as well to gifts to relatives as to gifts to strangers. *POY NUSANI v. TRATHA* I. L. R. 9 Mad. 273

10. ——— Gift to concubines—Validity of gift. G, a member of an undivided Hindu family, died leaving him surviving two nephews, V A and P R and Y, a concubine of G. V A lived with G at the time of his death, and had the whole of G's property, moveable and immovable, left in his (V A's) possession. P R, before his death, made a gift of the said property to Y in consideration of

by V A. *Held*, that the gift was invalid as against V R, who was entitled to the whole property, subject to the maintenance of Y as a concubine of G for many years; the High Court also directed the said maintenance to be secured for her (Y) by investment of a sufficient part of the property in trust for that purpose. *VRANDANDAS RAMDAS v. YAMUNABAI* 12 Bom. 229

11. ——— Gift to idiot—Validity of gift. There is no prohibition in the Hindu law against a gift to an idiot. Although an idiot child cannot take by right of inheritance, a gift by a parent to an idiot child to operate after the parent's death is valid. *KOOLBEXARAIN SHAHEE v. WOOMA COOMAREE* Marsh. 357 : 2 Hay 370

12. ——— Genuine gift by father-in-law to his widowed daughter-in-law—Gift by way of affection of a small share of moveable property acquired by the donor while living in union with

**HINDU LAW—GIFT—*contd.*****3. POWER TO MAKE AND ACCEPT GIFTS**  
*—contd.*

his sons and grandson—*Gift valid—Hindu law.* Where there is a genuine gift by a father-in-law to his widowed daughter-in-law by way of affection, out of a small share of moveable property most of which was acquired by the donor while living in union with his sons and grandsons, the gift cannot be impeached as being opposed to the principles of Hindu law. **HANMANTAPA V. JIVUOI**

I. L. R. 24 Bom. 547

13. ——— Gift of ancestral property by father to stranger—*Suit by minor son to recover.* Where a Hindu made a gift of certain land, which he had purchased with the income of ancestral property, and a suit was brought to recover the land on behalf of his minor son, who was born seven months after the date of the gift:—*Held*, that the gift was invalid as against the plaintiff, and that he was entitled to recover the land from the donee. **RAMANNA V. VENKATA**

I. L. R. 11 Mad 246

14. ——— Gift to widow by member of joint Hindu family—*Joint Hindu family—*

was come to, and certain deeds were executed by both parties, under which the widow was placed in possession of a certain house. On the part of the brother-in-law it was recited that, with a view to permanently settling the matter in dispute, he had received in cash from the widow the value of his share in the house that she had been put in possession of the house and was in sole proprietary possession thereof; and that he had no connection whatever with it. Subsequently the widow executed a deed of gift purporting to convey to the donee an absolute proprietary title to the house. After her

in a joint Hindu family entitled only to maintenance **Rabutti Dossee v. Shishchunder Mullick, 6**

ben of maintenance and to the experience of the Courts in connection with such matters, that it was for the donee to establish clearly and specifically that the donor, at the time when she executed the deed of gift, had any such absolute right of ownership as would entitle her to alienate the property

**HINDU LAW—GIFT—*contd.*****3. POWER TO MAKE AND ACCEPT GIFTS.**  
*—contd.*

15. ——— Voluntary gift to relative in consideration of natural affection—*Alienation by undivided member of joint family.* A member of an undivided Hindu family, consisting of himself, his adopted son, and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the sale was not justified by any circumstances of family necessity, and that the adoptive son

*Mad. 273*, that the gift by the undivided uncle to his daughter-in-law was invalid, and that the plaintiff was entitled to a moiety of the land sold to him. **VIJAYYA V. HANUMANTA**

I. L. R. 14 Mad. 459

16. ——— Gift of land on daughter's marriage—*Woman's estate—Power of alienation.* A Hindu in whom the whole of the family property had vested died without issue, and his mother took the estate. She subsequently gave a portion of the property to her son-in-law on the occasion of his marriage with her daughter. The gift was not found to be otherwise than reasonable in extent *Held*, that the gift was binding on the reversioner **RAMASAMI AYYAR V. VENKIDUSAMI AYYAR**

I. L. R. 22 Mad. 113

17. ——— Donor not in possession—*Donee not placed in possession—Gift of an undivided share—Stranger to the gift disputing its validity—Adverse possession—Limitation—Misjoinder of parties—Plaintiff's discretion as to addition of parties—Practice—Procedure.* The plaintiff's father and uncles were members of a joint Hindu family, but in 1870 they separated and partitioned the family property, with the exception of certain land which was kept joint and was applied

plaintiff's uncles, M and J, by a registered deed, gave to their nephew, the plaintiff, their undivided shares in this land. They were not, as already stated, in possession and they did not deliver possession of their shares to the plaintiff or to anyone on his behalf. The plaintiff's father (their co-sharer),

HINDU LAW—GIFT—*contd.*3. POWER TO MAKE AND ACCEPT GIFTS  
—*contd.*

was in possession, and he continued in possession after the gift was made. The plaintiff was at that time, and until 1892, a minor, and lived with his father as a member of a joint family. On the 1st January, 1887, his father mortgaged the whole of the land to the second defendant, who at once entered into possession. Subsequently the land subject to this mortgage was sold in execution of a decree against the plaintiff's father, and was purchased by one Kirpashankar Barchhor. In 1892

not made a party to this suit. The lower Court rejected the plaintiff's claim on the ground that the

limitation, inasmuch as the mortgagee, had held adverse possession since the 1st January, 1897, i.e., more than twelve years. On appeal to the High

that the shares were undivided did not render the gift invalid: this was not a gift by members of an undivided family to an outsider as in *Prandavandas v. Yamunabai*, 12 Bom. H. C. R. 229 it was a gift by persons who were not members of an undivided family (the plaintiff's uncles having previously separated from his father) to the plaintiff, a member of another co-parcenary. No consent was necessary to validate the alienation, nor was there anyone who did or could object. (ii) The plaintiff's claim was not barred by limitation: the property

him and the auction-purchaser to future settlement, he did it at his own risk: he was *dominus litis* *JOITARAM RAMKRISHNA v. RAMKRISHNA NANDLAL* (1902) I. L. R. 27 Bom. 31

18. ——— *Mitakshara gift—Gift of considerable portion of moveable or immoveable joint*

HINDU LAW—GIFT—*contd.*3. POWER TO MAKE AND ACCEPT GIFTS  
—*contd.*

family property invalid—*Acquiescence*. An undivided member of a Hindu family governed by the Mitakshara Law has no power to alienate any considerable portion of the moveable or immoveable property belonging to the joint family.

L. L. R. 30 Mad. 452

19. ——— *Gift to daughter by mother—Widow's estate—Power of Gift of house to daughter at her dvaragaman or gowana ceremony—Ceremony connected with marriage but not essential to it—Deferred dowry—Extent*. The dvaragaman ceremony (called *gowana* in Behar) is treated in works of authority as a ceremony of importance closely

her husband to her daughter on the occasion of the daughter's dvaragaman ceremony, and such gift is binding on the reversionary heirs of the husband. Gifts made at the time of the dvaragaman ceremony may rightly be regarded as dowry deferred and there is no substantial difference between such gifts and gifts made at the time of the marriage before the nuptial fire or when the bride is conducted from her father's house to her husband's. The question what portion it is reasonable to give to a daughter on the occasion of her marriage, has to be determined with reference to what would have been the share of the unmarried daughter under the rules laid down in the Mitakshara, Chap. I, s. 7, paras 5 to 14 *CHURAMAN SAHU v. GOPI SAHU* (1909)

13 C. W. N. 994

I. L. R. 37 Calc 1

## 4. CONSTRUCTION OF GIFTS.

1. ——— *Mode of construction—Deed*

inadmissible. *COLLECTOR OF MOORSHEBAD v. ANUND NATH ROY. KISHENMOONEE DABEE v. ANUND NATH ROY* W. R. F. B. 112

2. ——— *Limitation of gift—Words "angoja santan"*. The words "angoja santan"



HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

occurring in a deed of gift would limit the gift to the male issue of the donee. *BUGOLA MOYEE v. BHOWANI CHURN PAUL* . . . 5 W. R. 118

3. ——— Qualifying words—*Intention to give whole property* Where, from the whole tenor of a deed of gift, it appeared that the real intention of the donor was to pass all her property, qualifying words used in the deed were held not to control its operation. *KALEE DOSS ROY v. KHIRODA SOONDUREE DEBIA* . . . 18 W. R. 300

4. ——— Deed professing to be a will

DOSSER . . . 3 W. R. 200

5. ——— Gift to woman without express words—*Power of donee to alienate* In the case of gifts, as in the case of wills, the well-established rule must be followed that, in the absence of express words showing such an intention, a gift to a woman does not confer an absolute estate of inheritance which she is enable to alienate. *ANNAJI DATTATRAYA v. CHANDRABAI*

I. L. R. 17 Bom. 503

See *ANANDIBAI v. RAJARAM CHINTAMAN PETHE* W. R. 22 Bom. 984

6. ——— Gifts to daughter as *stridhanam* A Hindu executed in favour of his daughter an instrument in the following terms: "I have hereby given to you to be enjoyed as *stridhanam* after my death 2,320 fanams out of 6,000 fanams which remain as *kanom* on the land T.... The proportionate rent on 2,320 fanams is 365 paras. This quantity of paddy .... shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons." After certain clauses restricting the mode of enjoyment and the power of alienation, the instrument proceeded, "In the event of the said *kanom* being paid, that money shall be received by my sons, and shall be invested on some other property which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income: *Held*, that the instrument was not invalid under Hindu law, and that the plaintiff was entitled to a decree. *KRISHNA AYYAN v. VETHANATHA AYYAN*

I. L. R. 18 Mad. 252

7. ——— Construction of will making gift—*Absolute gift* Where it was plain, as far as the words of a will went, that the testator (a Hindu) intended to make an absolute gift of his property in favour of his widow and daughter, saying that after his death they should be proprietors, and his entire estate should devolve upon them, the Court held itself bound, with reference to the rulings of the Privy Council, to regard the gift as an ab-

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*con d.*

absolute gift, unless it could be shown (and this was

8. ——— Nature of gift to widow—*Construction of will* *Held*, on the construction of a will, that the proprietor's daughter, succeed to

1, a Hindu, a taluk in he stated: you are my youngest wife, and your two sons are nephews; therefore, for your charitable expense (*dan o khairath*) and for the maintenance of your minor sons, I make a gift of the above taluk to you. You, from this day becoming possessor thereof, after deduction of the Government revenue, with the balance of the profits, will perform acts of charity (*dan o khairath*) and maintain the sons. For this purpose I execute this *dan-pattio* "A died leaving C a son by his first wife, two minor sons by B, and B his widow. The minor sons of B died u the pr by C monar. *Held*, ab-solu

10. ——— *Alienation, suit to set aside* A, a Hindu living under the Mitak-

and as, with the exception of the said B, I have no

lectorate mutation book as proprietor and malguzar in the place of my name with regard to the property," etc. "Further, as of B there are two daughters, who after marriage, by the blessings of Providence, may be blessed with children, they and their children, therefore, are and will be heirs

parcels of the property In a suit by the daughter's son against the purchasers for a declaration of his reversionary right to the property *sibi*—*Held*, that, under the terms of the

HINDU LAW—GIFT—*contd.*4 CONSTRUCTION OF GIFTS—*contd.*

petition, there was an absolute gift to B, and that, as the gift was not fettered by any restrictions, the alienation by B was good and valid. CHATTER LAL SINGH v. SHEWUKRAM

5 B. L. R. 123; 13 W. R. 285

A contrary construction was put on this document in the case of *Mahomed Shamool Hoda v. Shewukram* (7 B. L. R. 209 not; 14 W. R. 313), which was a suit by a grandson of the testator against a purchaser from the widow to set aside the alienation; and the Court held that the widow only took an estate for life, and after her the daughters took absolutely as joint owners. CORCIN, C.J., and MITTER, J. (RAYLEY, J., dissenting). And this decision was affirmed by the Privy Council. *MAHOMED SHAMMOOL HODA v. SHEWUKRAM*. 14 B. L. R. 226; 14 R. 2 I. A. 7 22 W. R. 409

11. ——— Gift to wife.—A, a Hindu, executed a deed of gift of certain villages in favour of his wife in the following terms: "The under-mentioned villages have been granted as a gift to the Maharani for her necessary domestic expenses." The wife died a childless widow. Held, that the gift from her husband was for life only, and that the villages in question were not liable in the hands of her husband's heirs to her debts. Held, also, that the husband's heir was entitled to her moveable property as her heir, and that such property was in his hands chargeable with her debts. *SNEORUNIL RAM v. RAM NARAIN SINGH*. 5 C. L. R. 291

12. ——— Gift to widow.—Duration of a grant held by a Hindu widow made to her by her husband in his lifetime. On the distribution of com-

were unknown. No written grant was produced.

husband as zamindar to have made such a grant for life or for more was not in dispute. All that was known was that the widow had received rents for about twenty-six years. There was no sufficient evidence for holding that the village had been alienated in perpetuity. The judgment of the District Judge, dividing the compensation equally between the parties, was maintained, the widow being treated as holding for life. *BRAJA*

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

KIMORA DEVU GARU v. KUNDANA DEVI PATTI MAHADEVI GARU. I. L. R. 22 Mad. 431 L. R. 26 I. A. 66 3 C. W. N. 378

13. ——— Gift to daughter's sons,

another; the other heirs not to have any concern with it. Held, that the plaintiff as the daughter's daughter had no right to share therein with her brothers, the daughter's sons. *SEINATH GANGOPADHYA v. SAKRAMANOLA DEBI*

2 B. L. R. A. C. 144; 10 W. R. 486

14. ——— Gift of land to a daughter.—Presumption as to interest taken by donee. In a suit to recover possession of certain land, the plaintiff claimed title under a gift made to his mother, deceased, by her father, whose sons and grandsons, the defendants, had entered into possession on the death of the donee which took place less than three years before suit. The deed of gift was not produced, and it did not appear that the donee who had been placed in possession of the land and had retained it for thirty-seven years, was a widow at the time of the gift. Held, that the plaintiffs were entitled to a decree, there being no ground to presume that a life-interest merely was intended to pass under the gift. *RAMASAMI v. PAPAYYA*

I. L. R. 18 Mad. 406

15. ——— Gift to daughter with remainder to grandsons.—Right to mesne profits uncollected in lifetime of daughter.—Mesne profits. A Hindu by a deed dated in 1810 gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons. The daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the property. In 1865 the purchaser brought a suit and recover possession from the defendants. His representatives now sued for mesne profits of the property from 1860 to 1865. Held, that the plaintiffs were not entitled mesne profits which had accrued due, but were uncollected in the lifetime of her daughter; that such mesne profits would go to her heirs, who would alone be entitled to them. *GERU PRASAD ROY v. NAFAR DAS ROY*

3 B. L. R. A. C. 121

16. ——— Gift on contingency.—Lapse of gift. By an *ikrar* executed by A, a Hindu widow, in favour of B, a son of another wife of her deceased husband, after reciting that her husband had given her a *taluk* as *stridhan*, but that he had not empowered her to adopt a son, it was thus directed:

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

"You are the son of my co-wife; you are still living; the funeral cake will be preserved to us by you; and on my death the talukb is your rightful property. After my death, out of the whole profits

17. ——— Gift in *ikrarnamah*—*Succession as heiress—Survivorship*. An *ikrarnamah*, to which I K and T K were parties, contained the following stipulation: "After death of me, I K, my deceased son's widow, D K, will be the heiress; and after the death of me, T K, my estate shall devolve on Mussamuts R K and D K in equal moieties; should both R K and D K die, then their share shall be enjoyed and appropriated by the surviving ladies, but none of them shall ever be able to make gift or

proprietors in equal shares. *Held*, that, according to the true construction of the *ikrarnamah*, N K was not entitled to succeed to the estate after the

18. ——— Gift of land as "kasi or badi"—*Reversion of gift to grantor—Canarese Mapilla marriage*. Upon the marriage of his daughter, a Canarese Mapilla executed to the husband a deed of gift of land.

of his daughter in 1877. *Held*, that, upon the true construction of the deed of gift, the grantor could not recover. ISMAIL BEARI v. ABDUL KADER BEARI. I. L. R. 6 Mad. 319

19. ——— Gift charging profits of estate—*Corrody—Settlement*. In 1845 a Hindu executed a document called a *sanad* attested by witnesses, whereby he agreed to pay to his sister, and after her death to her daughter, Rs 10 per annum, from the produce of an estate inherited by him from his maternal grandmother. *Held*, that a *corrody* or charge on the profits of the estate was created which bound the estate in the hands of the widow of the grantor. CHATTI CHALAYANNA v. PANDRANOR SUBBANNA. I. L. R. 7 Mad. 23

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

20. ——— Gift conditional on liability for maintenance—*Liability of son for maintenance of family*. Where a father executed a deed of

HUKERUR MOOKERJEE v. RAJ KISHEN MOOKERJEE. 23 W. R. 236

21. ——— Gift to Brahmins—*Restriction against alienation—Rule of perpetuities*. *Ac-*

Act IV of 1882 (which may, or may not have been

DIT. L. R. 11 I. A. 218

23. ——— Gift to designated person—*Construction of will—Persona designata*. G, a childless Hindu, by his will directed as follows: "And as I am desirous of adopting a son, I declare

benami left by me, also that adopted son:

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

when he comes to maturity, the executors shall make over everything to him to his satisfaction. God forbid, but should this adopted son die, and my younger brother N have more than one son, then my wives shall adopt a son of his. If at that time N has not a son eligible for adoption, they shall adopt another son of S, and the wives and executors shall perform all the aforementioned acts." In a suit by one of G's widows as heir of her husband to set aside his will and recover half his property, it appeared that the abovementioned ceremonies had been performed by one widow only. *Held*, that according to the true construction of the will (which was established by the evidence) there was a gift of his property by the testator to a designated person independently of the performance of the ceremonies. **NIDHOMONI DEBYA v. SABDA PERSHAD MOOKERJEE**

L. R. 3 I. A. 253; 26 W. R. 91

24. ——— Gift to "adopted son"—*Involid adoption—Motive from gift—Persona designata.* *Held*, upon the true construction of an angahapatro whereby an estate was given to the donee in virtue of his being "adopted son" of the donor, that the gift did not take effect, inasmuch as the adoption was invalid. The distinction between

*J. A. 253*, distinguished. **FINANDRADEB RAIKAT v. RAJESWAR DAS**

I. L. R. 11 Calc. 463; L. R. 12 I. A. 72

See **VENKATA SAYA MAHIPATI RAMA KRISHNAN RAO v. COURT OF WARDS**

I. L. R. 22 Mad. 383

L. R. 28 I. A. 83

where this case is distinguished

25. ——— Transfer of shares in joint family estate by the head of the family and his sons to minor grandson—*Partial failure*

payment of debts incurred by him Possession

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

the gift by the head of the family with the consent

But it was a family arrangement partaking so far

**ASMAIDA KOEN**

I. L. R. 6 All. 580; L. R. 11 I. A. 164

26. ——— Gift to a class—*Construction of family settlement—Rule for gift to unborn grandsons—Partial failure of gift, effect of.* Where the intention of a donor is to give a gift to two named persons capable of taking that gift, although it is also his intention that other persons unborn at the

*Dassee v. Doorgamoney Dassee*, I. L. R. 4 Calc. 455, questioned. **RAM LAL SETT v. KANAI LAL SETT**

I. L. R. 12 Calc. 863

27. ——— Vested and contingent interest A will made by a Hindu contained the following clause—"I bequeath to my elder daughter Rs. 25,000, subject to the condition that she shall invest the same in lands... shall enjoy the produce... and shall transmit the corpus intact to her male descendants." Within a month after the

her suit must be dismissed **SRINIVASA v. DANDA-YUDAPANI**

I. L. R. 12 Mad. 411

28. ——— Conveyance by a Hindu without male issue—*Adoption pendente lite—Adoption from improper motive—Will.* A conveyance by a Hindu, without male issue at the date thereof, will bind his subsequently born or adopted male issue. Such issue at birth takes a vested interest in such property only as is that of their father at

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

that time C, a Hindu Brahmin without male issue, executed, on the 10th September 1856, a bakshishpatra (a deed of gift) to M containing words to the following effect: "I have given to you as gift and

have made the same over to you. You shall pay the Government assessment and village expenses, and you and your heirs should possess the property

hers' of your family. . . . I have no ownership whatever in the property; the ownership belongs to you from this day. This day I owe no money to any body. Whatever property there may be after my death, other than that described above, is all given to you. No person has any claim thereto; the entire ownership belongs to you. I have given in writing this deed in sound mind and of my own accord." The document was registered on the 4th October, 1856. M was put in possession of the property.

he (C) was restored to possession by that officer. In 1859, M brought a suit (No 446 of 1859) against C for the property. Before any decree was passed in it, C, on the 6th June, 1859, adopted the plaintiff, who was then eight years of age. The plaintiff was not made a party to that suit. On the 2nd

session of M, to be held according to the terms of the bakshishpatra. C appealed, but subsequently

Court of first instance being of opinion that the

Court.—*Held*, that the document was a conveyance and not a will, and that it vested the property in M.

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

could not revoke it, inasmuch as the document contained no power of revocation. *Held*, also, that, inasmuch as the plaintiff had been adopted before the hearing and decree in suit No 446 of 1859 and might have been made a party to that suit, he

the same right as an alienation *pendente lite*. If a legitimate son has been born to C during the suit, such son, to be bound by a pending suit affecting his father's ancestral property, must have been made a party, and a son adopted during the suit is in the same position. The one at his birth and the other at his adoption would take a vested interest in his father's property according to the Hindu law in the Presidency of Bombay. The circumstances that C might have adopted the plaintiff for the purpose of endeavouring to defeat the bakshishpatra did not

the validity of the adoption. **RAMBHAT v LAKSHMIAN CHINTAMAN** I. L. R. 5 Bom. 630

29. ——— Contingent gift to a class—Construction of settlement—Successive interests—Member of the class in existence on failure of prior interest—Rule in the Tagore Case. A *larar*, execut-

plaintiff had failed, the property would have reverted to

to issue.

Calc.

BHAYYA

I. L. R. 12 Mad. 503

30. ——— Hindu widow's power of alienation—Operation of gift by her to two dunees, one of whom could not take—Inheritance in a village community in Oudh—Wajib-ul-urz modifying the *Mutakshara* law. A clause in the *wajib-ul-urz* of a village in Oudh authorized any

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

co-partner not having male issue, or his widow, to make a gift of his share in the village to a daughter or a daughter's son; the intention apparent from this, and from a further provision as to the descendants of a sharer's daughter, being to modify the law otherwise prevailing, viz., the Mitakshara and authorize the introduction of a daughter, or her son, and their descendants, male or female, in priority to brothers or nephews of the sharer. *Held*, that such introduction was authorized, and that the inheritance, where the widow had made a gift of it in favour of a daughter, was transmitted to the daughter's daughter, the gift being of more than the donor would have taken as a widow. The gift was

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

speculative lives," if more than one, or "to such grandson alone for life," if there be only one, is invalid. Where a gift is made to a class, some of whom are incapable of taking, the rule is that the disposition fails as to all. *Leake v. Robinson*, 2 *Mervale Rep.* 353; and *Pearls v. Moseley*, L. R. 5 *App. Cases* 714, referred to. The rule applies even though all the members of a class are born before the gift takes effect, if it was antecedently possible that they might have not been so born, and the fact that the gift might have included objects too remote is fatal to its validity irrespective of the event. *In re Dutton*, L. R. 39 *Ch. D.* 155, referred to. A clause in a will, restraining the beneficiaries from alienating the property given to them under the will, is invalid. *ROJOOVVE DASSEE v. TROY-LUKHO MOBINI DASSEE* (1901)

I. L. R. 29 *Calc.* 280  
a.c. 6 C. W. N. 267

*Humphrey v. Tayleur* (1840, 133), which, not depending on any peculiarity of English law, was applicable here. *NANDI SINGH v. SITA RAM*

I. L. R. 16 *Calc.* 677  
L. R. 10 I. A. 44

31. — Gift to donees jointly. Where property is given jointly to two persons living as members of a joint Hindu family, each donee takes an interest in the property which passes to his heirs at his death, and not in the other donee by survivorship. *BAI DIWALI v. PATEL BECHARDAS* (1902)

I. L. R. 26 *Bom.* 445

32. — Gift to idol—Will, construction of—Idol not in existence at the time of the testator's death—Direction to executors to establish *thakur*—Gift to a class. The rule laid down in the case of *Tagore v. Tagore*, 9 *B. L. R.* 377,

33. — Gift to wife—Powers of alienation of donee—Construction of document. Ordinarily a gift by deed or will by a Hindu to his wife does not carry the absolute interest in the absence of some indication of an intention that she should have such absolute interest in the property. A conveyance executed by a Hindu transferring certain property to his wife, after reciting that the

to transfer the property by sale or mortgage, either in my lifetime or after my death. No objection taken by any person shall be held as fit to be allowed in this respect. *Held*, that notwithstanding the use of the word "mahk," the document did not confer an absolute power of alienation on the donee, but, she was not empowered to transfer the property either by sale or mortgage, unless a legal necessity arose for doing so. *Lalit Mahan Singh Roy v. Chul-Kan Lal Roy*, I. L. R. 24 *Calc.* 837, referred to. *JANNA DAS v. RAMAIAH PANDE* (1905)

I. L. R. 27 *Al.* 384

34. — Gift to daughter out of joint property—Limits of propriety—Joint family—Hindu Law. The sole surviving member of a joint Hindu family, owning property worth

existence at the time the gift takes effect is invalid. *Upendra Lal Boral v. Hem Chunder Boral*, I. L. R. 25 *Calc.* 405, followed. That which cannot be done directly by gift cannot be done by the intervention of a trustee. *Krishna Kamini Dassee v. Ananda Krishna Bose*, 4 *D. L. R.* (Old Cases), 231; *Rajendra Dutt v. Sham Chunder Mitter*, I. L. R. 6 *Calc.* 106, referred to. A gift for the daily worship of the *thakur* is invalid. A dedication of

35. — Will—Unregistered memorandum of an oral gift—Subsequent disposal by will—Presumption of advancement—Indian Trusts Act

I. L. R. 29 *Bom.* 51

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

(II of 1882), s. 82—*Transfer of Property Act (IV of 1882), s. 123.* According to the law, as it prevails in Bombay, a purchase by a husband in the name of his wife does not raise any presumption of a gift to the wife, or of an advancement for her benefit. *PER BATTY, J.*—In India, as a general rule, the criterion as to ownership of property is the source from which the purchase money was supplied; but it is not the sole criterion, and depends on the presence or absence of rebutting circumstances. Among Hindus the grounds against assuming advancement are specially unfavourable to the claim of a widow to an absolute estate. A Hindu widow brought a suit against the executor of her husband's will for a declaration that she was the sole owner of a house, which was purchased in her name by her husband and which was subsequently otherwise disposed of by her husband in his will. *Held*, that the plaintiff had not established her title to the house and that the disposal by will was valid. *BAI MOTIVAHOO v. PURSHOTAM DAYAL* (1903)

I. L. R. 29 Bom. 306

36. ——— Settlement on persons then in existence at close of a life—*Trusts Act (II of 1882), s. 6—Transfer of Property Act (IV of 1882), ss. 14, 15 and 123—Trust validly created by registered instrument without delivery of possession—Ss. 14 and 15 of the Transfer of Property Act do not affect any rule of Hindu Law.*

death of the survivor of the grand-daughters, the trustees were to hold the property in trust for the sons of the grand-daughters, who attain 18 and the daughters of the grand-daughters, who should

death. In a suit by the reversioners of *R* to set aside the settlement of *W* and *W*'s *Held* that a trust

remainder in favour of the sons of *V* and *R* (such sons being in existence at the date of the settlement) was valid under the Hindu Law. A settlement by way of remainder to take effect on the happening of an event following immediately on the close of a life in being is good. *Sreenivitha Socrum-money Dossu v. Denoburloo Mullick*, 9 M. I. A. 134, followed. A bequest to a class, some of whom could not take, is not void, but will enure for the benefit of such of the class, who can take. The rule in *Leake v. Robinson*, 2 Mer. 363, does not apply to the will of Hindus. *Bhagabati Barmanya v.*

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

although, as events actually happened, it was not so postponed. *RANGANADHA MUDALIAR v. BACHIRATHI AMMAL* (1906) I. L. R. 29 Mad. 412

37. ——— Estate of inheritance—*Gift—Construction of deed of gift—Immovable property—Life estate—Gift to a married woman—Ayautuka Stridhan, descent of—Petition—False*

revenue and get your name registered ..... and enjoy possession during your lifetime. On your death your husband, sons, grandsons and other heirs in succession will continue to enjoy and possess. The power to dispose of by gift or sale will

sufficient to show that the heirs were to succeed as such notwithstanding that they were not enumerated in the proper order. The property being "ayautuka stridhan," and the donee having no

died childless, mesne profits were held to have been rightly decreed from the date of his wife's death, and not limited to the three years before suit. *BASANTA KUMARI DEBI v. KAMIESHYA KUMARI DEBI* (1905) I. L. R. 33 Cal. 23 s.c. 10 C. W. N. 1

38. ——— Gift to widow, construction of. *A* and *B* brought a suit against *C* for division of what *A* and *B* alleged to be joint family property and *C* alleged to be his divided property. *A* died and *V*, his widow, was brought on the record as his representative. *V* and *B* withdrew from the suit on *C* giving them jointly some lands under a deed, which recited that *C* gave the lands as a matter of favour at the request of *V*

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

life only, in the face of the express words of the deed which purport to convey an absolute estate: *Per WALLIS, J.* In construing such documents, the

property given her to full ownership. The widow

referred to; and *Sreemutty Rabutti Dossee v. Sitchunder Mullick*, 6 Moo. 1. A. 1, referred to. *SAMBASIVA AYYAR v. VISVAM AYYAN* (1907)

I. L. R. 30 Mad. 350

39. ———— *Gift to widow, construction of.* When a suit brought by a Hindu widow against her deceased husband's co-parceners for possession of her divided husband's share was compromised and certain lands were given to her and another donee in equal shares as full owners

instrument in clear words conveys such an interest,

40. ———— *Gift—Construction of deed of gift—"Malik"—Gift to widow as "malik wa khud ikhtiyar"—"Absolute ownership"—Heritable and alienable estate—No distinction between male and female donee.* A Hindu executed a deed of gift of immovable property, to take effect after his death, to each of his two wives

there is anything in the context or surrounding circumstances to qualify such meaning; and it was not so qualified by the fact that the donee was a widow. In this case the context rather strengthened the presumption that the word was intended

HINDU LAW—GIFT—*contd.*4. CONSTRUCTION OF GIFTS—*contd.*

*RARI NATH OJHA* (1907) . I. L. R. 30 All. 84  
a.c. I. L. R. 35 I. A. 17

41. ———— *Gift to reversioner for the time being, if passes absolute title.* If a Hindu widow transfers her interest to the then reversioner, the latter can hold the property against the person, who is the reversioner, when the widow dies. *Gunga Pershad Kur v. Shumbhoo Nath Burman*, 22 W. R. 393; *Nobo Kisore Sarma Roy v. Hari Nath Sarma Roy*, 1, L. R. 10 Calc. 1102, followed. *ANNADA KUMAR ROY v. ISDRA BHUSAN MUKHOPADHYA* (1907) . 12 C. W. N. 49

## 5. REVOCATION OF GIFTS.

1. ———— *Gift made under mistake of law—Right to revoke gift.* By Hindu law a man may make a gift of any of his property hinding as against himself. From a time to time

I. L. R. 30

3. ———— *Revocation of gift by will.*

## HINDU LAW—GUARDIAN.

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*See CUSTODY OF CHILDREN.*

*See GUARDIAN.*

*See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER* . . . I. L. R. 25 All. 407

*See SPECIFIC PERFORMANCE.*

I. L. R. 18 Mad. 415

I. L. R. 23 Calc. 545

I. L. R. 27 Calc. 278



HINDU LAW—GUARDIAN—*contd.*

## 1. RIGHT OF GUARDIANSHIP.

1. ——— Age of discretion—*Father's*

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1 Hyde 111

2. ——— Guardian of adopted son—*Act XX of 1864—Natural and adoptive parents.* The natural father of a minor who has been adopted

3. ——— Guardian of daughter—*Koolin Brahmin.* A Koolin Brahmin is not so much the natural guardian of his daughter as her mother. *MODHOOSOODUN MOOKERJEE v. JADAR CHUNDER BANERJEE* 3 W. R. 184

4. ——— Mother—*Mithila law—Minor—Certificate of guardianship.* Under Mithila law, the mother of a minor is entitled to a certificate of guardianship in preference to the father. *JUSODA KOER v. LALLA NETTYA LALL* I. L. R. 5 Calc. 43

5. ——— Power of father to appoint another person than mother. The Hindu law does not prohibit a father from appointing, by writing or by word, any other person than the mother to be the guardian of his minor children. *SOORAH PRITHEE LAL JHA v. SOORAH DOORGA LAL JHA. SOORAH DOORGA LAL JHA v. NEELAKUND SINGH* 7 W. R. 73

present case, that the paternal grandmother, with the assent of the nearest male relative, had, in preference to the mother, given to charge of the

7. ——— Mother-in-law—*Deceased son's widow.* A Hindu widow is the proper guardian of her deceased son's widow in the absence of any person claiming a preferential title to succeed to the estate of the latter. *BAI KESER v. BAI CANGA* 8 Bom. A. C. 31

8. ——— Husband and wife—*Infant wife—Marriage.* According to Hindu law, after marriage, a husband is the legal guardian of his wife's person and property, whether she is a major or minor. The marriage of an infant being under the Hindu law a legal and complete marriage, the

HINDU LAW—GUARDIAN—*contd.*1. RIGHT OF GUARDIANSHIP—*contd.*

husband has the same right as in other cases to demand that his wife shall reside in the same house as himself, except, under special circumstances, such as absolve the wife from the duty. *KATEK. RAM DOKANE v. GENDHENFE* 23 W. R. 178

9. ——— Right of relatives (after parents are dead) to custody of child—*Nearest paternal relatives—Selection of guardian by Court.* The claims of relatives to the guardianship of a minor stand upon quite a different footing from those of parents. The nearest paternal relatives have no legal right to the immediate custody of a child on the death of its parents. In the absence of father or mother or guardian appointed by the father, the selection of a guardian for a Hindu minor is to be made by the Court, as it represents the ruling power. *KISTO KISSOR NEOGY v. KADER MOYE DASSEE* 2 C. L. R. 583

See *BIHUTO KOER v. CHAMELA KOER* 2 C. W. N. 191

10. ——— Proximity of connection—*Outcaste.* Proximity of connection does not necessarily entitle a person to the office of guardian. A person out of caste is not a proper person to be the guardian of Hindu minors. *FRUOOO DAYE v. RANAH DAYE* 4 W. R. 184

11. ——— Loss of caste—*Act XXI of 1850—Suit to obtain custody of minor from father*

ter in marriage to a man both old and impotent, does not, under Hindu law, thereby forfeit his right

the reason above mentioned, a person sued to have the custody of the infant himself as her guardian in lieu of her father, and as such to be declared empowered to arrange for her marriage to a suitable husband basing his suit on Hindu law.—*Held*, that such suit was not maintainable. *KANARI RAM v. BIDDYA RAM* I. L. R. 1 ALL. 549

12. ——— Father converted to Christianity. A father is not precluded from being custodian of his children by the fact that he has become a convert to Christianity. *MUCHOO v. ANKHOON SAHOO* 5 W. R. 235

13. ——— Immorality of father—

**HINDU LAW—GUARDIAN—*contd.*****1. RIGHT OF GUARDIANSHIP—*contd.***

the custody of his legitimate children. **JUMMALA PUDI KALIDAS v. ATTALURI SRRAMMA**

**I. L. R. 7 Mad. 29**

**14. — Right of guardianship—**  
*Right of father to give his daughter in marriage—*  
*Conduct of father forfeiting such right—Sue by a father to restrain his wife from giving their daughter in marriage without his consent* The plaintiff and R, the second defendant, were husband and wife belonging to the Prabhu caste, and lived together in the house of the first defendant, who was R's father, until the year 1850. In 1877 a daughter, S, had been born to them. In 1880 the plaintiff was convicted of theft and sentenced to two years' imprisonment. At the end of his term of imprisonment he did not return to live with his father-in-law, but went to reside in his own father's house, where in 1884 he requested his wife R to join him with their daughter R refused, and she and S continued to live in the house of the first defendant, her father. The plaintiff then married a second wife. In November 1885, S having attained nine years of age—an age at which it is customary for Prabhus to seek husbands for their daughters demanded his daughter S from the defendants, who, however, refused to deliver the girl to the plaintiff. In May 1886, the plaintiff filed this suit

for. **NANABHAI GANPATRAY DHAIIRYAVAN v. JANABHAI VASUDEVI** . **I. L. R. 12 Bom. 110**

**15. — Guardian of Hindu widow**  
*Grant of certificate of administration under Act XL of 1858* The relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. A certificate of administration under Act XL of 1858 was therefore granted to one of the former in preference to the latter **KHEDIRAM MOOKERJEE v. BONWARI LAL ROY** . **I. L. R. 18 Cal. 584**

**2. POWERS OF GUARDIANS****1. — Power of Hindu mother**

**DALPAT SINGH v. NANABHAI**

**2 Bom. 333; 2nd Ed. 308**

**2. — Contract made without authority—Necessity for sale.** Under the Hindu law, a contract made by a guardian without author-

**HINDU LAW—GUARDIAN—*contd.*****2. POWERS OF GUARDIANS—*contd.***

ity cannot bind the minor. Even if it is desirable that a minor should have any benefit, such as increase to a very small income, from some undertaking or enterprise, e.g., obtaining a lease of certain rents, that circumstance is not sufficient to constitute a necessity for the mother and guardian to mortgage the minor's ancestral property with a view to secure such benefit. **RADHA PERSHAD SINGH v. TALOOK RAJ KOOR** . **20 W. R. 38**

**3. — Power to deal with estate of minor—Minor—Act XL of 1858—Mother.** The

and to provide for the maintenance of the minor. **SOONDER NARAIN v. BENNETT RAO**

**I. L. R. 4 Cal. 76**

**4. — Minor—Mother**

**SINGH v. HARKISHAN SINGH** **I. L. R. 3 All. 535**

**See ABHASSI BEGUM v. RAJROOP KOSWARI**  
**I. L. R. 4 Cal. 33; 2 C. L. R. 249**

**5. — Compromise made by a father as guardian of his natural son—Sue by son to set aside compromise—Minor adopted by religious celibate.** C, who was the head of a Lingayat muth, died in 1862. The plaintiff, who was then a minor, claimed through his natural father, R, to be C's heir. This claim was disputed by P on behalf of his son, the defendant, who was also a minor. In 1863, pending legal proceedings between them, R and P compromised the dispute, and agreed that the muth and the property appertaining to it should be divided between the plaintiff and the defendant in equal shares. In the present suit the plaintiff thought to set aside the compromise made on his behalf by his natural father, R, on the ground that R had no authority to make it, and that there was no necessity for it. *Held*, that the plaintiff's natural father made a proper compromise on his behalf

When the minor arrives at full age, he may apply to

**I. L. R. 19 Bom. 593**

**HINDU LAW—GUARDIAN—*contd.*****2. POWERS OF GUARDIANS—*contd.***

7. ——— Power of mother as guardian of minor to sell her deceased husband's estate—*Minor's estate—Effect of omission*

to the minor in the deed of sale does not render it ineffectual if it is proved that it was her intention to deal with the son's interest, and not merely with any interest which she might have herself.

MURARI v. TAYANA . . . I. L. R. 20 Bom. 288

8. ——— Authority of guardian to borrow money for funeral ceremonies of minor's father—*Liability of the estate for such debt*

iff, who now sued to recover the amount from the estate of the deceased. *Held*, that *N*, as nearest male relative and guardian, according to Hindu law, of the orphan minor, had authority to bind the estate in the hands of the minor so far as the loan was necessary to secure the proper performance on the funeral ceremonies of the minor's father.

NATHURAM v. SHOMA CHHAGAN . . . I. L. R. 14 Bom. 563

9. ——— Uncertificated guardian, powers of—*Manager of joint Hindu family, powers of—Sale by de facto guardian of lunatic's share. Act XXXV of 1858 does not affect the general provisions of Hindu law as to guardians who do not avail themselves of the Act, and the managing member of a joint Hindu family, one of the members of which is a lunatic, may, in case of necessity, sell joint family property including the lunatic's share, although he does not hold a certificate under the said Act. Ram Chunder Chucker-lutty v. Brojonath Mozoomdar, I. L. R. 4 Calc. 929, followed in principle. Court of Wards v. Kapul-nun Singh, 10 B. L. R. 364. 19 W. R. 163, disapproved. KANTI CHUNDER GOSWAMI v. BISHESWAR GOSWAMI . . . I. L. R. 25 Calc. 585*

2 C. W. N. 241

10. ——— Mortgage, by guardian, of minor's property—*Duty of mortgagee to inquire as to necessity for loan. Where the guardian of a minor Hindu purports to mortgage the minor's property on behalf of his ward, the lender is bound to ascertain whether the guardian is acting for the benefit of the minor. It is only, however, when there has been at the time of the loan due inquiry as to the necessity for it, that the lender can obtain a charge over the minor's property. DALIBAI v. GORIBAI (1902)*

I. L. R. 28 Bom. 433

11. ——— Specific performance, suit for—*Agreement to sell immovable property—Agreement by Hindu mother as natural guardian*

**HINDU LAW—GUARDIAN—*contd.*****2. POWERS OF GUARDIANS—*contd.***

of infant son—*Son's death—Suit against mother as heir—Legal necessity—Specific Relief Act (I of 1877), s. 18—Transfer of Property Act (IV of 1882), s. 43. As natural guardian of her infant son, a Hindu mother has no power to sell immovable properties belonging to the infant except for legal necessity. Where, there being no legal necessity, a mother contracted to sell immovable property*

ance of the contract could not be maintained

**HINDU LAW—HUSBAND AND WIFE.**

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See REPRESENTATIVE OF DECEASED PERSON . . . I. L. R. 25 Mad. 365

See HINDU LAW—RESTITUTION OF CONJUGAL RIGHTS.

**1. CONJUGAL RIGHTS.**

1. ——— Conjugal rights—*Wife—Conjugal rights, suit for enforcement of—Residence of wife at her parental house—Agreement contrary to Hindu law and opposed to public policy—Conditions imposed by decree on husband—Bengal, North-Western Provinces and Assam Civil Courts Act (XII of 1887), s. 37, cl. (1)—Contract Act (IX of 1872), s. 23. The duty imposed upon a Hindu wife to reside with her husband, wherever he may choose to reside, is a rule of Hindu law and not merely a moral duty. An ante-nuptial agree-*

2. ——— Suit for restitution of conjugal rights—*Desertion—Cruelty—Insanity of husband—Limitation—Act XV of 1877 (Limitation Act), s. 23, sch. vi, arts. 31, 35, and 120. The texts*

not exclusively by the husband against the wife.

# HINDU LAW—HUSBAND AND WIFE

—*concl.*

## 1. CONJUGAL RIGHTS—*concl.*

The Civil Courts of British India, as occupying the position in respect of judicial functions formerly occupied in the system of Hindu law by the king, have undoubtedly jurisdiction in respect of the enforcement of such rights and duties. The Civil Courts of British India can therefore properly entertain a suit between Hindus for the

into the personal law of the Hindu

Desertion by a wife of her husband is permitted by the Hindu law under certain circumstances,

complaint such as would entitle the husband

I. L. R. 13 All. 126

3. ————— *Conjugal rights, restitution of—Cruelty—Matrimonial offence—Safety*

# HINDU LAW—HUSBAND AND WIFE

—*concl.*

## 2. MISCELLANEOUS CASES.

1. ————— *Succession—Effect of a wife deserting her husband and becoming a prostitute. Held, that the fact of a Hindu woman having deserted her husband and become a prostitute did not have the result of entirely severing all connection between herself and her husband. The husband therefore might still be heir to property acquired by the wife since she left him. Subbaraya Pillai v. Ramasami Pillai, I. L. R. 23 Mad. 171, and Bisheshur v. Mata Gholam, N. W. P. H. C. 300, followed. Musammul Ganga Jati v. Ghastia, I. L. R. 1 All. 46, referred to. Tara Munnee Dossea v. Motee Bunnance, 7 Sel. Rep. 273, and In the goods of Kaminey Money Dewah, I. L. R. 21 Cal. 697, dissented from. NARAIN DAS v. TIRLOK TIWARI (1906) I. L. R. 29 All. 4*

2. ————— *Guardianship—Rights of husband as legal guardian of wife—Custom for wife to*

maturity, unless such custody should be necessary in the interests of the girl. ARUNGA MUDALI v. VIRARAGHAVA MUDALI (1906)

I. L. R. 24 Mad. 255

# HINDU LAW—INHERITANCE.

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5 C. W. N. 602

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See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.

I. L. R. 2 All. 809

I. L. R. 6 All. 322

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HINDU LAW—INHERITANCE—*contd.*

## —impartible property—

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## —religious persons (ascetics)—

See LETTERS OF ADMINISTRATION  
I. L. R. 28 Cal. 608

## I. AUTHORITIES ON LAW OF INHERITANCE.

1. — Law in Western India—Comparative authority of *Mitakshara* and *Mayukha* in South Maratha country. In Western India, on

of the Courts and oral statements of persons learned in the Hindu law of this Presidency. *Babaji Kashinath v. Anandray Bhaskar*, unreported, commented upon. KRISHNAJI VYANKTESH v. PANDURANG. PANDURANG v. KRISHNAJI VYANKTESH  
12 Bom. 66

2. — Commentaries and text-books—*Mitakshara*—*Mayukha*—*Usage*. The commentaries and text-books embody, in many instances, the rules formed and enforced by custom, but custom, even on Hindu principles, may and must have power without their aid. They do not govern the process; it they are la sense and rules are but the exact extent of the reception, of any law book is governed by usage. In the Maratha country the *Mitakshara* is the principal authority upon Hindu law; but in doubtful cases it may properly be construed by the light of the *Mayukha*, the usage of the country having adopted the latter as well as the former. This course was followed in *Vinayak Anandray v. Lakshmbai*, 1 Bom. 118, where a different construction of the *Mitakshara* was allowed to prevail in Bombay from that which had been adopted for Bengal. BHAGIRTHAI v. KALNEJIRAY. I. L. R. 11 Bom. 285

3. — Comparative authority of the *Mitakshara* and the *Mayukha* in the Ratnagiri District. The Ratnagiri District forms part of the Maratha country where the doctrines of the *Mitakshara* are paramount, and where the *Mayukha*, notwithstanding the eminent position it has gained, is still a secondary authority. BALAKRISHNA RAPOJI APTÉ v. LAKSHMAN DINKAR. I. L. R. 14 Bom. 605

JANKIBAI v. SUNDRA. I. L. R. 14 Bom. 612

## 2. LAW GOVERNING PARTICULAR CASES.

1. — *Mitakshara* law—*Presumption* where that law prevails. In the absence of all evi-

HINDU LAW—INHERITANCE—*contd.*2. LAW GOVERNING PARTICULAR CASES—*contd.*

dence to the contrary, a Hindu must be considered to be governed by the *Mitakshara* law where it prevails. JUDOO BUXDOO TEWARRE v. KIRDOU SIKH. 24 W. R. 341

2. — Lands transferred to district having different law of succession—*Presumption against change of law*. When lands situate in one district are arbitrarily transferred by Government to another having a different system of law in matters of succession, the owners of those lands cannot be presumed to change their observances with their districts; the presumption being against such change. PIRTHEE SINGH v. COURT OF WARDS. 23 W. R. 272

3. — Local or family custom. In a case where the question was as to the right of succession to an estate held by S, the common ancestor of the plaintiff and the defendant, which estate was formerly within zillah Beerbhoom and subject to the law of the Bengal Presidency, but was held the case was to be governed by the *Mitakshara* law, as being that in force in zillah Bhagalpore. The Privy Council remanded the case for a decision on the effect of the transfer, and as to whether the succession thereby became regulated by the *Mitakshara* law, or whether, by reason of any local or family custom, it continued to be governed by the *Dayabhaga*. SHEO SOONDORER v. PIRTHEE SINGH. 21 W. R. 69

s. c. in High Court, PIRTHEE SINGH v. SHEO SOONDERY. 8 W. R. 261

5. — *Dayabhaga* or *Mitakshara*. The question being whether the descent in the family in this case was to be regulated by the *Dayabhaga* or the *Mitakshara*—*Held*, upon the evidence, that the *Dayabhaga* applied to the decision of the cause. DIBRAH v. KOOND LUTA. 7 W. R. P. C. 44; 4 Moo. I. A. 292

6. — *Mithila* law—*Preference of paternal to maternal lines*—*Migration*. By the Hindu law in force in Mithila or Tirhoot the right of succession vests in the descendants in the paternal line in preference to those in the maternal line; and such law continues to regulate the succession to property in a family who have

HINDU LAW—INHERITANCE—*contd.*2. LAW GOVERNING PARTICULAR CASES  
—*contd.*

last male proprietor who claimed to be entitled according to the law in force in Bengal:—*Held*, by the judicial committee, affirming the judgment below, that, according to all the authorities, the shasters of Mithila were to govern the succession, and that by them the party in possession, being descended in the sixth degree in the paternal line, was to be preferred to one in the maternal line; notwithstanding that part of the property was locally situate in Bengal, and that the last proprietor was domiciled there. *RUTHERFORD DUTT JHA v. RAJENDUR NARAIN RAO*. 2 Moo. I. A. 132

7. ——— Evidence showing what law governs family—*Inheritance*. Proof of the fact that, in matters connected with succession, the law of the country of domicile has been adopted by a family, negatives any presumption arising from the observance of ancient customs in other matters. *CHUNDRO SEEKRUR ROY v. NOBIN SOONDUR ROY*. W. R. 197

8. ——— Usage of the country. No statute law governs succession in the distribution of an

embody in many instances the rules formed and enforced by custom, but custom, even on Hindu

but the exact extent of the reception of any law book is governed by usage. *BHAQIRTHURAI v. KAHNUJIBAI*. I. L. R. 11 Bom. 285

## 3. SPECIAL LAWS.

## (a) COORG.

1. ——— Inheritance, law of—*Mitakshara law*. The ex-Rajah of Coorg died in England in 1859, leaving considerable moveable property which he had himself acquired and accumulated, chiefly by means of his pensions and some ancestral jewels and ornaments. By his last will and testament he left all his property to trustees in trust to pay thereout certain legacies, and to divide the residue in certain proportions among various members of his family. Some difficulty having arisen after his death regarding the distribution of his estate, the Court of Chancery stated a case and propounded certain questions under 22 and 23 Vict.

HINDU LAW—INHERITANCE—*contd.*3. SPECIAL LAWS—*contd.*(a) COORG—*contd.*

propounded was—“What school of Hindu law would govern the succession to the estate of the deceased Rajah, and the rights and interests of the members of his immediate family with reference to

question, the Court said that the doctrines of the Benares School of Hindu law, as laid down in the *Mitakshara*, should govern the decision of the case regarding the succession to the estate of the deceased Rajah, on the ground that the *Mitakshara* is the leading authority of Hindu law throughout Southern India as well as Benares, and that the Court had no reason to suppose that the doctrines of the *Mitakshara* had been in any way varied or altered by any text-book recognized as an authority in Coorg, although some variations prevail in various parts of Southern India. The Court were further of opinion that the doctrines of the same school of Hindu law would govern the case, supposing the Rajah died without having made any testamentary disposition of his property. The suc-

## (b) CUTCHI MEMONS.

2. ——— Absence of special custom. In the absence of proof of any special custom of inheritance, the Hindu law of inheritance applies to Cutchi Memons. *ASHABI v. TYEB HAJI RAHMATULLA*. I. L. R. 9 Bom. 115

*ABDUL CABDUR HAJI MAHOMED v. TURNER*. I. L. R. 9 Bom. 158

*Ser*, however, *In re ISMAEL*. I. L. R. 6 Bom. 452

3. ——— Custom—*Joint family—Joint and ancestral property*. Cutchi Memons are governed by the Hindu law of inheritance in the absence of proof of special custom. A custom alleged to exist among Cutchi Memons of recognizing no difference between ancestral and self-acquired property held not proved. Four brothers of the Cutchi Memon common by carried on trade with capital inherited from their father. Large profits were made in the course of business. It was alleged that some of the profits were made by means of borrowed capital, and some arose out of a commission business in which the capital of the firm

books, common expenses, and a common stall.

HINDU LAW—INHERITANCE—*contd.*3. SPECIAL LAWS—*contd.*(b) CATCH MEMONS—*conclld.*

The borrowed money was put into the general cash with the original capital. *Held*, that the whole property was ancestral. Augmentations which blend, as they accrue, with the original estate partake of the character of that estate. Moreover, the loans in question and the extension of business to which they led might have produced heavy losses instead of great profits, and the family property would have been liable to debts so incurred.

ANNEED . . . I. L. R. 10 Bom. 1

## (c) JAINS

4. ———— Widow claiming separate property of husband. In the absence of evidence to the contrary, the rules of inheritance of the Jains must be taken to be the same as those of the orthodox Hindus in that part of the country in which the property is situate. Therefore, where the widow of a Jain claimed as heiress of her husband, who was separate in estate, property situate in a district in which the Mitakshara prevails:—*Held*, that she was entitled to succeed. *LALLA MAHABEER PERSHAD v. KUNDER KOONWAR*

2 Ind. Jur. N. 8. 312; 8 W. R. 116

5. ———— Custom. In the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. *CHOTAY LALL v. CHUNNOO LALL*

I. L. R. 4 Calc. 744. 3 C. L. R. 465

*BACHEBI v. MAKHAN LALL*

I. L. R. 3 All. 55

*LALLA MAHABEER PERSHAD v. KUNDER KOONWAR*

2 Ind. Jur. N. 8. 312; 8 W. R. 116

*MANDIT KOER v. PHOOL CHAND LAL*

2 C. W. N. 154

*RUKHAB v. CHUNILAL AMBUSHET*

I. L. R. 18 Bom. 347

6. ———— Mitakshara law—Absence of special custom. They are governed by Mitakshara law in the absence of custom to the contrary. *BACHEBI v. MAKHAN LALL*

I. L. R. 3 All. 55

7. ———— Gujarati Jains settled in Belgaum—Succession among Jains—Rights of illegitimate sons of a Jain—Division into four castes—Dassa Porwad caste of Jains. The Courts

Hindu faith returns to the caste from which he traces his first descent. The four main divisions of Jains are: Pramari, Oswal, Agrawal, and Khandewal. Unless a special custom to the contrary

HINDU LAW—INHERITANCE—*contd.*3. SPECIAL LAWS—*contd.*(c) JAINS—*conclld.*

## (d) KANARA.

8. ———— Inheritance of females—*Ahyasantana* law. In Kanara females only are recognized as the proprietors of family property. The *Ahyasantana* system of inheritance differs only from that of Malabar in more consistently carrying out the doctrine that all rights to property are derived from females. *MUNDA CHETTI v. TIMAJU HENSU*

1 Mad. 380

## (e) MOLESALAM GIRASIAS.

9. ———— Hindu converts to Mahomedanism—Retention of Hindu law and usage. The Hindu law of inheritance and succession applies to Molesalam Girasias who were originally Rajput Hindus, but were subsequently converted to Mahomedanism. *FATESINGJI JASVATSINGJI v. KUTAR HARISINGJI FATESINGJI*

I. L. R. 20 Bom. 181

## (f) NAMBUDRIS

10. ———— Law governing Nambudri Brahmins. Nambudri Brahmins are governed by Hindu law, as modified by special customs adopted by them since their settlement in Malabar. *VASUDEVAN v. SECRETARY OF STATE FOR INDIA*

I. L. R. 11 Mad. 157

## (g) NIHANGS

11. ———— Nihangs in Gorakhpur—Alleged mode of succession to property by survivorship among a brotherhood of Nihangs—Failure to prove that the deceased, who possessed property, was a member. The plaintiff, and that the



**HINDU LAW—INHERITANCE—contd.****3. SPECIAL LAWS—contd.****(g) Nihangs—concld.**

an alleged son of the deceased. This son, who was a minor, was in possession through his mother and guardian. The Judicial Committee, without deciding as to the alleged mode of succession to property among Nihangs forming this brotherhood, affirmed the decision of the High Court that it had not been proved that the deceased was a member of the sect, and on this ground the dismissal of the suit was maintained. *GATRAJ PURI v. ACHAYRAJ PURI*

I. L. R. 18 All. 191  
I. L. R. 21 I. A. 17

**(h) RAJBANSIS**

12. ——— Family adopting Hindu religion—*Custom*. In the absence of any custom to the contrary, or of any satisfactory evidence to show what form of Hindu law they have adopted, the members of a family who have adopted the Hindu religion are governed by the school of Hindu law in force in the locality where they reside. *Fanindra Deb Raikal v. Rajeswar Das*, I. L. R. 11 Calc. 463; I. R. 13 I. A. 72. *RAM DAS v. CHANDRA DASSIA* . I. L. R. 20 Calc. 409

**(i) SADHS.**

13. ——— Inheritance, law of—*Absence of special custom*. Held, that the Hindu law of inheritance was presumably applicable to the

4. GUJARAT HAWA . . . . .

**(f) SAKULDIPJI BRAHMINS.**

14. ——— Mitakshara law. The tribe of Brahmins called Sakuldipi living in various parts of Northern India are governed by the Mitakshara school of Hindu law. *RUDER PEEKASHI MISSEER v. HANDAI NARAIN SAHU*

9 C. L. R. 16

**(k) SARAGIS.**

15. ——— Custom—*Saragis—Alleged custom of exclusion of daughters from inheritance to their fathers, set up but not proved.*

I. L. R. 24 All. 242

**(l) SUNI BORAH MAHOMEDANS**

16. ——— Hindu converts to Mahomedanism—*Effect of conversion—Custom and*

**HINDU LAW—INHERITANCE—contd.****3. SPECIAL LAWS—concld.****(l) SUNI BORAH MAHOMEDANS—concld.**

*usage of inheritance*. The Suni Borah Mahomedan community of the Dhandpudra talukh in Gujarat are governed by the Hindu law in matters of succession and inheritance. *BAI BAIGI v. BAI SANTOK*  
I. L. R. 20 Bom. 63

**4 MIGRATING FAMILIES.****1. ——— Hindu family migrating—**

*NOBIN CHUNDER PERDHAN*

Marsh. 232; 1 Hay 534

*S C OOTUM CHUNDER BRUTTACHARJEE v. OBNHOY CHURN MISSEER. NOBIN CHUNDER PERDHAN v. JAKARDHUN MISSEER* . . . . . W. R. F. B. 87

*SONATON MISSEER v. RUPITON MOLLAH*

W. R. 1864, 85

2. ——— Laws of origin and domicile. Hindu families are ordinarily governed

*DOBXY* . . . . . W. R. 1864, 56

*PIRTHEE SINGH v. SREO SOONDUREE*

8 W. R. 281

*s. c. in Privy Council, where it was remanded. SREO SOONDUREE v. PIRTHEE SINGH*

21 W. R. 89

3. ——— Adoption of local custom. Where a Hindu family came from the Punjab accompanied by their priests at a time when they

*SHIBO SHUNKUREE CHOWDHREAN* . . . . .

*See SURENDRA NATH ROY v. HIRAMANI BERNONI*  
1 B. L. R. P. C. 26

10 W. R. P. C. 35; 12 Moo I. A. 81

4. ——— Presumption of importing its own laws—*Rebutting presumption*. The presumption that a Hindu family, immigrating

HINDU LAW—INHERITANCE—*contd.*4. MIGRATING FAMILIES—*contd.*

into Bengal from the North-Western Provinces, imports its own customs and law as regulating the succession and the ceremonies of Hindu law in that

5. ——— Presumption as to change in law. When a family originally migrated from the Mithila province to the province of Bengal, the presumption is that they have preserved the religious rights and customs prescribed by the Mitakshara law, unless the contrary be proved. *KOONUD CHUNDER ROY v. SEETAKANTH ROY*

W. R. F. B. 75

W. P. to  
aus. *Held*,  
the North-  
ordinarily  
law, the  
ces of this  
; *HERA-  
MINLE*  
1 May 1922

The Privy Council, however, without deciding which law prevailed, seem to have doubted whether the decision of the High Court was correct on the evidence. *SURENDRANATH ROY v. HIRANANI BURMAN*

I B. L. R. P. C. 28

10 W. R. P. C. 35; 12 Moo. I. A. 81

7. ——— Presumption as to law governing family settling in province other than that of its origin—*Mitakshara* and *Dayabhaya* laws—Succession to ancestral estate—*Imparible zamindari*—Brother—Widow—Succession to self-acquired property by *Mitakshara* law If Hindu families migrate from one part of the country to another, the presumption is that they carry with them the laws and customs as to succession prevailing in the province from which they came. Where a family migrated from the North-Western Provinces, where the *Mitakshara* law prevailed, and settled in the Jungle Mahals of Midnapore *Held*, that the presumption is that it continued to be governed by the

observance of rites and ceremonies, at marriages, births and deaths, which showed a strong body of affirmative evidence in favour of the continuance and against the relinquishment of *Mitakshara* law in the family; and (c) documentary evidence pointing to the same conclusion. *Held*, further,

HINDU LAW—INHERITANCE—*contd.*4. MIGRATING FAMILIES—*contd.*

*Held*, also, that immoveable property which had been purchased by the Court of Wards during the minority of the last holder, out of the savings from the ancestral estate, were his self-acquired property, there being no sufficient evidence of any intention to incorporate it with the ancestral *zamin-dari* estate. Succession to such property follows the rule of the *Mitakshara* law as to self-acquired property. *PARSATI KUMARI DESI v. JAGADIS CHUNDER DHARAL* (1902)

I. L. R. 29 Calc. 433; s.c. 8 C. W. N. 490

L. R. 29 I. A. 82.

## 5. MODIFICATION OF LAW.

1. ——— Consent—Modification of operation of law The operation of the law of inheritance can be modified by consent of the parties. *MAHER-DAN SINGH v. SHLO KOONWAR* 1 Agra 108

2. ——— Waiver of rights—Absence of special custom In the absence of any evidence of special custom:—*Held*, that a nephew could not inherit the tenant-right from his uncle whose legal heirs were his sons, nor could the latter transfer their right of inheritance to their cousin, or confer on him such a right by consenting to his occupation of the land. *OMRAO SINGH v. PERTAB*

3 Agra 143

3. ——— Waiver of rights acquired by operation of law. *Held*, that the plaintiffs were competent to waive their right of inheritance, and that on the construction of a *wajib-ul-urz* it was not designed to give the widow a right of inheritance in the joint estate in preference to that of the brothers of the deceased contrary to Hindu law. *DAL CHUND v. SOONDER*

2 Agra 173

4. ——— Conditions in *wajib-ul-urz* altering law of inheritance—Document in

the village community. Small sections of society cannot be allowed to make special laws of descent for themselves. *SARUTI v. MUKH RAM*

2 N. W. 227

5. ——— Private arrangement—Al-

*DECI. DALAKRISHNA v. HIRABAI v. SUNDULKAR v. SAVI-TEJASAI* I. L. R. 3, Bom. 54

6. ——— Deed containing restrictions on inheritance. A deed which attempts to create,

**HINDU LAW—INHERITANCE—contd.****5. MODIFICATION OF LAW—concl'd.**

a new line of inheritance by excluding all heirs other than direct male heirs is contrary to Hindu law and invalid. *LAKSHMARIA v. BOGGARAMNA*  
I. L. R. 19 Mad. 501

**6. GENERAL RULES AS TO SUCCESSION.**

1. ——— Preference of heirs—*Ability to confer spiritual benefits—Capacity to offer oblations.* The rule of succession as laid down in the *Dayabhaga* rests upon the great principle of the

*alias KATTANA NACHAR v. DORASINGA TEVAR*  
6 Mad. 310

2. ——— Spiritual benefit rendered by heir. *Per MAHMOOD, J.*—There is no difference between the *Mitakshara* and the *Bengal* schools of Hindu law regarding the principle that the right of inheritance is based on the spiritual benefit which the heir, by taking the estate, renders to the soul of the deceased proprietor. There is a difference between the two schools only on a matter of detail relating to questions of preference between various competing classes of heirs. *JANEI v. NAND RAY*  
I. L. R. 11 All 194

3. ——— Bengal school—*Oblations, offering of.* According to the Bengal school of law, inheritance goes to him who offers oblations to the deceased, or to ancestors of the deceased, in which oblation the deceased would participate. Where more than one person offers such oblations, succession goes to him who offers oblations to the father of the deceased, and an heir who offers such an oblation will be preferred to an heir who offers oblations to the grandfather and great-grandfather of the deceased. *PRAN NATH SURNIA JOWARDAR v. SURUT CHUNDER BHATTACHARJEE*  
I. L. R. 8 Calc. 480; 10 C. L. R. 484

4. ——— *Dayabhaga—Consanguinity—Spiritual benefit.* Under the *Ben-*

5. ——— Heir of last full owner. The rule of Hindu law is that in the case of inheritance the person to succeed must be the heir of the last full owner. On the death of the last full owner, his wife succeeds as his heir to a widow's estate; and on her death the person to succeed is the heir at that time of the last full owner. *BHOODEN MOYE DEBIA v. RAN KISHORE ACHARYEE*  
3 W. R. P. C. 15; 10 Moo. I. A. 279

**HINDU LAW—INHERITANCE—contd.****6. GENERAL RULES AS TO SUCCESSION—contd.**

6. ——— *Mitakshara—Survivorship—Inheritance—Succession (Property, Protection) Act (XIX of 1851)—District Judge, jurisdiction of—Irregularity—High Court, revisional powers of.* A Hindu governed by the *Mitakshara* law died leaving him surviving a widow, a daughter by a previous wife, and two brothers. On his death

deceased brother and themselves. The District Judge granted their application. The widow contested this claim, and now applied to the High Court to have the order of the District Judge set aside. *Held*, that on the death of a member of a Hindu family governed by *Mitakshara*, there is only an accession to his property by the other members by survivorship and no succession by inheritance; and that the provisions of Act XIX of

title. *Jusoda Koonwar v. Goures Bynath Pershad*, 6 W. R. Mis 53, followed. *Held*, further, that the District Judge acted in the present case (supposing him to have jurisdiction to hear the application) illegally and with material irregularity; and that the petitioner was prejudiced thereby. *Held*, also, that the High Court had full jurisdiction in revision to set aside the order of the District Judge. *Fulchand v. Kamesh Koor*, 4 C. W. N. Notes cert., and *Abdul Rahiman v. Kullu Ahmed*, I. L. R. 10 Mad. 68, referred to. *SATO KOBE v. GOPAL SAKU* (1907). I. L. R. 34 Calc. 929

7. ——— Spiritual efficacy, doctrine of—*Inheritance—Propinquity—Affection—Natural justice—Mitakshara, principle of, applicable, where Dayabhaga silent—Reunion.* Mere spiritual benefit is not always the guiding principle of inheritance under the Bengal school of Hindu law. Propinquity has also been accepted in the Bengal school as a principle of succession. *Tootsee Dass Seal v. Luckhymoney Dassie*, 4 C. W. N. 743, referred to. In cases not contemplated by *Jimutavahana* or his followers, the law should be interpreted on rational lines consistently with the *Dayabhaga* followed in similar cases, and based on natural justice.

union or jointness, a partition and a subsequent

HINDU LAW—INHERITANCE—*contd.*G. GENERAL RULES AS TO SUCCESSION—*contd.*

state of jointness amongst co-partners by mutual consent and through affection, and one, who is never joint, cannot afterwards be said to be reunited or *reunited*. *Balabur v. Rukmabai*, 1 L. R. 30 Calc. 7; L. R. 30 I. A. 130, followed. *AKHAY CHANDRA BRATTACHARYA v. HARI DAS GOSWAMI* (1903) . . . . . 1 L. R. 35 Calc. 721  
a.c. 12 C. W. N. 511

## 7. GENERAL HEIRS.

## (a) BANDHUS.

1. ——— Enumeration of bandhus ——— *Mitakshara*. The enumeration of bandhus, or cognate kindred, given in *Mitakshara* ff. a. 6, art. f, is not exhaustive. *GRIDHAREE LALL ROY v. GOVERNMENT OF BENGAL*,  
1 B. L. R. P. C. 44; 10 W. R. P. C. 31

Reversing decision of High Court in *GOVERNMENT v. GRIDHAREE LALL ROY* . . . . . 4 W. R. 13

2. ——— *Bandhu* *ex parte materna*—*Bandhu ex parte materna*—Son of a sister—*Sister's daughters*. Suit filed in 1891 to recover possession of certain land, the property of a Hindu, beheaded an infant, *bandhu* *ex parte materna*.  
Sundrammal v. Rangoasani Mudaliar  
1 L. R. 30 Mad. 193

his adoptive father's side for her maintenance and that of her daughter, and that it had been assigned by her to A, B, and C; (ii) that other portions of the property had been conveyed in 1880 by the same persons, with the concurrence of D, as a gift to the daughters of the adoptive sisters of the deceased; (iii) that D was the son of a sister of the adoptive mother. The plaintiffs were grandsons of the brother of the deceased's adoptive father, being respectively the sons of his daughters. *Held*, (1) that the plaintiffs, being bandhus *ex parte materna*, were preferential heirs to D, who was a bandhu *ex parte materna*; (2) that the sister's daughters had no title, whether by the law of inheritance or under the gift asserted by them. *SUNDARAMMAL v. RANGOASANI MUDALIAR*  
1 L. R. 30 Mad. 193

3. ——— Father's sister's daughter's son—*Bhinnu gotra-sapinda*—*Succession of cognates*. If, a Hindu, died leaving a widow and a son of a first cousin, viz., the son of his father's sister's daughter. *Held*, that, on the death of the widow, the latter, viz., the son of his father's

*Mitakshara* law succession depends upon propin-

HINDU LAW—INHERITANCE—*contd.*7. GENERAL HEIRS—*contd.*(a) BANDHUS—*contd.*

quity and not upon religious efficacy. *PAROT BAPALAL SEVAKRAM v. MEHTA HARILAL SURAJRAM*  
1 L. R. 19 Bom. 631

4. ——— Maternal uncle—*Succession of bandhu*—*Priority of mother's half-brother over sons of father's paternal aunt*—*Mitakshara* law. The statement of bandhus entitled to inherit given in the *Mitakshara*, Ch. ff, a. 6, is not an exhaustive one. The maternal uncle of the deceased is omitted, but the sons of that uncle are specified. The omission to mention a maternal uncle does not signify that he is excluded from the first class of bandhus. The grounds of the judgment in *Gridhari Lal Roy v. Government of Bengal*, 1 B. L. R. . . . .

maternal uncle is accordingly an heir, though not specified in the *Mitakshara* list, and he also has priority over the sons and grandsons of the paternal aunt of the father of the deceased, who are more remote than he is. A mother's brother by the half-blood stands on the same footing as her whole brother in regard to priority over more remote bandhus. A half-brother may be postponed to a whole-brother, but there is no ground for his postponement to more distant kinsmen. *MUTHUSAMI MUDALIAR v. SIMANBUDU MUTHUKUMARASWAMI MUDALIAR* . . . . . 1 L. R. 19 Mad. 405  
L. R. 23 I. A. 83

5. ——— Daughter's son's son—*Mitakshara*—*Succession of bandhus*—*Daughter's son's son* entitled to preference over daughter's daughter's son—*Variance between pleading and proof*. A plaintiff who sues on and fails to prove an alleged gift, may rely on his title by inheritance. Under the *Mitakshara* law among persons claiming to succeed as bandhus, preference may be extended so as to prefer all other considerations being equal, that claimant between whom and the stem there intervenes one female link to that claimant who is separated from the stem by two such links. A daughter's son's son will have preference over a daughter's daughter's son. *TIRUMALACHARIAR v. ANDAL AMMAL* (1907)  
1 L. R. 30 Mad. 408

## (b) GENTILES AND COGNATES.

6. ——— Preference of heirs—*Gentiles*—*Cognates*. . . . .  
the gentiles are entitled  
5

## (c) SAMANODAKAS.

7. ——— Definition of samanodakas ——— *"Gotra"* of deceased person. *"Samanodakas"*

HINDU LAW—INHERITANCE—*contd.*7. GENERAL HEIRS—*contd.*(c) SAMANODAKAS—*concl'd.*

(or persons sallyed by a common oblation of water) belonging to the "gotra" (race or general family) of

## 8. ———— Preference of, to

*bandhus* or *bhinna gotra-sapindas*—*Vatan service, alienability of, beyond lifetime by will—Effect of subsequent change in the tenure rendering it alien-*

entire property, including his right to receive annually a certain desigui cash allowance, to the plaintiff's husband after the death of his (testator's) widow, *B A*. The testator and the plaintiff's husband were great grandsons of one *K* by his son and daughter respectively. The plaintiff's husband having predeceased *B A*, she made another will in favour of the plaintiff. Subsequently *B A* died. The plaintiff thereupon brought a suit against the defendants, claiming the aforesaid cash allowance and arrears under these wills and as heir of *P*. The defendants, who were distant cousins of *P*, being related to him beyond the thirteenth degree, *inter alia* contended that the wills were invalid, as *P*, when he made the will, had only a life-interest in the *vatan*, which was a service *vatan*, and that they were nearer heirs to *P* than the plaintiff who was a *bhinna gotra-sapinda* or *bandhu* of *P*. Both the

The case was one to be determined by the Hindu law of inheritance. The defendants, though more than thirteen degrees removed from *P*, were included in the term "*samanodakas*," and as such had a claim to the estate of *P* superior to that of the plaintiff or her deceased husband as his *bandhus*. *BAI DEV. KORE v. AMRITHAN JAVITHAN*

I. L. R. 10 Bom. 372

## 9. ———— Collateral distant relation

—*right to share.* A descendant of a brother of the

HINDU LAW—INHERITANCE—*contd.*7. GENERAL HEIRS—*contd.*

## (d) SAPINDAS.

10. ———— Definition of *sapindas*. The author of the *Mitakshara* in v. 3, s. 5, Ch. II, uses the word "*sapinda*" in the sense of "connection by particles of one body," and not in the sense

(chapter treating of rituals), it is necessary to see whether they are related as "*sapindas*" to each other, either through themselves or through their mothers and fathers. *UMAID BAHADUR v. UNOI CHAND alias MUNIUN*

I. L. R. 6 Cal. 119 : 6 C. L. R. 500

11. ———— *Sapindas* tracing relationship to common ancestor through two females. The widow of a Hindu having acquired property from her husband, and having died issueless without disposing of it, the plaintiffs claimed, as the heirs of the husband, to recover it from the defendants, who were the brother and sister of the widow. The plaintiffs were found to be the sons of the daughter's daughter of the husband's paternal grandfather. *Held*, that, inasmuch as plaintiffs were *sapindas* of the deceased husband, it was immaterial that their relationship to the common ancestor should have to be traced through two females.

I. L. R. 25 Mau. 120

12. ———— Preference among *sapin-*

FAL

10 iv. 24, 493

13. ———— Extent of right of succession of *sapindas*. Regarding the right of succession of *sapindas* :—*Held*, that the relationship extends to the sixth in descent below the point of divergence of the two lines. The rule laid down by the *Smriti Chandrika* and the literal language of the *Mitakshara* in Ch. II, s. 5, not followed. *PARASARA BHATTA v. RANGARAJA BHATTA*

I. L. R. 2 Mad. 202

14. ———— *Gotra*-*sapindas*—*Males ex-*

I. L. R. 16 Bom. 410

**HINDU LAW—INHERITANCE—contd.****7. GENERAL HEIRS—contd.****(d) SAPINDAS—contd.**

18. ——— Grandson of brother—*Mitalshara*—Succession—Question of priority between the son of the paternal uncle of the deceased and his brother's grandson. Held, that, according to the Hindu law of the *Mitalshara* school, the grandson of a brother is a nearer sapinda than the son of a paternal uncle. *Sambhoo Dutt Singh v. Jhooter Singh*, (1835) S. D. A. L. P. 382; *Rutehpully Dutt Jha v. Rajender Narain Rae*, 2 Moo. I. A. 113, *Kurcra Chand Gurain v. Oodung Gurain*, 6 W. R. C. R. 155; *Oorkya Koor v. Rajoo Nye*, 14 W. R. 208; *Bhyah Eam Singh v. Bhyah Ugur Singh*, 13 Moo. I. A. 373; and *Suba Singh v. Sarfara: Kunwar*, 1 L. R. 19 All. 215, referred to. *Surya Bhukta v. Lalshminaravanna*, 1 L. R. 5 Mad. 291, disented from. *KALIAN RAI v. RAM CHANDAR* (1901) . . . I. L. R. 24 All. 128

**8 SPECIAL HEIRS****(a) MALES.**

1. ——— Adopted son—Kinsmen. An

**BHUTTACHARJEE v. KRIPA MOYEE DEBIA**  
9 W. R. 423

2. ——— Right of one of family from which he was adopted. A member of a Hindu family cannot, as such, inherit the property of one taken out of that family by adoption. The severance of an adopted son from his natural family is so complete that no mutual rights as to succession to property can arise between them. *SRINIVASA AYYANGAR v. KUPPA AYYANGAR*. **RAYAN KRISHNAMACHARIYAR v. KUPPANNAYANGAR**  
1 Mad. 180

3. ——— Adoptive mother's father—Brother. An adopted son does not succeed to the estate of his adoptive mother's father in preference to the son's son of the brother of the adoptive mother's father. *CHINNAMAKRISTNA AYYAR v. MINATCHI ANNAL*  
7 Mad. 245

4. ——— *Mitakshara* law. An adopted son under *Dattaka Mimansa* and *Mitakshara* succeeds to property to which his adoptive mother succeeded as the heir of her father. *SHAM KUAR v. GAYA DIN* . . . I. L. R. 1 All. 255

5. ——— Succession of adopted son to relatives of adoptive mother. According to Hindu law, an adopted son takes by inheritance from the relatives of his adoptive mother

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—contd.**

in the same way as a legitimate son. *Morun' Moyee Deba v. Dejoy Krislo Goswamee*, W. R. F. B. 121, and *Chinnarama Rietna Ayyar v. Minatchi Annal*, 7 Mad. 245, overruled. **UMA SUNKER MOITRO v. KALI KOMUL MOZUMDAR**  
I. L. R. 6 Calc. 256; 7 C. L. R. 145

Confirmed by Privy Council, **KALI KOMUL MOZUMDAR v. UMA SUNKER MOITRO**  
I. L. R. 10 Calc. 232; 13 C. L. R. 379  
L. R. 10 I. A. 138

**JOYRISHORE CHOWDHRY v. PANCHOO BABOO**  
4 C. L. R. 538

6. ——— Share on death of one more than three generations from common ancestor. An adopted son is not precluded from inheriting the estate of one related lineally, although at a distance of more than three generations from the common ancestor. *MOKUNDO LALL ROY v. BR. KUNT NATH ROY*  
I. L. R. 8 Calc. 289; 7 C. L. R. 478

7. ——— Collateral inheritance. An adopted son inheriting collaterally along with collateral heirs is entitled to receive the same share as the other heirs. The *Dattaka Chandrika*, s. 5, para. 24 and 25, cannot be construed

8. ——— Succession of adopted son of one daughter and natural son of another—Grandfather's estate. The adopted son of one daughter shares equally with the natural son of another daughter in the inheritance left by his maternal grandfather. *UMA SUNKER MOITRO v. KALI KOMUL MOZUMDAR*, I. L. R. 6 Calc. 256, followed. *SERO KANT NUNDI v. MOHESH CHUNDER DUTT* . . . I. L. R. 9 Calc. 70

9. ——— Natural son born after adoption. An adopted son is entitled to one-fourth of the estate of the adoptive father if a natural son is born after the adoption. *RUKHAB v. CHUNILAL AMBUSHET* . . . I. L. R. 18 Bom. 347

10. ——— Share of adopted son where a son is subsequently born—*Mitakshara*—*Vyavahar Mayukha*. In Western India, both in the districts governed by the *Mitakshara* and those especially under the authority of the *Vya-*

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—contd.**

plaintiff a fourth share of the property in dispute.

but ordered the appellant (defendant) to bear his own costs of the appeal. *GIRIAPA v. NINGAPA*

I. L. R. 17 Bom. 100

11. ——— **Affiliated son (Illatam)—Custom of illatam—Reddi caste of Nellore** Under the custom of illatam (affiliation of a son-in-law) which obtains among the Reddi or Pedda Kapu caste of Nellore, the illatam son-in-law does not thereby lose his rights of succession to the estate of his natural father's divided brother. *BALARAMI REDDI v. PERA REDDI*

I. L. R. 6 Mad. 267

12. ——— **Burden of proof.** N, a Hindu, who had admittedly been taken as illatam into the family of his father-in-law, died,

Held, that, as an illatam can succeed to property in

*RAMAKRISHNA v. SUBBAKKA*

I. L. R. 12 Mad. 442

13. ——— **Custom—Surviv-**

to the second defendant. *MALLA REDDI v. PADMANNA*

I. L. R. 17 Mad. 46

14. ——— **Brother's daughter's son—Mitakshara law.** A brother's daughter's son succeeds as heir, under the Mitakshara, in the absence of nearer heirs. *DURGABIR v. JANAKI PERSHAD*

10 B. L. R. 341; 18 W. R. 331

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—contd.**

15. ——— **Great-grandson of paternal grandfather.** By the Hindu law the great-grandsons of the paternal grandfather are entitled to succeed as heirs to the deceased proprietor, and are to be preferred to the brother's daughter's son, because, although the former can offer

ancestors only. *GORIND PROSHAD TALOOKDAR v. MOHESH CHUNDER SURMA GHUTTUCK*

15 B. L. R. 35; 23 W. R. 117

See *In the matter of OODOY CHURN MITTER*

I. L. R. 4 Calc. 411

And *JUGGUT NARAIN SINGH v. COLLECTOR OF MANBHOOM*

I. L. R. 4 Calc. 413 note

16. ——— **Bengal school of Hindu law—Sapinda.** According to the Bengal school of Hindu law, a brother's daughter's son is a sapinda, and is therefore a preferable heir to the great-great-grandfather's great-great-grandson. *DIGUMBER ROY CHOWDERY v. MOTI LAL BUNDOPADHYA*

I. L. R. 9 Calc. 563; 12 C. L. R. 204

(*Contra*) *CHOORAL MONEE BOSE v. PROSONNO COOMAR MITTER*

1 W. R. 43

17. ——— **Dayabhaga school—Great-grandson of paternal grandfather.** A brother's daughter's son does not succeed in preference to a great-grandson of the paternal grandfather of the deceased. *HARIDAS BUNDOPADHYA v. BAMA CHURN CHATTOPADHYA*

I. L. R. 15 Calc. 780

18. ——— **Brother's son's daughter's son—Brother's son's son's son.** The right of inheritance of a brother's son's daughter's son is inferior to that of a brother's son's son's son. *KASHEE MOHUN ROY v. RAJ GORIND CHUCKERNUTTY*

24 W. R. 229

19. ——— **Cousin—Uncle's son—Childless daughter.** According to the Hindu law, an uncle's son succeeds in preference to a childless widowed daughter. *TARANOWEE GUPTA v. LUKHERMONE DASSEA*

Marsh. 29; 1 Hay 67

1 Ind. Jur. O. 8 22

20. ——— **Paternal great-aunt's grandson—Bandhu.** According to the Hindu law of succession in force in the Madras Presidency, the grandson of a paternal great-aunt of the deceased inherits to him as a bandhu. *SITHURANA v. PONNAMMAL*

I. L. R. 12 Mad. 155

21. ——— **First cousin's daughter's son—Sapindas—Collateral succession.** The sapinda relationship exists between the daughter's son and the son's son of two first cousins; the former therefore is an heir to the latter. *Uma*

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

*Sunkar Moitra v. Kali Kamol Mozumdar, I. L. R. 17 Cal. 518*

CHAND GOLECHA v. JAGAT SETTANI PRANKHARI  
PILAI . . . . . I. L. R. 17 Cal. 518

22. ——— Son of paternal uncle—  
Widow of another paternal uncle By the Hindu  
law the sons of a paternal uncle inherit in pre-  
ference to the widow of another paternal uncle of  
the propositus. RACHAVA v. KALINGARA  
I. L. R. 16 Bom. 716

23. ——— Cousin in third degree  
Held, that a cousin in the third degree has no right  
of inheritance in the presence of cousins in the  
second degree. MAHABEER PERHAR v. RAM  
SUNEN . . . . . 3 Agra 6

24. ——— Sapindas—Bandhus—Mitak-  
shari law—Descendants in third degree from  
common ancestor—Second cousins The plaintiffs  
were descended in the third degree from M, who  
was R's maternal great-grandfather, and R was  
descended in the third degree from M, who was  
the plaintiff's maternal great-grandfather. Held,  
with reference to the definition of bandhu and  
sapinda in the Mitakshara (by which school of  
Hindu law the parties were governed), that the  
plaintiffs were R's sapindas through his mother, and  
R was the plaintiff's sapinda directly; and being  
thus mutually related as sapindas, the plaintiffs  
were heritable sapindas and bandhus of R, *ex parte  
materna*, and on his death without issue were  
entitled to his property as his heirs. BABU LAL v.  
NANU RAM . . . . . I. L. R. 22 Cal. 339

See SHEOBHAR KUMAR v. BHAGWATI PRASAD  
I. L. R. 17 All. 523

25. ——— Daughter's son—Brother's  
son. A daughter's son is one of the nearer sapindas  
and in the line of heirs before a brother's son accord-  
ing to Hindu law. KRISHNAMMA v. PAPA  
4 Mad 234

28. ——— Under the Hindu  
law, where property is proved to be a separate and  
divided property, the daughters and daughter's son  
are the legal heirs entitled to it, and not more remote  
relations to the deceased. BUNYAR SINGH v. HUN-  
SEE . . . . . 2 Agra 166

See GOLAB KOOHWER v. SHIB SANAI

2 Agra 54

and HIMUNCHULL v. MAHARAJ SINGH

1 Agra 210

27. ——— Zamindars' law—  
Order of succession to hereditary office  
A woman, who had been appointed to succeed her  
husband, the holder of the hereditary office of kar-

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

nam in a zamindari, died leaving the defendant, her  
daughter's son, and the plaintiff, the son of her  
late husband's paternal uncle. Held, that the  
defendant was entitled to succeed in preference to  
the plaintiff. KRISHNAMMA v. PAPA, 4 Mad. 234,  
followed. SEETARAMAYYA v. VENKATARAU  
I. L. R. 18 Mad. 420

28. ——— Death of widow  
of last male proprietor. A daughter's son is on the  
death of the widow of the last male proprietor a pre-  
ferable heir to descendants in the third or fourth  
remove. HIMUNCHULL v. MAHARAJ SINGH  
1 Agra 210

BUNYAR SINGH v. HUNSEE . . . . . 2 Agra 166

29. ——— Law at Benares.  
Held, that, according to Hindu law current at  
Benares, the daughters' sons inherit in default of  
qualified daughters; and that, if there be sons of  
more than one daughter, they take *per capita* and  
not *per stirpes*. RAN SAWRUTH PANDEY v. BASDEO  
SINGH . . . . . 2 Agra 168

So in Madras. MUTTU VIZIA RAGUNADA RANI  
KORUNDAPURI NACHIAR alias KATTAMA NACHIAR  
v. DONA SINGHA TEVAR . . . . . 8 Mad. 310

30. ——— Succession to cul-  
tivation—Distant relation. Distant relation (such  
as those who are called distant sapindas and samano-  
dakas) of a deceased raiyat is not entitled to succeed  
by inheritance to the cultivation of a hereditary  
raiya. Held, with reference to the above principle,  
that the son of the daughter of the son of the deceased

31. ——— Mother's sisters.  
According to Hindu law, a deceased daughter's  
sister is not entitled to succeed to her husband's property.

32. ——— Mitakshara law.  
According to Mitakshara law, a daughter's son  
takes his maternal grandfather's estate as full pro-  
prietor.

I. L. R. 3 All. 134

33. ——— Adopted son of  
daughter—Brothers According to Hindu law, a  
person cannot succeed as the adopted son of a daugh-  
ter who has brothers alive, and who cannot be an ap-  
pointed daughter if she had brothers when she  
married. Nor can he succeed as claiming under a  
bought son. YACHEREDDY CHINNA BASSAVAPA v.  
YACHEREDDY GOWDARA . . . . . 5 W. R. P. C. 114



HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

34. ———— *Great-grandson.*  
A daughter's son does not inherit where there is a great-grandson of the deceased *shye*. GOOROGOBINDO CHOWDARY v. HUREE MADHUB ROY  
Marsh. 308 ; 2 Hay 401

35. ———— *Estate of maternal grandfather—Daughter.* A suit brought

by the plaintiff's mother. After A's death, M, a daughter of R, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently S, M's son, who had been born after K's compromise, brought a suit against M and the representatives of H and P to recover possession of the estate, on the allegation that, the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by K and the withdrawal of the former suit by M were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being alive, he was entitled to possession after her death only, and upon these findings gave him a decree declaring his right to possession on M's death. The lower Appellate Court reversed the decree, holding that the compromise entered into by K was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no

not entitle him, under ordinary circumstances, to succeed to his maternal grandfather's estate in a divided Hindu family during the existence of a daughter, whether she were his own mother or his maternal aunt; and that the claim for possession was therefore rightly dismissed. *Anantlal Bose v. Rajoncelant Mitter*, 15 B. L. R. 10 ; *Sibbi v. Badri Prasad*, I. L. R. 3 All. 434, and *Bairnath v. Mahabir*, I. L. R. 1 All. 608, referred to. SANT KUMAR v. DEO SARAN . I. L. R. 8 All. 365

36. ———— *Estate of sonless Hindu.* In the case of a sonless Hindu, his separate estate devolves, in the first instance, upon his widow or widows, and thereafter upon the

such daughter's son. DEARUF NATH v. GOBIND SARAN. GOBIND SARAN v. DEARUF NATH  
I. L. R. 8 All. 614

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

37. ———— *Father—Law in Gujarat—Mother.* In Gujarat the right of succession to the estate of a Hindu who is separate in interest, and who at his death, leaves a father and mother, but no issue or widow, devolves upon the father, in preference to the mother. KHODABHAI MAHJI v. BAHADUR DALA . I. L. R. 6 Bom. 541

38. ———— *Father's brother's daughter's son.* A father's brother's daughter's son cannot inherit according to Hindu law. GOBINDO HUREKAR v. WOONESH CHUNDER ROY  
W. R. F. B. 176

RAJ GOBIND DEY v. RAJESUREE DOSSER  
4 W. R. 10

39. ———— *Sapinda.* A father's brother's daughter's son is entitled to be recognized as an heir according to the Hindu law current in the Bengal school. GURU GOBIND SHAHA MANDAL v. ANAND LAL GHOSE MAZUMDAR  
5 B. L. R. F. B. 15 ; 13 W. R. F. B. 49

40. ———— *Whether preferential heir to mother's brother's son.* Under the

41. ———— *Spiritual benefit—Father's father's brother's son.* The father's

42. ———— *Father's father's sister's grandson—Gujarat—Father's father's sister's grandson—Mother's sister's son preferential heir—Movable inherited by widow—Testamentary power of disposition—Mayukha.* In Gujarat a mother's sister's son is the preferential heir to a father's father's sister's grandson. Under the Mayukha a widow has no testamentary power of disposition over movables, which have been inherited by her from her husband. *Gadadhar Bhat v. Chandrabhagabai*, I. L. R. 17 Bom. 620, followed. CHAMANLAL v. GAKESH MOTICHAND (1904)  
I. L. R. 26 Bom. 453

43. ———— *Father's sister's son—Great-grandson of great-great-grandfather.* A father's sister's son does not inherit when opposed to the great-grandson of the great-great-grandfather of the deceased. JERNATH SINGH v. COURT OF WARDS . 5 B. L. R. 442 ; 14 W. R. 117

s.c. on appeal to Privy Council  
15 B. L. R. 180 ; 23 W. R. 409  
L. R. 2 I. A. 183

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

44. ——— Grandfather—*Paternal aunt*  
—*Maternal grandfather*. Under the Hindu law

VENKATACHALA . . . I. L. R. 11 Mad. 344

PERSHAD C. DEBEE PERSHAD . . . I W. R. 317

46. ——— "Sons" as used  
in the *Mitakshara*. The term "sons" used in  
*Mitakshara*, Ch. II, s. 4, § 7, and s. 5, § 1, does  
not include grandsons *SURAYA v. LAKSHMINARASIMHA*  
I. L. R. 5 Mad. 291

47. ——— Grandson of  
brother—*Mitakshara law*. Under the *Mitakshara*  
law, a brother's grandson may be an heir. *GORHYA*  
*KOOER v. RUSOO NYE SOOKOOL* . . . 14 W. R. 208

KUREEM CHAND GUSAIN v. OODUNA GUSAIN  
6 W. R. 158

48. ——— Law in Madras  
Presidency—*Paternal uncle's son*. According to  
the Hindu law of succession current in the Madras  
Presidency, a paternal uncle's son succeeds to the  
inheritance before a brother's grandson. *SURAYA*  
*v. LAKSHMINARASIMHA* . . . I. L. R. 5 Mad. 291

49. ——— Grandson of  
maternal grandfather's brother. According to Hindu  
law, the grandson of a brother of a grandfather  
of the deceased is heir to his property in default of  
nearer heirs *BAJAJ KISHOR MITTER v. MOZUNDAR*  
*v. RADHA GOBIND DUTT*  
3 B. L. R. A. C. 435 : 12 W. R. 339

50. ——— Grandson of sister—*Maternal uncle's son*—*Right to sue as reversioner*. The plaintiff sued as the nearest reversionary heir of one V, deceased, to obtain a declaration that certain alienations made by the widow (who was defendant No. 1) in favour of defendant No. 2 were not binding on the reversion. Defendant No. 3 was the son of V's sister's son, and was joined in the suit, because he claimed to be a nearer heir than the plaintiff, who was the son of V's maternal uncle. *Held*, that both the plaintiff and defendant No. 3 were *athama bandhus* of the deceased, but defendant No. 3 was the nearer reversionary heir. *BALUSAMI PANDITHAR v. NARAYANA SAU*  
I. L. R. 20 Mad. 342

51. ——— Grandsons of

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

aside the alienation made by the widow. *Krishnayya v. Pichamma*, I. L. R. 11 Mad. 287, and *Babu Lal v. Nanlu Ram*, I. L. R. 22 Cal. 339, referred to. *SHEOBHARAT KUAR v. BHAGWATI PRASAD*  
I. L. R. 17 All. 523

52. ——— Grandson of  
mother's maternal uncle—*Bandhu*. According to  
the Hindu law of succession in force in the Madras  
Presidency, the grandson of the maternal uncle of  
the deceased's mother is in the line of heirs. *RATNASUBBU v. PONNAIPA* . . . I. L. R. 5 Mad. 69

53. ——— Great grandson—*Son of son's son*—*Daughter's son*. According to the Hindu law of descent, the son of a son's son is preferred, in the order of succession, before a daughter's son. *GOOROOOBBINDO CHOWDHRY v. HURREEMADHUR ROY*  
Marsh. 398 : 2 Hay 401

54. ——— Sons of grand-  
daughter. According to the Hindu law which pre-  
vails in Madras, the sons of a grand-daughter are ex-  
cluded from the inheritance. The plaintiff brought  
a suit for a moiety of the estate of his deceased  
second cousin, who left no issue or nearer kindred,  
claiming through his maternal great-grandfather. *Held*, that the plaintiff was not entitled to inherit  
the estate of the deceased. *KISSEN LALA v. JAVILLA PRASAD LALA* . . . 3 Mad. 248

55. ——— Daughter's son's  
son—*Great-grand-daughters*—*Bandhu*. N, the daugh-  
ter of J, inherited his property under Hindu

56. ——— Great grandson  
of great-great-great-grandfather—*Mitakshara law*  
—*Great-grandson*—*Bandhu*—*Gentiles*—*Father's sis-  
ter's son*. The great grandson of the great-great-  
great-grandfather of the deceased is, according to the  
*Mitakshara*, a nearer heir to the deceased than his  
father's sister's son. *JIBNATH SINGH v. COURT OF WARS*  
5 B. L. R. 442 : 14 W. R. 117

s.c. on appeal to the Privy Council  
15 B. L. R. 190 : 23 W. R. 409  
I. R. 2 I. A. 163

57. ——— Great-great-grandson of  
grandson—*Samanodaka*. D, being the grand-  
son's great-great-grandson of the common ancestor,  
who was the ninth in ascent from K, deceased  
was reckoned as a *samanodaka* and among  
the heirs of K. *KALIAN SINGH v. PAKKUAR*  
7 N. W. 338

58. ——— Great-great-great-grandson

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*34. \_\_\_\_\_ *Great-grandson.*

35. \_\_\_\_\_ *Estate of maternal grandfather—Daughter.* A suit brought against K, the widow of R, a Hindu, by the representatives of R's brothers, H and P, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After K's death, M, a daughter of R, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards

under the Hindu law, to succeed to such estate, and that both the compromise entered into by K and the withdrawal of the former suit by M were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being alive, he was entitled to possession

succeed to his maternal grandfather's estate in a divided Hindu family during the existence of a daughter, whether she were his own mother or his maternal aunt; and that the claim for possession was therefore rightly dismissed. *Amritlal Bore v. Rajeesant Muller*, 15 B. L. R. 10, *Sibta v. Padra Prasad*, I. L. R. 3 All. 434, and *Baijnath v. Mahabir*, I. L. R. 1 All. 608, referred to. *SANT KUMAR v. DEO SARAN*, I. L. R. 8 All. 365

36. \_\_\_\_\_ *Estate of sonless Hindu.* In the case of a sonless Hindu, his

such daughter's son. *DHARUP NATH v. GOBIND SARAN*, *GOBIND SARAN v. DHARUP NATH*, I. L. R. 6 All. 614

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

37. \_\_\_\_\_ *Father—Law in Gujarat—Mother.* In Gujarat the right of succession to the estate of a Hindu who is separate in interest, and who at his death, leaves a father and mother, but no issue or widow, devolves upon the father, in preference to the mother. *KHONABHAI MAHJI v. BAI-DHAR DALA*, I. L. R. 6 Bom. 541

38. \_\_\_\_\_ *Father's brother's daughter's son.* A father's brother's daughter's son cannot inherit according to Hindu law. *GOBINDO HOREKAR v. WOOMESH CHUNDER ROY*, W. R. F. B. 176

*RAJ GOBIND DEY v. RAJESSURJE DOSSES*, 4 W. R. 10

39. \_\_\_\_\_ *Sapinda.* A father's brother's daughter's son is entitled to be recognized as an heir according to the Hindu law current in the Bengal school. *GURU GOBIND SHAHA MANDAL v. ANAND LAL GROSE MAZUMDAR*, 5 B. L. R. F. B. 15; 13 W. R. F. B. 49

40. \_\_\_\_\_ *Whether preferential heir to mother's brother's son.* Under the

41. \_\_\_\_\_ *Spiritual benefit—Father's father's brother's son.* The father's

42. \_\_\_\_\_ *Father's father's sister's grandson—Gujarat—Father's father's sister's grandson—Mother's sister's son preferential heir—Moveables inherited by widow—Testamentary power of disposition—Mayukha.* In Gujarat a mother's sister's son is the preferential heir to a father's father's sister's grandson. Under the Mayukha a widow has no testamentary power of disposition over moveables, which have been inherited by her from her husband. *Gadadhar Bhat v. Chandrabhagabai*, I. L. R. 17 Bom. 620, followed. *CHAMANLAL v. GANESH MOTICHAND* (1904), I. L. R. 26 Bom. 453

43. \_\_\_\_\_ *Father's sister's son—Great-grandson of great-great-grandfather.* A father's sister's son does not inherit when opposed to the great-grandson of the great-great-grandfather of the deceased. *JERNATH SINGH v. COURT OF WARMS*, 5 B. L. R. 442; 14 W. R. 117

s.o. on appeal to Privy Council  
15 B. L. R. 190; 23 W. R. 409  
I. L. R. 2 I. A. 193

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

44. — Grandfather—Paternal aunt—Maternal grandfather. Under the Hindu law obtaining in the Madras Presidency, the maternal grandfather of a deceased Hindu succeeds to him in preference to his paternal aunt. *CHINNAMMAL v. VENKATACHALA* . . . I. L. R. 16 Mad. 421

45. — Grandson—Mitakshara law. Under the Mitakshara law, a grandson (his father being dead) shares equally with a son the self-acquired property of the grandfather. *LUCHOUN PERSHAD v. DEBEE PERSHAD* . . . 1 W. R. 317

46. — "Sons" as used in the Mitakshara. The term "sons" used in Mitakshara, Ch. II, s. 4, § 7, and s. 5, § 1, does not include grandsons. *SURAYA v. LAKSHMINARASANMA* . . . I. L. R. 6 Mad. 291

47. — Grandson of brother—Mitakshara law. Under the Mitakshara law, a brother's grandson may be an heir. *GOONRA KOOER v. RUJOO NYE SOOKOOL* . . . 14 W. R. 208

*KUREEM CHAND GUSAIN v. OOOONG GUSAIN* . . . 8 W. R. 158

48. — Law in Madras Presidency—Paternal uncle's son. According to the Hindu law of succession current in the Madras Presidency, a paternal uncle's son succeeds to the inheritance before a brother's grandson. *SURAYA v. LAKSHMINARASANMA* . . . I. L. R. 5 Mad. 291

49. — Grandson of maternal grandfather's brother. According to Hindu law, the grandson of a brother of a grandfather of the deceased is heir to his property in default of nearer heirs. *BRAJA KISHOR MITTER MOZUMDAR v. RAONA GOBINO DUTT* . . . 3 B. L. R. A. C. 435 : 12 W. R. 339

50. — Grandson of sister—Maternal uncle's son—Right to sue as reversioner. The plaintiff sued as the nearest reversionary heir of one V, deceased, to obtain a declaration that the defendant was not entitled to the property. *THE SULTAN MOHAMMAD ALI v. THE SULTAN MOHAMMAD ALI* . . . 3 B. L. R. A. C. 435 : 12 W. R. 339

51. — Grandsons of . . .

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

aside the alienation made by the widow. *Krishnayya v. Pichamma*, I. L. R. 11 Mad. 257, and *Babu Lal v. Nanlu Ram*, I. L. R. 22 Cal. 339, referred to. *SHEODARAT KUAR v. BHAGWATI PRASAD* . . . I. L. R. 17 All. 523

52. — Grandson of mother's maternal uncle—Bandhu. According to the Hindu law of succession in force in the Madras Presidency, the grandson of the maternal uncle of the deceased's mother is in the line of heirs. *RATNADEBBU v. POSNAPPA* . . . I. L. R. 5 Mad. 69

53. — Great grandson—Son of son's son—Daughter's son. According to the Hindu law of descent, the son of a son's son is preferred, in the order of succession, before a daughter's son. *GOOROOGOBINDO CHOWPHRY v. HURREEMADHUR ROY* . . . Marsh. 398 : 2 Hay 401

54. — Sons of grand-daughter. According to the Hindu law which prevails in Madras, the sons of a grand-daughter are excluded from the inheritance. The plaintiff brought a suit for a moiety of the estate of his deceased second cousin, who left no issue or nearer kindred, claiming through his maternal great-grandfather. *Held*, that the plaintiff was not entitled to inherit the estate of the deceased. *KISEEN LALA v. JAVALLA PRASAD LALA* . . . 3 Mad. 346

55. — Daughter's son's son—Great-grand-daughters—Bandhu. N, the daughter of J, inherited his property under Hindu law . . .

56. — Great-grandson of great-great-grandfather—Mitakshara law—Great-grandson—Bandhu—Gentiles—Father's sister . . .

s.e. on appeal to the Privy Council  
15 B. L. R. 190 : 23 W. R. 409  
L. R. 21 A. 163

57. — Great-great-grandson of grandson—Samanodaka. D, being the grandson's great-great-grandson of the common ancestor, who was the ninth in descent from K, deceased was reckoned as a samanodaka and among the heirs of K. *KALIAN SINGH v. PANKUAR* . . . 7 N. W. 338

58. — Great-great-great-grandson of great-great-great-grandfather—Mitakshara law—Gentiles. According to the Mitakshara, the great-great-great-grandson of the great-great-great-grandfather of the deceased is entitled to

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—contd.**

succession as one of the gentiles. *BYHA RAM SINGH v. ADAR SINGH*

5 B. L. R. 293 : 14 W. R. P. C. 1  
13 Moo. I. A. 373

59. ——— **Half-blood relatives—Distinction between whole blood and half-blood—Sapinda relations other than brothers and their sons.** The distinction of whole-blood and half-blood applies, according to the rule of succession of the Mitakshara founded on propinquity of blood, to sapinda relations other than the brother and his sons *Samat v. Amra*, 1 L. R. 6 Bom. 394, not followed. *SUBA SINGH v. SARAFRAJ KUNWAR*

I. L. R. 10 All. 215

60. ——— **Half-brothers—Brothers of the whole blood and of the half blood** By the Hindu law current in Bengal a brother of the whole-blood succeeds in the case of an undivided immovable estate in preference to a brother of the half-blood. Overruling *Tiluck Chunder Roy v. Ram Luckhee Dossee*, 2 W. R. 41; *Kaylash Chunder Sircar v. Goroob Churn Sircar*, 3 W. R. 43; *Goroob Churn Sircar v. Kaylash Chunder Sircar*, 6 W. R. 93 *RAJKISHORE LAHOORY v. GOBIND CHUNDER LAHOORY*, *RAMMOONEY DOSSEE v. GOBIND CHUNDER LAHOORY*

I. L. R. 1 Calc. 27 : 24 W. R. 234

*ISHEN CHUNDER CHOWDERY v. BHURET CHUNDER CHOWDERY*

5 W. R. 21

61. ——— **Nephew of half-blood—Brothers of whole and half-blood.** A nephew of the half-blood is excluded from succession by brothers of the whole and half-blood *PRITHEE SINGH v. COURT OF WARDS*

23 W. R. 272

62. ——— **Brothers of whole and half-blood.** Where two uterine brothers and a half-brother are members of a joint Hindu family and one of the two former dies the brother

63. ——— **Rule of succession as between relatives of the whole-blood and half-blood—Brothers—Brother's sons—Collaterals** The plaintiffs (along with others not parties to the suit) were relations of the half-blood to the propositus, and the defendants were his relations of the whole-blood; but, counting from the ancestor, the plaintiffs were sapindas of the fifth degree, and some of the defendants sapindas of the sixth, and the rest propositus. In respect of p. Brothers and their sons, the general rule applies, that the nearest sapinda succeeds in the absence of special local custom to the contrary, and therefore the plaintiffs were the heirs of the propositus

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—contd.**

to the exclusion of the defendants or any of them. *SAMAT v. AMRA*

I. L. R. 6 Bom. 394

64. ——— **Dayabhaga law.** According to the Dayabhaga, a brother of the

234, approved. *SHRO SOONDARY v. PRITHEE SINGH*

L. R. 4 I. A. 147

65. ——— **Sons of half sisters—Succession to estate of deceased brother—Half-blood and whole-blood** Under the Bengal school of Hindu law, sons of sisters of the half-blood are entitled to succeed equally with sons of sisters of the whole-blood to the property of a deceased brother. *BHOLANATH ROY v. RAKHAL DASS MUKHERJI*

I. L. R. 11 Calc. 69

66. ——— **Uncles of whole-blood and half blood** For the purpose of inheritance, an uncle of the whole-blood is not entitled to preference over one of the half-blood. One B, a minor, died leaving him surviving two paternal uncles, one of whom was an uncle of the whole-blood and the other of the half-blood. The nephew and the uncles were found to be divided from each other. Held, that the two uncles were entitled to inherit the property of their deceased nephew in equal shares *Samat v. Amra*, 1 L. R. 6 Bom. 354, considered. *SUBA SINGH v. SARAFRAJ KUNWAR*, I. L. R. 19 All. 215, not followed. *VITHALRAO KRISHNA VINCHURKAR v. RAMRAO KRISHNA VINCHURKAR*

I. L. R. 24 Bom. 317

67. ——— **Husband—Childless wife—Gift at marriage.** If a Hindu wife dies childless, all property given to her by her father at the marriage ("before the nuptial fire") goes to the husband.

68. ——— **Husband, heirs of—Childless widow—Nagar Pissa Pania caste.** Property inherited from her deceased husband by a childless widow among the Nagar Pissa Pania, at her death intestate, devolves on the relations in blood, on the mother's side, of the husband in preference to the heirs and next-of-kin of the widow. In the goods of *NATHIBAL JAKHISHEN DAS GOPAL DAS v. HAKHISEN DAS HULLODHAR DAS*

I. L. R. 2 Bom. 9

69. ——— **Nephew—Mitakshara law.** Under the Mitakshara, a nephew succeeds, not as the heir of his father, but as the direct heir of his uncle. *BRORO MOHUN THAKUR v. GOUREE PERSHAD CHOWDERY*

15 W. R. 70

70. ——— **In default of brothers, brother's sons succeed, taking according to**

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

numbers, and not by representation as grandsons ; but brothers' sons are totally excluded by the existence of brothers. *BROJAKSHOREE DOSHI v. SREE NATH BOSE* . . . 9 W. R. 463

71. ———— *Brother—Joint undivided family* Where, in an undivided Hindu family living under the Mitakshara law, a person dies without leaving issue, but leaving a brother and a nephew, the son of a predeceased brother, the latter is not excluded from succession by the former. *BIHMUL DOSI alias LALL BABOO v. CROONEE LALL* . . . I. L. R. 2 Calc. 379

72. ———— *Property purchased by widows benami for a relation—Stepson* A stepson made over property to his stepmother for her support. Out of the produce she bought properties for her nephew in the names of other parties. Held, under the circumstances, that the purchased property on her death went to the nephew, and not to the stepson, as heir of her husband. *CHANDRANATH ROY v. RAMJAI MAZUMDAR* 6 B. L. R. 303 ; 15 W. R. F. C. 7

73. ———— *Deceased brother's son.* A brother's son succeeds as heir in preference to a sister or a grand-daughter (daughter of a predeceased son). Both under the Mitakshara

74. ———— *Succession to cultivator.* On the death of a rayat having right of

75. ———— *Succession to tenant right—Custom.* In the absence of any evidence of special custom a nephew cannot inherit the tenant-right from his uncle, whose legal heirs were his sons. *OMRAO SINGH v. PESTAB*

3 Agra 143

76. ———— *Interest of Members in share that lapses.* Though a Hindu family may be joint and in union, all the members do not necessarily share in a portion that may lapse, e.g., a brother's son takes his own share as well as the lapsed share of a brother's son in preference to the grandsons of another brother. *MADHO SINGH v. BINDESEENY ROY* . 3 Agra 101

77. ———— *Separated son—Father's wi-*

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

tions, and the functions assigned to the son, and the character ascribed to him in the religious system of the Hindus, explain the preference in the succession accorded to him. *RAMAPA NAICKEN v. SITHAMMAL* . . . I. L. R. 2 Mad. 162

78. ———— *Relinquishment*

agreeing not to claim it during or after his father's lifetime is to place him in the position of a separated son. The relinquishment does not amount to disbenison. If therefore the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow. *BALKRISHNA TRIMBAK TENDULKAR v. SAVITRIBAI*

I. L. R. 3 Bom. 54

79. ———— *Mitakshara—Partition—Right of son, born after partition, to father's property* The property acquired by a Hindu governed by the law of the Mitakshara after a partition has taken place between him and his sons devolves on his death, when he leaves a son born after partition, on such son, to the exclusion of the other sons. *NAWAL SINGH v. BHAGWAN SINGH* I. L. R. 4 All. 427

80. ———— *Sons of a separated brother—Vyavahara Mayukha, Ch. iv, s. 3—Widow of a united brother's son.* The sons of a separated brother inherit in preference to the widow of the son of an undivided brother. *NAHALCHAND HARACHAND v. HENCHAND*

I. L. R. 9 Bom. 31

81. ———— *Separated grandson—Partition—Self-acquired property of grandfather, Descent of—United sons, Right of.* As between united sons and a separated grandson, the succession on the grandfather's death to the property, both ancestral and self-acquired, left by him goes, in preference according to Hindu law, to the united sons. *FAKIRAPPA v. YELLAPPA*

I. L. R. 22 Bom. 101

82. ———— *Separated brothers—United brother—Survivorship, right of.* Two Hindu brothers who hold the ancestral estate in common with a third brother may nevertheless hold self-acquired property in common between themselves in such a manner as to give a right of survivorship to one of themselves. Leaving out of the

son's right of inheritance under Hindu law is distinguished from that of all other heirs, in that it is "a prathandha," not liable to obstruct

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

## 83. ————— Separated bro-

three brothers continued and died associated, two without heirs and a third leaving a son and heir *C*. Held, that *B* had no claim to any part of the undivided three-fourth shares as against *C*, who took the whole absolutely. *JADUB CHUNDER GHOSE v BENODDEHARY GHOSE* . . . 1 Hyde 214

84. ————— Reunion—Succession of reunited members. In a Hindu family, when, after partition, certain members of the family reunite: Held, that, if a reunion actually takes place between the proper parties, their representatives and descendants, however remote, will remain joint until a fresh partition takes place. The members of the reunited family and their descendants succeed to each other to the exclusion of the members of the unassociated or not reunited branch. *TARA CHAND GHOSE v PUDUM LOCHUN GHOSE*

5 W. R. 249: 1 Ind. Jur. N. S. 207

85. ————— Requisites for proof of reunion According to Hindu law, mere living together in one residence or joint trade does not constitute a reunion after partition, but there must be junction of estate. When such reunion is satisfactorily established, Courts are bound to give a preference to the reunited partners to the exclusion of the members or their issue who have not been so reunited. *GOPAL CHUNDRA DAGHORIA v. KENARAY DAGHORIA* . . . 7 W. R. 35

86. ————— Reunion of descendants of members—Reunion not affecting inheritance

*VISVANATH GUNGADHUR v. KRISHNAJI GUNESH*  
3 Bom. A. C. 69

87. ————— Separated brother. Of three brothers forming together a joint

not inherit, and that the defendant was alone entitled to succeed. *Quere*, as to the effect of reunion in inheritance. *KESABRAM MAHADEATTAR v. NANDKISHOR MAHADEATTAR*

3 B. L. R. A. C. 7: 11 W. R. 308

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

88. ————— Separated and reunited brothers—Widow. A Hindu died leaving a widow, a son and the defendant's father; the widow h. The plaintiff

the estate of the deceased by inheritance. The defendant claimed the whole on the ground that the deceased lived as a reunited or associated brother with his (the defendant's) father, whereas the plaintiff was the son of a separated brother of the deceased. Held, that the material issue to be tried in the case was whether the widow lived in a state of reunion with the defendant, as her husband had done with the defendant's father, or whether she at the time of her death lived separate from him, though in the same family house. *RAMHARI SARMA v TRIHIRAM SARMA*

7 B. L. R. 337: 15 W. R. 442.

89. ————— Succession, application of the law of. Where there has been a reunion between persons expressly enumerated in the text of *Brihaspati*, viz., father, brother, and paternal uncle, and where their descendants continue to be members of the reunited Hindu family, the law of inheritance applicable to the latter is the same as in the case of the death of any of those between whom the reunion took place. *Tara Chand Ghose v Pudum Lochun Ghose*, 5 W. R. 249: 1 Ind. Jur. N. S. 207, *Gopal Chunder Daghoria v. Kenaram Daghoria*, 7 W. R. 35; and *Ramhari Sarma v. Trihiram Sarma*, 7 B. L. R. 336: 15 W. R. 442, referred to *ANNAI CHURN JANA v. MANGAL JANA* . . . 1 L. R. 18 Cal. 834

90. ————— Divided brothers of the full-blood—Son of a reunited half-

2. VENKATESAN . . . 1 L. R. 18 Mau. 220

91. ————— Presumption—

daughter, who married but subsequently died without male issue, the grandsons and the sole representative of *C*, who also had died, claimed to be entitled as one of the reversionary heirs of *B* to one-

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

third of his property. *Held*, that, the daughter of B having married into another family, no presumption can be drawn from the reunion of A and B that the co-parcenary continued as between the defendants of A and B up to the death of B's daughter. *KRODESH SEN v. KAMINI MOHUN SEN* 10 C. L. R. 161

92. ——— Sister's daughter's son—*Mitakshara*—*Mitakshara*—Sister's daughter's son. A sister's daughter's son is an heir according to the *Mitakshara*. *UMAID BAHADUR v. UDOL CHAND alias MUNMUN*

I. L. R. 6 Calc. 110; 6 C. L. R. 500

93. ——— Sister's son—*Mitakshara*. In the absence of nearer relatives, a man may be heir to his mother's brother as regards property subject to the *Mitakshara*. *AMRITA KUMARI DEBI v. LUKHINARAYAN CHUCKERBUTTY*

2 B. L. R. F. B. 28

S. C. OMRI KOOHAREE DABEE v. LUCKBEE NARAIN CHUCKERBUTTY 10 W. R. F. B. 76

94. ——— *Mitakshara* and *Mithila* law. A sister's son, except in Bengal, is no heir according to the *Mitakshara* or the *Mithila* school. *JOWAHIR RAHOOT v. KAILASSOT*

1 W. R. 74

95. ——— A sister's son is not an heir according to law. *BHEEM RAM CHUCKERBUTTY v. HUREE KISHORE ROY*

1 W. R. 359

96. ——— *Death of last female heir of uncle*. If a sister's son is alive at the

See *RASBHEHAREE ROY v. NIMAYE CHURN*

W. R. 1864, 233

97. ——— *Mother's sister's son*. According to the general principles of Hindu law, a sister's son is a preferential heir to a mother's sister's son, as being capable of conferring greater spiritual benefits upon the soul of the deceased. *GONESH CHUNDER ROY v. NIL KOMUL ROY*

22 W. R. 264

98. ——— According to the *Mitakshara*, a sister's son cannot inherit. *THAKOORAIN SAHBA v. MOHUN LALL*

7 W. R. P. C. 25; 11 Moo. I. A. 388

99. ——— *Law in Madras*. According to the Hindu law in force in the Madras Presidency, a sister's son does not inherit. *DOZ D. KULLAMMAL v. KUPPU PILLAI* 1 Mad. 85

100. ——— *Bandhu*. According to the Hindu law of succession in force in the Madras Presidency, a sister's son is in the line of

HINDU LAW—INHERITANCE—*contd.*8 SPECIAL HEIRS—*contd.*(a) MALES—*contd.*

heirs. *Semle* He is a bandhu. *CHELIKANT THIRUPATHI RYANINGARU v. SURANENI VENCATA GOPALA NARASIMHA RAO* 6 Mad. 278

101. ——— *Sapinda*. A sister's son does not succeed as a sapinda. *STRINIVASA AYYANGAR v. RANGASAMI AYYANGAR* I. L. R. 2 Mad. 304

102. ——— *Mitakshara* law. *Held*, that in the absence of nearer relatives a

I. A. 176, 187, *Amrita Kumari Debi v. Lukhi Narayan Chuckerbutty*, 2 B. L. R. F. B. 28; *Gri-dhara Lall Roy v. Bengal Government*, 1 B. L. R. P. C. 44; *Naraini Kuar v. Chundi Din*, I. L. R. 9 All. 467; and *Umaid Bahadur v. Udol Chand*, I. L. R. 6 Calc. 119, referred to. *RAOHUNATH KUARI v. MUNNAN MISHR*

I. L. R. 20 All. 161

103. ——— *Bandhu*. According to the Hindu law current in the Madras Presidency, assuming that a sister is entitled to inherit as a bandhu, the claims of a sister's son are superior. *Kutti Ammal v. Radakrishna Aiyar*, 8 Mad. 83, approved. *LAESBHAMAMMAL v. TIRUVENKATA MUDALI* I. L. R. 5 Mad. 241

104. ——— *Mitakshara*

14 Moo. I. A. 178, 187

105. ——— *Mitakshara*

106. ——— *Step-sister's son*. A step-sister's son is entitled to inherit under the Hindu law in force in the Madras Presidency. *SUBBARAYA v. KYLASA* I. L. R. 15 Mad. 300

107. ——— *Uncle—Maternal uncle—Father's maternal uncle*. The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown. *GRIDHARI LALL ROY v. GOVERNMENT OF BENGAL* 1 B. L. R. P. C. 44 10 W. R. P. C. 31



**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—contd.**

Reversing decision of High Court in GOVERNMENT  
v. GRIDHABEE LALL ROY . . . 4 W. R. 13

108. ————— Maternal  
uncles—Mother's sister's sons—Bandhus. Maternal  
uncles are included in the class of bandhus, and  
succeed in priority to mother's sister's sons.  
MOHANDAS v. KRISHNABAI . I. L. R. 5 Bom 597

109. ————— Paternal uncle  
—Matam—Burden of proof. N. a Hindu, who

I. L. R. 8 Mad. 167, so his natural relatives can  
succeed to his property, and a paternal uncle being  
a preferable heir to a sister, the plaintiff was *prima*  
*facie* entitled to recover, notwithstanding the admission,  
and that it was for the defendant to establish  
any special circumstances to rebut his claim.  
RAMAKRISHNA v. SUBBARAYA

I. L. R. 12 Mad. 442

110. ————— Maternal uncle of the  
half blood—Father's paternal aunt's son—Kindred  
of half-blood—Bandhus. Under the Hindu law  
of inheritance prevailing in the Madras Presidency,  
a maternal uncle of the half-blood is entitled to  
succeed in preference to the son of the father's  
paternal aunt. The former is an *atma bandhu*,  
the latter is *pitru bandhu*. MURTHY v. MUR-  
THYMARASAMI . . . I. L. R. 16 Mad. 23

111. ————— Brother's grandson—  
Brother's grandson preferred to widow of a daughter's  
son. The widow of a daughter's son is not entitled  
to succeed to the estate of her husband's maternal  
grandfather in preference to the maternal grand-  
father's separated brother's grandson. VALLABH-  
DAS JAGNADAS v. SAKIRBAI (1900)

I. L. R. 25 Bom. 28

112. ————— Husband, heirs of—

from her father after her marriage, by a woman who  
has died childless. *Judoo Nath Sircar v. Bussunt*  
*Coomar Roy Chowdhry* (1873), 19 W. R. 264, re-  
ferred to. Additions, made subsequent to her  
marriage, to ornaments given by a father to his  
daughter at the time of her marriage must be treated  
as being in the nature of gifts subsequent to mar-

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(a) MALES—concl.**

riage, and as not being governed by the law appli-  
cable to nuptial gifts. GOPAL CHANDRA PAL v.  
RAM CHANDRA PRAMANIK (1901)

I. L. R. 28 Cal. 311

113. ————— Paternal great grand-  
father's grandson—Succession—Paternal aunt.  
Under the Hindu law, as prevailing in the  
Bombay Presidency, the grandson of the paternal  
great-grandfather of the propositus is entitled to  
succeed, in preference to the paternal aunt. GA-  
NESH VAMAN KULKARNI v. WAGHU TALAD RAJARAM  
(1903) . . . I. L. R. 27 Bom. 610

**(b) FEMALES**

114. ————— General rules—Succession of  
female heirs—Nature of property. It is not the

an undivided Hindu family, females are only en-  
titled to maintenance; but if the property be held  
as a separate or divided property, it devolves upon  
the female heirs in their proper order of succession.  
SOORJOON v. ISHREE BRAHMAN . . . 3 N. W. 74

115. ————— Exclusion of  
female heirs—Mitakshara law—Joint property.

predecessing owner, his estate in the property  
PITUM KOO'WAR alias MUNAR BEBEE v. JOY  
KISHEN DOSS . . . 6 N. W. 101

116. ————— Limited estate  
in immovable property inherited by females who  
have become members of family by marriage—Ab-  
solute estate in immovable property taken by females  
who have not become members of family by mar-  
riage—Nature of estate taken by widow, mother,  
grandmother, daughter, sister, maternal great-niece  
A maternal great-niece inheriting property is  
in the same position, as regards the nature of

her son, does not apply to women who have not be-  
come members of the family by marriage, e.g., a  
daughter takes an absolute estate in the property

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

like the widow and mother, enter by marriage into the family whence the property comes which they inherit. The plaintiff sued to recover the moveable and immoveable property left by his brother's widow, L, who died without issue. The property in question had been given to L and her grandmother R, jointly by R's sister, M (L's maternal grand-aunt), who executed to them a deed of gift dated 17th December 1843. On her death, R and L took possession, and remained in joint possession until the death of R, which occurred in 1867. L was thenceforward, until her death, on April 19th, 1869, in sole possession. The plaintiff had obtained a certificate of heirship to L under Bombay Regulation VIII of 1827. The defendants were L's first cousins once removed. They claimed under a deed of gift executed to them dated 27th February 1869 and duly registered. The Subordinate Judge allowed the plaintiff's claim, holding the deed of gift to be *ultra vires* both as to the moveable and immoveable property. On appeal to the District Court, the Judge varied the decree of the lower Court, holding the deed of gift to be *ultra vires* only as to the immoveable property, and he varied the decree by awarding to the plaintiff as heir of L the immoveable property only. On appeal to the High Court, the only question argued was the

she took an absolute estate, and, being as she was without issue, had complete power to execute the deed of gift in favour of the defendants. **TULJARAM MORARI v. MATHURADAS** . 1 L. R. 5 Bom. 662

117. — *Law of inheritance in Bombay Presidency—Female taking absolute estate.* In Bombay, if not in other provinces in India, a female may take by inheritance from a male an absolute estate in her own right.

118. — *Brother's son's daughters.* A brother's son's daughters are not heirs according to Hindu law. **RADHA PEAREE DOSSEE v. DOORGA MONEE DOSSIA** . 5 W. R. 131

119. — *Daughters—Mitakshara law—Son's daughter.* According to the Mitakshara law a daughter or son's daughter does not inherit. **KOONUD CHUNDER ROY v. SEETANUST ROY** . W. R. F. B. 75

120. — *Widow.* The daughter has no right where there is a widow of the deceased. **MUTTE VIZIA RAGUNADA RANI KOLUNDAPURI NACHIAH alias KATTAMA NACHIAH v. DORASINGA TEVAR** . 6 Mad. 310

121. — *Descendants in third and fourth degree.* A daughter is, on the death

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

of the widow of the last male proprietor, a preferable heir to descendants in the third and fourth remove. **HIMUNCHULL v. MAHARAJ SINGH** . 1 Agra 210

**BUNYAR SINGH v. HUNSEE** . 2 Agra 166

**See GOLAB KOONWER v. SHIB SAHAI** 2 Agra 54

122. — *Absence of male issue or widow.* The general rule of Hindu law is that, if a man dies separate in estate from his kinsmen without leaving male issue or a widow surviving him, his daughters inherit his moveable and immoveable property. **NARAYAN BABAJI v. NANA MONOHAR** . 7 Bom. A. C. 153

123. — *Unmarried daughter.* According to the Mitakshara law, a maiden daughter does not succeed to her father in preference to her paternal uncle. **TOOLSEE v. MOHADER RAOT** . 8 W. R. 167

124. — *Unmarried or married daughters.* Unmarried or married daughters

**GUNADA RANI KULENDIPURI NACHIAH alias KATTAMA NACHIAH v. DORASINGA TEVAR** . 8 Mad. 310

125. — *Self-acquired immovable property—Widow.* A Hindu died pos-

session on their father's death, and that such vested right, on the death of one of them during the widow's lifetime, passed by inheritance to her sons, who upon the widow's death became entitled to enter into possession of their mother's half as her representatives. The widow in Western India has only a particular estate for life in the immoveable separate property of her deceased husband. **JANVIATRAM v. BAI JANNA** . 2 Bom. 10, 2nd Ed. 11

Dissented from in **LAKESHNIBAI v. GANPAT MOWAR** . 5 Bom. O. C. 128

126. — *Daughters as co-heiresses—Power of alienation or dealing otherwise with property—Compromise—Reversioners.* According to the law of the Dayabhaga, when several daughters inherit the estate of their father, they



HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

had inherited from her father. The defence was that plaintiff's brothers excluded her title. *Held*, that, the case being governed by the Mitakshara (which, and not the Mayukha, is the chief authority in the Patnagin District), the property in dispute descended to P's daughter (the plaintiff), and not to P's sons. *JANEIRAI v. SUNDRA*  
**I. L. R. 14 Bom. 612**

**138.** — *Widow.* A Hindu, an inhabitant of Bombay, entitled to separate moveable and immovable property, died without male issue, leaving a widow, four daughters, and brother, and the male issue of other deceased brothers. *Held*, that the widow was entitled to the moveable property absolutely and to the immovable property for life. Subject to the widow's interest, the immovable property descended to the daughters absolutely, in preference to the brother and the issue of the deceased brothers. *PRANJIVANDAS TULSIDAS v. DEVKUMAR BHAT*  
**1 Dom. 130**

**139.** — *Unmarried daughter—Subsequent marriage and issue.* According to the Hindu law current in Bengal, in default of son, grandson, great-grandson, or widow, the unmarried daughter succeeds in preference to married daughters; and if the unmarried daughter should subsequently marry and do leaving male issue, her son will succeed to the exclusion of the married sisters and their male issue. *RADHA KISHOR MANJEE v. RAM MUNDUL* . 6 W. R. 147

**140.** — *Dancing girls.* Properly left by—*Sister.* By Hindu law, on the death of one of the sisters of a Hindu, the property

daughter, and not on the surviving sister by survivorship. *KAMAKSHI v. NAGARATHNAM*

**5 Mad. 161**

**141.** — *Daughter's estate—Sridhan—Jain law—Mitakshara.* Under the Mitakshara law, the estate which a daughter takes in property inherited by her father is only

s.e. on appeal to Privy Council

**I. L. R. 4 Calc. 744 : I. L. R. 6 I. A. 15**  
**3 C. L. R. 465**

**142.** — *Daughter, Alienation by.* A daughter inheriting property from her father takes a life-interest only in such property, and has no power of alienation beyond her lifetime. The heir of the father on her death takes the property as heir of the ancestor, and not as her heir. *DEO PRSHAD v. LUGOO ROY*

**14 B. L. R. 245 note : 20 W. R. 102**

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

**143.** — *Mitakshara law.* Under the Mitakshara law, the unmarried daughter succeeds only in priority of her married sisters, not to the ultimate exclusion of such sisters' right of inheritance from their father. Therefore, where a Hindu under the Mitakshara died leaving two daughters, one married and the other unmarried, and the latter succeeded to the father's estate, and then married and subsequently died, leaving a son and two sisters, the son succeeded to the estate. *Held*, that the sister

**144.** — *Succession by daughter before her marriage—Subsequent marriage and birth of son—Death of such daughter—Succession of married sister.* On the death of a daughter who had succeeded before her marriage to her father's estate, to the exclusion of her married sister, the estate so inherited by her devolves upon her married sister who has, or is likely to have, male issue, and not upon her own son. *TINUMORI DASI v. NIBARAN CHUNDER GUPTA*  
**I. L. R. 9. Calc. 154 : 12 C. L. R. 376**

**145.** — *Daughters—Maharashtra School—Succession—Place of daughter in the list of heirs.* *Held*, that, according to the Maharashtra school of Hindu law, the daughter is a preferential heir to the widow of a predeceased brother's son, or to the adopted son of such widow, where no authority for the adoption has been given by the deceased husband of the adopter. *Nihalchand Harokchand v. Hemchand*, **I. L. R. 9 Bom. 31**, *reversed* to *SITA RAM v. CHINTAMAN* (1902)  
**I. L. R. 24 All. 473**

**146.** — *Daughter's power of alienation.* Under the Hindu law, a daughter who succeeds to an absolute and several estate in her father's immovable property may, if she has no issue, make a gift of that property in her lifetime or devise it by will, and her devisee is entitled to hold it against her own heirs or the heirs of her father. *HARIDHAT v. DAMODAR BHAT*  
**I. L. R. 3 Bom. 171**

**147.** — *Daughter's power of alienation.* According to the law of the Presidency of Bombay, the daughter of a Hindu dying without male issue takes absolutely, and may alienate lands by deed or devise them by will. *BABAJI v. BALAJI GANESH* . **I. L. R. 6 Bom. 680**

take not only absolute, but several estates, and consequently, when without any issue, may dispose of such property during life or may devise it by will. The rule is different in Bengal and Madras,

127. *Childless widowed daughter.* A childless widowed daughter, having no possibility of continuing the line of inheritance, can never inherit **LUXHEEMONEE DOSSEE v. TARAMEONE GOOTTEA**

1 Ind. Jur. O. S. 22  
Marsh. 29 : May 67

128. *Mitakshara law.*  
*Semle.* According to the Mitakshara law, a married daughter with male offspring is entitled to inherit in preference to a soulless widowed daughter.  
 GOCOLANUND DASS v. WOOLIA DASS  
 15 B. L. R. 405; 23 W. R. 340

In the same case on appeal to the Privy Council it was held that in the case of inheritance by daughters on default of nearer heirs no preference is awarded by the authorities recognized by the Benares school of Hindu law in Upper India to a daughter who has, or is likely to have, male issue, over a daughter who is barren or a childless widow. *Semle*. Under the law of the Benares school,

L. R. 5 I. A. 40

129. ————— *Barren daughters*  
 Sonless or barren daughters are not excluded  
 from inheritance by their sisters who have male issue  
 SHRIAMANI AMMAL v. MUTIALDOOL

I. L. R. 3 Med. 265

130. \_\_\_\_\_ Married daughters—Daughter having son—Priority—Unendowed

having a son; such priority of claim depending on the several daughters being respectively endowed (sadhan) or unendowed (nirdhan), the unendowed daughter having the preference. **BAKUDAI v. MANCHERABAI** . . . . . 2 Bom. 5

131. ————— *Test of daughter's priority.* On this side of India having male

132. *Right of succession of daughters to father's estate.* Held, that comparative poverty is the only criterion for settling the claims of daughters on their father's estate. *Bakubai v. Manchhabai*, 2 Bom. 5, and *Poti v. Na-*

rotum Bayu, 6 Bom. A.C. 183, followed. Where, therefore, two of four daughters brought suits claiming each a moiety of their father's estate, to the exclusion of the two remaining daughters, and such remaining daughters resisted such suits on the ground that they were entitled to the whole estate, being poor and needy, while their sisters were rich, and it was found that such remaining daughters were, as compared with their sisters, poor and needy, the Court dismissed such suits. **ADU KUMARI v. CHANDRA DAT** I. L. R. 2 All. 561

133. *Mitakshara, Ch. I, s. 3, v. 11, and Ch. II, s. 9, v. 13—Daughter's right of succession to father's estate—Meaning of "unprovided" for.* The estate of a deceased Hindu governed by the law of the Mitakshara was in the possession of one of his daughters, who was in poor circumstances. His other daughter, who was well off and possessed of property, claimed to share in such estate, contending, with reference to the law of the Mitakshara, that, as no provision had been made for her by her father, she was "unprovided for" within the meaning of that law, and therefore entitled to share in such estate. *Held*, that such expression must be construed irrespective of the sources of provision or non-provision. *DANNO v. DARBO* . . . . . I. L. R. 4 All. 243

134. *Succession among daughters—Test of right to inherit—Comparative potency.* In the Presidency of Bombay, the principle of law which governs the succession of a deceased person to an estate to their father's estate is into the property of the estate. *Basa*  
I. L. R. 23 Bom. 228

135. Married daughters. Married daughters are not excluded from succession by either the Dayabhaga or Mitakshara. BENODE KUMAREE DEBEE v PURDHAN GOPAL SAHAY, 2 W. R. 176

130. — *Law of inheritance in Presidency of Bombay*—Daughter, interest of, in Bombay, in property inherited from her parents. Under the Hindu law as prevailing in the Presidency of Bombay, a daughter inheriting from a mother of a father takes an absolute estate, which passes on her death to her own heirs, and not to those of the preceding owner. BHAGIRTH-  
RAY v. KAHNUNJRAY I. L. R. 11 Bom. 285

137. *Exclusion of her property from absolute descents to her own heirs, i.e., to her daughters to the exclusion of her sons. The plaintiff sued, as the heir of her mother, to recover certain property which had*

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(b) FEMALES—contd.**

had inherited from her father. The defence was that plaintiff's brothers excluded her title. *Held*, that, the case being governed by the Mitakshara (which, and not the Mayukha, is the chief authority in the Ratnagiri District), the property in dispute descended to P's daughter (the plaintiff), and not to P's sons. **JANKIRAI v. SUNDRA**  
I. L. R. 14 Bom. 612

**138.** ————— *Widow.* A Hindu, an inhabitant of Bombay, entitled to separate moveable and immoveable property, died without male issue, leaving a widow, four daughters, and brother, and the male issue of other deceased brothers. *Held*, that the widow was entitled to the moveable property absolutely and to the immoveable property for life. Subject to the widow's interest, the immoveable property descended to the daughters absolutely, in preference to the brother and the issue of the deceased brothers. **FRAN. JIVANDAS TULSIDAS v. DEVKUMARSHAI**  
I Bom. 130

**139.** ————— *Unmarried daughter—Subsequent marriage and issue.* According to the Hindu law current in Bengal, in default of son, grandson, great-grandson, or widow, the unmarried daughter succeeds in preference to married daughters; and if the unmarried daughter should subsequently marry and die leaving male issue, her son will succeed to the exclusion of the married sisters and their male issue. **RADHA KISHEN MANJEE v. RAM MUNDUL** . 6 W. R. 147

**140.** ————— *Dancing girls, Property left by—Sister.* By Hindu law, on the death of one of two sisters to whom the joint hereditary office of dancing girls attached to a pagoda had passed on the death of their mother, the share of the deceased sister in the office devolves on her daughter, and not on the surviving sister by survivorship. **KAMAKSHI v. NAGARATHNAM**  
5 Mad. 161

**141.** ————— *Daughter's estate—Stridhan—Jain law—Mitakshara.* Under the Mitakshara law, the estate which a daughter takes in property inherited by her father is only

s.c. on appeal to Privy Council

I. L. R. 4 Calc. 744; I. L. R. 6 I. A. 15  
3 C. L. R. 465

**142.** ————— *Daughter, Alienation by.* A daughter inheriting property from her father takes a life-interest only in such property, and has no power of alienation beyond her lifetime.

**HINDU LAW—INHERITANCE—contd.****8. SPECIAL HEIRS—contd.****(b) FEMALES—contd.**

**143.** ————— *Mitakshara law.* Under the Mitakshara law, the unmarried daughter succeeds only in priority of her married sisters, not to the ultimate exclusion of such sisters' right of inheritance from their father. Therefore, where a Hindu under the Mitakshara died leaving

**144.** ————— *Succession by daughter before her marriage—Subsequent marriage and birth of son—Death of such daughter—Succession of married sister.* On the death of a daughter who had succeeded before her marriage to her father's estate, to the exclusion of her married sister, the estate so inherited by her devolves upon her married sister who has, or is likely to have, male issue, and not upon her own son. **TINUMONI DAS v. NIMARUN CHUNDER GUPTA**  
I. L. R. 9. Calc. 154; 12 C. L. R. 378

**145.** ————— *Daughters—Maharashtra School—Succession—Place of daughter in the list of heirs.* *Held*, that, according to the Maharashtra school of Hindu law, the daughter has preferential heir to the widow of a predeceased brother's son, or to the adopted son of such widow, where no authority for the adoption has been given by the deceased husband of the adopter. **Nihalchand Harakchand v. Hemchand**, I. L. R. 9 Bom. referred to **SITA RAM v. CHINTAMAN** (1902)  
I. L. R. 24 LT.

**146.** ————— *Daughter—Power of alienation.* Under the Hindu law, a daughter who succeeds to an absolute and

**147.** ————— *Power of alienation.* According to the law of Bombay, the daughter succeeds to the absolute estate without male issue and alienate lands by deed. **BABAI v. BALAI GAYE**

**148.** ————— *Power of alienation—Succession by daughter.* In the law of Bombay, the daughter succeeds to the absolute estate without male issue and alienate lands by deed. **BABAI v. BALAI GAYE**

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

where daughters take by inheritance a joint estate with rights of survivorship. Result of the application of the Bombay rule to widows stated. **DULARIDAS v. KESHAYLAL**. I. L. R. 8 Bom. 85

149. — *Childless daughter—Joint estate—Survivorship.* R, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died, leaving a widow, S, and three unmarried daughters, B, S M, and N. On her husband's death, S continued to reside with her brothers, and was supported out of the income of the joint estate. All the daughters married during the lifetime of S, and B became a widow without having had a child. After S's death and during the lifetime of S M, N also became a childless widow. S M died after her mother, leaving a son R K. R K, on attaining majority, sued to recover, with mesne profits, a four-anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of R, and from which he alleged he had been dispossessed by the representatives of R's brothers, whom he made defendants in the suit, joining B and N with them as co-defendants. *Held*, that B, being a childless widow at the time of her mother's death, could take no interest in her father's estate. *Held*, also, that on their mother's death S M and N, as heirs of their father, took a joint estate in his succession, and on S M's death the estate which had come to her and N jointly survived to N, since the fact of the latter being at that time a childless widow did not destroy the right of survivorship which she had previously acquired by inheritance. **AMTOLALL BOSE v. RAJONIKANI MITTER**. 15 B. L. R. 10 : 23 W. R. 214 I. R. 2 I. A. 113

150. — *Right of daughter's son to maternal grandfather's estate—Reversioners.* So long as a daughter not disqualified, or in whom a right of inheritance has once vested, survives, a daughter's son acquires no right by inheritance in his maternal grandfather's estate. **AMTOLALL BOSE v. RAJONIKANI MITTER**, 15 B. L. R. 10, followed. Where therefore R died leaving issue, two daughters, B and P, and P died shortly after B, leaving sons, and while B was alive her sons and the sons of P sued as the heirs of R to set aside a mortgage of his real estate made by B as the guardian of her minor sons and by A, the father of P's sons, as their father and guardian, such suit was held not to be maintainable. **BARI NATH v. MANABIR**. I. L. R. 1 All. 603

151. — *Daughter-in-law—Succession to herress law*

152. — *Priority of daughter-in-law to a paternal first cousin.* A Hindu

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

widow, who had inherited the estate of her separated husband, died leaving her surviving a widowed daughter-in-law and a first cousin of her deceased husband. In a suit for possession left by the widow's residuary

Bombay the daughter-in-law was entitled to succeed to the property in priority to the paternal first cousin of her deceased husband. **VITHALDAS MANICKDAS v. JENABAI**. I. L. R. 4 Bom. 219

153. — *Mitakshara law.* Under the Mitakshara law and usages obtaining in the District of Behar, a daughter-in-law, whose husband has predeceased his father, is not in the line of heirs of her father-in-law. *Per MITTER, J.*—A daughter-in-law, not being a joint owner with her father-in-law, cannot after his death take his estate by right of survivorship. **ANANDA BIBI v. NOWNIT LAL**. I. L. R. 9 Calc. 315

154. — *Mayukha—Property given to a woman by a stranger—Devolution of such property—Daughter's daughters not entitled to it—Son's widow preferred as gotrasapinda.* By the law of inheritance laid down in the Mayukhas, a house given to a married woman by a stranger to the family and her own earnings devolve on her death as if she had been a male. The daughter-in-law of the deceased owner succeeds, therefore, in preference to the daughters of a deceased daughter. **BAI NARMADA v. BHAGWANTRAI**. I. L. R. 12 Bom. 505

155. — *Father's sister—Mother's brother—Bandhus.* According to the Hindu law current in the Madras Presidency the father's sister is not entitled to inherit in preference to the mother's brother. *Semble, per WILKINSON, J.*—The father's sister is a bandhu. **NARASIMMA v. MANGAMMAL**. I. L. R. 13 Mad. 10

156. — *Father's half-sister—Succession—Mother's brother.* In the Bombay Presidency the father's half-sister succeeds in priority to the mother's brother. **SAGUNA v. SADASHIV PANDU MORE** (1902). I. L. R. 28 Bom. 710

157. — *Grand-daughter—Mitakshara law.* According to Mitakshara law, a son's daughter does not inherit. **KOYUD CHUNDER ROY v. SEETAKUNT ROY**. W. R. F. B. 75

158. — *Bandhu—Son's daughter.* A son's daughter is entitled to inherit to her grandfather as a bandhu. **NALLANNA v. PONNAL**. I. L. R. 14 Mad. 149

159. — *Daughter's daughter.* On the principle laid down in **Nallanna v. Ponnal**, I. L. R. 14 Mad. 149, a daughter's daughter is, in the absence of preferential males heirs, entitled to succeed to her grandfather as a





HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. *Gauri Sahai v. Raklo*, 1 L. R. 3 All. 35, followed. *JAGAT NARAIN v. SHEO DAS* . 1 L. R. 5 All. 311

170. *Sister's daughter.* According to Hindu law, neither a sister nor a sister's daughter can inherit. *KALI PERSHAN SURMA v. BHORABEE DABEE* . 2 W. R. 180

*ANUND CHUNDER MOOKERJEE v. TEETORAM CHATTERJEE* . 5 W. R. 215

171. *Mitakshara law*—Male gotraja sapindas. According to the Mitakshara law, a sister is not in the line of heirs, and is not entitled to succeed in preference to male gotraja-sapindas. *JULIESTON KOOR v. UGGER ROY* . 1 L. R. 8 Calc. 725; 12 C. L. R. 460

172. *Brother* A sister cannot succeed her brother as heir by Hindu law. *ROCKINI DAS v. KADERNATH GHOSE* . 5 B. L. R. Ap. 87

*RAMDYAL DEB v. MAGNEE* . 1 W. R. 227

*ANUND CHUNDER MOOKERJEE v. TEETORAM CHATTERJEE* . 5 W. R. 214

173. *Law of Bombay*

1. On appeal to the Privy Council.

3 W. R. P. C. 41; 9 Moo. I. A. 516

174. *Law of Western India—Viramitrodaya.* Under the Hindu law prevailing in Western India, as sister succeeds to the estate of her deceased brother in preference to a separated and remote male relative of the deceased. The Viramitrodaya is an authority in Benares rather than in Bombay, and its doctrine—that, where there has been an intervening holder between

1 Bom. 117

1 Bom. 117

1 Bom. 117

1 Bom. 117

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1 Bom. 117

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

175. *Sisters take absolutely in severalty—Daughters.* In the Bombay Presidency sisters take by inheritance from a brother absolute estates in severalty. On the death of a son without leaving wife or child, his estate goes to his mother, and on her death to his sisters as his heirs. The sisters take an absolute estate in severalty, and not as joint tenants. *RYNDABAI v. ANASCHARYA* . 1 L. R. 15 Bom. 208

176. *Cousin on paternal side once removed.* Under the Hindu law, a sister succeeds as heir to the estate of her deceased brother in preference to a cousin on the paternal

177. *Sister's right of succession in preference to step-mother or paternal first cousin.* Under the Hindu law as prevailing in the Presidency of Bombay, a full-sister is the heir of her deceased brother, in preference either to his step-mother or paternal first cousin. *PINAYAK ANANTHAY v. LAKSHMIBAI*, 1 Bom. 117; 3 W. R. P. C. 11; 9 Moo. I. A. 516; *Shahkaram Sadashiv Adhikari v. Sitabhai*, 1 L. R. 3 Bom. 333, followed. *LAKSHMI DADA NAYAK* . 1 L. R. 4 Bom. 210

178. *Sisters endowed and unendowed, equal right of.* Hindu sisters, when they succeed, take equally. An unendowed sister

1 L. R. 6 Bom. 204

179. *Daughter of a predeceased son.* In the island of Bombay the sister's place as heir is to be determined by the text of Mayukha. Both under the Mayukha and the Mitakshara, the sister comes in as a gotraja-sapinda, and as such must be postponed to the brother's son, who is a sapinda. *MULJI PURSHOTAM v. CUSANDAS NATHA* . 1 L. R. 24 Bom. 563

*shara and Mayukha, authority of.* A Hindu unpossessed of certain immovable property situated in the district of Thana, in the Northern Konkan, leaving him surviving a mother, a full-sister, and a separated half-brother. His mother succeeded to his estate, and held it till her death. The half-

*Lakshmitai*, 1 Bom. 117, must be regarded as of general authority in the

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

to. It is settled law that a mother succeeding, on the death of her son, to his immoveable property takes only such a limited estate in it as a Hindu widow takes in the immoveable property of her husband dying without male issue, and that, on her death, her son's heir succeeds to such property. *SARASWATHI SADASHIV ADHARI v. SITABAI*  
I. L. R. 3 Bom. 353

181. — A sister may succeed to her brother and sue for the recovery of property unlawfully alienated by their mother which the latter inherited on the death of her son. *KUTTI ANJAL v. RADAKRISHNA AYYAR*  
8 Mad. 86

182. — *Priority of sister and half-sister.* In the Presidency of Bombay the sister and half-sister inherit in priority to the step-mother as well as to the brother's wife and the paternal uncle's widow. The law as to the succession of a full-sister in the Presidency of Bombay does not rest solely upon either the Mitakshara or the Mayukha, but is built upon both taken conjointly. The case of *Vinayak Anantav v. Lalchandani*, 1 Bom. 117 9 Moo. I A 516, decided that in the Presidency of Bombay the term "brothers" occurring in the Mitakshara (ch. II, s. 13, pl. 1) should be taken to include sisters. As the term "brothers," while including sisters, introduces them after brothers, so the term "half-brothers" must be regarded as including half-sisters and as bringing them in after half-brothers. *KESSEBBAL v. VALAB RAOJI*  
I. L. R. 4 Bom. 188

183. — *Half-sister—Sapinda.* In competition with a sapinda of the deceased, a half-sister cannot succeed according to the Mitakshara. *KUMARAVELU v. VIRANA GOUNDAN*  
I. L. R. 5 Mad. 29

*MOTHOORANATH MOZOONDAS v. EUSUFF ALI KHAN*  
14 W. R. 358

184. — *Dharwar district—Succession—Sister—Brother's widow.* In the district of Dharwar a sister is preferred as an heir to a brother's widow. *RUDRAPA v. IRAVA (1904)*  
I. L. R. 28 Bom. 82

185. — *Sister's daughter—Dayabhaga—Heirship—Sister's daughter's son*  
*Certificate of the District Judge, 1904, D. No. 100*

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

for a certificate under Act VII of 1833 to collect the debts due to the deceased. *Held*, without expressing a final opinion on the question, that *prima facie* a sister's daughter and a sister's daughter's son are not heirs under the Dayabhaga law, and are therefore not entitled to the certificate. *KRISHNA PADA DUTT v. SECRETARY OF STATE FOR INDIA (1903)*  
12 C. W. N. 453

186. — *Prostitute—Rule of inheritance affected by manner of life—Married prostitutes—Act XXI of 1850.* A married Marathi woman deserted her husband and lived in adultery with her lover. Of the two sisters and observed caste usage. The elder daughter died leaving property in land. *Held*, that the sister succeeded to the deceased in preference to the brother. *SIVASANGU v. MINAL*  
I. L. R. 12 Mad. 277

187. — *Prostitute—Succession to property of degraded woman.* In the absence of any local custom or usage to the contrary a woman of the town is no heir to her deceased sister, who was also a woman of the town. *Sivasangu v. Minnal*, I. L. R. 12 Mad. 277, distinguished. A woman of the town, who is a Hindu by birth, does not cease to be a Hindu by reason of her degradation, and succession to her property is governed by Hindu law. *SARNA MOYEE BEWA v. SECRETARY OF STATE FOR INDIA*  
I. L. R. 25 Calc. 254  
2 C. W. N. 97

188. — *Son's widow—Property of father-in-law.* Where a son predeceased his father, and the son's widow subsequently succeeded to her father-in-law's property as his heir, she takes the same estate in it as she does in property inherited by her from her husband. *GADADHAR BHAT v. CHANDRAHAGATAI*  
I. L. R. 17 Bom. 890

189. — *Step mother—"Mother"—Mitakshara—Law in Bombay.* The step-mother is not included by the Mitakshara within the term "mother." But, although a step-mother cannot in the Presidency of Bombay be introduced as an heir under the term "mother," yet, as the widow of a

heirs the step-mother, the brother's wife, and the paternal uncle's wife succeed in the Presidency of Bombay. *KESSEBBAL v. VALAB RAOJI*  
I. L. R. 4 Bom. 188

190. — *Step-mother preferable to widow of half-brother.* As between the

HINDU LAW—INHERITANCE—*contd.*8 SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

MABAI v. TUKARAM . . . I. L. R. 11 Bom. 47

181. — *Mitakshara law*  
*Succession to step-son.* According to the Mitakshara school of Hindu law, a step mother, not being one of the females expressly named in the Mitakshara and not being included under the term "mother" in Ch. II, s. 3, v. 1, cannot inherit from her deceased step-son. *Gauri Sahai v. Rukta*, I. L. R. 3 All. 45; *Jagat Narain v. Shao Das*, I. L. R. 5 All. 311; *Lala Joti Lal v. Durani Koor*, B. L. R. Sup. Vol. 67; *Kesarbai v. Balab Rani*, I. L. R. 3 Bom. 183, and *Kumaravelu v. Virana Goundan*, I. L. R. 5 Mad. 29, referred to. *RAMA NAND v. SUGIANI* . . . I. L. R. 18 All. 221

182. — *Right of step-mother to succeed to her step-son in preference to his paternal first cousin.* A step-mother succeeds to the property of her step-son in preference to the step-son's paternal uncle's son. *RUSSOOBAI v. ZULEKHABAI* . . . I. L. R. 18 Bom. 707

183. — *Paternal uncle.* Under the Hindu law which obtains in the Presidency of Madras, a step-mother does not succeed to the estate of her step-son in preference to a paternal uncle. *Kumaravelu v. Virana Goundan*, I. L. R. 5 Mad. 29, and *Muttanmal v. Venga Laksmin Ammal*, I. L. R. 5 Mad. 21, approved. *MARI v. CHINNAMMAL* . . . I. L. R. 8 Mad. 107

184. — *Sapinda-sapindas.* According to Hindu law current in the Madras Presidency, a step-mother does not succeed to the estate of her step-son in preference to his grandfather's brother's grandson. *RAMASAMI v. NARASSAMA* . . . I. L. R. 8 Mad. 133

185. — *Sapindas—Mitakshara law.* In competition with a sapinda of the deceased, a step-mother cannot succeed according to the Mitakshara. *KUMARAVELU v. VIRANA GOUNDAN* . . . I. L. R. 5 Mad. 29

186. — *Paternal grandmother.* A Hindu step-mother is not entitled to succeed to a deceased step-son before a paternal grandmother. *MUTTANMAL v. VENGALAKSHMINAMMAL* . . . I. L. R. 5 Mad. 32

187. — *Step mother and step-grandmother—Mitakshara law.* According to Mitakshara, in a divided family a step-mother cannot succeed to the estate of her step-son or a step-grandmother to the estate of her step-grandson. *LALA JOTI LAL v. DURANI KOWER*, LAL KOWER v. JAIKARAN LAL . . . B. L. R. Sup. Vol. 67; W. R. F. B. 173

188. — *Widow and Co-widow—Heir on exhaustion of all specified heirs.* The

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

members of the "compact series" of heirs specifically enumerated take in the order of enumeration

exhausted, the right of the widow is recognized to take her husband's place in competition with the representative of a remoter line. *NAHALCHAND HARAACHAND v. HEMCHAND* I. L. R. 8 Bom. 31

189. — *Brother of husband.* According to the Dayabhaga, a Hindu widow is the heiress of her husband in preference to his brother. *CHUNDER KANT SURMAH v. BUNSHER DES SURMAH* . . . 8 W. R. 81

200. — *Right to succeed to family property.* A Hindu widow's right to succeed to her husband's ancestral undivided property is only as his immediate heir. A widow can only inherit family property where there has been a partition among the co-parceners, of whom her husband was one, or where the whole property has vested in her husband by the death of all the other co-parceners. The widow of an undivided Hindu, who leaves a co-parcener him surviving, has, like the widow of a divided Hindu who leaves male issue, merely a right to maintenance. Where therefore a widow sued for a Palayappattu as heir to the surviving brother of her husband: *Held*, that the suit must be dismissed. *PEDDANUTTU VRAMANI v. ARRU RAU* . . . 2 Mad. 117

201. — *Daughters.* A Hindu widow, whether childless or not, stands next in the order of succession on failure of male issue. Where A had two wives, B and C, and B predeceased A, leaving three daughters, and C survived A and was childless: *Held*, that C succeeded to A's property in preference to the three daughters. *PERANMAL v. VENKATAMMAL* . . . 1 Mad. 223

202. — *Estate of husband's brother.* *Held*, that under Hindu law a widow was not entitled to inherit the estate of her husband's brother.

203. — *1 Agra 140*

203. — *Estate of husband's uncle.* *Held*, that a widow cannot, under Hindu law, claim to inherit the estate left by her husband's uncle, and could not consequently question the title of the defendant (widow of another brother's son), who was admittedly in possession of the estate claimed. *GOURIE v. DONBHO KOOKWAR* . . . 1 Agra 140

204. — *Jain law—Sonless widow.* A sonless widow of a Saragi Agarwala takes, by the custom of the sect, an absolute interest in the self-acquired property of her husband. *SUREO SINGH RAI v. DASHO* . . . 6 N. W. 382

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

Affirmed by Privy Council in s.c.

I. L. R. 1 All. 689

205. ————— *Khojas—Sister.*

The widow of a Khoja Mshomedan who has died childless and intestate succeeds to her husband's estate in preference to his sister. *RAMINATRAI v. HIRBAI* . . . . . I. L. R. 3 Bom. 24

206. ————— *Husband's brother—Mitakshara law.*

Where the Mitakshara law prevails, the widow of a member of a joint Hindu family cannot succeed to her husband in preference to the husband's brother, and is no heir to her brother-in-law, or to his widow, after their death. *BANEE PERSHAD v. MAHABOODHY* 7 W. R. 292

207. ————— *Property acquired by funds derived from ancestral estate.*

Where property is acquired by the members of a joint Hindu family from funds derived from the ancestral property and held by them in joint possession, on the death of one of them his share does not devolve on his widow. *TEEKHOOT v. MOONIAH* 7 W. R. 440

208. ————— *Separate estate of husband.*

In the case of property of which part is the common property of a joint Hindu family and part the separate acquisition of a deceased brother, his widow, in default of male issue, succeeds to his separate estate. *KATTAMA NAUCHBEAR v. RAJAH OF SHIVAJUNGNAH* 2 W. R. P. C. 31 : 9 Moo. I. A. 539

209. ————— *Right of widow to succeed to husband's share of partnership property.*

Ordinary co-partnership property is not subject to the rule of Hindu law which excludes a widow from the succession at her husband's death to a share of the joint property of an undivided family. *RAMFERSHAD TEWARRY v. SHEO CHUN DOSS THOOKRA v. RAMFERSHAD TEWARRY* 10 Moo. I. A. 490

husbands immediately after whom they succeed. *LAKSHMINIBAI v. JAIRAM HARI* 6 Bom. A. C. 152

211. ————— *Right of survi-*

HINDU LAW—INHERITANCE—*contd.*8 SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

description have interests which pass *inter se* by right of survivorship, and a widow's right as heir is excluded by the test when any of such collateral kinsmen survive her husband. The governing principle of the rule is co-partnership survivorship, which precludes alike the right of the widow and every other member of the family, who has no right to the enjoyment of the estate before the death of the possessor. *YESUNULA GAVURIDEVAMMA GARU v. YESUNULA RAMANDORA GARU* . 6 Mad. 93

212. ————— *Sapindas—*

*Law in Bombay.* In the Presidency and Island of Bombay the wife is a sapinda as well as a gotraja of her husband, and, if he die (without leaving a son or grandson), she, on the subsequent death of his separated sapinda and in the absence of any specially designated heir entitled to preference, ranks in the same place in the order of succession to the property of such separated sapinda as her husband would have occupied if he were living. Thus the widow of first cousin *ex parte paterna* of the deceased propitiatus was held prior in order of succession to a fifth male cousin *ex parte paterna* of the same. Or,

before the male representatives of a remoter branch. The Institutes of Manu, the Mitakshara, and the Mayukha, although of great authority in the Presidency of Bombay, are all subject to the control of law and usage. No one of them is, as a whole, in full force in any part of the Presidency. In all of them there are precepts which, if they ever were practical law, have, for a time beyond the memory of living men, been obsolete. *LALLUBHAI BAPUBHAI v. MANEVARBHAI* . I. L. R. 2 Bom. 389

In the same case on appeal it was held by the Privy Council,—By the Hindu law in force in Western India the widow of a collateral relation, although she is not specified in the texts amongst the heirs to members of her husband's family, may come into the succession as one of the classes of gotraja-sapindas of that family. According to the law of the Mitakshara as accepted in Western India, the right to inherit in the classes of gotraja-sapindas is to be determined by family relationship, or the community of corporal particles, and not only by

relationship, it was held that there was no reason for

## HINDU LAW—INHERITANCE—contd.

## 8. SPECIAL HEIRS—contd.

## (b) FEMALES—contd.

MALAI v. JUKARAN

I. L. R. 11 Bom. 47

191.

Mitakshara law

—Succession to step-son. According to the Mitakshara school of Hindu law, a step-mother, not being one of the females expressly named in the Mitakshara and not being included under the term "mother" in Ch. II, s. 3, v. 1, cannot inherit from her deceased step-son. *Gauri Sahni v. Rukko*, I. L. R. 3 All. 45; *Jagat Narain v. Shro Das*, I. L. R. 5 All. 311; *Lala Joti Lal v. Durani Koor*, B. L. R. Sup. Vol. 67, *Kesarbai v. Balab Rani*, I. L. R. 4 Bom. 188, and *Kumaraulu v. Virana Goundan*, I. L. R. 5 Mad. 29, referred to. *RANA NAND v. SURGIANI*, I. L. R. 16 All. 221

192.

Right of step-

mother to succeed to her step-son in preference to his paternal first cousin. A step mother succeeds to the property of her step-son in preference to the step-son's paternal uncle's son. *RUSOORAI v. ZULERNABAI*, I. L. R. 19 Bom. 707

193.

Paternal uncle.

Under the Hindu law which obtains in the Presidency of Madras, a step-mother does not succeed to the estate of her step-son in preference to a paternal uncle. *Kumaraulu v. Virana Goundan*, I. L. R. 5 Mad. 29, and *Muttiammal v. Venga Lukshmi Ammal*, I. L. R. 5 Mad. 32, approved. *MAHAI v. CHINNAMMAL*, I. L. R. 8 Mad. 107

194.

Sapinda-sapin-

das. According to Hindu law current in the Madras Presidency, a step-mother does not succeed to the estate of her step-son in preference to his grandfather's brother's grandson. *RAMASANI v. NARASSANA*, I. L. R. 8 Mad. 133

195.

Sapindas—Mi-

takshara law. In competition with a sapinda of the deceased, a step-mother cannot succeed according to the Mitakshara. *KUMARAYEDU v. VIRANA GOUNDAN*, I. L. R. 5 Mad. 29

196.

Paternal grand-

mother. A Hindu step-mother is not entitled to succeed to a deceased step-son before a paternal grandmother. *MUTTANAL v. VENOA LAKSHMIAN NAL*, I. L. R. 5 Mad. 32

197.

Step mother and step-

grandmother.—Mitakshara law. According to Mitakshara, in a divided family a step-mother cannot succeed to the estate of her step-son or a step-grandmother to the estate of her step-grand-son. *LALA JOTI LAL v. DURANI KOWER LAL KOWER v. JAIKARAN LAL*, B. L. R. Sup. Vol. 67 : W. R. F. B. 173

198.

Widow and Co-widow—

Heir on exhaustion of all specified heirs. The

## HINDU LAW—INHERITANCE—contd.

## 8. SPECIAL HEIRS—contd.

## (b) FEMALES—contd.

members of the "compact series" of heirs specifically enumerated take in the order of enumeration preferably to those lower in the list, and to the widows of any relatives whether near or remote, but where the group of specified heirs has been exhausted, the right of the widow is recognized to take her husband's place in competition with the representative of a remoter line. *NAHALCRAND HARACHAND v. HEVCAND*, I. L. R. 9 Bom. 31

199.

Brother of hus-

band. According to the Dayabhaga, a Hindu widow is the heir of her husband in preference to his brother. *CHUNDER KANT SIRMAR v. BUNSHER DER SURNAN*, I. L. R. 6 W. R. 61

200.

Right to succeed

to family property. A Hindu widow's right to succeed to her husband's ancestral undivided property is only as his immediate heir. A widow can only inherit family property where there has been a partition among the co-parceners, of whom her husband was one, or where the whole property has vested in her husband by the death of all the other

for a widow sued for a family property which she had inherited from her husband. *Held*, that the suit must be dismissed. *PEDDANTU VIRAMANI v. APPU RAO*, I. L. R. 2 Mad. 117

201.

Daughters. A

property in preference to the three daughters. *PERAMMAL v. VENKATAMMAL*, I. L. R. 1 Mad. 223

202.

Estate of hus-

band's brother. *Held*, that under Hindu law a widow was not entitled to inherit the estate of her husband's brother, and she, having no locus standi in Court, could not question the title of the party in possession of the disputed estate. *CHOORA v. BOSHUTEE*, I. L. R. 1 Agra 174

203.

Estate of hus-

band's uncle. *Held*, that a widow cannot, under

1 Agra 110

204.

Jain law—Son-

less widow. A sonless widow of a Saragi Agarwala takes, by the custom of the sect, an absolute interest in the self-acquired property of her husband. *SHRO SINGH RAI v. DAKHO*, I. L. R. 6 N. W. 382

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

Affirmed by Privy Council in a c.

I. L. R. 1 All. 688

205.

*Khojas—Sister.*

The widow of a Khoja Mahomedan who has died childless and intestate succeeds to her husband's estate in preference to his sister. *RABIMATRAI v. HIBBAI*. I. L. R. 3 Bom. 24

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*Husband's brother—Mitakshara law.* Where the Mitakshara law prevails, the widow of a member of a joint Hindu family cannot succeed to her husband in preference to the husband's brother, and is no heir to her brother-in-law, or to his widow, after their death. *BANEE PERSHAD v. MAHABOODNY*. 7 W. R. 202

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*Property acquired by funds derived from ancestral estate.* Where property is acquired by the members of a joint Hindu family from funds derived from the ancestral property and held by them in joint possession, on the death of one of them his share does not devolve on his widow. *TEENGOO L. MOONJIAN*. 7 W. R. 440

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*Separate estate of husband.* In the case of property of which part is the common property of a joint Hindu family and part the separate acquisition of a deceased brother, his widow, in default of male issue, succeeds to his separate estate. *KATTANA NAUCKER v. RAJAB OF SHITAGUSMAN*. 2 W. R. P. C. 31; 9 Moo. I. A. 539

of the joint property of an undivided family. *RAMPERSHAD TEWARRY v. SHEO CHURN DASS*. *THOOKRA v. RAMPERSHAD TEWARRY*. 10 Moo. I. A. 490

210.

*Wives of gotraja-sapindas—Law of Western India.* According to the Hindu law obtaining in Western India, the wives of all gotraja-sapindas and samanodaksas have rights of inheritance co-extensive with those of their husbands immediately after whom they succeed. *LAKSHMINAI v. JAYRAM HARI*. 8 Bom. A. C. 152

211.

*Right of survi-*

who are descendants in the male line of one who was a co-parcener with an ancestor of the last possessor. Collateral kinsmen answering the above

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

description have interests which pass *inter se* by right of survivorship, and a widow a right as heir is excluded by the test when any of such collateral kinsmen survive her husband. The governing principle of the rule is co-parcenary survivorship, which precludes alike the right of the widow and

212.

*Sapindas—*

*Law in Bombay* In the Presidency and Island of Bombay the wife is a sapinda as well as a gotraja of her husband, and, if he die (without leaving a son or grandson), she, on the subsequent death of his separated sapinda and in the absence of any specially designated heir entitled to preference, ranks in the same place in the order of succession to the property of such separated sapinda as her husband would have occupied if he were living. Thus the

rule holds in any part of the Presidency. In all of them there are precepts which, if they ever were practical law, have, for a time beyond the memory of living men, been obsolete. *JALLUDHAI BAPUBRAI v. MANKUTARIBAI*. I. L. R. 2 Bom. 388

In the same case on appeal it was held by the Privy Council.—By the Hindu law in force in Western India the widow of a collateral relation,

sapinda, it was held that there was no reason for withholding from that doctrine the force of law; the right of the widow being mainly rested on the ground of positive acceptance and usage. In this case the widow of a first cousin of the deceased, on the father's side, was held to have become by her marriage gotraja-sapinda of her husband's cousin's.

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

family, and to have a title to succeed to the estate of that cousin on his decease, in priority to male collateral gotraja-sapindas, who were seventh in descent from an ancestor common to them and to the deceased, who was sixth from that common ancestor. **LALLUBHAI BAPUBHAI v. CASSIRAI**

**I. L. R. 5 Bom. 110 : 7 C. L. R. 445  
I. L. R. 7 I. A. 212**

**213.** ————— *Heirs after widow's death—Female heir—Widow of gotraja-sapinda—Stridhan.* *N* and *H* were divided brothers. *H* died first, leaving a son named *T*. *N*

recovered the property from the defendants, who were distant samanodaka relations of *N*. It was contended on the plaintiff's behalf that on *J*'s death

succeeded to the property as a gotraja-sapinda, being the widow of *T*, the nephew of *N*. As such, she took only a life-interest in the property, and had no absolute interest in it as in her stridhan proper. In the Presidency of Bombay female heirs

**I. L. R. 21 Bom. 739**

**214.** ————— *Succession of co-*

*s.c. In the goods of DADOO MANIA*

**1 Ind. Jur. O. S. 59**

**215.** ————— *Right of co-widows—Right of senior widow.* According to Hindu law current in Southern India, two or more lawfully married wives (putnis) take a joint estate for life in their husband's property with rights of survivorship and equal beneficial enjoyment. The position of senior widow gives her, as in the case of other co-parenters, a preferable claim to the care and management of the joint property. **JIOYI-AMBA BAYI SAIBA v. KANAKSHI BAYI SAIBA, BAYI SAIBA v. JIOYI-AMBA BAYI SAIBA**

**3 Mad. 424**

HINDU LAW—INHERITANCE—*contd.*8 SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

**216.** ————— *Survivor of joint widows—Grandson of deceased widow.* *A*

between them the lands of the deceased husband. *K* took possession of her moiety and held the same till her death, when *R* took possession. In a suit by the sons of the deceased daughter of *K* against *R* for the share formerly held by *K* :—*Held*, that they were not entitled in preference to *R*, the surviving widow. **RINDANNA v. VENKATARAMAPPA**

**3 Mad. 288**

**217.** ————— *Co-widows—Joint tenants for life.* According to the Hindu law of inheritance, the separate property of a person dying without male issue and leaving more than one widow is taken by all the widows as a joint estate for life, with rights of equal beneficial enjoyment and of survivorship. The view that, according to the custom prevailing in Southern India, the senior widow by date of marriage succeeds in the first instance, the others inheriting in their turn as they survive, but being only entitled in the meantime to be maintained by the first, is not supported by the decisions of the Courts, nor by the sanction of any text-writer of paramount authority in the Madras Presidency. **GAJAPATHI NILAMANT v. GAJAPATHI RADHANANT**

**I. L. R. 1 Mad. 290 : 1 C. L. R. 97  
I. L. R. 4 I. A. 212**

**218.** ————— *By Hindu law two widows of one and the same husband take a joint interest in one undivided estate, and although the widows may arrange for the enjoyment of the estate in separate portions, there can be no compulsory partition converting the joint estate into an estate in severalty. *See* *ibid* : The interest of one of two such widows cannot be sold.* **JIOYI-AMBA BAYI v. KANAKSHI BAYI, 3 Mad. 424 ; RINDANNA v. VENKATARAMAPPA, 3 Mad. 288 ; NILAMANT v. RADHANANT, I. L. R. 1 Mad. 290 ; and EHGUMANDEN DOOLEY v. MYNA BACE, 11 Moo. I. A. 457, followed. **KATHAPATHAL v. VENKABAI****

**I. L. R. 2 Mad. 194**

**219.** ————— *Co-heirs—Right of survivorship.* Under the Mitakshara law,

and **NARAGUNTY LUTCHMEE DAVANAH v. VENGAMA NAIKDOO, 9 Moo. I. A. 60, cited.** **RATAN DABEE v. MODHUSOODDUN MOHAFATOR**

**2 C. L. R. 328**

**220.** ————— *Mitakshara law—Estate inherited by two Hindu widows from deceased husband—Alienation by one widow.* When their Lordships of the Privy Council have seen fit

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

to place a definite construction upon any point of Hindu law, the High Court is bound by such construction until such time as their Lordships may think fit to vary the same. According to the *Mitakshara* law, the estate which two Hindu widows take by inheritance from their deceased husband is not several, but joint. The senior of two such Hindu widows is not a manager of such estate and competent, for purposes of legal necessity, to alienate it without the consent of the other. *Bhugvandeem Doolby v. Myna Dace*, 11 Moo. I. A. 187, and *Gajapathi Nidamani v. Gajapathi Radhamani*, I. L. R. 1 Mad. 290, referred to. *RAM PIYARI v. MCLINTOCK* . . . I. L. R. 7 All. 114

221. ———— *Brother's widow*  
—*Survivorship*—*Benares school of law*. According to the law and usage of the Benares school of Hindu law, a brother's widow has no place in the line of heirs, nor is she entitled to succeed by right of survivorship. *Bhugnee Daire v. Gopaljee*, I S. D. A. N. W. P. (1862), 396, not followed. *Ananda Bibee v. Nounat Lal*, I. L. R. 9 Calc. 315, followed in principle. *JOGDANBA KOER v. SECRETARY OF STATE FOR INDIA* . . . I. L. R. 16 Calc. 387

222. ———— *Joint family*  
—*Widow's right*—*Maintenance*—*Gotraja-sapinda*. The widow of an undivided brother does not take a life-estate. She is only entitled to maintenance. She may perhaps succeed her brother-in-law as a *gotraja-sapinda*. *MANJAPPA HEGADE v. LAKSHMI* . . . I. L. R. 15 Bom. 234

223. ———— *Son's widow*  
—*Grandson's widow*. A Hindu died leaving him surviving . . .

according to the rule of obstructed heritage, the latter being entitled to maintenance out of the family property. *BAI ANKIT v. BAI MANIK*

12 Bom. 79

224. ———— *Cousin's widow*  
as *heirress*—*Female gotraja-sapinda*. In a suit on a mortgage executed by a Hindu, since deceased, to the plaintiff, it appeared that the mortgage premises had been the property of A, whose daughter, since deceased, was the mortgagor's wife and had executed a will purporting to devise the property to him. The suit was defended by B, who was the widow of a great-grandson of A's great-grandfather, and she claimed title to the property against the plaintiff under the law of inheritance. *Held*, that B had no title to the mortgage premises. *BALANMA v. PULLAYYA* . . . I. L. R. 18 Mad. 168

225. ———— *Widow of paternal uncle*—*Nephew*. The widow of a paternal uncle is, according to Hindu law, no heir to her

HINDU LAW—INHERITANCE—*contd.*8. SPECIAL HEIRS—*contd.*(b) FEMALES—*contd.*

nephew. *UPENDRA MOHAN TAGORE v. THANDA DASI* . . . 3 B. L. R. A. C. 349  
s.c. *WOOPENERO MOHUN TAGORE v. THANDA DOSSIA* . . . 12 W. R. 263

226. ———— *Widow of paternal uncle*—*Mitakshara law*—*Females*. According to *Mitakshara* law, nona but females expressly named can inherit and the widow of the paternal uncle of a deceased Hindu, not being so named, is therefore not entitled to succeed to his estate. *GAURI SAHAI v. RUKKO* . . . I. L. R. 3 All. 45

227. ———— *Succession on death of adopted son*. On the death of a son adopted by a Hindu as the son of one of his two wives, the property descends (the adoptive mother having died before the son) not to the other wife, but to the next legal heir. *KASHRESHUREE DEBIA v. GREESH CHUNDER LAHOREE* . . . W. R. 1864, 71

228. ———— *Succession on death of adopted son*. If the adoptive mother survives an adopted son before he attains majority, she has a life-interest in the property of her husband. *SOONDER KOONWAREE DEBIA v. GUDADHUR PERSHAD TEWARREE* 4 W. R. P. C. 118; 7 Moo. I. A. 54

229. ———— *Son validity adopted*. In a case where a valid adoption makes the adopted son the legal heir, the widow has no right but that of maintenance. *RUTNA DOBANI v. PURLADH DOBEY* . . . 7 W. R. 450

230. ———— *Preference of the adoptive mother in inheriting the family estate through the adopted son over a senior co-wife*. A Hindu, having two wives, adopted a son in conjunction

wife, having taken part in the adoption by her husband at his selection, inherited the impartible family estate upon the death of the adopted son in preference to the co-wife who was senior in marriage but who had not been conjoined in the adoption. *Rakeshshuree Debia v. Greesh Chunder Lahoree*, W. R. (1864) 71, referred to and approved. *ANAPURNI NAGHAR v. FORBES*

I. L. R. 23 Mad. 1  
3 C. W. N. 730

231. ———— *Re-marriage of widow*—*Succession to a son of first marriage, notwithstanding remarriage*—*Hindu Widow's Re-marriage Act (XV of 1856), ss. 2 and 5*. The widow of a Hindu married a second time. Subsequently to her re-marriage, her son by her first marriage died childless. *Held*, that she was entitled to succeed



**HINDU LAW—INHERITANCE—contd.****! 8. SPECIAL HEIRS—contd.****(b) FEMALES.—contd.**

to his property, notwithstanding her re-marriage.  
CHAMAR HARU DALMEL v KASHI (1902)

I. L. R. 28 Bom. 388

**232. — Inheritance—**  
*Law of Bombay School—Mitakshara—Vyavahara Mayukha—Succession to stridhan—Co-widow—Husband's brother—Husband's brother's son—Deed of gift, construction of—Absolute or limited estate of inheritance—Vyavahara Mayukha, Chapter IV, s. 10, placita 28 and 30, construction of* By the Hindu law of the Bombay School, viz., the Mitakshara subject to the doctrine to be found in the Vyavahara Mayukha where the latter differs from it, a co-widow is entitled to succeed to the property of a woman dying without issue, in preference to her husband's brother or husband's brother's son. A deed executed by a Hindu in favour of his future wife conveyed immovable property to her, "her heirs, executors, administrators, and assigns" on the condition that, if she died "without leaving issue of the intended marriage, who shall succeed to a vested interest" in the property, and without exercising a power of appointment given her by the deed, then "the property shall vest in her legal heirs, according to the Hindu law of the Bombay School." Held, that she took an absolute estate of inheritance in the property. The true construction of placitum 30 of Chapter IV, s. 10 of the Vyavahara Mayukha, and one that brings it into harmony with the Mitakshara, and also reconciles it with placitum 28, is that it should be read distributively as regards the property of women married according to one of the approved forms and the property of those married in one of the lower forms. In the one case those of the heirs enumerated by Brihaspati, who are blood relations of the husband, namely, the husband's sister's son, the husband's brother's son, and the husband's brother will suc-

ceed to the husband's family, or the nearest to her in her father's family, as the case may be. The list is not exhaustive, and neither a co-widow nor any other sapinda of the husband is excluded. The words "and the rest" mean or include the other relations of the husband or father. The co-widow therefore takes in her right place and is a preferential heir to the husband's brother or husband's brother's son. *Bai Kisserbai v Hunsraj Morari* (1906)

I. L. R. 30 Bom. 431  
s.c. I. R. 33 I. A. 176  
10 C. W. N. 803

**233. —**

**Inheritance—**

*Special heirs—Females—Estate inherited by two widows—Alienation by one widow—Widow—Power of widow—Alienation by one of two co-widows—*

**HINDU LAW—INHERITANCE—contd.****B. SPECIAL HIERS—conclid.****(b) FEMALES—conclid.**

*Parties adding plaintiffs—Non-joinder—Joinder of plaintiff after time for bringing suit has expired—Effect of co-contractors—Limitation Act (XV of 1877), s. 22. Where two Hindu widows, D M and D R, who on the death of their husband took under the Mitakshara law a joint estate in the property of the husband, afterwards by arrangement between themselves divided the property between them, intending to give to each so far as the other was concerned full power of alienation in the event of legal necessity, and one of them, D R, made a gift of her share in the estate to the reversioners, who thereafter in certain transactions proceeded on the assumption that there was a partition between the widows, not only of possession of the property included in the husband's estate, but also of the title. Held, that a mortgage executed in favour of the plaintiff by D M of her share without the consent of D R, was binding on the property hypothecated under it so far as the interests of D R and the reversioners were concerned, to the extent that the debt was incurred for legal necessity. The addition after the expiry of the period of limitation of an infant member of a Mitakshara family as plaintiff to a suit on a mortgage is not fatal to the suit. *Gurdayya Gouda v. Dattatraya Anant*, I. L. R. 28 Bom. 11, followed *THAKURMANI SINGH v. DAI RANI KOER* (1906) I. L. R. 33 Cal. 1079*

**9. CHILDREN BY DIFFERENT WIVES.**

**1. — Children by different mothers of same caste.** The Hindu law of inheritance makes no distinction between the legitimate children of mothers of the same caste. *NGENDUR NARAIN v. RUGHONATH NARAIN DEY* W. R. 1884, 20

**2. — Sons by different mothers—**  
**—Priority in time of marriage—Primogeniture.** As

and is the same in the case of sons of several wives of equal caste and rank as in the case of sons by one. *SIVANANJA PERUMAL SETHURAYER v. MUTTU RAMALINGA SETHURAYER. ATHILAKSHMI ANNAL v. SIVANANJA PERUMAL SETHURAYER* 3 Mad. 75

**10. ILLEGITIMATE CHILDREN.**

**1. — Illegitimate children—Issue of illegal intercourse.** Illegitimate sons are

**HINDU LAW—INHERITANCE—contd.****10. ILLEGITIMATE CHILDREN—contd**

excluded by the Hindu law from inheriting when the intercourse between their parents was in violation of, or forbidden by, law. *VENKATACHELLA CHETTY v. PARVATHAM* . . . 8 Mad. 134

2. ——— *Illegitimate son and daughters—Property of mother.* A Hindu woman having daughters by one paramour and a son by another died leaving a house. The daughter sued the son and his assignee for possession of the house in succession to their mother. It was inter alia pleaded for the defence that the plaintiffs could not recover the house for the reason that it had been derived from the putative father of the first defendant, but this was not proved. *Held*, that the plaintiffs were entitled to recover. *Semble* That the decision would have been the same even if the allegation on which the above plea was based had been established. *ARUNAGIRI MADALI v. RANGANAYAKI AMMAL* . . . I. L. R. 21 Mad. 40

3. ——— *Maintenance, Right to—Sudras—Issue of Pat marriage.* The

no legitimate son and no legitimate daughter or son of such a daughter, the illegitimate son by the Dasi takes the whole estate. If, however, there

widow of the deceased proprietor. The dictum of LORD CAIRNS in *Gajapathi Radhika v. Gajapathi Nilamani*, 13 Moo I. A. 477 : s. c. 6 B. L. R.

upon and explained. The terms Dasi and Dasiputra, as defined by various writers on Hindu law, discussed, and the rights by inheritance of a Dasiputra considered. The condition that, in order to

**HINDU LAW—INHERITANCE—contd.****10 ILLEGITIMATE CHILDREN—contd.**

practice been discarded in the Presidency of Bombay. In this Presidency the illegitimate offspring of a kept woman, or continuous concubine, amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra. *G*, a Sudra woman, was married to *T*, also a Sudra, by Pat marriage, without having received a *chhoti* (release) from her first husband, who was then living, or obtained any other sanction of her Pat with *T*. *Held*, that the intercourse between *G* and *T* was adulterous, and that therefore the plaintiff, their son, being the result of such intercourse, was not entitled to take as heir even to the extent of half a share, and was not a Dasiputra within the scope of *Yajnyavalkya's* text, or recognized as such by other commentators. He was, however, held entitled to maintenance, as he had been recognized by *T* as his son. *RAHJI v. GOVINDA WALAD TEJA*

I. L. R. 1 Bom. 97

4. ——— *Sudras.* In the case of Sudras the law has been and still is that illegitimate sons succeed their fathers by right of inheritance. *PANDAIYA TELAYER v. PULI TELAYER* I Mad. 478

5. ——— *Illegitimate sons of Jain of Dassa Porwad class—Right to maintenance.* Under the ordinary Hindu law, illegitimate sons do not inherit, but are only entitled to maintenance. *Held*, that a Jain of the Dassa Porwad caste was governed by the general Hindu law applicable to the three regenerate castes, being though not a Brahmin, certainly not a Sudra, but a Vaisnya by origin, and having as such carried this law with him from Gujarat to the Belgaum District. *Held*, therefore, that his widow was his sole heir, and that his illegitimate sons were only entitled to maintenance. *Quere* Whether even among Sudras the widow is altogether excluded from inheritance by illegitimate sons. *Rahi v. Govinda Walad Teja*, I. L. R. 1 Bom. 97, doubted. *AMBABAI v. GOVIND* . . . I. L. R. 23 Bom. 257

6. ——— *Sons of Sudra.* The illegitimate sons of a Sudra are as such entitled to one half of a son's share. *KESHOREE v. SAMARDHAN* . . . 6 N. W. 94

7. ——— *Sons of Sudra.* The illegitimate son of a Sudra, being the offspring

according to *ARUNAGIRI*. *Semble*. To entitle the illegitimate sons of a Sudra by a Sudra woman to inherit a share in the family property, the intercourse between the parents must have been a continuous one, and the woman must have been an unmarried woman. Therefore the illegitimate son of a Sudra by a Sudra woman living with him in

HINDU LAW—INHERITANCE—*contd.*10. ILLEGITIMATE CHILDREN—*contd.*

adultery is not entitled to a share in or to inherit the family property. *DATTI PARIST NAYUDU v. DATTI BANGARU NAYUDU*, 4 Mad. 204

8. ———— Sons of Sudra—*Brother's son.* *Semhle* An illegitimate son of a Sudra by his concubine is his heir in preference to a brother's son. *KRISHNAMMA v. PAPP*, 4 Mad. 234

9. ———— Sons of Sudra. The son of a Sudra by a slave-girl is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side. *NISSAN MURDOJAN v. DUTCHWANT ROY*, Marsh. 609

10. ———— Sons of Sudra According to the doctrines of the Bengal school of Hindu law, a certain description only of illegitimate sons of a Sudra by an unmarried Sudra woman is entitled to inherit the father's property in the absence of legitimate issue, viz, the illegitimate sons of a Sudra by a female slave or a female slave of his slave. *NARAIN DRANA v. BAKHAL GUIS*, I. L. R. 1 Cal. 1. 23 W. R. 334

11. ———— Son of Sudra by concubine—*Bengal school of law* According to the Bengal school of Hindu law, the son of a Sudra by a kept woman or continuous concubine does not inherit his father's estate. *Narain Dhan v. Rukhal Gais*, I. L. R. 1 Cal. 1, followed. *Indran Varan gypuly Tayer v. Ramaswamy Pandia Talver*, 3 B. L. R. P. C. 1 15 Moo. I. A. 111, explained. *Rahi v. Govinda Valad Tera*, I. L. R. 1 Bom. 91, *Sadu v. Baisa*, I. L. R. 1 Bom. 37, *Datti Parist Nayudu v. Datti Bangaru Nayudu*, 4 Mad. H. C. 204, *Krishnayyan v. Muttusami*, I. L. R. 7 Mad. 4037, *Sarasu v. Mannu*, I. L. R. 2 All. 134, and *Hargobind Kuari v. Dharam Singh*, I. L. R. 6 All. 329, explained and distinguished. *KIRPAL NAGAIN TEWARI v. SIKHARION*, I. L. R. 10 Cal. 81

12. ———— *Mitakshara law*—*Illegitimate daughters.* The illegitimate offspring of a kept woman or continuous concubine amongst Sudras are on the same level as to inheritance as the issue of a female slave by a Sudra. Under the Mitakshara law, the son of a female slave by a Sudra takes the whole of his father's estate, if there be no sons by a wedded wife, or daughters by such a wife, or sons of such daughters. If there be any such heirs, the son of a female slave will participate to the extent of half a share only. *Held*, therefore, that M, the illegitimate son of an Ahir by a continuous concubine of the same caste, took his father's estate in preference to the daughters of a legitimate son of his father who died in the father's lifetime. *SARSUTI v. MANNU*, I. L. R. 2 All. 134

13. ———— *Sudras—Right of illegitimate sons.* Y and S were undivided Hindu brothers of the Sudra caste. Y died before S, leaving two illegitimate sons by A, an unmarried Sudra woman kept as a continuous concubine. S

HINDU LAW—INHERITANCE—*contd.*10. ILLEGITIMATE CHILDREN—*contd.*

left two widows. *Held*, that, although the illegitimate sons of A would be entitled to inherit the estate of Y, they could neither exclude the right of survivorship of S nor succeed to the estate of S. *KRISHNAYYAN v. MUTTUSAMI*, I. L. R. 7 Mad. 407

14. ———— *Sudras—Sons born of a kept woman.* Sons born of a woman continuously kept by their father as a concubine (and whose connection with their father is neither adulterous nor incestuous) are, in the case of a Sudra's estate, entitled to equal shares with legitimate sons in a suit for partition, if it is the wish of the father that they should so participate. Cl 2 of P. XII, Ch I, Part II of the Mitakshara, does not refer alone to the self acquired property of the father. *KARUPPANSAN CHETTI v. BULOKEY CHETTI*, I. L. R. 23 Mad. 18

15. ———— *Mitakshara—Sudra family—Dasi-putra or son by a slave-girl—Right of survivorship—Illegitimate son.* In a Sudra family of the Mitakshara school, a dasi-putra or illegitimate son by a slave-girl is a co-partner with his legitimate brother in the ancestral estate and will take by survivorship. *JOGENDRO BHUPATI v. NITYAKUND MAN SINGH*, I. L. R. 11 Cal. 702

16. ———— *Illegitimate son.* The illegitimate son of a married woman by a concubine with whom she is living in adultery while undivorced from her lawful husband cannot inherit his father's property. *NARAYAN BHARTI v. LAVINO BHARTI*, I. L. R. 2 Bom. 140

17. ———— *Sudras—Illegitimate sons—Collateral succession—Mitakshara law.* Amongst Sudras governed by the Mitakshara law an illegitimate son does not inherit collaterally to a legitimate son by the same father. *Sarasu v. Mannu*, I. L. R. 2 All. 134; *Jogendra Bhupati v. Nityakund Man Singh*, I. L. R. 11 Cal. 702; I. L. R. 18 Cal. 151; *Sadu v. Baisa*, *Nissau*, *Murtogh v. Dhanwant Roy*, Marsh. 609; and *Krishnayyan v. Muttusami*, I. L. R. 7 Mad. 407. *SHOME SHANKAR RIJENDRA VARERU v. RAJESAR SWAMI JANGAN*, I. L. R. 21 All. 99

18. ———— *Rights of an illegitimate son of a Sudra—Position of legitimate, adoptive, and illegitimate sons and daughter's sons compared.* A, the son of a deceased zamindar, sued B and C, his widow and brother, for possession of the zamindari, which was impartible. A was found to be an illegitimate son of the late zamindar. *Held*, that he could not exclude his father's co-partner or widow from succession to the impartible zamindari. *Krishnayyan v. Muttusami*, I. L. R. 7 Mad. 407, and *Kulanthas Natchar v. Ramasami* (unreported), in which it was ruled that a widow's claim to inherit would exclude that of an illegitimate son, approved and followed. *Sadu v. Baisa*, I. L. R. 4 Bom. 37, and *Jogendra Bhupati v.*

HINDU LAW—INHERITANCE—*contd.*10. ILLEGITIMATE CHILDREN—*contd.*

*Nityanund Man Singh, I. L. R. 11 Cal. 702, distinguished. PARVATHI v. THIRUMALAI*  
I. L. R. 10 Mad. 334

19. ———— *Determination of caste—Children of mixed marriages—Status of son of Kshatriya by Sudra woman. Although the illegitimate children of members of the regenerate*

*marriage. The illegitimate son of a Kshatriya by a Sudra woman is not a Sudra, but of a higher caste called Ugra. BRINDAVANA v. RADHAVANI*

I. L. R. 12 Mad. 72

20. ———— *Sudras—Illegitimate son. Held, that an Ahir, who was the offspring of an adulterous intercourse, was incapable of inheriting his father's property, even as a Sudra. Venkatesh Chetty v. Parvathammal, 8 Mad. 131; Parisi Nayudu v. Bangaru Nayudu, 4 Mad. 204; Tiraramulu Udayan v. Singaravelu, I. L. R. 1 Mad. 306; Rahu v. Govinda, I. L. R. 1 Bom. 97; and Narayan Bharthi v. Loring Bharthi, I. L. R. 2 Bom. 140, referred to. DALIT v. GANPAT*

I. L. R. 8 All. 367

21. ———— *Sudras—Succession—Illegitimate son's right to succeed to the whole estate. The plaintiff was one of three daughters of one S, a Lingayet, who died in 1870, leaving immovable property. The defendants were his illegitimate sons. After his death his widow and*

*was entitled to one-sixth of the property only, and the defendants to one-half. The defendants ap-*

*took it as one of a class of persons who exclude the illegitimate son's right to more than half (Mayne's Hindu law, para. 466, 4th ed.). If it went to the daughters on the father's death, there was no evidence to show that the defendants had had adverse possession of it as against the plaintiff before the widow's death in 1880. SINGH v. GIREWA*

I. L. R. 14 Bom. 282

22. ———— *Succession to outcasted Brahmin—Brothers of deceased remain-*

HINDU LAW—INHERITANCE—*contd.*10 ILLEGITIMATE CHILDREN—*contd.*

*ing an caste—Sons of deceased by Bania widow—Doctrine of justice, equity, and good conscience. K, a Brahmin, lived with a Bania widow, for which offence he was outcasted. He left his family and his village and went to live elsewhere, taking the widow with him. He had sons by her, and he and his family lived as cultivators and acquired property. K died in his new home and left the widow and their sons in possession of the property which he had acquired. This being so, the brothers of the deceased K sold the property which had been thus acquired by him to one R K. R K thereupon sued his vendors and the surviving sons of K by the widow, together with their mother and the widow of a deceased son, for recovery of the property. Held, that the sons of K by the Bania widow with whom he had been living and their mother were entitled to remain in possession of the property acquired by K as against the brothers of deceased who had remained in caste. RADHA KISHN v. RAJ KUAR*

I. L. R. 13 All. 573

23. ———— *Estate of Raj-*

*manner not authorized by Hindu law. PURNOR SIKH v. KNOOMAN*

3 Agra 313

24. ———— *Khatti class—Illegitimate son—Maintenance. Held, that the appellant had failed to establish the alleged marriage of his father with his mother, and that consequently*

*twice-born races whose illegitimate sons could not inherit; but that he was entitled to maintenance out of his father's estate. CHETTRYA RUM MURDUN SIKH v. PURNULAN SYN*

4 W. R. P. C. 132; 7 Moo. I. A. 18

*See ROSHAN SIKH v. BALWANT SIKH*  
I. L. R. 22 All. 181

25. ———— *Saygi marriage—Byah marriage. By the custom of a Hindu family no distinction was made between the issue of a*

*Byahi wife RADAIK GHASERAIN v. BUDAIK PERSHAD SIKH*

Marsh. 644

HINDU LAW—INHERITANCE—*contd.*10. ILLEGITIMATE CHILDREN—*contd.*

manner of a joint Hindu family, are not a joint Hindu family according to Hindu law. On the death of each, his lineal heirs representing their parent would, by the effect of the agreement, enter into that partnership; collaterals, however, not so entering by succession, unless the Hindu law gave in such a case a right of inheritance to collaterals. In a partition suit instituted by one of the illegitimate children a deed of compromise was executed by the parties which provided for the mode of enjoyment and against the sale, mortgage, lease, or security of any separate share. *Held*, (i) that these provisions of the deed did not extend to prevent alienation by devise, nor effect the right of inheritance; and (ii) that the arrangement between the parties included the right of survivorship, the claim of the State only arising on failure of heirs of the last survivor. *MYNA BOYEE v. OOTTORAM*

2 W. R. P. C. 4 : 8 Moo. I. A. 400

Varying decision of High Court in *MAINA BAI v. UTTARAM* . . . . . 2 Mad. 198

27. ——— *Sudras—Illegitimate son—Mitakshara law—Suit for partition by illegitimate son—Disputes—Right of illegitimate sons among Sudras—Position of a son by a female slave.* Under the *Mitakshara* School of Hindu law, an illegitimate son of a Sudra, nor born of a female slave, cannot claim a share in the family property, where his putative father has already parted with his interest in the property during his lifetime. *Kirpal Narain Tewari v. Sukurmoni*, 1 I. L. R. 19 Cal. 91, and *Norain Dhara v. Rakhai Gani*, 1 I. L. R. 1 Cal. 1, referred to. *Jogendra Bhupati Hurrochundra v. Nityanand Man Singh*, 1 I. L. R. 18 Cal. 151, distinguished. *Semble*. Under the *Mitakshara* law, an illegitimate son of a Sudra, by a female slave, does not occupy the same position as a son lawfully begotten. He does not at his birth acquire a joint interest with his father in the ancestral family property. It is only after the father's death that he may claim a share in the family property, and during his father's lifetime he may take a share by his father's choice. *see Jogendra Bhupati Hurrochundra v. Nityanand Man Singh*, 1 I. L. R. 18 Cal. 151, 155, referred to. *RAM SARAN GARAIN v. TEK CHAND GARAIN* (1900) . . . . . I. L. R. 28 Cal. 194

28. ——— *Sons by concubine—Division of property by brothers—Two sons born to one divided brother by concubine—Decease of both illegitimate sons, leaving sons of their own—Claim by divided brother against the grandsons for property of the deceased divided brother.* Plaintiff and R were divided brothers in a family of Sudras. R kept a permanent concubine, by whom he had two illegitimate sons. Both of these sons . . . . . their own t . . . . . now sued, property, grandsons

HINDU LAW—INHERITANCE—*contd.*10. ILLEGITIMATE CHILDREN—*contd.*

recover. *Quare*: Whether an illegitimate son of an illegitimate son could, on the principle of *ius representationis*, represent the illegitimate son if, before the inheritance opened, the latter predeceased his father. *RAMALINGA MUPPAN v. PAVADAI GOUNDAN* (1901) . . . . . I. L. R. 25 Mad. 519

## 11. DANCING-GIRLS AND PROSTITUTES.

1. ——— *Succession to property of dancing-girl—Devadasi—Outcaste—Adopted niece—Brother.* On the death of a prostitute dancing-girl, her adopted niece belonging to the same class succeeds to her property, in whatever way it was acquired, in preference to a brother remaining in caste. *NARASANNA v. GANGU*

I. L. R. 13 Mad. 133

2. ——— *Property acquired by dancing-girls—Gains of prostitution.* In a suit by a brother against his sister for a share of property, valued at a large sum, on the ground that it was ancestral property left by their mother, it was found that the parties belonged to the bogan or dancing-girl caste residing in the Godavari district, and that the property had been acquired by the defendant as a prostitute. *Held*, that the plaintiff was not entitled to any share in property so ac-

3. ——— *Murali—Married sisters—Exclusive right claimed by Murali as unmarried daughter to inherit her father's property—Prostitution—Kanya—Maiden—Mitakshara—Vyavaharamayukh—Act XXI of 1850.* A *Voghya* (male dedicated to the God Khandoba) had three daughters, one of whom was a *Murali* (female dedicated to the God Khandoba) and two married.

who in her maiden condition becomes a prostitute being neither a *Kanya* (unmarried) nor a *Kulastri* (married), but being at the same time notwithstanding . . . . . her as held

HINDU LAW—INHERITANCE—*contd.*11. DANCING-GIRLS AND PROSTITUTES—*contd.*

4. — Effect of a wife deserting her husband and becoming a prostitute. *Held*, that the fact of a Hindu woman having deserted her husband and become a prostitute did not have the result of entirely severing all connection between herself and her husband. The husband therefore might still be heir to property acquired by the wife since she left him. *Subbaraya Pillai v. Ramasami Pillai*, 1 L. R. 3 Mad. 171, and *Bhakesh v. Mata Chelam*, N.-W. P. H. C. 300, followed. *Mussammat Ganga Jati v. Ghanta*, 1 L. R. 1 All. 4<sup>th</sup>, referred to. *Tara Munnee Dossea v. Motee Buncanee*, 7 Sel. Rep. 23, and *In the goods of Kaminy Money Bewah*, 1 L. R. 21 Cal. 657, dissented from. *NARAIN DAS v. TRILOK TIWARI* (1906) . . . 1 L. R. 29 All. 4

## 12. IMPARTIBLE PROPERTY.

1. — Impartibility—Succession to raj. Partibility in the general rule of Hindu inheritance, the succession of one heir, as in the case of a raj, the exception. *EAST INDIA COMPANY v. KAMACHEE BOYE SAHIBA* . . . 4 W. R. P. C. 42

SE C. SECRETARY OF STATE FOR INDIA v. KAMACHEE BOYE SAHIBA . . . 7 Moo. L. A. 478

2. — Mitakshara law—Rules governing succession. For determining who is to be heir to an impartible estate, the same rules apply which also govern the succession to . . .

3. — Rules for succession to impartible estate—Custom—Seniority—Mitakshara law—Nearness of kin—Brothers of whole and half-blood. In determining the right of succession to an impartible estate, the class of kindred from whom a single heir is to be selected should be first ascertained. Next it should be . . .

of blood is no ground of preference under the Mitakshara law in case of disputed succession to coparcenary property which is partible, and it is likewise no ground of preference when such property is impartible. Where therefore the family property is . . .

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

4. — Rule of selection as between an elder son by a wife of an inferior class . . .

sons who are born of mothers of the same caste, but of different classes therein, the right of a junior son by a first married wife, if she be of higher class, is superior to that of an elder son of a wife of lower class. Thus, when a Sudra marries a woman of his caste, but of an inferior class, as a *degger* wife in addition to his wife equal in caste to him, the rule of selection is in favour of his son by the latter by reason of the mother being of a higher class. A valid custom prevails among the Kumbha zamindars, whereby the son by a senior wife has a prior . . .

LINGASAMI KAMAYA NAIR

1 L. R. 17 Mad. 422

5. — Primogeniture. Succession in consequence of primogeniture amongst Hindus in India seems to be the rule only in the case of large zamindaris and estates which partake of the nature of principalities. *BRUJANORAY BEN DAVALATRAY GHORPADE v. MALOJIRAY BIN DAVALATRAY GHORPADE* . . . 5 Bom. A. C. 161

6. — Custom—Son's right at birth—Right of coparcenary. There is no such coparcenary in an estate impartible by custom as under the law of the Mitakshara governing the descent of ordinary property attaches to a son on . . .

11, 12, 13, 14, 15, 16

See VENKATA SURYA MAHIPATI KRISHNA RAO v. COURT OF WARDS . . . 1 L. R. 22 Mad. 363  
1 L. R. 26 I. A. 63

and VENKATA NARASIMHA NAIDU v. BHASHYA-KARLU NAIDU . . . 1 L. R. 22 Mad. 538

7. — Succession to raj, nature of. On the question of the extent to which property of the nature of an impartible raj is excepted from the general law by a special rule of succession entitling the eldest of the next of kin to take solely:—*Held*, that such a usage does not interfere with the general rules of succession further than to vest the possession and enjoyment of the . . .

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

to partible property; but the mode of its beneficial

vision for maintenance in lieu of co-parcenary shares YENUMULA GAVURIDEVAMMA GARU v. YENUMULA RAMANDORA GARU, 8 Mad. 93

8. ——— Impartible raj—Joint Hindu family—Power of Rajah to alienate—Primogeniture—Sui by eldest son to set aside alienation Where there is no local or family custom overriding the general law, the succession to a raj or impartible zamindari, according to Hindu law, goes by primogeniture. In the absence of any custom to the contrary, a raj or impartible zamindari is, according to Hindu law, not separate property, but joint family property. *Shivagunga case*, 9 Moo. I. A. 513; *Ramakakshmi Ammal v. Sivanantha Perumal Sethurayar*, 12 Moo. I. A. 570; *Doorga Pershad Singh v. Doorga Konwari*, 1 L. R. 4 Cal. 190; *Yanumula Venkayamah v. Yanumula Boochia Vankondora*, 13 Moo. I. A. 333; and *Periasami v. Periasami*, L. R. 51 A. 61, followed. *Tipperah case*, 12 Moo. I. A. 523, observed on. *BRAWAKI GHULAM v. DEO RAJ KUARI* I, L. R. 5 All. 542

See PERIASAMI v. PERIASAMI.

L. R. 51 A. 81  
I, L. R. 1 Mad. 312

Reversing decision of the High Court in *PERIASAMI alias KOTTAI TEVAR v. SALUKAI TEVAR alias OYYA TEVAR*.

9. ——— Raj estate—Evidence proving title by inheritance to raj estates—Estate held as separate under the Hindu law—Widow's interest therein—Act XI of 1857 (Offences against the State)

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

ing the life of the widow, who outlived him. The separation of the estate, as held by the late Rajah, negatived both the confiscation and limitation. The claimant, to prove his title, relied upon a pedigree not stated in any document produced that had existed in the family before this suit. The genealogy on which he claimed was, however, identical with one which his father had more than once asserted, alleging title to two mouzahs of the raj estate. The Rajah called upon to answer in proceedings at settlement had not given a direct denial to the alleged relationship. On the contention

evidence was insubstantial:—*Held*, that the evidence, taken altogether, oral and documentary, had been sufficient to prove that the appellant was related to the deceased Rajah as he had claimed to be, and

KISHORE PRASAD, I. L. R. 17 All. 456  
L. R. 22 I. A. 139

10. ——— Succession to raj—Grant by Government—Beng. Reg. XI of 1793—Rights of junior members of family. The land sued for was originally an impartible raj, and by family custom Rajah by Govt. settlement

on A, a Hindu A in his lifetime, by his will and otherwise, showed that he wanted the estate to descend to a single heir, and shortly before his death he made B, the son of his eldest grandson,

co-heirs with A under the ordinary law of inheritance, and contend that the will was a forgery; that A had no power to make it; and that the special law of inheritance ceased when the first proprietor was expelled. It was found from

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

tion as to whether A had by law power to make a

SANEZ v. RAJENDAR PERTAR SANEZ  
9 W. R. P. C. 15; 12 Moo. I. A. 1

11. ——— Power of Rajah holding impartible raj—Relinquishment—Position of son on relinquishment There is no difference between the position of a Rajah holding an impartible raj and that of an ordinary zamindar in respect of his power to relinquish the property in favour of his next legal heir. Such a relinquishment is not forbidden by the Hindu law. Where the effect of such a relinquishment is to give the property entirely into the hands of the son by the Rajah's death.

14 W. R. 187

12. ——— Impartible raj—Succession in joint family to ancestral impartible estate—Right of nearest male collateral—Exclusion of widow where the family is joint, and the estate not separate—Custom—Right of females to inherit. Impartible ancestral estate is not, merely by reason of its being impartible, the separate estate of the single member of the undivided family, upon whom it devolves, so long as the family continues joint. *Chintaman Singh v. Nowlukho Konicari*, I. L. R. 1 Cal. 158; L. R. 2 I. A. 263, referred to and followed. A female cannot inherit impartible ancestral estate, belonging to a joint family, under the Mitakshara, when there are any male members of the family who are qualified to succeed as heirs.

and the family was undivided, and where no special custom existed, modifying the Mitakshara law of succession:—*Held*, that the nearest male collateral relation of the last Rajah, who died without male issue, was entitled to succeed in preference to the Rajah's widow. This relation, viz., a brother of the late Rajah's deceased father, at one time received an allowance for maintenance out of the family estate. What amounted to an attachment of the same estate as a subsistent right of maintenance

originated in the partition of a more ancient one,

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

with others out of which minor estates were formed. If in the latter there had been descents to widows, no inference hence, to support the widow's claim to inherit in this family, could be drawn. Such minor estates might have been separate (which estates

similar family custom in another. *RUF SINGH v. BAJRAT*. I. L. R. 7 All. 1; L. R. 11 I. A. 149

13. ——— Succession to raj—Tributary Mebals of Cuttack. *Beng. Reg. XI of 1816, s. 3*. According to the Pachea Sawal, a brother of the Rajah of Attgurrh, one of the tributary mebals of Cuttack, has a preferential title over the Rajah's son by a phoolbeahi wife to succeed to the raj. The effect of a devise of his estates by a Rajah would be to alter the course of succession, and, therefore, contrary to s. 3, Regulation XI of 1816. *NITTANUND MUGOIRAJ v. SREEKURU JAGANNATH BEWARTAH PATNAIGE*. 3 W. R. 118

14. ——— Mode of succession to impartible estate—Priority of marriage—Priority of birth—Custom—Evidence. By the general Hindu law, where a subject of inheritance is from its nature

the contrary, to be preferred as heir to a subsequently born son of the second wife. *RAMA LAKSHMI ANMAL v. SIVANANANTHA PERUMAL SETHURAYER*. 12 B. L. R. 398; 17 W. R. 553  
14 Moo. I. A. 570

Affirming decision of High Court in *SIVANANANTHA PERUMAL SETHURAYER v. MUTTU RAVALINGA SETHURAYER*. 3 Mad. 75

15. ——— Mode of succes-

16. ——— Undivided impartible ancestral property. Plaintiff, claiming title by succession both as heir by the general Hindu law and according to family custom, sued to recover the Totavalli estate in the zillah of Rajahmundry. Defendant, the widow of the person last in the en-



**HINDU LAW—INHERITANCE—contd.****12. IMPARTIBLE PROPERTY—contd.**

joymont of the estate, pleaded that the plaintiff was not of the royal stock, but merely a dependent of the family; that he had an elder brother alive,

ant's husband had recovered possession of the estate from the widow of the prior possessor, J D. The lower Court found that the plaintiff was an

ant's husband had recovered possession of the estate from the widow of the prior possessor, J D. The lower Court found that the plaintiff was an

law regulating the devolution of indivisible ancestral property, which had vested in the last possessor. That the objection to the plaintiff's title as heir by the general law was thus reduced to the questions: Whether his alleged kinship to the last possessor was proved; and if so, whether, according to the ordinary course of legal succession to such property, he, or the defendant, as the widow of the last possessor, was heir to the estate. That upon the first question plaintiff had proved his kinship to the last possessor, and upon the second that plaintiff was heir to the estate, in preference to the defendant, the widow of the last possessor. The sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who, in the way pointed out, are entitled to unity of possession and community of interest, according to the law of partition, are co-heirs, irrespective of their degrees of agnate relationship to each other, and that, on the death of one of them leaving a widow and no near sapindas in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor, to the exclusion of the widow. But when her husband was the last survivor, the widow's position as heir, relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self and separately acquired property. *YENUMULA GAVURIDEVANNA GARU v. YENUMULA RASANDORA GARU* 8 Mad. 93

17. ——— **Impartible zamindari—Personal property of zamindar** The rule of impartibility applicable to zamindars does not extend to personal property of a zamindar left at his death,

**HINDU LAW—INHERITANCE—contd.****12. IMPARTIBLE PROPERTY—contd.**

and such property is divisible amongst his sons after his death. *RAJESWARA GAJAPUTTY NARAINA DEO MAHARAJALUNGARU v. VINAYAPATAH RUDRA GUJAPUTTY NARAINA DEO MAHARAJALUNGARU* 5 Mad. 31

18. ——— **Separate estate.** The mere impartibility of an estate is not sufficient to make the succession to it follow the course of succession of separate estate. *Shivagunga case*, 9 Moo. I. A. 31; 23 W. R. P. C. 31, explained. *YANUMULA VENKAYAMAM v. YANUMULA BOODHA VANKONDORA* 13 W. R. P. C. 21 13 Moo. I. A. 333

19. ——— **Impartible zamindari, succession to—Custom.** The succession to a zamindari which is admitted to be in the nature of a principality, impartible and capable of enjoyment by only one member of the family at a time, is governed (in the absence of a special custom of descent) by the general Hindu law prevalent in the part of India in which the zamindari is situated, with such qualifications only as flow from the impartible character of the subject. The succession to such a zamindari may be governed by a particular or customary canon of descent. The course of succession according to the Hindu law of the

which part is the common property of a joint Hindu family and part the separate acquisition of a deceased brother, his widow (in default of male issue) succeeds to his separate estate. *KATTAMA NACHAR v. RAJAH OF SHIVAGUNGA* 2 W. R. P. C. 31; 9 Moo. I. A. 539

20. ——— **Impartibility of zamindari shown by evidence—Grant by sanad in**

What was said in the judgment in the *Hansapur case*, 12 Moo. I. A. 1, was applicable here. The estate continued to be impartible, and the rule of succession to it was not altered. It descended by

**HINDU LAW—INHERITANCE—contd.****12. IMPARTIBLE PROPERTY—contd.**

the rule of primogeniture. *SRIMANTU RAJA YARLAQADDU MALLIKARJUNA v. SRIMANTU RAJA YARLAQADDU DURGA*. I. L. R. 13 Mad. 408  
L. R. 17 I. A. 134

**21.** *Zamindari formerly held under raj—Zamindari originally existing before 175—Grant by Government in 1802, and again in 1835, of the same zamindari—Absence of intention to grant it as impartible—Sanad-i-milkiyat-i-istimrari.* Although it might be taken that the Mirangi zamindari was formerly held on a military tenure under a raj, and that it continued to be held on the same tenure after it had been incorporated in another zamindari, and subsequently when, by conquest, it became part of the Vizianagram mindan, which was dismembered in 1795, and even if impartibility was the rule then applicable to the estate, yet the subsequent dealings with

which was in no way distinguishable from that of an ordinary zamindari assessed to the revenue, all led to the conclusion that the zamindari was now partible. It was clear from the kabuhut, or instrument of assent to the sanad-i-milkiyat-i-istimrari of 25th April 1804, that the latter was in the ordinary form of such grants, and there was no ground for inferring that the Government intended to create an

above mentioned. The case of the *Hansapur Zamindari*, 12 Moo I. A. 1, situate in Behar, as

I. L. R. 14 Mad. 237

*ZAMINDAR OF MARANGI v. SATRUCHARLA RAMABHADRA RAJU*. I. L. R. 18 I. A. 45

Affirming the decision of the High Court in *JAGANNATHA v. RAMABHADRA*

I. L. R. 11 Mad. 380

**22.** *Impartible zamindari—Obstructed inheritance—Interest of holders of—Inheritance by daughter's sons.* In a suit to recover possession of the impartible zamindari of

by the father of the present defendant, who was the son of her elder sister (deceased), against the pre-

**HINDU LAW—INHERITANCE—contd.****12. IMPARTIBLE PROPERTY—contd.**

sented plaintiff and the daughter of the late Rani for possession of the zamindari to which he claimed to be entitled by right of inheritance. A decree was passed for the plaintiff in that suit, under which he obtained possession of the zamindari and retained it until his death in 1833, when he was succeeded by the present defendant. The plaintiff now sued

plaintiff had a right of survivorship, but that he had succeeded to the estate as full owner, and had therefore become a fresh stock of descent; (ii) that accordingly nearness or remoteness of relationship to the istimrar zamindar was immaterial, and the defendant's right of succession was not affected by the fact that the whole class of the istimrar zamindar's daughter's sons had not been exhausted. *METTUVADUGANATHA TEVAR v. PERIASANI*  
I. L. R. 16 Mad. 11

**23.** *Adoption by a zamindar in conjunction with one of his two wives—Right to succeed to adoptive son.* The holder of the impartible zamindari of Uthumalai, who married two wives, subsequently made an adoption in conjunction with his junior wife. The zamindar died in August 1891, and the adopted son died an infant without issue in December of the same year. *Held*, that the junior wife, having taken part in the adoption, was entitled to the impartible estate in preference to her co-wife. *ANNAPURNI NACHIAH v. COLLECTOR OF TINNEVELLY*. I. L. R. 18 Mad. 277

**24.** *Succession to impartible zamindari—Survivorship.* Heritage to an impartible zamindari is to be traced according to the ordinary rules of the Hindu law of inheritance unless some further family custom exists, beyond the custom of impartibility, although the estate

of the last owner of the originally unobstructed estate, though this did not comply with a custom of the

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

joyment of the estate, pleaded that the plaintiff was not of the royal stock, but merely a dependent of the family; that he had an elder brother alive, and therefore could not sue, and that, in accordance with her husband's instructions, as contained in his will, she was about to adopt a son. She also alleged that plaintiff should have become a party to an appeal pending before the Privy Council from the decree in suit No. 3 of 1860, under which the defendant's husband had recovered possession of the estate from the widow of the prior possessor, *J. D.* The lower Court found that the plaintiff was an undivided member of the family in which the right to the estate was vested, and a descendant of the defendant's late husband in the 12th degree through

an ancestor now become parties *et cetera*, in accordance with the judgment of the Privy Council, that the estate was acquired not by *J. D.*, but by his father, *B. D.*, the common ancestor, through whom plaintiff traced his kinship, and has ever since enjoyed as ancestral property derived from the said *B. D.* That accordingly the question of succession raised in this suit, similarly to that in the appeal before the Privy Council, was determinable by the law regulating the devolution of indivisible ancestral property, which had vested in the last possessor. That the objection to the plaintiff's title as heir by the general law was thus reduced to the questions: Whether his alleged kinship to the last possessor was proved; and if so, whether, according to the

possessor, and upon the second that plaintiff was heir to the estate, in preference to the defendant, the widow of the last possessor. The sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who, in the way pointed out, are entitled to unity of possession and community of interest, according to the law of partition, are co-heirs, irrespective of their degrees of agnate relationship to each other, and that, on the death of one of them leaving a widow and no near sapindas in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor, to the exclusion of the widow. But when her husband was the last survivor, the widow's position as heir, relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self and separately acquired property. *YENUMULA GAYURIDEVAMMA GARU v. YENUMULA RANGENDORA GARU* 8 Mad. 93

17. — Impartible zamindari—*Personal property of zamindar.* The rule of impartibility applicable to zamindars does not extend to personal property of a zamindar left at his death,

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

and such property is divisible amongst his sons after his death. *RAJESWARA GAJAPUTTY NARAINA DEO MAHARAJALUNGARU v. VIRAPATAPAH RUDRA GAJAPUTTY NARAINA DEO MAHARAJALUNGARU* 5 Mad. 31

18. — *Separate estate.*  
*YANUMULA VENKAYAMAH v. YANUMULA BOOCHIA VANKONDORA* 13 W. R. P. C. 21  
13 Moo. I. A. 333

19. — *Impartible zamindari, succession to—Custom.* The succession to a zamindari which is admitted to be in the nature of a principality, impartible and capable of enjoyment by only one member of the family at a time, is governed (in the absence of a special custom

to such a zamindari may be governed by a parti-

which part is the common property of a joint Hindu family and part the separate acquisition of a deceased brother, his widow (in default of male issue) succeeds to his separate estate. *KATTAMA NACHIAH v. RAJAH OF SHIVAGANGA* 2 W. R. P. C. 31; 9 Moo. I. A. 539

20. — *Impartibility of zamindari shown by evidence—Grant by sanad in 1302 of zamindari without change of rule of succession by primogeniture—Mad. Reg. XXV of 1302.* The question whether an estate is impartible and

What was said in the judgment in the *Hansapur* case, 13 Moo. I. A. 1, was applicable here. The estate continued to be impartible, and the rule of succession to it was not altered. It descended by

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

the rule of primogeniture. *SHIMANTU RAJA YARLAGADDU MALLIKARJUNA v. SHIMANTU RAJA YARLAGADDU DURGA*. I. L. R. 13 Mad. 408  
I. L. R. 17 I. A. 134

21. ———— *Zamindari formerly held under raj—Zamindari originally existing before 175—Grant by Government in 1802, and again in 1835, of the same zamindari—Absence of intention to grant it as impartible—Sanad-i-milkiyat-i-istimrari*. Although it might be taken that the Mirangi zamindari was formerly held on a military tenure under a raj, and that it continued to be held on the same tenure after it had been incorporated in another zamindari, and subsequently when, by conquest, it became part of the Vizianagram zamindari, which was dismembered in 1795, and even if impartibility was the rule then applicable to the estate, yet the subsequent dealings with

the conclusion that the zamindari was now partible. It was clear from the kashulat, or instrument of assent to the sanad-i-milkiyat-i-istimrari of 25th April 1804, that the latter was in the ordinary form of such grants, and there was no ground for inferring that the Government intended to create an impartible zamindari, or to restore an old one with impartibility attached. In 1835 there was, for a second time, such a dealing with the estate by the Government, in granting it again by sanad, as showed that there was no intention to the effect above mentioned. The case of the *Hansapur Zamindari*, 12 Moo I. A. 1, situate in Behar, as to which their Lordships in 1867 held that it must be taken to retain its previous old quality of impartibility, after having been granted in 1790, was distinguished. *SATRUCHARLA JAGANNADRA RAJU v. SATRUCHARLA RAMABHADRA RAJU*

I. L. R. 14 Mad. 237

*ZAMINDAR OF MIRANGI v. SATRUCHARLA RAMABHADRA RAJU*. I. L. R. 18 I. A. 46

Affirming the decision of the High Court in *JAGANNATHA v. RAMABHADRA*

I. L. R. 11 Mad. 380

22. ———— *Impartible zamindari—Obstructed inheritance—Interest of holders of—Inheritance by daughter's sons*. In a suit to

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

sent plaintiff and the daughter of the late Rani for possession of the zamindari to which he claimed to be entitled by right of inheritance. A decree was passed for the plaintiff in that suit, under which he obtained possession of the zamindari and retained it until his death in 1883, when he was succeeded by the present defendant. The plaintiff now sued as above, claiming that the right to the zamindari had devolved on him, and not on the defendant, on the death of the plaintiff in the former suit. *Held*, (i) that the defendant's father had not succeeded to a qualified heritage, nor to a mere right of management of joint family property in which the plaintiff had a right of survivorship, but that he had succeeded to the estate as full owner, and had therefore become a fresh stock of descent; (ii) that accordingly nearness or remoteness of relationship to the istimrar zamindar was immaterial, and the defendant's right of succession was not affected by the fact that the whole class of the istimrar zamindar's daughter's sons had not been exhausted. *MUTTUVAIDUGANATHA TETAR v. PERIASAMI*

I. L. R. 18 Mad. 11

23. ———— *Adoption by a*

24. ———— *Succession to impartible zamindari—Survivorship*. Heritage to an impartible zamindari is to be traced according to the ordinary rules of the Hindu law of inheritance unless some further family custom exists, beyond the custom of impartibility, although the estate

daughters her surviving. A suit was then brought by the father of the present defendant, who was the son of her elder sister (deceased), against the pre-

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

Inherited alone the impartible zamindari. On her death, the elder daughter's son, in litigation ending in 1881, made good his title to the impartible zamindari, being the descendant in the elder line. *Held*, that this son of the elder daughter became, as the last male owner, the stock from which descent had now to be traced, and that the ancestor was no longer that stock. And *held*, that the son of this last male owner had a title to the zamindari on his father's death in consequence of the full and complete ownership of the latter, who had himself become a fresh root of title. This decision disposed of the only question that was argued on this appeal. But the decision of the Courts below that the plaintiff could not claim the inheritance in virtue of survivorship was also affirmed. The judgment below, on this part of the case, was based on this, that no family co-parcenary had existed to give rise to survivorship, as the sons of daughters could not form a family co-parcenary, which could only consist of the descendants of a paternal ancestor. *MUTTUVAIDUGANADHA TEVAR v. PERIASAMI TEVAR* . . . I. L. R. 19 Mad. 461  
L. R. 23 I. A. 128

25. . . . . Impartible estate—*Effect of,*

the right of another member of the joint family to succeed to it upon his death, in preference to those who would be his heirs if the property were separate. *DOORGA PRASAD SINGH v. DOORGA KOWARI* I. L. R. 4 Cal. 180 : 3 C. L. R. 31  
L. R. 5 I. A. 148

s.c. in the High Court. *DOORGA PRASAD v. DOORGA KOWAREE* . . . 20 W. R. 154

## 26. . . . . Impartible estate

—*Primogeniture—Custom.* The principles on which is founded the judgment in *Ramalakshmi Ammal v. Sivonantha Perumal Ammal*, 14 Moo. I. A. 570, as to the succession to an impartible inheritance, apply with equal force, whether the first-born son is born of a first married wife or of a wife afterwards married. The text of Manu, Ch. IX, v. 125, distinctly shows that among sons born of wives equal in their class, and without any other distinction, there can be no seniority in right of the mother. In v. 122 of the same chapter the words "but of a lower class" added by the gloss of Cullaena Bhatta are to be read as correctly inserted in the text. Two wives of a Patayagar of an impartible *poliem* having died before his marriage with a third and fourth wife, it was contended

under the rule above referred to, and that it was accordingly immaterial to consider whether or not

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

this third wife was in the position of a first married wife. What might be the effect of one wife being "of a lower class" than another was not in question. *PEDDA RAMAPPA v. BANAJARI SESHAMMA*

I. L. R. 2 Mad. 286 : 6 C. L. R. 315  
L. R. 8 I. A. 1

## 27. . . . . Mitakshara law

—*Exclusion of females from succession—Impartible joint ancestral property—Custom.* A female cannot inherit an impartible ancestral estate belonging to a joint Hindu family governed by the Mitakshara, where there are any male members of the family who are qualified to succeed as heirs. This is a rule of law, and not dependent on custom. A custom modifying the law must be a custom to admit females, not a custom to exclude them. *HIRANATH KOER v. RAM NARAIN SINGH*

8 B. L. R. 274 : 17 W. R. 318

Upholding on appeal s.c. . . 15 W. R. 375

But see *DURGA PRASAD SINGH v. DURGA KOWARI* . . . 8 B. L. R. 308 note : 13 W. R. 10

where to a ghatwali estate which descended from the father to the eldest son, the younger sons having allowances made to them, a widow was held entitled to succeed as heir to her son

28. . . . . Devolution of impartible property—*Right of nearest co-parcener of senior*

*of the estate. Original incidents of im-*

first he left no issue : by the second he had issue M, R and P ; by the third he had issue V. Upon the death of the zamindar, he was succeeded, first by M, then by M's son, and then by R, who held the estate for many years. When R died, the grandson son claimed as the nearest class of was entitled onged to the 4 v. Venkata- 1 Mad. 250, ka Telavar v. 7 Mad. 316, as of proof of ad been held,

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

holding a precarious possession of the *palayam* until 1783, when he supported the East India Company. In 1785, he was replaced in possession, as a "renter," but upon failure to pay the *palayam* was placed under the control of a manager until the country was restored to the Nawab. In 1790, the East India Company again assumed control of the country, and the *palayagar* again held possession of the estate as a "renter" under the Company. In 1792, the *palayagar* died, he being the same *palayagar* who had been expelled in 1765. He was succeeded by his son, who died in 1801, the year in which the Company took possession of the country, leaving a younger brother of the half-blood him surviving. The Government, in 1802, declared its intention of appointing the half-brother to succeed to the *palayam* on a *zamindari* tenure, and subsequently directed that the half-brother should be instated in the *palayam* as soon as a *sanad* of investiture could be prepared. The question of restoration was however kept

reiterating its intention to restore the *palayagar* to the management of his *palayam* under a new arrangement, proposed to grant him a *joghur* bringing in an average of thirty-three per cent. of the gross collections, and subject to a nominal rental assessment. This proposal was consented to by the *palayagar*; but the arrangement was again varied, the *palayagar* receiving ten per cent. of the gross collections. In 1817, instructions were issued to the effect that villages should be given over to the *palayagar* of a value equal to the average gross amount of his then income, from whatever source derived. It was also declared that the villages were to be given on *zamindari* tenure. The approval of the Government having been obtained, a conditional *sanad* was granted in December 1817, and the half-brother of the last *palayagar* was put in possession. The first defendant, in whose possession the *zamindari* was at the date of suit, was a descendant from the *palayagar* last referred to, tracing his descent from the family of the grantee of the *sanad*, by his second wife. Plaintiff and second defendants were descendants from the family of the grantee by his third wife. Plaintiff now sued for partition, when the plea was raised that the *zamindari* had been from its origin an impartible estate, and that the *sanad* granted in 1817 had not altered the incident of impartibility which had always attached to it; *Held*, that the estate was impartible. KACHI YUVA RANGAPPA KALAKKA TROLA UDAYAR v KACHI KALYANA RANGAPPA KALAKKA TROLA UDAYAR (1901) I. L. R. 24 Mad. 562

29. *Mitakhara*

family—Succession—Impartible estate—Survivorship—Civil Procedure Code (Act XII of 1882), s. 231—Execution of decree—Representative of deceased

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

person—Assets. The rule of succession to an impartible estate, in the absence of a *sanad*, is governed by the law of the country, and not by the law of the place of the estate. *State of Madras v. The Collector of Madras*, 11 M. L. J. 100, 11 M. L. J. 101, 11 M. L. J. 102, 11 M. L. J. 103, 11 M. L. J. 104, 11 M. L. J. 105, 11 M. L. J. 106, 11 M. L. J. 107, 11 M. L. J. 108, 11 M. L. J. 109, 11 M. L. J. 110, 11 M. L. J. 111, 11 M. L. J. 112, 11 M. L. J. 113, 11 M. L. J. 114, 11 M. L. J. 115, 11 M. L. J. 116, 11 M. L. J. 117, 11 M. L. J. 118, 11 M. L. J. 119, 11 M. L. J. 120, 11 M. L. J. 121, 11 M. L. J. 122, 11 M. L. J. 123, 11 M. L. J. 124, 11 M. L. J. 125, 11 M. L. J. 126, 11 M. L. J. 127, 11 M. L. J. 128, 11 M. L. J. 129, 11 M. L. J. 130, 11 M. L. J. 131, 11 M. L. J. 132, 11 M. L. J. 133, 11 M. L. J. 134, 11 M. L. J. 135, 11 M. L. J. 136, 11 M. L. J. 137, 11 M. L. J. 138, 11 M. L. J. 139, 11 M. L. J. 140, 11 M. L. J. 141, 11 M. L. J. 142, 11 M. L. J. 143, 11 M. L. J. 144, 11 M. L. 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HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

palayam. The Judicial Committee will not interfere in a question as to the amount of maintenance, which is matter to be dealt with by the Courts in India. *KACHI KALITANA RANGAPPA KALAKKA THOLA UDAYAR v. KACHI YUYA RENGAPPA KALAKKA THOLA UDAYAR* (1905)

I. L. R. 28 Mad. 506

L. R. 32 I. A. 261

§ 31. — *Impartible estate, succession to—Liability of son for debts of father—Civil Procedure Code, Act XIV of 1882, s. 34—Impartible estates does not pass by survivorship but as separate property and constitute assets within the meaning of s. 34, Civil Procedure Code—Custom of non alienability cannot be set up in execution proceedings—Mortgage decree not impeachable in execution proceedings—Attachment, effect of—Does not create a charge. A decree against a father can, when the father dies before the decree is fully executed, be executed against the son as representative by attaching any separate property of the father inherited by the son. The joint family property in*

any joint interest in it. Such estate devolves on the son not by survivorship as joint property but as the separate property of the father. Where such property devolves on a son from his father and the son as representative is proceeded against under s. 234, Civil Procedure Code of 1882, in execution of decrees obtained against his father, the inherited estate will be assets for the purposes of s. 234 of the Civil Procedure Code of 1882. *Nachiappa Chettiar v. Chinnayarasami Naicker*, I. L. R. 29 Mad. 458, not followed. *Raja of Kalahasti v. Acharya*, I. L. R. 39 Mad. 451, approved. Where an impartible estate in the hands of a son is attached in execution of decrees obtained against his father, it is not open to the son in execution to take objection on the ground that such estate is by custom inalienable. Such objection can only be taken by way of a separate suit. Such a custom does not necessarily imply the existence of coparcenary rights which will make the property joint family property. *Ramasami Naick v. Ramasami Chetti*, I. L. R. 30 Mad. 55, referred to. A decree for sale under the Transfer of Property Act cannot be impeached in execution proceedings but only by separate suit. *Kuriyal v. Mayan*, I. L. R. 7 Mad. 555, dissented from. Attachment of property in execution does not give any title and confers on the attachment creditor no better right

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I. L. R. 32 Mad. 429

32. — *Impartible pottam—Evidence of impartibility—Pannai lands attached to*

HINDU LAW—INHERITANCE—*contd.*12. IMPARTIBLE PROPERTY—*contd.*

*the pottam—Maintenance and marriage expenses of junior member of the family of poligar. The step-brother of the holder of a pottam in the Madura district, of which the gross income was about Rs15,000 a year, sued him for a partition of the estate and in the alternative for maintenance. It*

enquiries were made of members of the zamindar's family and other persons connected with the zamindari as to the nature of the estate, and their recorded answers showed that they understood the estate to be impartible, and that it descended to a single heir. *Held*, (i) that the pottam was impartible; (ii) that the plaintiff was entitled to decree for a monthly payment to him of Rs60 for his maintenance. The plaintiff's claim extended to certain pannai lands within the limits of the zamindari; some of which had been handed down from zamindar to zamindar since 1831, others having been purchased by the plaintiff's father. The High Court found that they had been recognized and dealt with as part and parcel of the zamindari. *Held*, that the pannai lands were impartible, and the plaintiff was not entitled to a share in them or in the cattle, etc., used for cultivating them. The plaintiff further claimed a sum of Rs4,000, the amount of a loan alleged to have been contracted by him for the purposes of his marriage. It appeared that the cost of the marriage had been defrayed by the bride's brother. *Held*, also, that the

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I. L. R. 16 Mad. 54

33. — *Impartible po*

*passes by survivorship. When on the death of a polliagar, the right of exclusive possession passes*

*J. A. 553, proceeds upon grounds which are in conflict with the rulings of the same tribunal in Madras cases and with the law of Southern India and Benares respecting the impartibility of property of a joint Hindu family. NARAGANTI ACHAR-MAGARU v. VENKATACHALAPATI NAYANIVARU*

I. L. R. 4 Mad. 260

HINDU LAW—INHERITANCE—*contd.*

## 13. JOINT PROPERTY AND SURVIVORSHIP.

1. *Joint property—Succession per capita and per stirpes.* Where property is acquired while a Hindu family is joint according to the Bengal law, the inheritance goes *per capita* and not *per stirpes*. *KANGUTTY DOSI v. NUNDO COOMAR DOSI* 2 W. R. 11

*RUTUN KRISTO BOSOO v. BRUGOBAN CHUNDER BOSOO* 18 W. R. 32

2. *Mitakshara law—Joint and self-acquired property.* A Hindu subject to the Mitakshara dying possessed of a share in joint family property and also of separately acquired property, the two will not necessarily devolve on the same heir; but they may either descend to different persons, or, if descending to the same persons, may descend in a different way and with different consequences. *PITUM KOONWAR alias MUNAR BISSIE v. JOY KISHEN DASS* 0 W. R. 101

3. *Separate enjoyment of self-acquired property—Succession to self.* If a Hindu, his property, by the law current,

but on his death without male issue such property,

partition shows that, as to the separately acquired property of one member of a united family, the other members of that family have neither community of interest nor unity of possession. The foundation therefore of a right to take such property by survivorship fails. *KATTAMA NAUCHAN v. RAJAH OF SHIVAGURUA*

2 W. R. P. C. 31 9 Moo. I. A. 539

*SHIB NARAIN BOSE v. RAM NIDHEE BOSE* 9 W. R. 87

5. *Mitakshara law.* The principle of survivorship under Mitakshara law is limited to two descriptions of property,

1. I. A. 11, 11 Case 55

6. *Mitakshara law—Succession.* When, in an undivided Hindu

HINDU LAW—INHERITANCE—*contd.*13. JOINT PROPERTY AND SURVIVORSHIP—*contd.*

family living under the Mitakshara law, a brother dies without having issue, but leaving brothers and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his nephews and brothers.

father or grandfather would have taken had he survived the period of distribution. *DEBI PARSHAD v. THAKUR DIAL* I. L. R. 1 All. 105

7. *Property, on-cestro and self-acquired—Joint tenancy.* When property is held in co-partnership, the share of an undivided co-partner who leaves no issue goes, according to Hindu law, to his undivided co-partners, whether the property is ancestral or acquired by the co-partners as joint tenants. *PADHABAI v. NANARAV* I. L. R. 3 Bom. 151

8. *Inheritance of illegitimate son among Sudras—Co-partners.* A Hindu of the Sudra caste died in 1850 leaving two widows, B and S, a son Mahadu, and daughter Durga. The children were not only of B and S and

the quarters they lived separately, and Sadu was allowed by Mahadu a portion of the family property

Bench (WESTROFF, C.J., KENDALL and PINNEY, JJ.) that after the death of their father, Mahadu and Sadu succeeded as co-partners to the whole property, subject to the maintenance of B, S, and Darya, if she were then unmarried, and in that event also to her reasonable marriage expenses,—Sadu, however, as an illegitimate son, taking only half a share. *Held*, also, that inequality of shares did not prevent co-partnership and succession by survivorship, and that, as Mahadu and Sadu were co-partners from the death of their father until the death of Mahadu, the usual result of co-partnership followed on the occurrence of the latter event, viz., the surviving co-partner (i.e., the plaintiff Sadu) took the whole property. *Rahi v. Goriado valia Teja*, I. L. R. 1 Bom. 57, followed. *SADU v. BAIZA* I. L. R. 4 Bom. 37

9. *Mitakshara law—Sudras—Illegitimate son—Impartible property.* Under the Mitakshara, among Sudras, where a

and the illegitimate son, having survived the legitimate, was held entitled by survivorship to succeed



**HINDU LAW—INHERITANCE—contd.****13. JOINT PROPERTY AND SURVIVORSHIP—contd.**

to the family estate, which was impartible and appertained to a raj, on the death of his brother without male issue. *Sadu v. Baza*, I. L. R. 4 Bom. 47, referred to and approved. *Jogendra Bhupati Hurochundra Maharatra v. Nityanand Man Singh*, I. L. R. 18 Calc. 151  
I. L. R. 17 I. A. 128

**10. ———— Inheritance—**  
*Daughter's sons, nature of estate taken by—Inheritance treated as joint property.* The estate of V, a Hindu, having descended to D and R, sons of the daughter of V, was held by them as joint tenants. D having died, R by will devised the estate to the plaintiff. Held, that, although the shares which devolve on the two sons of a daughter may not come to them as co-parcenary property, yet, inasmuch as D and R had treated the estate as co-parcenary property, the survivor, R, was competent to dispose of the estate by will. *Gopalasami v. Chinrasami*, I. L. R. 7 Mad. 458

**11. ———— Co-parceners—**  
*Liability of property for debts.* According to the rulings of the High Courts of Madras and Bombay, the undivided interest of a co-parcener is not liable for his separate simple debts after his death, but lapses to the survivors on his death. *Kotta Ramasami Chetti v. Bangari Seshama Nayyanvaru*, I. L. R. 3 Mad. 145

**12. ———— Joint family estate, succession to—Title of member by survivorship—Effect of award and record at settlement of widow's estate for life—Land Revenue Act, C P (XVIII of 1881), s. 87.** Where a Hindu and his widow had successively held the estate in suit as joint family estate in co-parcenary with the appellant or his predecessor—Held, that the appellant succeeded at the widow's death. Though the widow was recorded under an award by the Collector in the settlement records as owner of an 8-anna share of the estate for her lifetime, that did not operate a separation in title or alter its devolution. S 87 of the Land Revenue Act, Central Provinces (XVIII of 1881) did not affect the appellant's claim, for the award related solely to the widow's interest. *Rewa Prasad Sukal v. Deo Dutt Ram Sukal*, I. L. R. 27 Calc. 515  
I. L. R. 27 I. A. 38

**13. ———— Obstructed heritage—Succession per capita—Succession on extinction of a divided branch of a family.** On the death, without issue, of a Hindu who has divided from the rest of his family, his property passed in succession to his widow and mother. On the death of the latter, the nearest surviving reversioners were the plaintiff's husband and the first defendant's father, both since deceased, and their first cousin. The plaintiff now claimed a one-third share of the property abovementioned as the heiress of her husband, who left no issue. It appeared that the plaintiff's husband and his co-reversioners

**HINDU LAW—INHERITANCE—contd.****13 JOINT PROPERTY AND SURVIVORSHIP—contd.**

were divided. Held, that the plaintiff was entitled to recover. *Semble*: That she would have been entitled to recover even if her husband had not been divided from his co-reversioners. *Saminadra Pillai v. Thangathanni*, I. L. R. 19 Mad. 70

**14. ———— Obstructed inheritance—Inheritance passing to daughter's son—Presumption of joint property.** The daughter's sons of a deceased Hindu take the property of their maternal grandfather as an inheritance liable to obstruction, and consequently take it without rights of survivorship inter se. Where property enjoyed in common by persons capable of forming a joint Hindu family was in its origin separate property, there is no presumption that such property has subsequently become joint property. *Muttayan Chetti v. Sivagiri Zamindar*, I. L. R. 3 Mad. 370; and *Sivaganga Zamindar v. Lakshmana*, I. L. R. 9 Mad. 188, doubted. *Chelikani Venkataramanayamma Garu v. Appa Rau Bahadur Garu*, I. L. R. 20 Mad. 207

**15. ———— Gift to donees jointly—Death of donee—Survivorship—Joint tenancy—Tenancy in common.** Where property is given jointly to two

survivorship. *Bai Diwali v. Patel Becharadas* (1902), I. L. R. 28 Bom. 445

**16. ———— Grandsons—Two grandsons through the same daughter take estate as joint ancestral estate.** Held, that, under the *Mitakshara* law, the two sons of a Hindu's only daughter succeed on their mother's death to his estate jointly, with benefit of survivorship, as being joint ancestral estate. *Jasoda Koor v. Sheo Pershad Singh* (1859), I. L. R. 17 Calc. 33; and *Saminadra Pillai v. Thangathanni* (1895), I. L. R. 19 Mad. 70, overruled. *Venkayamma Garu v. Venkataramanayamma* (1902)

I. L. R. 25 Mad. 676  
S.C. I. R. 28 I. A. 156  
7 C. W. N. 1

**14. OCCUPANCY RIGHTS.**

**1. ———— Remote heirs—Right of occupancy.** The strict Hindu law of inheritance does not recognize the right of occupancy right is not to of an occupancy holding.

**HINDU LAW—INHERITANCE—contd.****14. OCCUPANCY RIGHTS—contd.**

possession, cannot on the death of the raiyat claim the holding **BOODHO RAY v. LAL REFREF**

2 N. W. 120

**JATTE RAM SURMAH v. MUNGLU SURMAH**

8 W. R. 60

2. *Remote heirs.*—*Occupancy raiyat.* Remote heirs are not allowed to succeed to a right of occupancy. Sons, or immediate heirs, residing with the raiyat in the village, succeed on his death. **PER KOOER v. UPPER BALEE SING**

2 N. W. 80

**15. RELIGIOUS PERSONS (ASCETICS, GURUS, MOHUNTS, ETC.).**

1. *Ascetics—Succession to property of ascetics—Right of occupancy.* Although the High Court has, under the Hindu law, admitted the right of a disciple to succeed to the effects of an ascetic, it may be a question whether the Court does

acquired. But, however this may be, a tenant-right of occupancy is on a different footing from property which is exclusively the estate of a deceased ascetic, and the principles which govern the hereditary right of succession to a tenant-right of occupancy are such as an ascetic, if he conform to the spirit of his religion, cannot carry out. **SOOREJ KUMAR PERSHAD v. MAHADEO DUTT**

5 N. W. 50

2. *Succession to the property of ascetics.* The principle of succession upon which one member of an order of ascetics succeeds to another is based entirely upon fellowship and personal association with that other, and a stranger, though of the same order, is excluded. **KHUGENDER NARAIN CHOWDHRY v. SHARFOUR OOHORENATH**

I. L. R. 4 Cal. 543

3. *Property left by ascetic—Rules relating to ascetic persons of the Sudra caste.* It being clearly implied by all the authorities that a Sudra cannot enter the order of yathi or saniasi, the devolution of property left by a deceased person of the caste referred to, who has become an ascetic and renounced the world, is regulated by the ordinary law of inheritance, in the absence of proof of any general or special usage to the contrary. **DHARMAPURAM PANDARA SANNADHI v. VIKRAMPANIAN PILLAI**

I. L. R. 22 Mad. 303

4. *Guru—Disciple leaving mas-*

**HINDU LAW—INHERITANCE—contd.****15. RELIGIOUS PERSONS (ASCETICS, GURUS, MOHUNTS, ETC.)—contd.**

5. *Chela.* Amongst

sion of a village belonging to his deceased guru, founding such suit on his right of succession as chela without alleging that he had been nominated by the deceased as his successor and confirmed, or that he had been elected as successor to the deceased, such suit was held to be unmaintainable. **MADHO DAS v. KANTA DAS**

I. L. R. 1 All. 539

6. *Priest—Disciple.* In certain cases a priest may, according to Hindu law, be the heir of a deceased disciple. **JUDANUND GOSSAMEE v. KESUB NUND GOSSAMEE**

W. R. 1864, 146

7. *Gosavi—Succession to the estate of a Gosavi in the Dekkan—A Gosavi's right to nominate his successor by a written instrument.* A guru in the Dekkan has a right to nominate his successor from amongst his chelas (disciples) by a written declaration. **TRINIBAKPURI GURU SITALPURI v. GANGABAI**

I. L. R. 11 Bom. 514

8. *Mohunt—Chela—Heir of deceased mohunt.* According to Hindu law, a chela is the heir of a deceased mohunt, and as such entitled to a certificate to enable him to collect his debts. **SHOOTROKASH DOSS v. JOYRAM DOSS**

5 W. R. Mss. 57

9. *Chela—Heirs of deceased mohunt.* Where the mohunt of a by-

preceptor. **RANDOSS BYRAGEE v. GENDU DOSS**

3 Agra 295

10. *Succession to the office and property of a deceased mohunt—Custom of the muth or institution.* In determining the

a mohunt, the right to succeed to his landed and

**HINDU LAW—INHERITANCE—contd.****15. RELIGIOUS PERSONS (ASCETICS, GURUS, MOHUNTS, ETC.)—contd.**

other property was contested between two goshains *Held*, that the claimant, in order to succeed, must prove the custom of the muth entitling him to recover the office and the property appertaining to it. The evidence showed the custom to be that the title to succeed to the office and property was dependent on the successor's having been the chela, approved and nominated as such by the late mohunt, and also, after the death of the latter, installed or confirmed as mohunt by the other goshains of the sect. *Held*, that a claimant who failed to prove his installation or confirmation was not entitled to a decree for the office and property against a person alleging himself to have been a chela, who, whether with or without title, was in possession. *GENDA PURI v. CHATAR PURI* . . . . . **I. L. R. 9 All. 1**  
**L. R. 13 I. A. 100**

**11. ——— Head of religious institution—Succession—Custom and practice** The right of succession to the property left by the deceased head of a religious institution depends upon custom and practice, which must be proved by evidence in each case. *Greedharee Doss v. Nundo Kissoore Doss*, 11 Moo. I. A. 405; *Genda Puri v. Chatar Puri*, I. L. R. 9 All. 1, and *Ramalingam Pillai v. Vythilingam Pillai*, I. L. R. 16 Mad. 490, referred to. *RAMJI DASS v. LACHHU DASS* (1902)  
**7 C. W. N. 145**

**16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE****(a) GENERAL CASES.**

**1. ——— Sapatibandha property.** Sapatibandha (liable to obstruction) property vests in the heirs in existence at the time the inheritance opens, and is not subject to variation by the subsequent birth of any co-heir. *NARASIMHA RAO v. VEERABHADRA RAO* . . . . . **I. L. R. 17 Mad 287**

**2. ——— Suspension of inheritance—Unborn sons—Child in the womb, right of.** Proprietary right is created by birth, and not by conception. A child in the womb takes no estate. In cases where, when the succession opens out, a female member of the family has conceived, the inheritance is suspended until the birth of the child.

unborn son *GOURA CHOWDHRAIN v. CHUMMUN CHOWDHRY* . . . . . **W. R. 1884, 340**

**3. ——— Unborn son—Pregnancy—Adoption.** According to Hindu law, the right of inheritance is not suspended by pregnancy or until adoption. *DUKHINA DOSSEE v. RASHI BEHAREE MOJOMDAR* . . . . . **6 W. R. 221**

**HINDU LAW—INHERITANCE—contd.****16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—contd.****(a) GENERAL CASES—contd.**

**4. ——— Son not born when succession opened out.** A sister's son, in order to have a preferential title over his paternal uncle, must have been born or conceived when the succession opened out. It is contrary to a Hindu law that mother should be a trustee for a son who may hereafter be conceived. *RASHI BEHAREE ROY v. NIMAYE CHURN* . . . . . **W. R. 1864, 223**

**5. ——— Unbegotten heir.** An inheritance cannot remain in abeyance for an unbegotten heir (such not being a posthumous son). The succession must vest in the heirs existing at the time of the death of the person whose inheritance descends. *KOYLASHNATH DOSS v. GYANONEE DOSSEE*  
**W. R. 1864, 314**

**6. ——— Divesting of estate—Heir born after death of ancestor.** By Hindu law an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of a son of an excluded person if he was born

See, also, *BAPOJI v. PANDURANG*  
**I. L. R. 6 Bom. 616**

**7. ——— Exclusion from inheritance—Proof of ground for exclusion** The party who seeks to exclude one of the heirs to property from a share of the inheritance is bound to prove the cause of the exclusion. *FUTTICK CHUNDER CHATTERJEE v. JAGGUT MOHINEE DABI*  
**22 W. R. 348**

**8. ——— Disqualification—Onus probandi—Presumption.** *K K* died leaving a widow (*A*), three sons (*R*, *K*, and *P*), and a daughter (*H*). *R* and *K* died unmarried, and *P*, who survived them, left a widow (*C M*). *W*'s son, *K C*, sued *C M* for 5 annas 15 gundas of the joint family estate. One of the pleas raised for the defence was that the sons, *R* and *K*, were disqualified from inheriting, and 1 anna 15 gundas was claimed as the exclusive property of defendant's widow. *Held*, that the onus

son of the said disqualification *CHUNDER MONEE DABIA v. KRISTO CHUNDER MOZOOMDER*  
**18 W. R. 375**

**9. ——— Disqualified heir—Widow of the disqualified heir—Exclusion from inheritance—Rule as to construction of Hindu Law texts** The wife or widow of a disqualified Hindu does not become incapable of inheriting property merely by reason of her husband's disqualification,

**HINDU LAW—INHERITANCE—contd.****16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—contd.****(a) GENERAL CASES—concll.**

whether the claim as heir to a deceased person, through her husband or otherwise, if she is herself free from any of the defects, which exclude a person from inheritance under Hindu law. It is a canon of interpretation in Hindu law that a special text from a general text.

law, when there is a collocation of two texts, dealing with the same subject, and in the first of them two words or expressions occur, of which only one is repeated in the second text, the other word or expression must be excluded as not applying to cases falling within that second text. *GANGU CHANDRABHAGABAI* (1907) . I. L. R. 32 Bom. 275

**b) ADDICTION TO VICE.**

10. *Addiction to vice as unfitting son for inheritance.* Vague and

his father" for the purpose of declaring him to have forfeited his right of inheritance by misconduct. *KALKA PRESHAD v. BUDREE SAH* . 3 N. W. 267

**(c) BLINDNESS.**

11. *Son of blind man*

ance. The blind man having married, a son was born to him in 1853. The blind man died in 1861. *Held by NORMAN, J.*, that on the birth of the blind man's son he became entitled to the inheritance from which his father had been excluded. *Held*, on appeal (by a Full Bench), that by Hindu law an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person *in utero*, having been begotten and being in the womb at the time of the ancestor's death, he is afterwards born capable inheriting. *KALIDAS DAS v. KRISHNA CHANDRA DAS* . 2 B. L. R. F. B. 103

II W. R. O. C. 11

12. *Incurable blindness.* *Semble* : A daughter who becomes incurably

**HINDU LAW—INHERITANCE—contd.****16 DIVESTING OF, EXCLUSION FROM AND FORFEITURE OF, INHERITANCE—contd.****(c) BLINDNESS—concll.**

blind in her infancy has no right to inheritance, but only to maintenance. *BAKUBAI v. MANCHHABAI* 2 Bom. 5

13. *Congenital blindness—Blindness after birth.* The blindness which under the Hindu law as recognized in Bengal excludes an afflicted person from inheritance, refers to congenital blindness, and not to loss of sight which has supervened after birth. *MONESH CHUNDER ROY v. CHUNDER MONESH ROY*

14 B. L. R. 273 : 23 W. R. 78

14. *Congenital blindness—Person not born blind.* According to the Hindu law as prevailing in the Bombay Presidency blindness to cause exclusion from inheritance must be congenital. Therefore, where the widow of a childless intestate, though proved to have been totally blind for some years before the death of her husband, was admitted not to have been born blind :—*Held*, that such blindness did not prevent her from inheriting the property of her husband on his decease. *MURAJI GOKUL DAS v. PARVATIBAI* I. L. R. 1 Bom. 177

15. *Incurable blindness.* Incurable blindness, if not congenital, is not such an affliction as, under the Hindu law, excludes a person from inheritance. *UMABAI v. BHAYU PADMANJI* . I. L. R. 1 Bom. 557

**(d) DEAFNESS AND DUMBNESS.**

16. *Deaf and dumb person.* According to Hindu law, the son of a deaf and dumb man, born after the death of his grandfather, cannot succeed to the estate descended from his father. *PARSESMANI DASI v. DINANATH DAS* . 1 B. L. R. A. C. 117  
11 W. R. O. C. 19 note

17. *Deafness and dumbness from birth—Divesting of estate—Son of excluded person.* One B., a Hindu, died leaving him surviving L., his undivided son born deaf and

sequently married and had a son, the plaintiff, who sued to recover his half share in a certain

**HINDU LAW—INHERITANCE—contd.****16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—contd.****(d) DEAFNESS AND DUMBNESS—concl'd.**

of the inheritance which had solely vested in him. *BAPUJI v. PANDURANG I. L. R. 8 Bom. 816*

**18.** ————— *Sons of deaf and dumb person—Partition—Disqualified heirs—Birth of qualified heir.* Under the Hindu law of inheritance which obtains in Southern India, the sons of a deaf and dumb member of an undivided Hindu

**19.** ————— *Deaf and dumb son—Exclusion from inheritance—Vesting of the estate in the widow of the least male holder—Subse-*

widow succeeded to the estate the sons being disqualified from inheriting. Later on C married and a son was born to him. The widow thereafter sold the property of the plaintiffs, who now sued to recover possession from the wife and son of C. It was contended for the defendants that the widow succeeding to her husband, took only a widow's estate and that that estate was divested by the after-born son of C. *Held*, that the plaintiffs were entitled to succeed. Both in fact and in contemplation of law C's son had no existence when the estate vested in the widow; and his subsequent birth could not divest the estate. *Held*, that C's son stood in no better position than would have been occupied by his father C, if the latter's disqualification had been removed after the widow had succeeded to the inheritance; and in that case the widow's title would prevail, inasmuch as it was superior to C's, while his disqualification endured. *PAWADEWA v. VENKATESH (1908)*

I. L. R. 32 Bom. 455

**20.** ————— *Dumbness—Inheritance—Exclusion from inheritance.* Dumbness, if from birth, is a cause of disinherison in females as well as in males. A Hindu widow born dumb is, according to the law prevailing on this side of India, incapable of inheriting from her husband. Such widow is, however, entitled to her stridhan and to maintenance out of the property of her deceased husband. Case remanded to have the widow made a party to the suit, that it might be determined whether she was born dumb, and if so, that the amount of her stridhan and of her maintenance might be ascertained. *VALLABHRAH SHIBNARAYAN v. BAI HARIANGA*

4 Bom. A. C. 135

**HINDU LAW—INHERITANCE—contd.****16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—contd.****(e) INCONTINENCE.**

See *HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.*

**21.** ————— *Daughters right of succession.* Under the Hindu law prevailing in the Presidency of Bombay, a daughter is not debarred by incontinence from succession to the estate of her father. Smriti writers and commentators on Hindu law and judicial decisions on the question of a daughter's right of succession referred to and discussed. *ARYYAPA v. RUDRAYA*

I. L. R. 4 Bom. 104

**(f) INSANITY.**

**22.** ————— *Mental incapacity—Idiotcy.* The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiotcy is not necessarily utter mental darkness. A person of unsound mind, who has been so from his birth, is in point of law an idiot. The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life. *TIRUMANAGAL AMMAL v. RAMASWAMI AYYANGAR*

I. Mad. 214

**23.** ————— *Idiotcy—Madness.* The rule of Hindu law which disqualifies "idiots" and "madmen" from inheritances should be enforced only upon the most clear and satisfactory proof that its requirements are satisfied. The rule does not contemplate the disqualification of persons who are merely of weak intellect in the

**211, distinguished** *SURTI v. NARAIN DAS*  
I. L. R. 12 All. 530

**24.** ————— *Mitakshara family—Sue by lunatic father to recover family property—Disability to sue.* A lunatic, a member of a joint Mitakshara family, cannot sue to recover property belonging to the joint family, he being,

**25.** ————— *Congenital insanity—Partition.* It is not necessary that madness or insanity should be congenital to disqualify a person from inheritance; a co-parcener, therefore, who has become insane whilst in possession will lose his share on partition. *RAM SAHYE BHUKUT v. LALLA LALJEE SAYEE*

I. L. R. 8 Calc. 149; 9 C. L. R. 457

**26.** ————— *Incurable insanity.* In order to exclude a person from inheritance under the Hindu law on the ground of insanity, it is sufficient to show that when the succession open-

**HINDU LAW—INHERITANCE—contd.****18. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—contd.****(f) INSANITY—contd.**

ed he was mad, and not in a condition to perform the funeral oblations. Proof that his insanity was was incurable is not necessary. **DWARAKANATH BISAK v. MAHENDRANATH BISAK**

O B. L. R. 198 : 18 W. R. 305

27. ———— *Condition of mind at time succession opens out.* The condition of a minor's mind at the time the succession opens out to him is to be looked to; therefore, where a party obtained a decree declaratory of his right to succeed to certain property as reversioner on the death of the widow, and on their death he had become insane:—*Held*, that he was not entitled to execute the decree. **BRAJA BHUKAN LAL AHUTSI v. BICHAN DONI** . 8 B. L. R. 204 note : 14 W. R. 330

28. ———— *Condition of mind at time succession opens out.* In order to exclude a person from inheritance under the Hindu

29. ———— *Condition of mind at time succession opens out—Incurable insanity.* A person is disqualified under Hindu law from succeeding to property if he is insane when the

qualified to succeed to property after the disqualification of insanity ceases, he cannot resume property from an heir who has succeeded to it in consequence of his disqualification when the succession opened

**DEO KISHEN v. BUDH PRAKASH**

I. L. R. 5 All. 508

30. ———— *Lunatic.* Although, according to Hindu law, a lunatic has no rights of inheritance, he is not debarred from taking an estate duly conveyed to him. **GOURENATH v. COLLECTOR OF MONGHYR** **COURT OF WARDS v. RUGHOOBH DIAL SHEEFERSHAD NARAIN v. COLLECTOR OF MONGHYR** . 7 W. R. 5

31. ———— *Possession of property by lunatic.* A Hindu lunatic may be possessed of property, though he cannot take it by inheritance. **COURT OF WARDS v. KURUMON SINGH** 10 D. L. R. 384 : 19 W. R. 164

32. ———— *Insanity subsequent to inheriting of property—Committee in lunacy under Act XXXV of 1855—Mortgage of joint family property by Mitakshara law.* Under

**HINDU LAW—INHERITANCE—contd.****18. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—contd.****(f) INSANITY—contd.**

*Annas v. Kery Annas, I. L. R. 3 Cal. 116 : I. R. 7 I. A. 115, referred to.* The father and head of a joint family under the Mitakshara law having become insane, two of his grandsons, acting as committee appointed under Act XXXV of 1855, mortgaged the joint family property on behalf of the lunatic, with the sanction of the Judge. The mort-

the entire property. **ABILAKH BHAGAT v. BHERHI MAHTO** . I. L. R. 22 Cal. 884

33. ———— *Proof of insanity—Appointment of guardian under Act XXXV of 1855—Disability to sue.* Exclusion, under the Hindu law, of a claimant from the inheritance on the

**RAN BIJAI BAHADUR SINGH BISHESHVAR BARNH SINGH v. RAN BIJAI BAHADUR SINGH**

I. L. R. 18 Cal. 111

L. R. 17 I. A. 173

**(g) LAMENESS.**

34. ———— *Lameness—Exclusion from inheritance—Lameness of a member of an undivided family—Effect on right of inheritance.* Lameness which is not congenital is no bar to the right of inheritance which a member of an undivided Hindu family ordinarily possesses. *Quare*, Whether lameness which is congenital would be a bar. **VENKATA SUBBA RAO v. PURUSHOTTAM** (1902)

I. L. R. 28 Mad. 133

**(h) LEPROSY.**

35. ———— *Incurable leprosy.* Incurable leprosy of the sanious or ulcerous type, contracted before partition, excludes the person afflicted with it from a share in the ancestral estate. **ANANTA v. RAMABAI**

I. L. R. 1 Bom. 554

**HINDU LAW—INHERITANCE—*contd.*****16 DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*contd.*****(h) LEPROSY—*concl'd.***

38. ————— *Virulent and aggravated form of leprosy.* It is only when leprosy assumes a virulent and aggravated type that it is by Hindu law made a ground for disqualification for inheritance. *JANARDHAN PANDURUNG v. GOPAL PANDURUNG* . . . . . 5 Bom. A. C. 145

37. ————— *Disease of a mild and not virulent form.* Leprosy of a mild type was held not to affect the coparcenary rights of a member of a Hindu family. It is only where the disease is of a virulent type that it effects a disqualification to inheritance. *RANGAYYA CHETTY v. THAKRACHALLA MUDALI* . . . . . I. L. R. 19 Mad. 74

38. ————— *Expiation—Onus of proof.* Where a party who claimed to be heir-at-law to the estate of a deceased Hindu was opposed on the ground that he was disqualified from inheriting by leprosy, but volunteered to state that he had performed the penance required by the shastras for the expiation of the disease, he was held to have admitted thereby that the leprosy was of that grievous nature which demanded expiation before he could succeed to the inheritance, and to lie under the onus of proving the fact that expiation had been performed. *BROODNESSUREE DABEA v. GOURKE DOSS TURKOPUNCHANUN* . . . . . 11 W. R. 635

39. ————— *Evidence of incurable disease.* When it is contended that a Hindu is incapable of inheriting by reason of an incurable disease, as leprosy, the strictest proof of the disease will be required. *ISSUR CRUNDER SEIN v. RANEE DOSSEE* . . . . . 2 W. R. 125

*NULLIF CRUNDER GOHOO v. BAGOLA SOONDURKE DOSSEE* . . . . . 21 W. R. 249

40. ————— *Leprosy after reviving of estate—Divesting of property.* A leper's property to which he has succeeded by inheritance before the disease is not divested from him, he can make a valid gift of it. *SHAMA CHURN ADHICAREE BYRAGEE v. KPOF DOSS BYRAGEE* . . . . . 6 W. R. 68

**(i) MARRIAGE.**

41. ————— *Mohunts—Forfeiture of Mahantship by marriage.* Among the Gossains of the Deccan and certain other places, marriage does not work a forfeiture of the office of mahant and the rights and property appendant to it. *GOSAIN RAMBHARTI JAGRUBHARTI v. SUBABHARTI HARBHARTI* . . . . . I. L. R. 5 Bom. 682

42. ————— *Hindu widows—Hindu widow, custom of marriage of—Forfeiture of estate.* A Hindu widow, on remarriage, forfeits the estate inherited from her former husband, although, according to custom prevailing in her caste, a remarriage is permissible. *Murugaya v. Peramakudi*, I. L. R. 1 Mad. 26, followed. *Matungini Gupta*

**HINDU LAW—INHERITANCE—*contd.*****16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*contd.*****(i) MARRIAGE—*concl'd.***

*v. Ram Rutton Roy*, I. L. R. 19 Cal. 289, referred to. *Harsharan Dass v. Nandi*, I. L. R. 11 All. 330, dissented from. *RAJUL JEHAN BEGUM v. RAM SURUN SINGH* . . . . . I. L. R. 22 Cal. 589

43. ————— *Marriage of Hindu widow after conversion—Marriage Act (III of 1856), s. 2—Hindu Widows Marriage Act (XV of 1856), s. 2—Forfeiture of property of first husband—Act XXI of 1850.* A Hindu widow inherited the property of her husband taking there-in the estate of a Hindu widow. She afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by s. 10 of that Act, that she was not a Hindu. Held, by the majority of the Full Bench (PRINSEP, J., dissenting), that by her second marriage she forfeited her interest in her first husband's estate in favour of the next heir, all rights which any widow may have in her deceased husband's property by inheritance of her husband being expressly determined by s. 2 of the Hindu Widows' Remarriage Act (XV of 1856) upon her remarriage. *Gopal Singh v. Dongaree*, 8 W. R. 246, overruled. *PRINSEP, J.—S. 2 of Act XV of 1856 does not apply to all Hindu widows remarrying, but only to Hindu widows remarrying as Hindus under Hindu law as provided by the Act* *MATUNGINI GUPTA v. RAM RUTTON ROY* . . . . . I. L. R. 19 Cal. 289

44. ————— *Remarriage—Widow's Remarriage Act (XV of 1856), ss. 2, 3, and 4—Castes in which remarriage is allowed—Forfeiture of property inherited from son.* Under s. 2 of the Widows' Remarriage Act (XV of 1856) a Hindu widow belonging to a caste in which remarriage has been always allowed, who has inherited property from her son, forfeits by remarriage her interest in such property in favour of the next heir of the son. *VITHU v. GOVINDA* . . . . . I. L. R. 22 Bom. 321

**(j) OUTCASTS.**

45. ————— *Act XXI of 1850—Exclusion from caste.* Since the passing of Act XXI of 1850, exclusion from caste, whether by renunciation of religion or from any other cause, is no longer a ground for exclusion from inheritance. *BRUJUN LALL v. GYA PERSHAD* . . . . . 2 N. W. 446

46. ————— *Convert—Act XXI of 1850.* Before the passing of Act XXI of 1850, the property possessed or acquired by a Hindu convert to Mahomedanism prior to his conversion passed to his nearest heir professing the Hindu religion. *MEWA KOONWER v. LALLA ODDH BEHARER LALL* . . . . . 2 Agra 311

HINDU LAW—INHERITANCE—*contd.*16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*contd.*(i) OUTCASTS—*contd.*

47. ———— *Marriage with Mahomedan—Forfeiture of property—Act XXI of 1850.* The Hindu law disentitling a widow to inherit on re-marriage and marriage with a Mahomedan does not apply to a widow who became a Mahomedan before her marriage with a Mahomedan. According to s. 3, Act XXI of 1850, and a. 9, Bengal Regulation VII of 1832, conversion does not involve forfeiture of inheritance. *OOPAL SINGH v. DHUNGAJEE* . . . . . 3 W. R. 208

48. ———— *Change of religion—Degradation—Death of husband while outcast—Dissolution of marriage—Suit by widow to recover husband's estate.* In 1850 K married S, both being Brahmans. K subsequently became a convert to Christianity. In 1881 K died and S

tance remained to S. *SINAMMAL v. ADMINISTRATOR-GENERAL OF MADRAS* . I. L. R. 6 Mad. 169

49. ———— *Exclusion from caste—Act XXI of 1850.* Exclusion from caste of Hindu for an alleged intrigue does not involve deprivation of his civil rights to hold, deal with, and inherit his property (Act XXI of 1850). *KARU. THE DATTA alias PULLAKATT MEELAKADAN NAMBOODRI v. MEEL PULLAKATT VASSA DEVAN NAMBOODRI* . . . . . 1 Ind. Jur. N. S. 238

50. ———— *Exclusion from caste—Act XXI of 1850.* Held, that the mere fact that the plaintiffs (whose right by near relationship to maintain the suit was established) are out of caste, and that the men of pure blood of their tribe do not eat with them is of itself no ground of exclusion from inheritance, s. 1, Act XXI of 1850, having annulled any such disqualification. *TAIR SINGH v. KOUSILLA* . . . . . 1 Agra 60

51. ———— *Persons descended from outcasts.* The doctrine of Hindu law that outcasts are incapable of inheritance has no bearing upon the case of the members of new families which have sprung from persons so degraded. *TARA CHUND v. REEB RAY* . . . . . 3 Mad. 50

52. ———— *Divesting of property—Exclusion from caste.* It is a general rule of Hindu law that when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an outcast. An estate which a mother has inherited from her son is not divested by reason of her subsequent unchastity. *DEOKEE v. SOOKHDEO* . . . . . 2 N. W. 361

53. ———— *Hindu becoming a byragee.* A Hindu becoming a byragee, if he chooses to retain possession of, or to assert his right

HINDU LAW—INHERITANCE—*contd.*16. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*contd.*(j) OUTCASTS—*contd.*

to, property to which he is entitled, may be doing an act which is morally wrong, but in which he will not be restrained by the Court, inasmuch as such an act does not exclude him from any rights he may have in such property. *JAGANNATH PAL v. BIDYANAND* . . . . . 1 B. L. R. A. C. 114; 10 W. R. 172

*TEELUCK CHUNDER v. SHAMA CHURN PROKASH* . . . . . 1 W. R. 209

54. ———— *Hindu becoming a byragee.* A Hindu, by becoming a byragee, does not divest himself of all title in his family estate, which on his death devolves on his heirs, and not on a kept mistress, although she may have performed his funeral rites on account of his being an outcast. *KHOODERAM CHATTERJEE v. ROOKHINEE BOISTOREE* . . . . . 15 W. R. 107

55. ———— *Act XXI of 1850—Suit by person born a Mahomedan as reversioner in a Hindu family.* Act XXI of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste. The latter part of s. 1 protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste.

*WANT SING v. KALLU* . . . . . I. L. R. 11 All. 100

## (A) PARTICIPATION IN CRIME.

56. ———— *Succession to property of deceased—Death caused by murder—Participation in crime by next heir—Effect on right of succession.* charged, w dered S. accused w succession to S (after the defendant) now sued

have been tried. The question whether the Hindu, who has been party to a murder, is prevented from succeeding to the estate of the person murdered is



LAW—INHERITANCE—*contd.*VESTING OF, EXCLUSION FROM, AND  
FORFEITURE OF, INHERITANCE—*contd.*(k) PARTICIPATION IN CRIME—*concltd.*

would be entitled to it, were the guilty heir of the way. The text or Yagnavalkya, which foundation of the Mitakshara law of inheritance, enunciates but a general rule, the effect of which is liable to be nullified more or less by facts other than the two postulated therein, namely, the case of a male owner of property without co-partners and the survival of the relation specified in the text. What such facts are has to be ascertained either with reference to the rules embodied in other Hindu texts or with reference to principles, which it is the duty of the Court to follow as a tribunal bound to administer the law of justice, equity and good conscience in cases not provided for specifically. *VEDANAYAGA MUDALIAR v. VEDAMMAL* (1904) I. L. R. 27 Mad. 501

## (l) REFUSAL TO ADOPT.

57. ————— *Widow's refusal to adopt* A widow's refusal to comply with a direction to adopt is no ground of forfeiture as regards her rights of inheritance. *UMA SUNDARI DASSEE v. SANKARDEEN DASSEE* I. L. R. 7 Cal. 288 ; 9 C. L. R. 83

## (m) UNCHASTITY.

## See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

58. ————— *Mother's unchastity.* The texts which pronounce that Hindu females are debarred from inheriting by unchastity are confined in their application to the widow as such, and do not impose a condition on the succession of the mother. *KOJIYADU v. LAESHWI* I. L. R. 5 Mad. 149

59. ————— *Mother's unchastity* An estate which a mother has inherited from her son is not divested by reason of her subsequent unchastity. It is a general rule of Hindu law that, when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an outcast. This rule would not under Hindu law apply to a wife who has become unchaste. But there is no authority to show that it does not apply to a mother. *DECKEE v. SOOKHDEO* 2 N. W. 361

60. ————— *Mother's unchastity—Inheritance to property of son.* A mother, guilty of unchastity before the death of her son, is, by Hindu law, precluded from inheriting his property. *RAMESH TOLAPATRO v. DURGASUNDARI DEVI* I. L. R. 4 Cal. 550

61. ————— *Unchaste daughter—Bengal school of Hindu law.* According to the Bengal

HINDU LAW—INHERITANCE—*contd.*16. DIVESTING OF, EXCLUSION FROM, AND  
FORFEITURE OF, INHERITANCE—*concltd.*(n) UNCHASTITY—*concltd.*

school of Hindu law, a daughter who is unchaste is precluded from inheriting the property of her father. *RAMANANDA alias HAKIS CHANDEA CHOWDHRY v. RAJKISHORI BARMANI*

I. L. R. 23 Cal. 347

62. ————— *Degradation of daughter on account of incontinence—Effect on her right to inherit the stridhanam property of her mother.* Under the Hindu law, the degradation of a daughter on account of incontinence does not put an end to her right to inherit the *stridhanam* property of her mother. *Semble* That the same rule is applicable when the question involved is the right of inheritance to the property of the father. *ANGAMMAL v. VENKATA REDDY* (1902) I. L. R. 28 Mad. 509

63. ————— *Disqualification of daughter—Unchastity—Inheritance—Marriage with Mahomedan during lifetime of undivorced Hindu husband—Legitimacy of issue—Act XXI of 1850.* Where a Hindu married woman embraced Islamism and married a Mahomedan according to the forms of Mahomedan law, and had sons by him during the lifetime of her Hindu husband without having been divorced from the latter—*Held*, that as the sons were illegitimate, she was in the position of an unchaste daughter, and was, under Hindu law, disqualified from inheriting her father's property. *Dhan Bibi v. Laloo Bibi*, I. L. R. 27 Cal. 501, and *Ramananda v. Rajkishori Barmani*, I. L. R. 23 Cal. 347, referred to. The provisions of Act XXI of 1850 cannot save her right of inheritance, because she had not lost such right by reason of her renouncing or being excluded from the Hindu communion. *Bhagwant Singh v. Kalu*, I. L. R. 11 All. 100, distinguished. *SUNDARI LETANI v. PITAMBAR LETANI* (1905) I. L. R. 32 Cal. 873 9 C. W. N. 1001

64. ————— *Prostitutes—Law governing succession to her property.* A woman of the town who is a Hindu by birth does not cease to be a Hindu by reason of her degradation, and succession to her property is governed by Hindu law. *SARNA MOYEE BEWA v. SECRETARY OF STATE FOR INDIA* I. L. R. 25 Cal. 254 2 C. W. N. 87

## 17. PRIMOGENITURE, RULE OF.

————— *Orissa, land tenure in—Inheritance—Primogeniture, rule of—Custom—Regulation XI of 1793—Regulation X of 1800—Regulation XII of 1805, s. 86—Bhuyyan—Paharaj—Kalla—Gard—Hereditary office, estate attached to—Evidence Act (I of 1872), ss. 13 (b), 32 (3) & (5), 49, 50—Statements of persons, who are dead—Usage, opinion as to—Ancient document, custody of—Regulation VII of 1852, s. 9. The rule of primogeniture may exist by family custom, although the estate*

**HINDU LAW—INHERITANCE—concl.****17. PRIMOGENITURE, RULE OF—concl.**

*zoomaar, I. L. R. 1 Cal. 100. 15 W. N. 5, referred to. Words like Bhunyan and Pakaraj used as titles of the owners of an estate in Orissa, and words like Killa and Garh used as descriptive of the estate were held, when read in connection with passages from standard works of reference on land tenure in Orissa, and taken in connection with the evidence adduced in the case, to furnish a proper basis for the inference*

who is dead, regarding the descendants of another member of the family, before any question arose as to the latter, is relevant under s 32 (5) of the Evidence Act. *SHYAMNAND DAS MOHAPATRA v RAMA KANTA DAS MOHAPATRA* (1905)

I. L. R. 32 Cal. 6

**18. RE-UNION.**

*Re-union—Inheritance—Heirs—Special heirs—Mitakshara—Re-union not affecting inheritance.* According to the Mitakshara, re-union is restricted to three classes of cases, namely, (i) between father and son, (ii) between brothers and (iii) between maternal uncle and nephews. Under the Hindu law as laid down in the Mitakshara, there cannot be a valid re-union between first cousins, who were originally joint, but had subsequently separated. *Vishwanath Gangadhar v. Krishnaji Ganesh, 3 Bom. H. C. (A. C. J.) 69. Lakshmi Bai v. Ganpat Moraba, 4 Bom. H. C. (O. C. J.) 130; Abhai Churn Jana v. Mangol Jana, I. L. R. 19 Cal. 634. Balkishen Das v. Ram Narain Sahu, I. L. R. 30 Cal. 735. L. R. 30 I. A. 139. 7 C. W. N. 578, referred to. BASANTA KUMAR SINGHA v. JOGENNATH NATH SINGHA* (1905)

I. L. R. 33 Cal. 371  
s.c. 19 C. W. N. 236

**HINDU LAW—INTEREST.**

See HINDU LAW—DAMNIFAT; USURY.

*Interest—Mitakshara—Debtor wrongfully withholding payment—Demand by creditor—Interest Act (XXXII of 1839)—Indian Contract Act (IX of 1872).* The plaintiff sued to recover a sum of money with interest from the date of demand from the defendant, who held the money in deposit for her. There was no agreement between the parties to pay interest. The

**HINDU LAW—INTEREST—concl.**

the suit were Hindus governed by law of the Mitakshara. *Held*, that, under special circumstances, interest may be awarded by Courts in India, by way of damages. *Held*, further, that under Hindu Law as it is to be found in the Mitakshara there is annexed to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor, if he wrongfully withholds payment after demand: and that the incident was annexed to every such contract at the date when the interest Act (No XXXII of 1839) came into force. *Held*, further, that the parties being Hindus governed by the Mitakshara that constituted a special circumstance justifying

I. L. R. 31 of Bom. 354

**HINDU LAW—JAINS.**

1. ———— **Performance of funeral ceremonies—Hindu Law—Jains—Minor son—Widow.** According to Hindu Law, which applies in this respect to Jains, the son of a deceased

includes the grandson and great grandson), it is the duty of the widow to get them performed, where the husband has died in division and the widow becomes his heir. The widow is not only interested in the performance of the ceremonies, but where the son is a minor it is her religious duty to see that they are duly performed. *SUNARAJ DAMJI v. DAHIBAI* (1905)

I. L. R. 29 Bom. 319

2. ———— **Jains governed by Hindu law.** In the absence of any special custom, Jains are governed by the ordinary Hindu law. *KALADVA TAVANAPPA v. SONAPPA TAMANGAVRA* (1909)

I. L. R. 33 Bom. 669

**HINDU LAW—JOINT FAMILY.**

Col.

**1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—**

- |                            |       |
|----------------------------|-------|
| (a) GENERALLY              | 5026. |
| (b) EVIDENCE OF JOINTNESS  | 5037. |
| (c) EVIDENCE OF SEPARATION | 5045. |

**2 NATURE OF, AND INTEREST IN, PROPERTY—**

- |                            |       |
|----------------------------|-------|
| (a) ANCESTRAL PROPERTY     | 5056. |
| (b) SELF-ACQUIRED PROPERTY | 5070. |

**3 NATURE OF JOINT FAMILY AND POSITION OF MANAGER**

5076.

**4 DEBTS AND JOINT FAMILY BUSINESS**

HINDU LAW—JOINT FAMILY—*contd.*

Col.

## 5. POWERS OF ALIENATION BY MEMBERS—

- (a) MANAGER . . . . 5093.  
 (b) FATHER . . . . 5107.  
 (c) OTHER MEMBERS . . . 5111.

## 6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS . . . . 5124.

## 7. SUITS FOR POSSESSION . . . 5155.

## 8. PARTITION . . . . 5157.

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY

See HINDU LAW—

ALIENATION—ALIENATION BY FATHER;  
 CUSTOM—IMPARTIALITY;

DEBITS . . . 6 C. W. N. 370

MITAKSHARA.

PARTITION—

REQUISITES FOR PARTITION;

I. L. R. 30 Cal. 231

RIGHT TO PARTITION—GRANDSON;

7 C. W. N. 688

EFFECT OF PARTITION.

I. L. R. 24 All. 48

See INSOLVENCY ACT, ss 7 AND 30.

I. L. R. 26 Mad. 214

See LETTERS OF ADMINISTRATION

I. L. R. 27 Bom. 140

See LIMITATION ACT, 1877, SCH. II, ART. 64 . . . . I. L. R. 25 All. 67

See MALABAR LAW—JOINT FAMILY.

See MINOR—REPRESENTATION OF MINORS IN SUITS . . . I. L. R. 23 All. 459

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

I. L. R. 25 Bom. 362

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS

I. L. R. 27 Bom. 157

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION

6 C. W. N. 841

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY;

DISTRIBUTION OF SALE-PROCEEDS

I. L. R. 23 All. 106

debts, and joint family business—

See HINDU LAW—PARTITION—EFFECT OF PARTITION I. L. R. 24 Mad. 555

HINDU LAW—JOINT FAMILY—*contd.*

debts, and joint family business—  
 —concl.

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.

I. L. R. 25 Mad. 220

nature of joint family, and position of manager—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT . I. L. R. 26 Mad. 644

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION . . . I. L. R. 28 Cal. 789

powers of alienation by members—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

power of manager—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

I. L. R. 27 Bom. 287

## 1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

(a) GENERALLY.

1. ——— Presumption—Parties not Hindus residing in Hindu country—Presumption governing family. *Per MITTER, J.*—When parties who are not Hindus reside in a Hindu country, and, adopting the customs of Hindus, have lived as Hindu families do, joint in food and estate, they will be

2. ——— Status of Hindu

CHOWDERY . . . . . Status of Hindu  
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PHANNATH CHOWDERY v. KASHINATH ROY  
 CHOWDERY . . . . . W. R. 1864, 169

BEER NARAIN SIRCAR v. TEENCOWRIE NUNDEE  
 . . . . . 1 W. R. 316

NILMONEY BHOOYA v. GUNGA NARAIN SHAHUR  
 ROY . . . . . 1 W. R. 334

**HINDU LAW—JOINT FAMILY—*contd.*****I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*****(a) GENERALLY—*contd.***

MOONYE SURNAN v. LOMUN SURNAN

2 W. R. 288

KATTAMA NAUCHEAR v. RAJAH OF SHIVAGUNGAH

2 W. R. P. C. 31; 8 Moo. I. A. 539

BIREO PERSHAD MYTEE v. KENA DEXEE

5 W. R. 82

DHARM CHUND SHATEA v. RAJMOHESHEE DEBEE

5 W. R. 145

LUKHUN CHUNDER v. MODROO MOOKHEE DOSSEE

5 W. R. 278

SREENATH NAG MOZOONDAR v. MON MOHNEE

DOSSEA . . . . . 8 W. R. 35

NUND RAM v. CHOOTOO . . . . . 1 Agra 255

GANE BHIVE PARAR v. KANE BHIVE

4 Bom. A. C. 189

BAI MANCHA v. NAROTAMDAS KASHIDAS

8 Bom. A. C. 1

SHEO BUTTUN KOONWER v. GOUD BEHARY

BHUKT . . . . . 7 W. R. 449

RADHA RUMON KOONDGO v. PRUOL KOOMAREE

BIBEE . . . . . 10 W. R. 28

GOMENDNATH SEIN v. GORIND CHUNDER SEIN.

10 W. R. 393

DHAROO SOOKLAIN v. COURT OF WARDS.

11 W. R. 338

KOONJ BEHAREE PATTUCK v. GYADEEN PATTUCK

11 W. R. 381

PEARSEE LALL v. BUKHOREE LALL.

12 W. R. 121

BROJONATH PAUL CROWDHAY v. SKEEGOPAL

PAUL CROWDHAY . . . . . 12 W. R. 468

SHUSHREE MOHUN PAUL CROWDHAY v. AUKIL

CHUNDER BAKERJEE . . . . . 25 W. R. 232

INDER COOMAR DOSS v. DOOLAL CHUNDER DOSS

18 W. R. 258

DEBBO MOYEE v. TARACHAND PAL

18 W. R. 459

BAROOLALL JHA v. JUMA BUKSH

22 W. R. 118

BHUGOBUTTY MISRAIN v. DOMUN MISSEER

24 W. R. 385

**3. ———— Onus probandi**

The presumption of the Hindu law in a joint undivided family is that the whole property of the family is joint estate, and the onus lies upon a party claiming any part of such property as his separate estate to establish that fact. *GOORZE KRIST GOSAIN v. GUNGAPERSAUD GOSAIN*

6 Moo. I. A. 53

**4. ———— Presumption as**

to property acquired while family is joint. The presumption is that all acquisitions made while a

**HINDU LAW—JOINT FAMILY—*contd.*****I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*****(a) GENERALLY—*contd.***

family is joint are made from the joint funds. —

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HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(a) GENERALLY—*contd.*

and an exclusion known to the plaintiff. *JIVAN BEAT v. ANIBHAT* . I. L. R. 22 Bom. 259

8. ———— *Presumption—*

*Evidence of separation.* The father and the son under the Mitakshara law are in the position of a

The burden of proof, therefore, is on the member alleging self-acquisition. *SUDAKSH MOHAPATTA v. SOORJOMONEE DAYEE* . 11 W. R. 436

This case went to the Privy Council, but it was decided on a point which made the decision of this point unnecessary.

See *SOORJOMONEE DAYEE v. SIDDHAKSH MOHAPATTA* . 12 B. L. R. 304  
20 W. R. 377; L. R. I. A. Sup. Vol. 212

10. ———— *Presumption—*

*Suit for share in joint property.* In a suit to establish the plaintiff's right to a share in joint properties belonging to a family subject to the Mitakshara law, where a part of the property sued for was admitted to be joint—*Held*, that the presumption of Hindu law was that the residue of the property was also joint, and that the onus lay with the defendants to prove separate acquisition without the aid of joint funds. Where the members of a Hindu family are living in a joint family-house, enjoying in common the produce of part of the joint property, the separate possession by any member of a specific portion of the joint property ought not to be treated as an exclusive or adverse possession against the other members. *HEERA LALL ROY v. BIDYADHAR ROY* . 21 W. R. 343

11. ———— *Presumption as*

*to property being joint.* As a result of litigation, a decree was passed establishing the title of R as a brother by adoption to L and a co-sharer of his family property; but no possession was actually directed to be given to R except of the zamindari which was the principal family estate. Subsequently an execution-creditor of R took possession of two lots, which were no part of the zamindari

burden of proof lay upon those who insisted that the two lots did not form part of the joint family estate. *CHAND HURREE MAITEE v. NARENDRO NARAIN ROY* . 18 W. R. 231

12. ———— *Waste land—*

*Self-acquisition.* When waste land was taken up and cultivated by the father of an undivided Hindu family, and the question was whether it was family

HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(a) GENERALLY—*contd.*

property or self-acquired:—*Held*, that the burden of proof lay on those who asserted that it was self-acquired. *SRIBAYYA v. CHELLASAMA*

I. L. R. 9 Mad. 477

13. ———— *Presumption—*

*Raj—Separate estate.* In the case of an ordinary joint undivided family the presumption would be that the property is joint, but where a plaintiff,

undivided nature of the family alone on this contention can raise no presumption as to the joint nature of the estate so as to shift the burden of proof from the plaintiff to the defendant, a presumption inconsistent with the contention itself. But if under such circumstances the head of the family alleges that he has made purchases in the name of a

14. ———— *Property origin—*

*ally separate enjoyed in common.* Where property enjoyed in common by persons capable of forming a joint Hindu family was in its origin separate property, there is no presumption that such property has subsequently become joint property. *Mulayyan Chetti v. Sivagiri Zamindar*, I. L. R. 3 Mad. 370; and *Sivaganga Zamindar v. Lalshmana*, I. L. R. 9 Mad. 188, doubted. *CHELIKANT VENKATARAMA KATAMMA GARU v. APPE RAU BHADUR GARU* . I. L. R. 20 Mad. 207

15. ———— *Presumption—*

*Purchase of property with joint funds.* *Held*, by

joint family. *TARACHURN MOOKERJEE v. JOY NARAIN MOOKERJEE* . 8 W. R. 226

16. ———— *Presumption as*

*to house built by member of joint family—Claim to exclusive possession.* Where a member of a family claims an exclusive right to a house which he has built, the presumption of Hindu law against his claim arises only if the family is joint, having possession of joint property. *GUNGABHUE CHATTERJEE v. SOORJO NATH CHATTERJEE* . 15 W. R. 446

17. ———— *Loan contracted*

*by manager of joint family—Presumption* There is no presumption that a loan contracted by the

# HINDU LAW—JOINT FAMILY—*contd.*

## 1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*

### (a) GENERALLY—*contd.*

manager of a joint Hindu family has been contracted for a family purpose. *SOURU PADMANABH RANGAPPA v. NARAYANRAO BIN VITHALRAO*

I. L. R. 18 Bom. 520

18. ———— *Proof of separate acquisition—Adverse possession.* Where both parties are descendants of the same common ancestor, and plaintiff proves that the property belonged to that common ancestor, and separation between the parties has taken place within statutable limit it lies on the opposite party asserting it to be divided to show exclusive title by separate acquisition by some ancestor, apart from the right of succession by inheritance from the common ancestor, or a distinct severality of interest and a clear adverse possession for more than twelve years. *BAIKER SINGH v. BHURTH SINGH* . 1 Agra 162

19. ———— *Evidence as to the continuance of the joint holding of property—Inheritance and survivorship under the Mitakshara*

been members of a joint family under the Mitakshara. On the death of one of the brothers, who died before the claimant's father leaving sons, the latter became entitled thereto jointly with the survivor. In order to establish this claim to inherit her father's share on his subsequent death: *Held*, that it was for her to adduce evidence that there had been a separation between her father and his co-sharer or co-sharers. As the evidence stood, the inference was that the previous joint holding had continued till her father's death. *PRIT KOER v. MAHADEO PERSHAD SINGH*

I. L. R. 22 Cal. 85  
I. L. R. 21 I. A. 134

20. ———— *Evidence—Person claiming a share, onus of proof as to—Presumption as to property of member of joint family* The plaintiff as a joint member of the defendant's family sued to set aside a release obtained from him by the defendant and for partition, etc. The plaintiff was the son of one L, and the defendant was the

whose death it came into the possession of the defendant as eldest male member of the family, although belonging to a younger generation than the plaintiff. The defendant denied that any part of the property in his hands was ancestral property. He alleged that the property of L was self-acquired,

# HINDU LAW—JOINT FAMILY—*contd.*

## 1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*

### (a) GENERALLY—*contd.*

and that L had, by his will, devised the whole of his property, except Rs25,000, to his son T (the defendant's father), on whose death it had come to the defendant. *Held*, that there was no evidence to prove that the property left by L at his death was joint property. It might be that L was joint with his brother J, but it did not follow that they possessed joint property. Although presumably every Hindu family is joint in food, worship and estate, there is no presumption that every family possesses property. Unless there is an admitted nucleus of

I. L. R. 13 Bom. 61

21. ———— *Presumption as to joint character of all property* When a family is joint, it cannot be presumed that all the property in the hands of any member is joint. *SADABURTH PERSHAD SAHOO v. LOTF ALI KHAN PHOOLBAS KOOR v. LALL JUGGESSUR SAHL BIKRAMJEET LALL v. PHOOLBAS KOOR. RANDHYAN KOONWAR v. PHOOLBAS KOER* . 14 W. R. 339

Upheld on review . . . 18 W. R. 48

22. ———— *Purchase from one member. Notice of joint character of property.* Presumably, every Hindu family is joint in food, worship, and estate; and thus presumption applies in the absence of any evidence of a nucleus of joint property, and even without evidence that the family is undivided. A purchaser, therefore, from one member of a Hindu family is affected with notice of the claims of the other members. *OBING CHUNDER MOOKERJEE v. DOORAPERSAD BAZOO*

14 B. L. R. 337; 22 W. R. 248

*BEER NARAIN SINGAR v. TEENCOWHIE NUNDEE*  
1 W. R. 316

23. ———— *Sale and subsequent re-purchase by member of joint family.* The rule of Hindu law in cases of joint family property (i.e. that it must be presumed to be joint until proved to be the contrary) is applicable to a case where the property has passed by sale into the hands of third parties, and has been redeemed by private purchase by one of the former shareholders. *GOROO PERSAUD ROY v. DABEE PERSAUD TEWARZEE*  
6 W. R. 58

24. ———— *Suit for joint property—Presumption.* In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only a portion, where defendant pleaded that the whole property had been made over by the grandfather, by a deed of gift, to the judgment-debtor:—*Held*, that the plaintiff was

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(a) GENERALLY—contd.**

entitled to the presumption of co-partnership, and the onus lay with the defence to prove that the property had passed absolutely to the judgment-debtor. **GOPEE LALL v. BUGWAN DASS**

12 W. R. 7

**25. Presumption as to purchase of property.** When a property is purchased in the name of one of the members of a joint Hindu family, the presumption, according to Hindu law, is that it is purchased with money derived from joint funds. **HANEE MADHUR BOSE v. SOODRA MADHUR BOSE**

2 May 333

**26. Presumption as to purchase of property.** The presumption being that an estate purchased by one of several Hindu brothers living in commensality is the joint estate of all, if a plaintiff seeks to dispossess the other brothers under a title acquired from the brother in whose name the estate was purchased, the onus of proving that it was the sole property of such brother lies upon him. **ANUND MOHUN ROY v. LAMB**

Marsh. 169; 1 May 374

**NURONATH DAS ROY v. GODA KOLTRA**

20 W. R. 342

**27. Purchase made when family is joint.** Purchases made when a family is joint by individual members thereof are presumably made out of the common funds, and for the common benefit. And it is incumbent on any member of the family alleging that a purchase made whilst such family was joint was made out of his separate funds to establish his allegation by proof. **HARI SINGH v. DABEE SINGH**

2 N. W. 308

**28. Separate acquisition—Presumption.** The plaintiffs sued to have their rights declared under a mokurarr-maursai lease obtained by I, father of the defendant, but it

The existence of any nucleus of joint property was not proved. *Held*, that, where one member of a joint family is found to be in possession of any property, the family being presumed to be joint in estate, the presumption is, not that he was in possession of it as separate property acquired by him, but as a member of a joint family. Therefore, the burden of proof was on the defendant to show that I had acquired the property separately, and that it was property which could by law be treated as a separate acquisition. **TARUCK CHUNDER FODDAR v. JOGESHUR CHUNDER KOONDOL**

11 B. L. R. 193; 19 W. R. 178

**29. Purchase by son—Joint funds—Presumption.** In the case of a purchase by a son undivided in interest from his

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(a) GENERALLY—contd.**

father, the legal presumption, in the absence of evidence to the contrary, would be that the purchase was made with the joint funds. **NARAYAN DESHPANDE v. ANAJA DESHPANDE**

I. L. R. 5 Bom. 130

**30. Purchase with joint funds—Execution of decree.** A purchase by

**31. Joint property—Presumption that family is joint.** The presumption of Hindu law is that every family is joint, and that all property possessed by the family is joint. A member of an undivided family may, however, acquire separate property, but the burden of proof lies upon him to prove the independent character of the acquisition. The essence of his exclusive title is that the separate property was acquired by his sole agency without employing what is common to the family. **MOOLJI LALLA v. GORULAS VULLA**

I. L. R. 8 Bom. 154

**32. Presumption as to family being joint—Joint enjoyment of property.** The normal condition of a Hindu family being joint, it must be presumed to remain joint, unless some proof of a subsequent separation is given; and where property is shown to have been once joint family property, it is presumed to remain joint until the contrary is shown; but the mere fact of a family being joint is not enough to raise a presumption

acquired, or that at some period since its acquisition it had been enjoyed jointly by the family. **SMIT GOLAN SINGH v. BARAN SINGH**

1 B. L. R. A. C. 164; 10 W. R. 19

**33. Separate acquisition.** In a suit by a purchaser to recover a share

joint fund from which  
d. KHILUT  
OR  
W. R. 333

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(a) GENERALLY—contd.**

**34.** *Separate acquisition—Presumption—Nucleus. Semble:* When property has been purchased by an individual member of a joint Hindu family, the burden of proof is on those who claim it to be joint property to show that there was a nucleus of joint property out of which it could have been purchased. **DENOXATH SHAW v. HURRYNARAIN SHAW** . . . 12 B. L. R. 340

**35.** *Acquiescence in property being considered joint.* Certain Hindus descended from a common ancestor, after having lived in commensality and joint estate, separated, no deed of separation being executed or reservation expressed of any kind. About eleven years after . . . of the parties to the separation . . . and the others . . .

ancestral income during the time the family was joint. *Held*, that the common presumption of Hindu law in favour of members of a joint family did not apply to such a case, and it lay on the plaintiffs to show why they were silent so long. Where other property was proved to have been separately acquired by the members of the family, it was held that there was no more presumption of joint than of separate acquisition. **BADUL SINGH v. CHITTURDHAREE SINGH** . . . 9 W. R. 558

**36.** *Purchase by Hindu widow in husband's lifetime—Presumption.* Where the widow of one of three brothers claimed two-thirds of a dwelling-house which had been the joint family property of the three brothers, on the ground that one-third fell to her as widow of the deceased and mother and guardian of his son, and that she had purchased the other third share from one of the brothers out of her own stridhan during the lifetime of her husband:—*Held*, that, though it was equally difficult to prove that the purchase-money was stridhan, or that it was the joint property of the three brothers, yet, in the absence of evidence that the brothers had other joint property from which they derived joint profits, of which the purchase money could be treated as a part, the sale of the second third share to plaintiff under a genuine and valid instrument duly conveyed it to her and made it her property. **GONESH JUNG v. DEBIA v. BIKESHWAR DHUL** . . . 25 W. R. 178

**37.** *Proof of sepa-*

purchases of the property in dispute by the plaintiff could not be treated as his separate acquisitions made from the money which had come to him with

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(a) GENERALLY—contd.**

his wife, and by means of funds arising from that money. **KRISTNAPPA CHETTY v. RAMASAWMY IYER** . . . 8 Mad. 25

**38.** *Separate acquisition—Purchase in name of son.* Where the ancestor of a joint Hindu family purchased a property in the name of his youngest son, the onus was held to be on those claiming under the youngest son to prove that the property was his separate possession. **JOYNARAIN ROY v. PUNCHAYOND**

W. R. 1884, 10

**39.** *Purchase in name of son—Presumption.* When a father and son lived as a joint family, and property was purchased in the name of the son, the presumption is that the property was joint estate, and purchased in the name of the son with a resulting trust in favour of the father. The burden of proving that it was separate estate is on those who claim it as such. **POORNIMAH CHOWDHURAI v. DEPODEZ DOSSEE**

W. R. 1884, 103

**40.** *Presumption of joint property—Cesser of commensality.* Suit to obtain a declaration of the plaintiff's right to a share of an estate which he claimed to be joint family property and to have his share allotted to him; the defendant contending that it was not joint property, but separate acquisition after the separation of the family. *Held*, that the cesser of commensality was only material to the determination of the issues in the case so far as it removed or qualified the presumptions which the Hindu law might otherwise raise, that an acquisition made in the name of an individual son of the family was made by the head of the family and as part of the family estate, and that, though a cesser of commensality had taken place, the property claimed was joint family property. **ANUNDEE KOONWAR v. KHEDOO LALL**

14 Moo. I. A. 412; 18 W. R. 69

**41.** *Ancestral property—Burden of proof where property alleged to be ancestral—Property derived by a son from his*

character. **NANABHAI GANPATRAY DHAIIRYAVAN v. ACHARYA** . . . I. L. R. 12 Bom. 122

**42.** *Self-acquisition—Partition—Burden of proof—Findings of fact—Findings based upon presumptions only—Second appeal—Practice.* In a suit for partition, brought in 1893, the plaintiffs claimed a share in the income of a certain *nam* village which had been purchased



HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(a) GENERALLY—*conclld.*

by the defendant in 1873. The defendant pleaded (a) that it was his self-acquired property, and (b) limitation. The Court of first instance rejected the claim, but in appeal the Judge held that the burden of proving self-acquisition and exclusive enjoyment lay upon the defendant, and that, in the absence of such proof, the presumption was in favour of the plaintiffs. He therefore reversed the decree and awarded the plaintiff's claim. On appeal to the High Court : *Held* (reversing the decree, and remanding the case for re-trial), that the burden of proof lay on the plaintiffs. It was for them to show that the purchase had been made out of ancestral funds, and they were also bound to prove that they had been in receipt of their share of the income. That burden could not be shifted on to the defendant, who acquired the property and in whose name and possession it had admittedly been for years  
VINAYAK NARSINGH v. DATTO GOVIND (1900)

I. L. R. 25 Bom. 367

## (b) EVIDENCE OF JOINTNESS.

43. ——— Presumption of union—Near and remote relationship of members. Presumption of union in a Hindu family is stronger as between brothers than as between cousins, and the presumption is weaker the further from the common ancestor the descent has proceeded. *Moro Vishwanath v. Oanesh Vitthal* . 10 Bom. 444

44. ——— Commensality—"Iymalee," meaning of. The word "Iymalee" expressed joint tenancy, even where commensality is not implied. *Pearee Monze Bibee v. Madhub Singh*  
15 W. R. 93

45. ——— Evidence of joint occupation. Where part of the family property is

MONZE . . . . . 15 W. R. 304

46. ——— Onus probandi—Presumption. The mere fact of a Hindu family living in commensality is not sufficient to raise a presumption of their property being joint. The existence of joint funds out of which the property might have been purchased must also be proved to raise the presumption of the property being joint. *Radhika Prashad Dey v. Dharva Dasi Devi*  
3 B. L. R. A. C. 124 : 11 W. R. 499

47. ——— Possession as between brothers and sisters in native families—Evidence of enjoyment of income. In dealing with the question of possession as between brothers and sisters in native families regard must be had to the conditions of life under which such families live, and to the fact that in such families the manage-

HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(b) EVIDENCE OF JOINTNESS—*contd.*

ment of the property of the family is, by reason of the seclusion of the female members, ordinarily left in the hands of the male members. In the case of such families slight evidence of enjoyment of income arising from the property is sufficient *prima facie* proof of possession. *Fazal Karim v. Umda Bibi*, All. Weekly Notes (1884) 171, referred to. *INAYAT HUSEN v. ALI HUSEN* . I. L. R. 20 All. 182

48. ——— Presumption of joint ownership. There can be no presumption of joint ownership from the mere fact of commensality. *Khilut Chunder Ghosh v. Koonjallal Dhrur*  
11 B. L. R. 194 note : 10 W. R. 323

49. ——— Purchase—Presumption arising from commensality. The mere fact of one person living jointly or in commensality with others affords no presumption that property purchased by that person was purchased with the joint funds. *Kristo Chunder Kermokar v. Ruchoogath Kermokar*  
12 B. L. R. 352 note : 10 W. R. 328

50. ——— Suit for possession of property alleged to be joint. In a suit to

defendant to rebut the *prima facie* case made out. *Chundro Tara Desai v. Buxsh Ali*  
11 W. R. 305

51. ——— Son-in-law merely living in house of father-in-law. The presumption of Hindu law as to joint property cannot apply in a case where the property is claimed through a son-in-law merely living in the house of his father-in-law and not shown to be joint in family or funds in any legal sense. *Dossee Monze Dossee v. Ram Chand Mohur* . 7 W. R. 249

and carried on a banking business at five different places. Such circumstances, under the general principles of Hindu law, held, to constitute a joint family property in which the brothers were entitled

RAMPERSHAD TEWARRY. THOORNA v. RAM PERSHAD TEWARRY . 10 Moo. I. A. 490

HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(b) EVIDENCE OF JOINTNESS—*contd.*

53. ——— Use of names of all members in deed of purchase—*Presumption as to joint property.* Where it was admitted that in the

sufficient grounds for presuming joint property until the contrary was established. *LALLA KALEE SAVOR v. LALLA KUNLA SAVOR* 24 W. R. 351

54. ——— Payment of a joint jumma —*Possession—Joint possession, evidence of.* The mere fact that a joint jumma is payable to Government is not evidence of joint possession. *SORRESHER MCTOFER v. RAMLOCHUN CHUCKERBUTTY* 2 May 81

55. ——— Payment by one brother to another without receipt—*Presumption of joint property—Onus probandi.* The fact of one

that the defendant discharged the debt out of the joint funds. *HURISH CHUNDER MOOKERJEE v. MOONODA DEBIA* 17 W. R. 565

56. ——— Separate debts contracted by manager—*Presumption that debt is joint.* The condition of a Hindu family is *prima facie* joint, and therefore property held by the managing member of a Hindu family is *prima facie* joint; but as there is nothing to prevent the individual managing member from contracting debts on his own account, there is no presumption that a debt contracted by him is joint. *SUNKER PERSHAD v. GOVIND PERSHAD* I. L. R. 5 Cal. 321

57. ——— Presumption as to nature of property where the family is joint. Where a plaintiff's family is admitted or proved to be a

I. L. R. 10 Bom. 336

58. ——— Presumption as to nature of debt where the family is joint. Where a debt advance from the funds of a joint Hindu family and due to that family is a bond-debt, it is not necessary that it should appear in the bond that the funds were those of a joint family. *Jag-mohandas Kilabhai v. Allu Moria Duskal*, I. L. R.

HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(b) EVIDENCE OF JOINTNESS—*contd.*

19 Bom. 339, followed. *PATESHURI PARTAP NARAIN SINGH v. BHADWATI PRASAD* I. L. R. 17 All. 578

59. ——— Possession of tank—*Presumption from previous possession.* In a suit to recover a share of a tank, on the allegation of its being joint family property—*Held*, that the mere fact of plaintiff's having at some previous time been in possession could be no proof of his title or shift the onus on defendant. *HURISH CHUNDER BHUTACHARJEE v. NEYUR CHUNDER KOORER* 9 W. R. 461

60. ——— Onus probandi—*Suit for possession of joint property.* Where a party sues

61. ——— Suit for property acquired from proceeds of alleged joint trade. In a suit for property acquired from the proceeds of an alleged joint trade, the joint character of which is neither admitted nor proved, the onus lies in the first instance on the plaintiff, who is not entitled under the circumstances to the ordinary presumption of Hindu law arising from the existence of joint family estate. *HURISH CHUNDER DASS v. GOVIND PERSHAD CHATTERJEE* 16 W. R. 163

62. ——— Evidence of separate acquisition. The plaintiff sued for partition of certain property, alleging it to be joint family property. It consisted of a house in Bombay and certain fields at Vavia in the Thana District, outside the jurisdiction of the Court. As to the house in Bombay, the first defendant alleged that it was his self-acquired property; that he had purchased it in his own name in 1863 out of his private funds; that there were no family funds, and that neither his father nor his brothers (the latter of whom were then very young) were in a position to contribute anything towards the purchase; that by his invitation his father and brother had lived with him in the house, that his father had died then and that one of his brothers had subsequently left the house and with his family had gone to reside elsewhere; that the plaintiff (the youngest brother of the first defendant) had continued to occupy a room in the house by the first defendant's permission up to the date of suit. The plaintiff, on the other hand, relied on the fact that the house was purchased and used as a family residence, while the father and sons were all living in union; that it was bought in the name of the eldest son (defendant No. 1), who was then the manager of the family; that the father lived and died there; and that he himself (the plaintiff) and his family had continued to live there, even after he had separated in food from his brother (defendant.

**HINDU LAW—JOINT FAMILY—contd.****I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(b) EVIDENCE OF JOINTNESS—contd.**

No. 1). *Held*, that the house was liable to partition. No doubt, the onus of proof was upon the plaintiff. The facts, however, proved by him or admitted by the first defendant raised a strong presumption that the house was family property, and against it there was only the first defendant's statement that the house was bought with his own money. But there was nothing to show that he kept a private fund apart from the family funds. He was the manager of the family and he kept no separate accounts. **BALARAM BHASKARJI v. RANCHANDRA BHASKARJI** I. L. R. 22 Bom. 922

83. ———— *Suit for partition—Plea by defendants that some of the property in suit was their self-acquired property.* In a suit for partition of property alleged to be the property of a joint Hindu family, of which the plaintiff was a member, the defendants, while admitting that some of the property scheduled in the plaint was joint property, pleaded that the bulk of the property in suit, of which they were in possession, was their own self-acquired property. *Held*, that the burden of proof was on the defendants to show that each property was their self-acquisition. **Gajendar Singh v. Sardar Singh**, All. Weekly Notes (1896) 23, **Dhurm Das Pandey v. Shama Soondri Dibiah**, 3 Moo. I. A. 229, and **Gobind Chunder Mookerjee v. Doorgapersaud Baboo**, 14 B. L. R. 337. 22 W. R. 248, referred to. **KANHAI LAL v. DEVI DAS** I. L. R. 22 All. 141

84. ———— *Joint property, suit to recover—Onus of proof—Limitation Act, 1877, Arts. 127, 144* The plaintiff sued for a share in certain property on the allegation that his ancestor X and the defendant's ancestor Y were uterine brothers who, while they were living in common

**HINDU LAW—JOINT FAMILY—contd.****I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(b) EVIDENCE OF JOINTNESS—contd.**

*property—Separation—Burden of proof.* Three brothers, M, P, and H, once constituted a joint Hindu family. After the death of all of them the descendants of M sued the descendants of H, in effect to obtain their share of the property which had been of P in his lifetime. In their plaint they alleged that the family was still joint. By their evidence, however, they set up a separation between themselves and H shortly after the death of P. The defendants, on the other hand, alleged that some twenty or twenty-five years before suit, after the death of M, there had been a separation between the plaintiffs on the one side and P and H on the other. *Held*, that, the plaintiffs having set up a case which was inconsistent with the presumption of the family remaining joint, it was for them to

86. ———— *Evidence of re-union after separation—Presumption of re-union after division* Where a division has taken place amongst the members of a Hindu family, one of whom is a minor, the circumstance that the father and minor continue to live together, and that their shares become mixed, does not conclusively constitute a state of re-union between the father and the minor, but is evidentiary matter only to prove the re-union. **KUTA BULLY VISAYA v. KUTA CHUDAPPA VUTHANULU** 2 Mad. 235

87. ———— *Separation and*

10 W. R. 200

See **JADAB CHUNDER GHOSE v. MOTER LALL GHOSE** 1 Hyde 214

88. ———— *Branch of family remaining joint after separation—Onus of proof—Presumption as to branch of family remaining joint when separation has taken place between it and other branches of joint family.* Each branch of a family,

it is incumbent on him to show that the property in which he seeks to recover a share is "joint property" **OSHOY CHURN GHOSE v. GOBIND CHUNDER DEY** I. L. R. 9 Cal. 237

85. ———— *Suit for possession of property alleged to have been joint family*

1. L. R. 12 Cal. 112

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(b) EVIDENCE OF JOINTNESS—contd.**

69. ————— *Sole possession by one member of portion of joint property by consent.* Although the members of a joint Hindu

OF 24-PERGUNNAS v. DEBNATH ROY CHOWDHRY  
21 W. R. 222

70. ————— *Purchase of property by one member benami—Presumption.* Property purchased by a member of an undivided family with money belonging exclusively to himself is his separate acquisition in which the other members are not entitled to share. BOONIADI LALL v. DEWKEE NUNDON LALL . . . 19 W. R. 223

71. ————— *Support of relatives and payment of marriage expenses—Presumption.* If the property is separate, the presumption operates no longer, and each member is separate owner of what he possesses. Even in the case of a separate family blood relationship within certain degrees imposes a moral duty, though not a legal

LILLA v. GOKULDA VULLA  
I. L. R. 8 Bom. 154

72. ————— *Evidence rebutting presumption—Exception to rule of onus in Hindu joint family—Admitted partition or non-acquisition with joint funds.* Although Hindu law presumes joint tenancy to be the primary state of a Hindu family, and the general rule is that the burden of proof that partition has taken place lies upon him who asserts it, there are exceptions to this general rule, e.g., when it is admitted or proved that property in dispute was not acquired by the use of patrimonial funds, the party alleging such property to be joint must prove his averment. So, too, when it is admitted or proved that partition has already taken place, the presumption is that it has been a complete partition, and it lies upon a person alleging that family property, in the exclusive possession of one of the members of the family after such partition, is liable to be partitioned, to make good his allegation by proof. NARAYAN BABAI v. NANA MANOHAR . . . 7 Bom. A. C. 155

73. ————— *Suit for property after separation.* After a general separation in food and a partition of estate, and after the brothers have commenced to live separately, if any one of them comes into Court alleging that a particular portion of property originally joint continues to remain so, the onus of proof lies on him. RAM

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(b) EVIDENCE OF JOINTNESS—contd.**

GORIND KOOND v. HOSSEIN ALI . . . 7 W. R. 80  
PREM CHEND DAN v. DARIDIBA DEBIA . . . 15 W. R. 238

74. ————— *Evidence to rebut.* When the presumption of joint property in a joint Hindu family is rebutted by production of an exclusive and separate title, the party against whom such a title is produced is bound to show that the title is not really exclusive and separate. LOKE-NATH SURMA v. GOMA MOYEE DESHE . . . 1 W. R. 107

75. ————— *Allegation of separation—Suit for possession.* Plaintiff alleged that she and her deceased husband were partners

for possession by reversal of the sale. The purchasers appeared and filed a written statement to the effect that the vendors had separated from their father in his lifetime, and that they (the purchasers) had been in succession to the vendors for more than twelve years in possession. Held, that the onus lay on the plaintiff, who would have to show not only that she represented one of the heirs of her husband's father, but also that the land in dispute was part of the estate left by the father at his death. PROOKRY PANDEN v. SOOKEIA . . . 10 W. R. 438

76. ————— *Partial separation.* The presumption of Hindu law that a family remains joint until a separation is proved is not applicable where it is admitted that a disruption of the unity of such family has already taken place; a presumption under such circumstances cannot arise as to whether the other members of the family remained joint or became separate. RADHA CHURN DASS v. KRIPA SINDHU DASS . . . I. L. R. 5 Calc. 474; 4 C. L. R. 428

77. ————— *Onus probandi—Division of property.* In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is,

does not arise where it appears that there has been a division of the family property and a separation in the family, all the members of which are living separately. BANNOO v. KASHEE RAM . . . I. L. R. 3 Calc. 315

78. ————— *Onus probandi.* Where plaintiff, a member of a Hindu family, suing for a division of the family estate, admitted on the face of his plaint that he had taken possession of part of the family property, and for sixteen years lived separately, the onus probandi lies on him to

**HINDU LAW—JOINT FAMILY—*contd.*****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*****(b) EVIDENCE OF JOINTNESS—*contd.***

show that the circumstances under which he became possessed of the portion of his property were consistent with his statement that the family remained undivided. **SOMANGOU DA BIN DAJAMAN-GOU DA v. BHARVANGOU DA** . . . 1 Bom. 43

**79. ——— Separate estate of co-parcener—Proof—Onus—Nucleus of ancestral property—Adverse possession** When the question was whether a certain property was the joint property of a Hindu family or the separate estate of a member and it was proved that the family lived joint in one house and that there was a nucleus of joint property of substantial value, the onus was on the party setting up a case of separate estate. *Held*, on the evidence, that the property was joint. Whilst on the one hand there were certain instruments by which the grantors purported to deal with it as if it were separate estate, there were, on the other hand, a series of family books and various contracts and transactions inconsistent with anything but joint property. But over and above this, the tenor of family life proved the use of the property to have been the same after as before the execution of those instruments. A case of adverse possession by a co-parcener cannot be established by mere paper assertions not brought home to the knowledge of the other co-parceners, when there has been no actual exclusion of the latter from use and enjoyment for the period of limitation. **ANANDRAO GUNFUTRAO v. VASANTRAO MADHAWRAO** (1907) 11 C. W. N. 478

**(c) EVIDENCE OF SEPARATION.**

**80. ——— Character of proof—Evidence to rebut presumption of joint property** Character of "strict proofs" which an auction-purchaser of the rights of one member of a joint Hindu family can be expected to give, in order to rebut the presumption in favour of joint estate in a joint Hindu family. **LALLA SREEDHUR NARAIN v. LALLA MODHO PERSHAD** . . . 8 W. R. 294

**81. ——— Portions of estate held in severalty—Evidence to rebut presumption of joint property.** So long as no partition of a joint estate is proved, the presumption is that the property is joint. The fact that certain parcels are admittedly held in severalty does not rebut the presumption as regards the rest of the joint estate. **SREERAM GHOSE v. SREE NATH DUTT CHOWDHURY** 7 W. R. 451

**82. ——— Separate occupation of portions of dwelling-house—Evidence to rebut presumption of joint property.** Where there is joint occupation of some portions of a joint family dwelling-house, and the separate occupation of other portions of the same property appears to be merely permissive, such separate occupation does not neces-

**HINDU LAW—JOINT FAMILY—*contd.*****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*****(c) EVIDENCE OF SEPARATION—*contd.***

sarily imply that the properties occupied are separate properties. **GOUD LALL SINGH v. MOESH NARAIN GHOSE** . . . 14 W. R. 484

**83. ——— Occupation of separate**

property as joint property. **BELAS KOER v. BHOWANEE BUKSH** . . . Marsh. 841

**84. ——— Separation in mess—Presumption of joint property.** Mere separation in mess is not sufficient to rebut the presumption of joint property arising out of nucleus of joint property. **BANEE MADHUB MOOKERJEE v. BHADRODUTTY CHURN BANERJEE** . . . 8 W. R. 270

evidence of members of the family would be the best evidence as to whether the parties were joint or separate; the account books would be simply corroborative. **JAGUN KOER v. RUGHOOONDRUX LALL SAHOO** . . . 10 W. R. 148

**86. ——— Separation in food and habitation—Separation of joint family, evidence of** Although a family may be separate in food and habitation, it may still be joint under Hindu law, if the family property be joint. In this case there was held to be not sufficient evidence of separation. **PARBUTTY COOMAR v. SODABUT PERSAD** 2 May 315

**87. ——— Separation in dwelling, food and business—Presumption of separation in**

**SINGH** . . . 20 W. R. 110

**88. ——— Separation of shares—Presumption of joint family** Proof of separation of

**BUKSH NARAIN** . . . W. R. 1005,

**89. ——— Use of one name in docu-**

**KOMUL SINGH v. JANAKEE DASSEE**  
1 Ind. Jur. O. S. 23; W. R. F. B. 3  
**JANAKEE DASSEE v. KISTO KOMUL SINGH**  
Marsh. 1; 1 May 20

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(c) EVIDENCE OF SEPARATION—contd.****DEELA SINGH v. TOOFANEE SINGH****1 W. R. 307**

**90. —** Deed providing separate accommodation—*Evidence of partition.* The fact of the members of two branches of a Hindu family being separate in food and worship is quite com-

division of ownership or estate. The absence of attestation by caste-men to documents by which a Hindu affects to deal with his property as though he were separate in estate is a circumstance which throws suspicion on the truth of an alleged separation, as the presence of such would be satisfactory evidence of a state of things generally believed to be true at the time. **CHHABILA MANCHAND v. JADAVBHAI** . . . **3 Bom. O. C. 87**

**91. —** Separation in residence and transaction of affairs—*Evidence of partition.* Evidence of some separation in residence, separate transaction of affairs in certain instances, and

**92. —** Separate appropriation of profits—*Evidence of partition.* Separate appro-

**93. —** Alienation of share of one member—*Proof of separation in estate.* The mere fact of one of several co-sharers alienating his share of the property is no proof of separation in estate. **TREELUCHUN ROY v. RAJKISHEN ROY** . . . **5 W. R. 214**

**94. —** Portion of estate separately held—*Long separate possession.* The acts of different members of a family in allowing separate

member without proof that he has jointly or otherwise held possession of the lands in question within twelve years. **SURBESSUR METHOOR v. GOSSAHS DOSS METHOOR** . . . **17 W. R. 210**

**95. —** Incomplete separation. Absence of separate enjoyment through opposition of co-sharer. Where the surviving sharer in an estate sought to be put in possession of his co-sharer's portion, as manager on behalf of the latter's widow, on the ground that, though the deceased

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(c) EVIDENCE OF SEPARATION—contd.**

co-sharer had made efforts to reduce his share to distinct possession, those efforts had not been completely successful when he died, and he could not therefore be said to have had a separate enjoyment of the said share:—*Held*, that, as the deceased co-sharer had done all that was possible to obtain

must be held to have separated, and that the share of the deceased co-sharer must be held to have passed to those to whom though not his immediate heirs, he had been taking steps, when he died to devise the possession of it. **JOY NARAIN GIRI v. GOLUCK CHUNDER MITTEZ** . . . **25 W. R. 355**

**96. —** Management by one brother—*Presumption of property being joint.* Where property is not expressly shown to be separate, the presumption of Hindu law is that it is

so acquired. **FRANKISHEN PAUL CHOWDHRY v. MOHMOOR MOHUN PAUL CHOWDHRY** . . . **1 Ind. Jur. N. 9. 73; 5 W. R. P. C. 11**  
**10 Moo I. A. 403**

**97. —** Record of proprietorship in one name—*Purchase from one member of*

chase the purchaser was ignorant of the real state of the family, and was really led by that circumstance to believe that the recorded proprietor was the sole owner. **GOUR CHUNDER BISWAS v. GREESH CHUNDER BISWAS** . . . **7 W. R. 120**

**98. —** Property standing in name of one member—*Separate possession and acquisition.* The mere fact of certain property standing in the name of one member of a joint family is no index to the real owner, nor is the existence of a separate possession any evidence as to separate acquisitions, unless such separate possessor can prove consent of the other sharers to his keeping a separate account. **LALLA BEHAREE LALL v. LALLA MODRO PRASAD** . . . **6 W. R. 69**

**RUNJEET SINGH v. MADUD ALI** . . . **3 Agra 222**

**99. —** Entry in revenue records of one name—*Presumption as to property being joint.* D, claiming as a widow of A, brought a suit of ejectment against the sons of A's brother, deceased. D admitted that the property had originally been the joint ancestral property of A and his

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(c) EVIDENCE OF SEPARATION—contd.**

brother. *Held*, that the mere appearance on the face of the revenue records that A was sole owner was not sufficient to rebut the presumption of Hindu law, that the property remained joint. **JUSSOONDAR v. AJODHA PERSHAD**

2 Ind. Jur. N. S. 261

SHIBSOONDERY DOSSEE v. RAKHAL DOSS SIKKAR  
1 W. R. 38MUN MOHINEE DABEE v. SOGDAMONZE DABEE  
3 W. R. 31

100. ——— **Definement of shares in ancestral property** A four-anna ancestral share in a zamindari village was owned by two

definemment of shares followed by entries of separate interests in the revenue records, and since 1264 Fasli the two plaintiffs had each been recorded as the owner of a one-anna share and H of a two-anna share thereof. The entire four-anna share had been

share in favour of the defendants, and caused mutation of names to be made in their favour, surrender-

separate possession of the two-anna share of which the defendants were the donees. On second appeal it was contended that, inasmuch as since 1814 there could have been no separate enjoyment of the four-anna share which was in the possession of the mortgagees, the evidence afforded by separate registration could not prove actual separation. **Ambika Datt v. Sukhmani Kuar**, 1 L. R. 1 All. 437, was cited in support of the contention. *Held*, that, from evidence of definement of shares followed by entries of separate interests in the revenue records, if there be nothing to explain it, separation as to estate may be inferred. Joint family property in the hands of mortgagees may be separated in estate, although there could be no separate enjoyment of the shares so separated. **Ambika Datt v. Sukhmani Kuar**, 1 L. R. 1 All. 437, discussed **RAY LAL v. DANI DATT**. 1 L. R. 10 All. 480

101. ——— **Evidence of separation—**  
—Shares separately recorded in village papers—

**HINDU LAW—JOINT FAMILY—contd.****1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—contd.****(c) EVIDENCE OF SEPARATION—contd.**

*Separate purchases by individual members of family out of joint family funds.* Where there has existed a joint Hindu family possessed as such of immoveable property, the presumption is that, until the

taken place, nor is the fact that specific purchases of immoveable property have been made from time to time in the names of individuals members of the family, and that the property as purchased was recorded in each case in the name of the nominal assignee **GAJENDAR SINGH v. SARDAR SINGH**  
1 L. R. 18 All. 178

102. ——— **Deed of sale and mutation of names—Evidence of separation in estate.**

1 Ind. Jur. O. S. 100

103. ——— **Registration of name of widow after husband's death—Partition—Evidence of partition** Where property is joint and ancestral, the mere registration of the widow's name after her husband's death, and sole possession by her, is not sufficient proof that the property has been divided in the absence of any evidence of regular partition. **LUGHAN PERSHAD v. MOONZE KOOWER**. 1 Agra 220

104. ——— **Registration of name as lumberdar—Presumption—Onus probandi.** Where an estate was originally ancestral belonging to a joint and undivided Hindu family, the presumption of law being that a family once joint retains that status can only be rebutted by evidence of partition or acts of separation; and the onus probandi

v. MIKHEEN LALL. 11 Moo. L. A. 300

105. ——— **Registration of name of one member as proprietor—Ancestral property—Onus probandi.** Where property is proved to be ancestral, the mere registration of one brother as proprietor is of little value as supporting a case of the property not being joint, and the burden of proving that the property is not joint rests on him

HINDU LAW—JOINT FAMILY—*contd.*I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(c) EVIDENCE OF SEPARATION—*contd.*

who alleges that to be the case. **AMRIT NATH CHOWDHRY v GAURI NATH CHOWDHRY**

6 B. L. R. 232

**UMRITHNATH CHOWDHRY v. GOURERNATH CHOWDHRY**. 15 W. R. P. C. 10, 13 Moo. I. A. 642

such female member during the life of her minor son,

**NATH MONIRO v. KRISTO KONTUL SINGH**

15 W. R. 357

107. ——— *Presumption—Property purchased in names of wife and daughter-in-law* In a suit for partition of joint family property, it was found that certain property stood partly in the name of the wife of the original proprietor and partly in that of a daughter-in-law. *Held*, that a wife, a member of a joint family, is, as regards property held in her name, in the same position as her husband with respect to property

**Chowdhry, 15 C. L. R. 41, distinguished** **NORIN CHUNDER CHOWDHRY v. DOKHOBALA DAS**

I. L. R. 10 Cal. 686

108. ——— *Presumption of*

I. L. R. 8 Mad. 214

109. ——— *Purchase and possession of portion of Property by one member—Source of purchase-money* Where a Hindu family lives joint in food and estate the presumption of law is that all the property they are in possession of is joint property, until it is shown by evidence that one member of the family is possessed of separate property. The purchase of a portion of the property in the name of one member of the family, and the existence of receipts in his name respecting it, may be perfectly consistent with the notion of its being joint. The criterion in such cases in India is to consider from what source the purchase-money comes. **DHARM DASS PANDY v. SHAMA SOODERY DEBIA**. 6 W. R. P. C. 43; 3 Moo. I. A. 229

HINDU LAW—JOINT FAMILY—*contd.*I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(c) EVIDENCE OF SEPARATION—*contd.*

110. ——— *Purchase by one member—Evidence of want of sufficient funds.* Where the

any money, to leave any surplus funds from which the property in suit could have been purchased;—*Held*, that the presumption of joint ownership was rebutted, and it was for the plaintiff to show the acquisition of the property with joint funds. The party alleging self-acquisition is not in every case bound to show the source from which the purchase-money was derived. **DHUXOORSHAREE LALL v. GURUT LALL**

11 B. L. R. 201 note; 10 W. R. 122

111. ——— *Receipt of purchase-money by one member—Source of consideration-money for purchase.* The mere fact of the consideration money for property sold by a member of a joint Hindu family having passed through his hands does not relieve him of the onus of proving the source from which the money came or to rebut the presumption of joint ownership. **KOONJ BEHAREE DUTT v. KHETURNATH DUTT**. 6 W. R. 270

113. ——— *Separate acquisition—Presumption—Onus probandi* The presumption of Hindu law that any property acquired during the time a Hindu family remains joint belongs to all the members of the joint family does not take away the onus which lies on the plaintiff in a suit to recover a share of the property of proving his case; it merely aids him in proving it. Such presumption is liable to be rebutted by means other than enquiring as to the source from which the purchase-

each member carried on business separately, and that the property was thenceforward in the exclusive possession, and used for the business, of the member in whose name it had been purchased, is evidence sufficient to rebut the presumption that the property was joint. **BHOLANATH MAHTA v. ANJODHIA PERSAD SODHUL**

12 B. L. R. 336; 20 W. R. 65.



HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(c) EVIDENCE OF SEPARATION—*contd.*

114. — *Separate acquisition—Onus probandi*—Purchase by one member of family in his own name, but with joint funds. In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of R, one member of the family, for his separate debt, the defendants sought to rebut the presumption that the property in dispute was part of the joint estate by showing that, though the mem-

funds, and dealt with it as their own without reference to the other members of the family. They also relied on the following facts as showing that the property in dispute was the separate property of R, *etc.*, that during R's lifetime the other members of the family allowed him to appear to the world as the sole owner thereof, and on one occasion when R, B the karta, and a third member of the family entered into a security bond with the Collector whereby R pledged this property, and the two others pledged other properties, each of them described the property pledged by him as being in his possession "without the right of any co-sharers." On the other hand, the plaintiff, in addition to oral evidence to show that the property in dispute had been purchased out of the joint

between B and R relative to the purchase of the property. *Held*, that the evidence as to the separate trading funds and property of the several members of the joint family, and their independent dealing with such property, disclosed such a state of things as might be fairly held to weaken, if not altogether to rebut, the ordinary presumption of Hindu law as to property in the name of one

disentitle those members to recover from the defendant, the purchaser at a sale in execution of a decree against R, their own share of such estates.  
BODA SISON DOODHARIA v. GONESA CHUNDER SEV  
13 B. L. R. P. C. 317 : 19 W. R. 356

115. — *Joint funds—Separate trading.* Suit between a widow claiming

HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(c) EVIDENCE OF SEPARATION—*contd.*

administration to the estate and effects of her deceased husband as his only legal personal representative, and a caveator claiming the whole family property as an undivided second cousin of the deceased and sole surviving member of the family. The widow asserted a division, and that the whole property of the deceased had been self-acquired by his father. The Court of first instance found against division and against self-acquisition, laying the burthen of proof of each question entirely on the party asserting the facts. On appeal it was contended for the appellant (the plaintiff) that the onus on plaintiff was sufficiently discharged when it was shown that the two branches of the family were trading separately, and that certain items of

concordance with the view of the judicial committee of the Privy Council in *Dhurm Dass Pandey v. Shama Soondery Dibiah*, 3 Moo. I. A. 229, and the observations of COCKIN, C.J., in *Taruck Chunder Poddar v. Jodheshur Chunder Koonoo*, 11 B. L. R. 193, that such a contention could not be maintained.  
VEDAVALLI v. NARAYANA, 1 L. R. 2 Mad. 19

116. — *Self-acquisition—Partibility of property given by father to sons—Arrangements made as to enjoyment of joint property, effect of, on members.* Whilst the members of a Hindu family are found in possession of joint ancestral estate, all property in the possession of any member of the family is to be presumed to be joint, and it is incumbent on the member who claims property in

by a father to his unseparated sons. What is acquired by the father's favour will subsequently be declared exempt from partition. Separate property may be acquired by the exertions of a member of the family without detriment to the family funds. It may be acquired with money borrowed on the sole credit of the borrower, and it may be acquired by the



HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(c) EVIDENCE OF SEPARATION—*contd.*

114. ——— Separate acquisition—*Onus probandi*—Purchase by one member of family in his own name, but with joint funds. In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defend-

had acquired separate property from their own funds, and dealt with it as their own without reference to the other members of the family. They also relied on the following facts as showing that the property in dispute was the separate property of *R*, viz., that during *R*'s lifetime the other members of the family allowed him to appear to the world as the sole owner thereof, and on one occasion when *R*, *B* the karta, and a third member of the family entered into a security bond with the Collector whereby *R* pledged this property, and the two others pledged other properties, each of them described the property pledged by him as being in his possession "without the right of any co-sharers." On the other hand, the plaintiff, in addition to oral evidence to show that the property in dispute had been purchased out of the joint family funds, although the purchase was made in the name of *R* alone, filed the family account-books and the private account-books of *R* for the same purpose, as well as certain letters which passed between *B* and *R* relative to the purchase of the property. Held, that the evidence as to the separate trading funds and property of the several

Hindu law as to property is the same as in the case of a joint family and to them since the

disentitle those members to recover from the

HINDU LAW—JOINT FAMILY—*contd.*1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*(c) EVIDENCE OF SEPARATION—*contd.*

and sole surviving member of the family. The party asserting the facts. On appeal it was contended for the appellant (the plaintiff) that the onus on plaintiff was sufficiently discharged when it was shown that the two branches of the family

party asserting the facts. On appeal it was contended for the appellant (the plaintiff) that the onus on plaintiff was sufficiently discharged when it was shown that the two branches of the family

115. ——— Self-acquisition—Parti-  
cipation of property given by father to sons—Arrangements made as to enjoyment of joint property, effect of, on members. Whilst the members of a Hindu family are found in possession of joint ancestral

nature of family property that the members of the family should live in commensality; they may dwell and mess apart, and yet remain joint in property. Parties who allege that the acquisitions of the

115. ——— Joint funds—  
Separate trading. Suit between a widow claiming

**HINDU LAW—JOINT FAMILY—*contd.*****I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*****(c) EVIDENCE OF SEPARATION—*contd.***

may agree to take loans from the common fund, and treat the profits on such loans as the separate property of the several members by whom the loans have been respectively taken. **NERSHISA DASS v. NARAIN DASS** . . . 3 N. W. 217

Affirmed by Privy Council in . . . 26 W. R. 17

**117.** ———— *Separate acquisition—Members carrying on separate dealings—Manager of joint family.* In a suit for partition and . . .

upon as guardians for the plaintiffs granted an amukhtamamah to the principal defendant. In the . . .

not under the circumstances karta of the family, but held that the burden of proving separate acquisition was upon the defendants, and declared the properties claimed to be joint. On appeal:—*Held*, (i) that the principal defendant was not the karta, and that the plaintiffs were bound to look to the managers first, and (ii) that, although the members of the family had certain properties joint, yet the ordinary presumption applicable to a simple case of co-parcenary did not apply. **UDOY CHAND BISWAS v. PANCHOO RAM BISWAS HURUMONI DASI v. PANCHOO RAM BISWAS** . . . 11 C. L. R. 514

**118.** ———— *Long possession as proprietor—Proof of separation.* In a suit brought to recover a share of land alleged to be joint family property where the defendants pleaded possession as proprietors for more than thirty years.—*Held*, it was not necessary to prove actual separation, but it was enough to show that the defendants had been in possession as they alleged. **GURAVI v. GURAVI** . . . 3 Bom. A. C. 170

**RANE v. RANE** . . . 3 Bom. A. C. 173

**119.** ———— *Settlement with one member of joint family—Separate acquisition, proof of.* The fact of a settlement being made with one member of a joint Hindu family does not . . .

**HINDU LAW—JOINT FAMILY—*contd.*****I. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*contd.*****(c) EVIDENCE OF SEPARATION—*contd.***

they actually contributed money towards the acquisition of the property. **HURO SOONDREE DEBIA v. DOORGA DASS BHUTTACHARJEE**

18 W. R. 215

**120.** ———— *Distribution of land and tenants—Partition of khoti estate—Proof of partition.* Where the plaintiffs sued for the partition of a khoti estate, alleging that they and the defendants were joint proprietors thereof, and where the defendants admitted that the estate was originally joint, but set up that a partition had taken place more than a hundred and fifty years ago:—*Held*, that the burden of proving that a partition had been made lay on the defendants, and that the mere distribution of land and tenants, such as is usual in the South Konkan, while a khoti estate continues to be held in co-parcenary, in no way established a formal partition. **BABASHET BIN GOBINDSHET v. JIRSHET BIN YESSHET**

5 Bom. A. C. 71

**121.** ———— *Partition—Milalshara—The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common, or by an actual partition by metes and bounds.* **MUDIT NARAYAN SINGH v. RANGALAL SINGH** (1902) . . . I. L. R. 29 Calc. 797

**2. NATURE OF, AND INTEREST IN, PROPERTY.****(a) ANCESTRAL PROPERTY.**

**1.** ———— *Ancestral property, meaning of—Immovable property of father.* Ancestral property is not confined to such property as the father derives from his father or any ancestor, but means at least immovable property derived from the father, however acquired by him. **RAJMOHUN GOSSAIN v. GOUMOHUN GOSSAIN**

4 W. R. P. C. 47 : 8 Moo. I. A. 91

**2.** ———— *Property purchased by father as manager for himself and sons—Purchase from profits of ancestral family.* Property purchased by a father in possession of ancestral property, as manager for himself and his sons, from the profits of such ancestral property is itself ancestral property. **SHUDANUND MOHAPATRE v. BOMMALÉE DASS** . . . 6 W. R. 256

**3.** ———— *Joint ancestral property*

property after its distribution retained its character as ancestral property, and shares taken under the arrangement are not to be regarded as the self.

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

acquired property of the heirs who took them.  
MEWA KOONWER v LALLA OUDH BEHAREE LALL.

2 Agra 311

4. ——— Ancestral property inherited from brothers—*Interest of sons in ancestral property.* S died, leaving three sons and

5. ——— Moveable converted into immovable property—*Mitakshara law.* *Quare:* Whether ancestral property which was moveable when it descended, but has been converted into immovable property, is not immovable ancestral property for the purposes of the Mitakshara law. SHAM NARAIN SINGH v RUDRANATH DIAL. I. L. R. 3 Calc. 608; 1 C. L. R. 343

6. ——— *Interest of sons in ancestral property—Mitakshara law—Adopted sons.* Where money derived from ancestral estates is invested, before the adoption of a son, in the purchase of immovable property which continues to exist at the time of the adoption, the adopted son has equally a vested right in that property as he has in any other similar immovable property which the father had it in his power before the adoption to alienate, but which he did not alienate. SUDANUND MOHAPATTUR v. SOORJOMONEE DAYEE

11 W. R. 438

1 This case went on appeal to the Privy Council, but it was decided on a point which made the decision of this point unnecessary.

See SOORJOMONEE DAYEE v. SUDANUND MOHAPATTUR

12 B. L. R. 304

20 W. R. 377

I. L. R. I. A. Sup. Vol 212

7. ——— Property once ancestral but alienated and re-purchased with separate funds—*Recovered ancestral property.* The principle of the Mitakshara law that, if a father recovers ancestral property which had been taken

money out of his self-acquired property. BOLAKKE SINGH v COURT OF WARDS

14 W. R. 34

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

8. ——— *Interest of son in joint family property—Co-partenary rights—Limitation.* A son during the life of his father has, as co-partener, a present proprietary interest in the ancestral property to the extent of his proper share; but beyond that he has vested in him no legal interest whatever whilst his father is alive. Except in respect of his co-partenary rights, a son is not in a different position as to the corpus of the ancestral property from that of any other relation who is an heir-apparent of the owner of property. Though the Limitation Act may have been decided to be a bar to a suit by the son for partition, his right as co-partener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his proper share of the property. RAYACHARLU v. VENKATARAMANIAN. 4 Mad. 60

9. ——— *Property acquired by litigation—Self-acquired property devised by a father to his son—Earnings of father as mill manager—Property left by testator to be held moveable or immovable according to its condition at his death.* Defendant's great-grandfather (M) died in 1792, leaving a will, dated 1789, whereby he directed his

It, which took place in 1805. A share was received in 1852 by the executors of his son N (defendant's father), who had died in 1843. Held, that this

having regard to M's will there was no apparent intention on the part of the testator to convert into money such of his property as consisted of lands and

whether acquired before or after the birth of a son. In order to entitle a co-partener to hold as property self-acquired by him property which has been recovered by his exertions (e.g., by litigation), such

centers, to whom it has been imputed, must have been in a position to sue. A son to whom his father

**HINDU LAW—JOINT FAMILY—*contd.*****2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*****(a) ANCESTRAL PROPERTY—*contd.***

Some of the property in the defendant's hands consisted of his earnings as manager of a mill and of the investments of such earnings. The mill had been established in 1860, and the defendant brought thirty-nine shares out of the ancestral funds in his hands. He was appointed chairman of the company, and managed the mill for ten years without any remuneration. His management was very successful, and good dividends were declared every year from 1863. In 1870 he declined to work any longer without remuneration and at a meeting of the shareholders he was appointed managing director, and was granted a commission on all sales effected by the company. *Held*, that the commission so received by the defendant was his self-acquired property. Under the circumstances, it might safely be inferred that he did not obtain the appointment of manager by the direct influence of the shares which he held in the company. The gratuitous services which he had for years rendered to the shareholders had influenced them in giving him the appointment, and such influence could not be said to have been created by the direct instrumentality of the ancestral property. In a suit for partition brought by a son against his father—*Held*, that the plaintiff was entitled to partition of the ancestral property as it subsisted at the date of the suit. A custom alleged to exist among the

10. — Profits in business where capital is ancestral property—*Profits earned by loans and by commissions*. Four brothers of the Cutchi-Memon community carried on trade with capital inherited from their father. Large profits were made in the course of business. It was alleged that some of the profits were made by means of borrowed capital and some arose out of a commission business in which the capital of the firm was not used at all; and it was contended that such profits could not be considered as an ancestral fund. It appeared, however, that the entire business was carried on by the same firm. There were common books, common expenses, and a common staff. The borrowed money was put into the general cash with the original capital. *Held*, that the whole property was ancestral. Augmentations, which blend, as they accrue, with the original estate, partake of the character of that estate. Moreover, the loans in question and the extension of business, to which

**HINDU LAW—JOINT FAMILY—*contd.*****2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*****(a) ANCESTRAL PROPERTY—*contd.***

resulting from them. *MAHOMED SIDICK v AHMED ABDULA HAJI ABDSATAR & AHMED*

**I. L. R. 10 Bom. 1**

11. — Wealth amassed in trade—*Proof of ancestral quality of property*. Where wealth amassed by an individual in trade is said to be ancestral in the hands of that individual, it is not

**I. L. R. 13 Bom. 534**

12. — Property bona fide disposed of before birth of son—*Rights of sons—After-born son—Son born subsequently to adoption by father and partition*. According to Hindu law, sons acquire rights only in the property which belonged to their father at the time of their birth,

as an after-born son to share as a co-partner divided property depends upon his mother being pregnant with him at the time of a partition. The father of the plaintiff adopted the third defendant. After the adoption, the wife of the father gave birth to a son. Thereupon the father effected a division of the pro-

adopted son. *YERZYAMIAN v. AGNISWARLAN*  
**4 Mad. 307**

13. — Interest of son in ancestral property—*Mitakshara law* According to the

**5 W. R. 54**

And also to the profits of ancestral property.  
*SUDANUND MOHAPATTUR v SOORJOO MONKE DAYEE*  
**11 W. R. 436**

14. — Ancestral immoveable property—*Rights of father and son—Suit by father to eject son*. The sons in an undivided Hindu family, although they have a proprietary right in the paternal and ancestral estate, have not independent dominion. Where therefore the plaintiff sued to eject the defendant, his son, from a portion of a house, partly self-acquired by the

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

15. — Burden of proof where property alleged to be ancestral—Property derived by a son from his mother where it originally formed part of his father's estate. Where a Hindu by will leaves property to another which is afterwards alleged to be ancestral by members of the testator's family, the burden of proving it to be ancestral rests on the plaintiffs. There is no presumption of Hindu

1831, o his and wife's demise previous to my sons attaining their full age of twenty-one years to entitle them to claim their respective shares of whatever may be left after marrying, etc., then I direct my surviving execu-

granted to her alone in January 1832. In 1836 she bought the P property for Rs. 2,801. There was no evidence to show out of what funds this property was bought, but the deed of sale stated that it was assigned to "P, widow and administratrix of the late P M, her heirs, executors, administrators, and assigns." In 1845 the eldest son A separated from the family, and gave a release to his mother P. In 1854 she purchased the X property for Rs. 452, the conveyance being to "P, her heirs, executors, administrators, and assigns." In this deed also she was described as "the widow and administratrix of P M, deceased." In the same year, i.e., 1854, the second son B separated and gave P a release. The third son C (the third defendant) continued to live with his mother P until 1871, in which year she died intestate. C then entered into possession of all the property which she had or managed in her lifetime, including the P and X

mortgagees were about to sell them at an auction for the purpose of defeating their (the plaintiffs') rights. They therefore filed this suit, and prayed (*inter alia*) that the claims of the mortgagees, after being ascertained, might be paid off. The defendants denied that the properties in question were ancestral property in the hands of C (the third defendant) or that the plaintiffs, as his sons, had

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

of their being sold, that the whole of the surplus proceeds should be paid to him. The original property was to be regarded, as in 1831, the self-acquired property of P M and as having passed under his will. In the absence of any evidence with regard to it, there was no presumption as to its character, and the plaintiffs, who alleged it to be ancestral, were bound to prove that fact. On P M's death, his sons, A, B, and C, took whatever they

claiming their shares, one share would be left with P, and that share, subject to her incapacity as a Hindu widow to deal with immoveable property

PATRAY DHARAYAN v. ACHRAYAN  
I. L. R. 12 Bom. 123

claimed to have charged upon the immovable

to maintenance; inasmuch as, during the mother's lifetime, it was not in any sense ancestral, and the sons had no co-partnership interest in it, but merely the contingent interest of taking it on their father's

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

death intestate, and, in the case of the plaintiff's husband, such interest, by reason of his predeceasing his father, never became vested. *Adhibai v. Cursandas Nathu*, I. L. R. 11 Bom. 199, dissenting from on this point. *Savitribai v. Laxmibai*, I. L. R. 2 Bom. 573, referred to. *JANKI v. NAND RAM*

I. L. R. 11 All. 184

17. ——— Ancestral property—Self-acquired property made ancestral by agreement—Effect of such agreement on accumulations and accretions of the property—Election—Estoppel—Interest of minor members of family in property made ancestral by agreement *M* and his three sons *T*, *P*, and *J*, lived together as an undivided Hindu family.

June 1881, entered into an agreement with them (the plaintiffs) which recited, *inter alia*, that he, *M*,

with him until his death. In the interval, however, viz., in 1880, the partition suit brought by *J* was decided, and by the decree it was declared that the immovable property specified in Sch. I of the aforesaid agreement was not ancestral property, but was the self-acquired property of *M*. On the 9th March 1890, *M* died, leaving a will, dated 27th January 1888. By this will he directed that his executors and trustees should take possession of all his property, both ancestral and self-acquired, and, after referring to the agreement of the 28th June 1881, and the property in Part I of the schedule thereto, continued: "Whereas it has been decided

some other provisions, he devised and bequeathed to his trustees "all the residue of my self-acquired

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

property in Part I of the said schedule. This last-

agreement being ancestral under the agreement and will, they (the plaintiffs) were entitled not only to them, but to all the accumulations and accretions thereof, which amounted in value to about ten lakhs of rupees. The University, on the other hand, contended that the accumulations and accretions formed part of the self-acquired property of the testator, and went to the University under the residuary clause of the will. *Held* (TYABJI, J.), (i) that the effect of the agreement was to make the property specified in Part I of the schedule thereto ancestral property as between the parties to the agreement (ii) That the agreement was confirmed by the will and was binding on the executors. (iii) That, although the corpus of the said property became ancestral under the agreement, the accumulations and accretions thereof did not; they were the self-acquired property of the testator, and passed to the trustees under the residuary clause of the will. The plaintiffs had subsequently to the death of *M* taken possession of the properties in question and had paid probate duty on them. The plaintiffs had taken conveyances from the executors and had given releases to the executors, and in a previous suit (No. 670 of 1892) the first plaintiff had in his evidence stated that he did not wish to dispute the will, and that he had elected to 'take under it' *Held*, that by their conduct the plaintiffs had elected to take the properties in question under the will, and could not maintain a suit for an account of the rents and profits either under or in opposition to the will. *Held*, also, that the sons of the plaintiffs (the minor defendants) were bound by the acts of the plaintiffs. The property in question was not really ancestral. It was only such for the purpose and by virtue of the agreement of 28th June 1881, and the plaintiffs were entitled to waive it or rescind it if they pleased, and their sons could not prevent them from doing so. *TRIBHOVANDAS MANGALDAS v. YORKE-SMITH*

I. L. R. 20 Bom. 316

*Held* on appeal (FARRAN, C.J., and STRACHAY, J.) reversing the above decree, that all accumulations and accretions to the properties in question subsequent to the agreement of 28th June 1881 were ancestral property, and passed as such to the sons of *M* at his death. *TRIBHOVANDAS MANGALDAS v. YORKE-SMITH* I. L. R. 21 Bom. 349

property in which no member has any defined share; and the property passes, on the death of any mem-



HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

ber, to the survivors. Where a member of a *Mitakshara* family executed a deed of gift, treating the property as his self-acquired property, and it was found that the same was the joint property of the family: *Held*, that the whole deed should be set aside. *GOPAL LAL v. MAHADEO PRASAD* (1901) 2

6 C. W. N. 651

19. *Dayabhaga—Joint family—Presumption of joint property—Father—Burden of proof.* The presumption of law that, while a Hindu family remains joint, all property including acquisitions made in the name of individual members, is joint property does not apply to the case of a joint family governed by the *Dayabhaga*. Certain property in dispute was acquired in the name of one of several brothers during the lifetime of their father, and was so the possession of that brother. *Held*, that the burden of proof in such a case rests upon the party, who asserts that the property in reality belonged to the father. *SARODA PRASAD RAY v. MAHANANDA RAY* (1904). I. L. R. 31 Calc. 448

20. *Dayabhaga—Joint property—Partition—Widow—Moveable property—Reversionary, rights of—Waste, prevention of—Bill quia timet—Injunction—Reverter.* A Hindu widow, governed by the *Dayabhaga* school, has, in regard to moveable property inherited by her from a male, the same powers and is subject to the same restrictions in respect of management and alienation as to immovable property similarly inherited by her. *Coswainath Bysack v. Hurrosondery Dasse*, 2 *Morley's Dig* 1899; *Thakoor Dayhee v. Raj Rahuk Ram*, 11 *Moo. I. A.* 139, and *Bhagwandern Doobey v. Myrna Buer*, 11 *Moo. I. A.* 487, referred to. A Hindu widow, governed by the *Dayabhaga* school, inheriting her husband's share in joint properties, is entitled to claim partition of the properties, both moveable and immovable, as against her husband's co-parceners; but if there be a reasonable apprehension of waste by her of the moveable properties allotted to her share, sufficient provision should be made in the final decree for partition, for the prevention of such waste, to safeguard the interests of the reversioners. The remedy of the latter is not necessarily confined to a subsequent suit for injunction or a bill quia timet. *Soudamoney Dasse v. Jogesh Chander Dutt*, I. L. R. 2 Calc. 262; *Janaki Nath Mukhopadhyay v. Mothuranath Mukhopadhyay*, I. L. R. 9 Calc. 580, *Coswainath Bysack v. Hurrosondery Dasse*, *Clarke's Rules and Orders* (Appx) 91, and *Devin Behary Moduck v. Lal Mohun Chatteropadhyay*, I. L. R. 12 Calc. 209, referred to. *Biswanath Chandra v. Khandamoni Dasi*, G. B. L. R. 747; *Hurrydoss Dutt v. Rungunmoney Dasse*, 2 *Scind* 657; and *Hurrydoss Dutt v. Vipparanah Dasse*, 6 *Moo. I. A.*

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

433, distinguished. *DURGA NATH PRAMANIK v. CHRISTAKONI DASSI* (1904)

I. L. R. 31 Calc. 214  
s.c. 8 C. W. N. 11

21. *Action in ejectment—Issue as to alleged personation by plaintiff—Admissibility and effect of ex parte official inquiries.* In an action brought in 1894 by the presumptive collateral heir to a deceased Hindu to recover his estate from the appellant as having been substituted for the real heir, who was admittedly born in 1881, but was alleged by the plaintiff to have died in 1883, it appeared that a former suit had been

quines:—*stena*, showing the appeal, these matters regard to the purpose, the nature and the circumstances of the said inquiries, which were not in any sense judicial, but were made *ex parte* in order to obtain support to a foregone conclusion, the said proceedings and results were not, even if admissible, entitled to any weight. *CHANDRASANJI HINATASANJI v. MOHANSANJI HAMBERSANJI* (1906)

I. L. R. 33 I. A. 198  
s.c. I. L. R. 30 Bom. 523

22. *Joint family—*

them then had any separate property. At that time one of them had two sons and another son was born to him after the partition. The father and these

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

nucleus of ancestral property the onus was on the defendant to show that the property in suit was self-acquired and not purchased with ancestral funds; that such onus had not been discharged; that on the contrary the evidence showed that there

the joint funds was joint property, and did not belong to any particular member of the family. There was therefore no self-acquired property, and the will was consequently inoperative to defeat the claim of the younger sons to a share in the family estate. *LAL BHADUR v. KANHAIYA LAL* (1907)

I. L. R. 29 ALL 244; I. R. 34 I. A. 65

23. ——— Mortgage—Joint family—Liability of sons in respect of a mortgage executed by the father—Exemption of son's interest—Subsequent suit against sons for share of debt payable by them—*Lamistation Act* (XV of 1877), *Sch. II, Arts 147, 152, 120*. Certain joint ancestral property was mortgaged by the head of the family first in 1832 and

from the operation of the mortgagee's decree. The mortgagee then sued the sons and grandsons to recover from them a proportionate part of the amounts due on his mortgages. This suit was

## 24. ——— Joint family—

by way of usufructuary mortgage of joint family

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN,  
PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

property. The father sued for redemption, but was unsuccessful. *Held*, on suit by the sons claiming to redeem the whole mortgage, that the sons were not precluded by reason of the result of their father's suit from suing to redeem, but they could not obtain redemption of more than their own shares. *SUNDAR LAL v. CHHITAR MAL* (1906)

I. L. R. 29 ALL 215

25. ——— Legal representative—*Mitakshara*—*Suretyship*—Execution of decree—Decree against father—Execution against representative—*Mitakshara* son, liability of, to be brought upon the record—*Civil Procedure Code* (Act XIV of 1852), *ss. 234, 244*. Where a decree for

ancestral property or of a share of it for the debt covered by the decree might be determined in the execution proceedings, if the legal representative had been properly brought on the record under

I. L. R. 34 CALC. 942

26. ——— Property inherited from maternal grandfather, *Mitakshara*—Joint family—Ancestral property *Held*, that a son in a joint Hindu family does not acquire by birth an interest jointly with his father in property which the latter inherits from his mother

I. L. R. 26 ALL 867

27. ——— Doctrine of nucleus—Ancestral property—Difference between joint property, joint family property and joint-ancestral family property. The three notions—(i) joint property, (ii) joint family property, and (iii) joint-ancestral family property are distinguishable. In all

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

three things there is a common subject—property; but it is qualified in three different ways. The joint property of the English law is property held by any two or more persons jointly, and its characteristic is survivorship. Analogies drawn from it to joint-family property are false or likely to be false for several reasons. The essential qualification of the second class is not jointness only, but a good deal more. Two complete strangers may be joint tenants, according to English law; but in no conceivable circumstances could they constitute a joint Hindu family, or, in that capacity, hold property. In the third case, property is qualified in a two-fold manner; it must have been joint-family property and it must be ancestral. There must have been a nucleus of joint-family property before ancestral joint-family property can come into existence, because the word ancestral connotes descent and therefore pre-existence. B—because it is true that there can be no joint ancestral family property without a previous nucleus of joint-family property, it is not true that there cannot be joint-family property, without a pre-existing nucleus, for that would be identifying joint-family property, with ancestral joint-family property. Where there is ancestral joint-family property every member of the family acquires by birth an interest in it, which cannot be defeated by individual alienation or disposition of any kind. This is equally true of joint-family property. Where it is known or admitted that some at least of the property of a joint-family has come down to them the presumption is that the whole property is ancestral, and any member alleging that it is not will have to prove his self-acquisition. Where property is admitted or proved to be joint-family property, it is subject to exactly the same legal incidents in every respect as property which is admitted or proved to be ancestral joint-family property. Further, this class of property in India differs radically in origin and essential characteristics from the joint property of the English law. The fundamental principles of the Hindu joint-family is the tie of *sapindaship*. Without that it is impossible to form a joint Hindu family. With it as long as a family is living together it is almost impossible not to form a joint Hindu family. There is nothing either in practice or theory which excludes the possibility of members of the same family starting a family fortune holding it as members of a joint family, and thereby clothing

acquired that character, and before it has been divested by partition obtains by birth an interest in it. *KARSONDAS DHARANSY v. GANAGANI* (1908) I. L. R. 32 Bom. 479

28. ——— Money received at marriage—*Dayabhaga*—Joint property or self-acquisi-

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(a) ANCESTRAL PROPERTY—*contd.*

*tion*—Money received at marriage by a member. Money received by a member of a joint Hindu family at marriage is not joint family property. *ADHAR CHANDRA CHATTERJEE v. NABIN CHANDRA CHATTERJEE* (1907) 12 C. W. N. 103

29. ——— Right of co-parcener's son born after release—*Joint Hindu family*—Release by a co-parcener. M., a member of a joint

sued the first son to recover from him a moiety of the sum allotted to the first son on partition. *Held*, that the second son was not entitled to any share in the property. *SHIVAJIRAO v. VASANTRAO* (1908) I. L. R. 33 Bom. 267

30. ——— Right to manage charities—*Joint family*, right of, to manage charities—Such

male member of such a family is, until a partition is effected, entitled to exercise the right of management vested in the family on its behalf. Until partition is effected, no junior member is entitled to management by rotation, in the absence of an agreement recognising such right; nor is it competent to a Court to decree such a right on the ground of convenience. *THANDAVARAYA PILLAI v. SHUNMOOAM PILLAI* (1908) I. L. R. 32 Mad. 167

## (b) SELF-ACQUIRED PROPERTY.

31. ——— Property inherited through

32. ——— Property acquired from father-in-law on marriage—*Inability to partition*. Property acquired from a father-in-law is self-acquired property, and therefore not liable to be shared in by a brother. *BENARIE LAL ROY v. LALL CHAND ROY* 25 W. R. 307

33. ——— Father's interest in self-acquired property of son—*Separation*. The doctrine of Hindu law that a father takes a share in his son's self-acquired property applies only to cases of families in joint estate, but not where separation

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(b) SELF-ACQUIRED PROPERTY—*contd.*

\*in estate has taken place. ANUND MOHUN PAUL CHOWDHRY v. SHAMA GOONDUR

W. R. 1864, 352

34. ——— Property acquired by member while drawing income from family. Property acquired by a Hindu while drawing an income from his family is liable to partition. RAMA-SHESHAYYA PANDAY v. BHAGABAT PANDAY

4 Mad. 5

35. ——— Property acquired by one member in trading—*Education at expense of joint family.* *Quere* Where a member of a joint Hindu family subject to the Mitakshara law has received a general education at the expense of the joint family funds, but is shown to have derived no material wealth from those funds, does property which he afterwards acquires by the exercise of his industry and intelligence in successful trading become joint in the contemplation of the Hindu law? Decisions of the Indian Courts bearing on this question observed on. PATILJEM VALOO CHETTI v. PATILJEM SOORYAH CHETTI

I. L. R. 1 Mad. 252

I. L. R. 4 I. A. 109

36. ——— Onus of proof. A, a Hindu, took up some abandoned waste land and brought it into cultivation. *Held*, that the true test as to whether the land was his self-acquired property or not is whether it was brought under cultivation by family or self-acquired funds, and the onus probandi lay upon those who allege the latter. SUBBAYYA v. SUBBAYYA

I. L. R. 10 Mad. 251

37. ——— Gains of science—*Educational family expense.* Gains of science acquired at the family expense, and whilst the acquirer is receiving a family maintenance, are liable to partition, and upon the death of the acquirer form part of the family property, and do not pass to his widow. BAI MANCHA v. NAROTAMPAS KASHIDAS

8 Bom. A. C. 54

38. ——— *Self acquired property—Partition.* The acquisition of a distinct property by a member of an undivided Hindu family without the aid of joint funds is his self-acquired property, and is not subject to partition;

science has been imparted at the expense of persons who are not members of the acquirer's family. When the Hindu texts speak of the gains of science, they intend the special training for a particular profession which is the immediate source

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(b) SELF-ACQUIRED PROPERTY—*contd.*

of the gains, and not the general elementary education which is the stepping-stone to the acquisition of all science. Consequently, the property acquired by a Subordinate Judge who had received elementary education at the family expense, but a knowledge of law and judicial practice without such aid, is impartible. The ruling of the Privy Council in *Luzimon Rao Sudashev v. Mullar Rao Daye*, 2 Knapp 60, interpreted to mean no more than that law as now settled, viz., that when there is ancestral property by means of which other property may have been acquired, then it is for the party alleging self-acquisition to prove that it was acquired without any aid from the family estate. *Bai Mancha v. Narotampas*, 6 Bom. 1, distinguished. Dictum of MITTER, J., in *Dhunooldharee v. Gumpul Lal*, 11 B. L. R. 201; 10 W. R. 122, that the Hindu law nowhere sanctions the contention that the acquisition of a member of a Hindu family who has received education from the joint estate is liable to partition—commented on as not strictly correct. LAKSHMAN MAYARAM v. JAMINABAI. I. L. R. 6 Bom. 225

39. ——— *Fruits of elementary education impartible—Earnings of different co-shares thrown into the joint stock—Estoppel—Alienation of joint property by manager of family.* Three brothers—K, M, and N—were members of a joint Hindu family living at Nagothna. M and N went to Baroda and obtained employment

no power to alienate them. They also prayed, in the alternative, for a partition of their two-thirds share of the property. *Held*, that, the plaintiffs having received only a rudimentary education in their family, their earnings in the exercise of their profession as karkuns were self-acquired and impartible, and that the property purchased or redeemed with those earnings would also be impartible, unless it appeared that they had voluntarily thrown such property into the joint stock, with the intention of abandoning all separate claims upon it. If they did so, the property would thereupon become joint property. *Held*, also, that, the plaintiffs having held out K as the manager of

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(b) SELF-ACQUIRED PROPERTY—*contd.*

the whole estate, as a matter of fact, borrow the money for the benefit of the family.

**KRISHNAJI MAHADEV v. MORO MAHADEV**  
I. L. R. 15 Bom. 32

40. ———— *General education acquired at the expense of the joint family funds.* Held, that the mere fact that a member of a

family has self-acquired property. **Pauliem Paloo Chetty v. Pauliem Sooryah Chetty**, I. L. R. 1 Mad. 252, and **Krishnaji Mahadev v. Moro Mahadev**, I. L. R. 15 Bom. 32 referred to and followed.

**LACHIN KVAR v. DEBI PRASAD**  
I. L. R. 20 All. 435

41. ———— *Prostitution.* The ordinary gains of science are divisible when such science has been imparted at the family expense and acquired while receiving a family maintenance. *Secus*, where the science has been imparted at the expense of persons not members of the learner's family. The trade of prostitution is recognized and legalized by Hindu law. **CHALAKONDA ALASANI v. CHALAKONDA RATAN CHALAN**. 2 Mad. 56

42. ———— *Income derived from prostitution—Dancing girl—Education in dancing and music.* Property acquired with income derived

I. L. R. 4 Mad. 350

43. ———— *Professional earnings of vakil—Self-acquired property—Gains of science.* Upon the question whether the professional earnings of a vakil were generally his self-acquisition and impartible;—Held by **KIRKPATRICK, J.**, that the question must be upon the facts in each case, how far the common family means were instrumental in enabling the professional man to earn the property which is claimed as subject to partition. The fair presumption is that such attainments as are usually possessed by a vakil have been acquired with the assistance of the family means. By **HOLLOWAY, J.**, that the ordinary gains of science by one who has received a family maintenance are certainly partible. Moreover, within the meaning of the authorities a vakil's business is not matter of science at all. **DEVASTALLA JAGANNADHAR v. DEVASTALLA NARAYAN**. 7 Mad. 47

HINDU LAW—JOINT FAMILY—*contd.*2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*(b) SELF-ACQUIRED PROPERTY—*contd.*

44. ———— *Partnership property—Agreement allowing members to draw separately from assets of firm—Self-acquired property.*

were joint as to their general concerns, and in some sense joint as members of a family, yet that relation was qualified by the provision contained in a family arrangement whereby each member of the family might take out and use assets derived from a partnership firm for the benefit of his sole and separate speculations;—Held, that the plaintiff was not entitled to throw his own and his brother's acquisitions into hotchpot and to claim an equal division of them. The arrangement being of such an extraordinary character as to leave it in the power of each member to draw to an unlimited extent upon the assets of the firm, the Privy Council declined to extend the operation of such an agreement one iota beyond its terms, and were therefore of opinion that the High Court was right in drawing a distinction between pledging the credit of the firm and drawing out money actually belonging to the firm. **NEERUNGHE DOSS v. NARAIN DOSS**

26 W. R. 17

Affirming decision of High Court in s.c.

3 N. W. 217

45. ———— *Self-acquired immovables—Construction of words of a deed granting an absolute estate of inheritance—Change of ancestral character of immovables—Mortgage and foreclosure—Bona fide re-acquisition for value by mortgagor's descendant.* A father, being a member of an undivided family, alienated the family immovables

movables alienated by a father's gift, disputed by his son, partly consisted of zamindari rights in villages which had been at one time ancestral in the family, but had been transferred to satisfy the debts of an ancestor, and had been acquired back by his descendant, the donor. As to one of these villages, the Courts below had differed whether it was self-acquired property in the donor's hands. It had been mortgaged by the ancestors; and the mortgage had been foreclosed under Regulation XVII of 1806, before having been re-acquired by the donor. That the foreclosed property was self-acquired property

tion was not a redemption of an estate inherited from an ancestor, and merely encumbered; but that the once ancestral character of this village had been destroyed by the foreclosure. Like the other villages alienated by the father's gift, it was self-

**HINDU LAW—JOINT FAMILY—*contd.*****2. NATURE OF, AND INTEREST IN PROPERTY—*contd.*****(b) SELF-ACQUIRED PROPERTY—*contd.***

acquired by the donor. Other immoveable property comprised in the gift consisted of a *malikana* payable out of other villages conferred upon the

deduction of Government revenue for generation after generation." *Held*, that the grant of the *malikana* was absolute to the one grantee; that

KISHORI

L. R. 25 I. A. 54

RAO BALWANT SINGH v. RANIKISHORI

2 C. W. N. 273

48. ——— *Joint Hindu family—Ancestral property—Self-acquired property—Property inherited from collateral, acquired after litigation supported by joint family funds.* The head of a joint Hindu family owning a large amount of joint ancestral property acquired by inheritance from a collateral branch of the family property both moveable and immoveable after litigation ending in a compromise. This litigation was carried on by means of money belonging to the joint family business. *Held*, on a finding that the business of the family usually necessitated the existence of a very large floating balance, and that the money used for this litigation was in a short time re-credited by the head of the family in the family accounts, that the money should be treated as borrowed, that there was no appreciable detriment to the ancestral property, and consequently the property, which passed under the compromise above referred to, was self-acquired and not ancestral property. *Rani Meera Kunwar v. Rani Hulas Kunwar*, L. R. 11 A. 157, and *Rai Nursing Das v. Rai Narain Das*, 3 All H. C. 217, referred to *Bachcho Kunwar v. Dhanam Das* (1906).

I. L. R. 28 All. 347

47. ——— *Devise of self-acquired property to sons—Self-acquired property—Nature of son's interest.* *Semble* That property which is the self-acquired property of a Hindu who has sons and grandsons and is devised by will to one of the owner's sons remains after devolution self-acquired property and does not become the joint property of the devisee and his sons. *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy*, I. L. R. 10 Bom. 528, followed. *Tarachand v. Kesh Ram*, 3 Mad. H. C. 50, and *Muddun Gopal Thakoor v. Ram Bulsh Pandey*, 6 W. R. 71, dissented from *Semble*, also, that where the sons of a Hindu father, ap-

**HINDU LAW—JOINT FAMILY—*contd.*****2. NATURE OF, AND INTEREST IN, PROPERTY—*contd.*****(b) SELF-ACQUIRED PROPERTY—*contd.***

parently members with their father of a joint Hindu family, took under their father's will property acquired by him under the will of his father, devised to them separately by name; but continued to live in the manner of a joint Hindu family and treated at all events the immoveable property for a series of years in all respects as if it were joint ancestral property, the property so devised remained separate property according to Hindu law. *Appovier v. Rama Subba Aiyar*, 11 Moo. I. A. 75, and *Balishen Das v. Ram Narain Sahu*, L. R. 39 I. A. 139, referred to. *PARSOTAM RAO TANTIA v. JANKI BAI* (1907) . . . I. L. R. 29 All. 354

48. ——— *Presumption as to the character of the property held by the father—Self-acquisition.* A Hindu, who had a son and that son's son living with him, made a deed of gift of his property in favour of his grandson. In that deed the property was described as his self-acquired property; and the deed was attested by his son. It was shown that the son had knowledge of the contents of the deed. *Held*, that the above fact led to the inference that the property was self-acquired. *KALLIANJI v. BEZANJI* (1908)

I. L. R. 32 Bom. 512

**3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER.**

1. ——— *Position of manager—Agent.* The managing member of a Hindu joint family holds a position in relation to the other members of the family and the family property analogous to is not the *MUHAM.*

I. L. R. 22 All. 307

2. ——— *Rights of members of family—Position of manager—Agent—Trustee.*

SINGH v. PORAN CHUNDER SINGH . 9 W. R. 483

3. ——— *Agreement between members of a Hindu family—Their estate managed by one in the relation of ordinary agent to principal—Liability to account.* Three brothers of a

**HINDU LAW—JOINT FAMILY—contd.****3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—contd.**

joint Hindu family agreed that their estate should remain joint, excepting the share of a separated fourth brother, which was excluded. It was in the agreement that the eldest of the three should manage the family estate, and that after twelve years, and after an account rendered by him of the profit and loss, a division among them should be made; any one of them to obtain his share on giving up his portion of the profits. In a suit for partition commenced by one of the brothers and carried on by his representatives, the term having expired:—*Held*, that the true construction was that the estate was not a mere agreement to partition.

and become liable on the footing of an ordinary agent, accountable for receipts and expenditure, and that he was not in the position of the managing member of a joint family liable only to account as to the then existing estate of the property. *SETRUCHERLA RAMABHADRA v SETRUCHERLA VIRABHADRA SURYANARAYANA* I. L. R. 22 Mad. 470  
I. L. R. 26 I. A. 167  
3 C. W. N. 533

4. ———— **Manager, liability of, to account—Partnership, distinction between Hindu family and.** The manager of a joint Hindu family is not, by reason of his occupying that position, bound to render an account to the other members of the family. There is no analogy in this respect between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept on the understanding that the profits, when realized, should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member:—*Held*, that this was in the nature of a partnership, and an account was decreed. *RANGANNANI DAS v KASINATH DUTT*  
3 B. L. R. O. C. 1: 13 W. R. 76 note

5. ———— **Suit for account during minority of members.** A managing member of joint Hindu family is bound to render an account.

*CHANDRA ROY CHOWDHRY v. PEARIMOHUN GOHO*  
5 B. L. R. 347

*ORHOY CHUNDER ROY CHOWDHRY v. PEARKE MOHUN GOHO* . 13 W. R. P. B. 75

6. ———— **Suit for account of portion of joint property.** One member of a joint Hindu family sued another, who was the manager, for a moiety of two items pertaining to the

**HINDU LAW—JOINT FAMILY—contd.****3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—contd.**

ancestral estate, which she alleged that the defendant had misappropriated. *Held*, that the form of the suit was wrong, and that the plaintiff should have sued for an account of the whole joint family property. *NOWLASO KOOREE v. LALLJEE MODI*  
22 W. R. 202

7. ———— **Suit by a coparcener for an account of the profits of a joint family firm—Injunction—Exclusion of partner.**

business of the firm. *GANPAT v. ANNABI*  
I. L. R. 23 Bom. 144

8. ———— **Right of excluded minor to account.** Where an infant has been ejected by the manager of the joint Hindu family from the family house, and excluded from enjoy-

9. ———— **Suit for share of profits—Suit for partition—Account, right to.** A member of a joint Hindu family cannot sue for a share of the profits of the joint family estate, as he has no definite share until partition. He may sue for a partition of such estate unless by a family usage of special law it is impartible, and then is entitled to an account. *PIRTHI LAL v JOWAHIR SINGH*  
I. L. R. 14 Calc. 493  
I. R. 14 I. A. 37

*See SHANKAR BAKSH v. HARDEO BAKSH*  
I. L. R. 16 Calc. 397  
I. R. 16 I. A. 71

10. ———— **Reference to arbitration—Power of father as manager of joint family to refer to arbitration the partition of the joint family property—Effect of award.** It is competent to the father of a joint Hindu family in his capacity of managing member of the family to refer to arbitration the partition of the joint family property, and the award made on such a reference, if in other respects valid, will be binding on the sons. *JAGAN NATH v. MANNU LAL*  
I. L. R. 16 All. 231

11. ———— **Remuneration for management.** In a suit for partition of family property, one of the defendants claimed to be credited with a sum payable to him as the managing coparcener under a deed of management to which the plaintiff was not party:—*Held*, that the

HINDU LAW—JOINT FAMILY—*contd.*3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—*contd.*

claim under the deed of management was not valid against the plaintiff. In the absence of a valid special agreement, the managing co-parcener of a joint Hindu family is clearly not entitled to remuneration, he being a joint owner of the property which he manages. *KRISHNASAMI AYYANGAR v. RAJAGOPALA AYYANGAR*. I. L. R. 18 Mad. 73

12. ——— Power of manager to revive a time-barred debt—*Limitation Act (XV of 1877), s. 19.* The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. *DENKAR v. ARTAJI*. I. L. R. 20 Bom. 155

13. ——— Partnership—*Mitalshara doctrine of joint family property—Limitation Act (XV of 1877), Sch. II, Art. 106—Contract Act (IX of 1872), ss. 237, 253.* I and his five sons constituted an undivided Hindu family. I and his three elder sons lived apart from the two youngest sons, and were in possession of some ancestral property. The two youngest sons were plaintiff and I a defendant respectively in the suit. The suit was

the case an agreement under which plaintiff had become jointly interested in the business ought to be inferred. *Held*, that plaintiff had not a joint interest in the contract business, and was not entitled to claim a share in it. *Held*, also, that, even if such an interest had existed, plaintiff's claim was barred by limitation. *Mawng Tha Hnyun v. Mah Thein Myah*, L. R. 27 I. A. 189, distinguished. *Per BHASNYAM AYYANGAR, J.*—It was impossible to regard plaintiff and first defendant as forming in themselves an undivided family owning joint family property as a corporate body. *Sham Narain v. Court of Wards*, 20 W. R. 197, commented on. The origin and nature of the *Mitalshara* doctrine of joint family property discussed. *Peddappa v. Ramalingam*, I. L. R. 11 Mad 406, referred to. *Radha Churn Dass v. Kripa Sindh Dass*, I. L. R. 5 Cal. 474, considered. *Rampershad Teuarry v. Shroochurn Dass*, 10 M. I. A. 450, distinguished. *SEDAKSAM MAISTRI v. NARASIMHULU MAISTRI* (1901)

I. L. R. 25 Mad. 148

14. ——— Partnership with manager of joint family—Death of manager, effect of—Joint family and joint family business, nature of—Partner, right of, to sue for particular assets after suit for general account barred—*Limitation Act (XV of 1877), Sch. II, Art. 106.* Where K, the manager

HINDU LAW—JOINT FAMILY—*contd.*3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—*contd.*

of a joint Hindu family, enters into a partnership for the family benefit with S, a stranger to the family, the partnership is dissolved on the death of K, in the absence of any agreement with the survivors. How far a joint Hindu family resembles a corporation sole and how far a joint family business resembles a partnership.

under Sch. II, Art. 106 of the Limitation Act, if brought more than three years after the dissolution of the partnership, a suit will lie for recovering a share of any particular asset received by a partner after such dissolution, if such suit is brought within time and if such claim, having regard to previous dealings, is not inequitable. *Merwanji Hormusji v. Rustomji Burjorji*, I. L. R. 6 Bom. 628, and *Knox v. Cye*, L. R. 5 H. L. 656, followed. *SOKKANDHA VANNINUNDAR v. SOKKANDHA VANNINUNDAR* (1905). I. L. R. 28 Mad. 344

15. ——— Minor co-parceners—*Joint Hindu family—Guardian of the family property appointed by the Court—Guardianship ceases when one of the co-parceners attains majority—Guardianship goes to the adult co-parcener.* Where a joint Hindu family consists of co-parceners, who are all minors, the co-parceners forming one group,

hand over the joint family property to the adult co-parceners notwithstanding the fact that other co-parceners are minors. *Virupakshappa v. Nilgangaia*, I. L. R. 19 Bom. 391, applied. *Bindaji v. Mathurabai*, I. L. R. 30 Bom. 152, followed. *RAMCHANDRA v. KRISHNARAO* (1903)

I. L. R. 32 Bom. 250

parlenary A Magistrate has jurisdiction to protect a manager in such possession by proceedings under s. 14 of the Criminal Procedure Code. *Sri Mohan Thakur v. Narsing Mohan Thakur*, I. L. R. 27 Cal. 259, referred to and approved. *BHASKARI KASAVARAYADU v. BHASKARAM CHALAPATIRAYADU* (1908) I. L. R. 31 Mad. 318

17. ——— Liability of karta to account—Settled account—Re-opening on ground of error or omission—Right to surcharge and falsify—Onus—Pleadings—Frame of plaint—Objection when to be taken—Partial partition—Suit for partition unpartitioned property The manager of a



**HINDU LAW—JOINT FAMILY—contd.****3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—contd.**

joint family administers it for the purposes of the family, and so long as he does this, he is not under the same obligation to economise or to save as would be the case with a paid agent or trustee. *Rajah Setrucherla v. Rajah Setrucherla*, L. R. 26 I. A. 167, referred to. When accounts have to be taken with a view to a partition of joint family properties the enquiry is mainly into assets then existing in the hands of the different members of the family. The head of the family cannot in

by such presumption as to matters which were not contemplated by them or which were not in fact

*Helan Dass v. Durga Das*, 4 C. L. J. 323, referred to and explained. The onus is always on the party having liberty to surcharge and falsify on the ground of mistakes and omissions. An account which has been settled may be rectified, if mistake is established and it does not matter whether the error in the accounting occurred by accident or design, nor is it necessary that the error or mistake should be mutual. Ordinarily when the plaintiff impeaches accounts which have been settled, on the ground of errors, such errors ought to be specifically stated. Where the plaintiff did not make specific averment of errors, but asked for relief only upon the general ground that items of joint family property had been excluded from partition, but no objection was taken by the defendants to the frame of the suit, and after the preliminary question of the liability of the defendant to render account had been decided in favour of the plaintiff, the parties went into an elaborate examination of the accounts without objection and it did not appear that the defendant was in any way prejudiced by the omission in the plaint, *Held*, that the objection that the errors were not specified in the plaint could not prevail. *Mohesh Chandra v. Radha Kishore*, 12 C. W. N. 28 : s. c. 6 C. L. J. 580, 590, distinguished. Property excluded from partition continues to be joint property and is liable to partition. *BHOWANI KROSHAD SHAMU v. JUDERNATH SHAMU* (1909)

13 C. W. N. 309

**4. DEBTS AND JOINT FAMILY BUSINESS.**

1. Debt incurred by manager  
—Presumption of debt being on joint account.

**HINDU LAW—JOINT FAMILY—contd.****4. DEBTS AND JOINT FAMILY BUSINESS—contd.**

2. ———— Duty of purchaser from manager of family—Minor members.

*booe Murray Koonceere*, 6 Moo. I. A. 393, followed. *TANDAVARY MUDALI v. VALLI ANNAL*  
1 Mad. 398

3. ———— Liability of members for

4. ———— Debt incurred by joint family—Duty of purchaser—Reasonable enquiry. A person lending money on the security of the property of an undivided Hindu family is bound to make enquiries as to the necessity that exists for such loan. If he lends the money after reasonable

5. ———— Debts incurred for family purposes—Evidence of legal necessity. *N. G.*

6. ———— Suit by one member for debt due to family firm—Partnership in a

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

examination that no new business to send on account of the management of the affairs of the firm

he not being the managing member or proprietor.  
JUGAL KISHORE v. HULANI RAM

I. L. R. 8 All. 264

7. ——— Joint ancestral business, nature of—Partnership—Manager of joint family, power of. An ancestral trade descends like other Hindu property upon the members of an undivided family, and the manager of such family can on behalf of the family enter into co-partnership with a stranger. In carrying on such a trade,

ger are not bound to investigate the status of the

between co-partners of partnership accounts, and differences by a transfer and division of partnership property, is not such a necessary act, but is one which is left to be dealt with by the ordinary rules of

according to English law is placed in with respect to his co-partners and their representatives.  
RAMLAL THAKURSIDAS v. LAHMICHAND MUNIRAM

1 Bom. Ap. 61

6. ——— Mitakshara law—Debts incurred by manager of joint family in trading. A joint family property acquired and

I. L. R. 1 Calc. 470

9. ——— Business carried on for benefit of infants—Debts incurred by guar-

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

dian—Liability of infants—Contract Act, s. 247.

admitted by contract into a partnership business, the minor is not to be held personally liable for the debts incurred in such trade, but that his share therein is alone liable. JOYKISTO COWAR v. NITYANEND NUNDEY

I. L. R. 3 Calc. 738 : 2 C. L. R. 440

10. ——— Ancestral trade carried for benefit of minor by the minor's natural guardian—Minor bound by acts of the guardian—Liability of minor for debts. Under Hindu law, where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral

11. ——— Power of managing member to bind members of partnership.

absence of evidence to possess the know-

BENGALA DOSSEE v. MOHUN DOSSEE  
I. L. R. 5 Calc. 792 : 6 C. L. R. 34

See SHAM SUNDAR LAL v. ACKHAN KUNWAR  
I. L. R. 21 All. 71

12. ——— One member as agent of others—Partnership As between the members of a joint family, any one or more may be authorized by the rest to act as their agent or agents in any business transaction; but when a joint family or any members of it carry on a trade in partnership, and contract with the outside public in the course of that trade, they have no greater privileges than any other traders. If they are really partners, they must be bound by the same rules of law for enforcing their contracts in Courts

HINDU LAW—JOINT FAMILY—*contd.*3. NATURE OF JOINT FAMILY AND POSITION OF MANAGER—*concl.*

joint family administers it for the purposes of the family, and so long as he does this, he is not under the same obligation to economise or to save as would be the case with a paid agent or trustee. *Rajah Setrucherla v. Rajah Setrucherla*, L. R. 26 I. A. 167, referred to. When accounts have to be taken with a view to a partition of joint family properties the enquiry is mainly into assets then existing in the hands of the different members of the family. The head of the family cannot in general be called upon to defend the propriety of the past transactions of the family. *Jug Mohan Das v. Mangal Das*, I. L. R. 10 Bom 528 at pp. 561 and 581, *Narayan v. Nathu*, I. L. R. 28 Bom 201; *Abhay Charan v. Pearl*, 5 B. L. R. 247; 13 W. R. 75, *Surjeemonee v. Dinabundhoo*, 6 Moo. I. A. 326, referred to. When

by such presumption as to matters which were not contemplated by them or which were not in fact

*Helan Dass v. Durga Das*, 3 C. L. J. 323, referred to and explained. The onus is always on the party having liberty to surcharge and falsify on the ground of mistakes and omissions. An account which has been settled may be rectified, if mistake is established and it does not matter whether the error in the accounting occurred by accident or design, nor is it necessary that the error or mistake should be mutual. Ordinarily when the plaintiff impeaches accounts which have been settled, on the ground of errors, such errors ought to be specifically stated. Where the plaintiff did not make specific averment of errors, but asked for relief only upon the general ground that items of joint family property had been excluded from partition, but no objection was taken by the defendants to the frame of the suit, and after the preliminary question of the liability of the defendant to render account had been decided in favour of the plaintiff, the parties went into an elaborate examination of the accounts without objection and it did not appear that the defendant was in any way prejudiced by the omission in the plaint, *Held*, that the objection that the errors were not specified in the plaint could not prevail. *Mohesh Chandra v. Radha Kishore*, 12 C. W. N. 28. s. c. 6 C. L. J. 550, 590, distinguished. Property excluded from partition continues to be joint property and is liable to partition. *BHOWANI PRASAD SHAH v. JUGERNATH SHAH* (1909)

13 C. W. N. 309

## 4. DEBTS AND JOINT FAMILY BUSINESS.

1. ——— Debt incurred by manager—Presumption of debt being on joint account.

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

Though property of a joint Hindu family is *prima facie* joint, yet as there is nothing to prevent an individual managing member from contracting debts on his own account, there is no presumption that a debt contracted by him is joint. *SUNKUR PERSHAD v. GOURY PERSHAD* . . . I. L. R. 5 Calo. 321

2. ——— Duty of purchaser from manager of family—Minor members. A debt incurred by the head of a Hindu family residing together under ordinary circumstances, is presumed to be a family debt; but when one of the members is a minor, the creditor seeking to enforce his claim against the family property must show that the debt was contracted *bond fide* and for the benefit of the family. *Hunoomanpersaud Pandey v. Babooe Munray Koonjerees*, 6 Moo. I. A. 393, followed. *TANDAVARYA MUDALI v. VALLI ANNAL* 1 Mad. 388

3. ——— Liability of members for separate debts of deceased brother—Survivorship. P, an undivided Hindu co-parcener, died on the 7th August 1874, leaving him surviving a brother C and a son N. N subsequently died on the 2nd July 1875. In a suit brought by plaintiff

NINGAPA . . . I. L. R. 4 Bom. 310

4. ——— Debt incurred by joint family—Duty of purchaser—Reasonable enquiry. A person lending money on the security of the property of an undivided Hindu family is bound to

of the family are adults or minors. Authorities bearing on the question of the *onus probandi* in such cases cited. *KANE BHIVE PARAB v. KANE BHIVE* 4 Bom. A. C. 169

5. ——— Debts incurred for family purposes—Evidence of legal necessity. N. G.

6. ——— Suit by one member for debt due to family firm—Partnership In a

**HINDU LAW—JOINT FAMILY—*contd.*****4. DEBTS AND JOINT FAMILY BUSINESS—*contd.***

suit for money lent, brought by the father of a joint Hindu family who carried on jointly an ancestral money-lending business, the plaintiff stated in examination that he had ceased to take an active

he not being the managing member or proprietor.  
JUGAL KISHORE v. HULAST RAM

I. L. R. 8 All. 264

7. ———— **Joint ancestral business, nature of—Partnership—Manager of joint family, power of.** An ancestral trade descends like other Hindu property upon the members of an undivided family, and the manager of such family can on behalf of the family enter into co-partnership with a stranger. In carrying on such a trade, infant members of the family will be bound by the acts of the manager which are necessarily incident

between co-partners of partnership accounts, and differences by a transfer and division of partnership property, is not such a necessary act, but is one which is left to be dealt with by the ordinary rules of

according to English law is placed in with respect to his co-partners and their representatives.  
RAMEL THAKURSIDAS v. LAKSHICHAND MUNIRAM  
I Bom. Ap. 51

8. ———— **Mitokshara law—Debts incurred by manager of joint family in trading.** A joint family property acquired and

I. L. R. 1 Calc. 470

9. ———— **Business carried on for benefit of infants—Debts incurred by guar-**

**HINDU LAW—JOINT FAMILY—*contd.*****4. DEBTS AND JOINT FAMILY BUSINESS—*contd.***

dian—Liability of infants—Contract Act, s. 247. Where the ancestral trade of a Hindu was carried on after his death for the benefit of his infant

admitted by contract into a partnership business, the minor is not to be held personally liable for the debts incurred in such trade, but that his share therein is alone liable. JOYKISTO COWAR v. NITYANAND NUNDEY

I. L. R. 3 Calc. 738 ; 2 C. L. R. 440

10. ———— **Ancestral trade carried for benefit of minor by the minor's natural guardian—Minor bound by acts of the guardian—Liability of minor for debts.** Under Hindu law, where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral trade is carried on under the superintendence of the minor's natural guardian for the benefit of herself

11. ———— **Power of managing member to bind members of partnership.**

absence of evidence be taken to possess the know-

BEMOLA DOSSEE v. MOHUN DOSSEE

I. L. R. 5 Calc. 792 ; 6 C. L. R. 34

See SHAM SUNDAR LAL v. ACKHAN KUNWAR

I. L. R. 21 All. 71

12. ———— **One member as agent of others—Partnership.** As between the members of a joint family, any one or more may be authorized by the rest to act as their agent or agents in any business transaction; but when a joint family or any members of it carry on a trade in partnership, and contract with the outside public in the course of that trade, they have no greater privileges than any other traders. If they are really partners, they must be bound by the same rules of law for enforcing their contracts in Courts

**HINDU LAW—JOINT FAMILY—contd.****4. DEBTS AND JOINT FAMILY BUSINESS—  
contd.**

of law as any other partnership. *RAMSBUK v. RAMLALL KOONDOD*

I. L. R. 6 Cal. 615 : 8 C. L. R. 457

13. Joint family—Partnership—Infant sons—Mitakshara law—Promissory note, suit on—Non-joinder of parties—Plea in bar of suit. In a suit on a promissory note executed by the defendant in favour of a firm whose original partners were two brothers, one of whom had previously died leaving an infant son surviving, while the other, who also had infant sons, was, at the date of the execution of the note, sole surviving partner of the firm—*Held*, that a Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business, does not necessarily become a member of the trading partnership carrying on the business. There must be some consent act to that effect on the part of the infant and his partners. Even, therefore, where parties are governed by the Mitakshara law, an infant need not be joined as a co-plaintiff in a suit by the father to recover a trade debt. Decrees obtained in such suits by or against the managers of the business are presumed to have been obtained by or against them in their representative capacity and will be binding on the whole joint family. *Bisnessur Lall Sahoo v. Luckmessur Sing*, I. L. R. 6 I. A. 233; *Petum Doss v. Ramdhone Doss*, I. L. R. 6 Cal. 815, referred to *LUTCHMANEN CHETTY v. SIVA PROKASA MODELAR*

I. L. R. 26 Cal. 349  
3 C. W. N. 190

14. Family firm—Cutchi Memons—Partnership in firm—Onus probandi—Adjudication of insolvency under s. 9 of

grandfather of the appellant, and had ever since been carried on under the same name by the family of the founder. The petitioning creditors alleged that the members of the insolvent's family lived

the family, or that he had ever been a partner, or had represented himself to be a partner in the firm. *Held*, confirming the order of the Court below,

**HINDU LAW—JOINT FAMILY—contd.****4. DEBTS AND JOINT FAMILY BUSINESS—  
contd.**

apply in the case of a member of a joint and undivided Hindu family; (ii) that the firm in question was a family firm, and was the property of a family subject to Hindu law; that whatever might have been the appellant's position previously, it was clear that on his father's death his father's share in the firm by law descended to the appellant and his brothers, if he had any. He then became a partner in the firm, if he had not been so already. It was open to him to show that he did not become a partner; but the facts abovementioned being established, the burden rested on him of displacing them, and of showing that he did not become a member of the family firm. In the matter of *HABOON MATOMED*. I. L. R. 14 Bom. 189

15. Partnership—Joint family, Member of, starting new business—

worship, and estate. Subsequent to the death of

business was started, the eldest brother had no power to start the new business so as to bind the infant members. *MARHON DUTY v. RAM LALL SHAW*. 3 C. W. N. 134

18. Promissory note by member of an undivided Hindu family—Liability of other members—Negotiable Instruments Act (XXVI of 1881), ss. 4, 26, 27. The maker of a promissory note (executed in plaintiff's favour),

benefit of the family which consisted of

with the maker of the note that suit being well as the *HARD* and *J. dissenting* were in as the of his

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

were minors when the money was borrowed. *Per DAVIES J.*—(1) Had the suit been brought on a bond or on the debt of which the promissory note afforded evidence, other members of the family might have been held liable as well as the maker of the note, on the ground that the latter represented them. But in the case of a suit on a promissory note (as this suit was) no such representation could be alleged unless the persons said to be represented appeared by name on the face of the document.

ATTAR v. KRISHNASAMI ATTAR

I. L. R. 23 Mad. 597

17. ——— Business carried on by one member as manager—*Liability of all as joint owners—Ancestral trade and ordinary partnership, difference between—Contract Act IX of 1872.* *J.*, the father of the three defendants established a trading firm in 1865 under the name of *J. H.* He and his three sons lived together as a joint Hindu family. *J.* died in 1872, and the busi-

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

ownership in a trading business created through the operation of Hindu law between the members of an undivided Hindu family cannot be determined by exclusive reference to the Contract Act (IX of

a rule, can one of the partners, when severing his connection with the business, ask for an account of past profits and losses. SAMALBHAI NATHAUBHAI v. SOMESHWAR MANGAL. I. L. R. 5 Bom. 38

18. ——— Payment of debt—*Debtor of undivided family—Release—Manager of family.* The debtor of an undivided Hindu family is not

19. ——— Bond in favour of one co-sharer—*Joint family—Payment of such*

under the circumstances the mortgage bond passed to *B* operated as a valid discharge of *A's* claim under the previous bond. GURUSHANTAPPA v. CHANMAILAPPA. I. L. R. 24 Bom. 123

20. ——— Debt incurred by senior member of family—*Mortgage of family property by senior member—Decree against mortgagor—Purchase under that decree—Suit for partition of property among the co-parceners—Recognition of debt as binding on co-parceners—Suit by purchaser for possession—Evidence of award in partition insufficient as showing necessity for original mortgage.* An undivided Hindu family consisted of *A*, his three sons, and his nephew. *A* mortgaged family land while the nephew was a minor. The mortgagee filed a suit and obtained a decree on the mortgage,

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

in execution of which the land was put up for sale and purchased by plaintiff. The nephew was not made a party to that suit. A died, whereupon the nephew instituted a suit for partition against A's sons: plaintiff was not a party to that suit. The matters in dispute therein were referred to arbitrators, who held that the mortgage which A had executed was binding on the nephew, and charged his share with a half of it. They also awarded the nephew certain land, being part of the land which had been purchased by plaintiff. Plaintiff now sued to recover the land so awarded to the nephew, but adduced no evidence to show that the mortgage executed by A was binding on the nephew, beyond proving the award by the arbitrators: *Held*, that, although the decree which had been passed in accordance with the award of the arbitrators in the partition suit was binding as between the nephew and the other members of the family, it could not be used in the present suit as evidence that the debt was for a family purpose binding on the nephew; and that, there being no other evidence, the suit failed. *KANUNA REDDI v. THAMBU REDDI* (1903)

I. L. R. 26 Mad. 26

21. — Document executed by eldest brother on understanding that all would join—*Proposed agreement with all members of Hindu family—Agreement not perfected—Execution of document by eldest brother upon understanding that all would join—Refusal by younger brothers to execute—Suit on document dismissed* Plaintiff sued two brothers and the minor son of the elder of them on a hypothecation bond, which recited that it was executed by the elder on his own behalf and on behalf of his minor son, and by his two brothers (one of whom was now deceased) on their own behalf, respectively. In fact, it was signed only by the eldest, for himself and for his son, the other brothers having refused to execute it when asked to do so. The defence was that no suit could be brought on the document, inasmuch as it was not completed; and the younger of the two surviving brothers further contended that the loan had not been contracted for his benefit; that the eldest brother had not executed the bond on his behalf; and that he had never agreed to execute it himself. The document separately named each of the three brothers as parties; they were not described as being undivided, and the eldest was described as only representing his son. *Held*, that the document constituted merely a proposed agreement which had never been perfected; the plaintiff having contracted and the eldest brother

intended that all the members of the family should execute the document, it could not take effect, by reason that the person who had alone executed it

HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

happened to be the managing member, and that the debt was recited to have been incurred for the benefit of the family. *SIVASAMI CHETTI v. SEYUGAN CHETTI* (1901) . . . I. L. R. 25 Mad. 389

22. — Liability of sons for father's debts—*Joint Hindu family—Liability of sons to pay their father's debts—Limitation—Act XV of 1877 (Indian Limitation Act), Sch. II, Art. 120.*

filed a suit against the sons, claiming payment from them of the father's debt. *Held*, (i) that the liability of the sons to pay their father's debt

*Mallesam Naidu v. Jugala Panda*, I. L. R. 23 Mad. 292, and *Natasayyan v. Ponnusami*, I. L. R. 16 Mad. 99, referred to. The latter case dis-sented from as regards the *terminus a quo* of the period of limitation. *NARAYAN MISRA v. LALJI MISRA* (1901) . . . I. L. R. 23 All. 206

23. — Loan taken by Manager

the purpose of carrying on a trade in his name, but that the income was spent for the benefit of the joint

the brother of the maker of the note, belonging to the joint family, liable jointly with the heirs of the maker. *Held*, that the view taken by the Judge was erroneous, and that the proposition may be true as regards the sons in a *Misakshara* family as to debts contracted by the father, but not as regards other members. *Held*, also, that, in order to make

(1903) . . . 7 C. W. 21, 22

**HINDU LAW—JOINT FAMILY—contd****4. DEBTS AND JOINT FAMILY BUSINESS—contd.**

**24. — Engagement entered into by father—Joint Hindu family—Surety—Liability of sons under an engagement by their father to be answerable for the payment of rent by a third person.** Held, that under the Hindu law the sons in a joint Hindu family are liable as such for the due fulfilment of an engagement entered into by their father as surety for the payment of rent by a lessee in accordance with the terms of his lease. *Tukarambhai v. Ganga Ram Mulchand Gujar*, I L R 23 Bom 454, and *Sitaramayya v. Venkatramanna*, I L R 11 Mad. 373, followed. **MAHARAJA OF BENARÉS v. RAM-KUMAR BHISHI (1904)**. I. L. R. 28 All 81

**25. — Decree against karta—Hindu Law—Dayabhaga—Debt incurred for joint family purpose—Execution when available against joint family property—Effect, when karta sued in personal capacity—Representative capacity—Parties—Agency—Difference between Dayabhaga and Mitakshara law.** When a debt is contracted by the managing member of a joint family for a joint family purpose, the joint family and not the managing member alone, is liable. There is no decree against the managing member alone, where the other members are adults.

**26. — Karta as administrator, powers of—Personal bond of karta, if binding on co-parceners—Probate and Administration Act (V of 1881), s. 90.** A karta of a joint Hindu family cannot cast the obligation of a personal bond on his co-parceners. The co-parceners, however, might become liable on the bond if the karta was

*Venkatesh Pai*, I. L. R. 21 Bom. 828, 816, referred to. **Obiter:** A karta of a joint Hindu family, who is also the administrator of the joint estate, cannot exercise powers as karta, which he is directly prevented from exercising as administrator. *Shur-pur Chunder v. Raj Kishen Mukherjee*, 15 B. L. R. 350, referred to. **RANJIT SINGH v. AMULYA PRASAD GHOSH (1905)**. 8 C. W. N. 823

**27. — Liability of minor member of family for trade debts—Joint Hindu family—Family business—Separate property.** Where a

**HINDU LAW—JOINT FAMILY—contd.****4. DEBTS AND JOINT FAMILY BUSINESS—contd.**

the debts incurred by the family trading firm, but the interest of the separating member in the family property will alone be liable. *Chalamayya v. Varadappa*, I. L. R. 22 Mad. 167, followed. *Ram Lal Thakuradas v. Lakshminand Muniram*, I Bom II C. App. 11; *Johurra Bibee v. Sriyopal Misser*, I. L. R. 1 Cal. 470; *Bemola Dossee v. Mohua Daser*, I L R. 5 Cal. 192, and *Lutchman Chetty v. Siva Prakasa Modaliar*, I. L. R. 26 Cal. 349, referred to. *Sambhaji Nathubhai v. Someshua* I L R. 5 Bom. 38, and in the matter of *Haroon Mahomed*, I L. R. 14 Bom. 189, distinguished. **BISHAMBHAR NATH v. FATEH LAL (1906)**

I. L. R. 29 All 178

**28. — Family business—Joint family—Sut to recover a debt due to the firm—Parties to such suit.** Held, that the managing members of a joint Hindu family carrying on a joint family business are not entitled to maintain a suit in their own names against debtors of the family without joining with them in the suit either as plaintiffs or defendants all the other members of the family. *K. P. Kanna Pisharday v. V. M. Narayanan Somayajipad*, I. L. R. 3 Mad. 334; *Balkrishna Moreshwar Kunte v. The Municipality of Mahad*, I. L. R. 10 Bom. 32; *Ramesh v. Ram Lal Koondeo*, I L R. 6 Cal. 815; *Kalidas Kevadas v. Nathu Bhagvan*, I. L. R. 7 Bom. 217; *Inam-ud-din v. Liladhar*, I. L. R. 14 All. 524; *Alagappa Chetti v. Vellian Chetti*, I. L. R. 18 Mad. 33, and *Angamuthu Pillai v. Kolandavelu Pillai*, I. L. R. 23 Mad. 190, referred to. *Pateshri Partap Narain Singh v. Rudra Narain Singh*, I. L. R. 26 All. 528, distinguished. **SHAMRATHI SINGH v. KISHAN PRASAD (1907)**. I. L. R. 29 All. 311

**29. — Joint family—Ancestral family business—Liability of member of the family after severance of his connection with the family business.** A member of a joint Hindu family carrying on an ancestral family business upon attaining the age of majority completely severed his connection with the family business, nor was it shown that he ever ratified any of the transactions entered into by the family firm. **Held**, that such member could, on the failure

I. L. R. 29 All. 186

**30. — Promissory note by karta—Negotiable Instruments Act (XXVI of 1881), ss. 4, 26, 27, 28—Joint Hindu family, liability of—Promissory note executed by karta—Family necessity—Liability of other members—Agency.** Where the karta of a joint undivided Hindu family borrows money on promissory notes for the purpose of a joint family business or to meet a joint family necessity, the creditor can recover the money from all the members of the joint family, although they were not all



HINDU LAW—JOINT FAMILY—*contd.*4. DEBTS AND JOINT FAMILY BUSINESS—*contd.*

parties to the notes. Ss. 26, 27, 28 of the Negotiable

*ABHINAV, I. L. W. N. 726*, referred to. *BAISHNAK CHANDRA DE v. RAMDHON DHOR* (1906)  
11 C. W. N. 139

## 5. POWERS OF ALIENATION BY MEMBERS.

## (a) MANAGER.

1. ——— Power of manager—Position  
of manager of family. *U. S. v. S.*

*GAN SAYANT BAL SAYANT* (under English law).  
*SAYANT v. NARAYAN DHOND*  
*SAYANT* . . . . . I. L. R. 7 Bom. 467

## 2. ——— Ancestral family trade

The case of a widow, or of a daughter, differs from that of the manager or head of an undivided family who manages an ancestral trade, and has

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*I. L. R. 21 All. 71*  
*I. L. R. 25 I. A. 183*  
*2 C. W. N. 729*

Upholding decision of High Court in *ACHAN KUR v. THAKUR DAS* . . . . . I. L. R. 17 All. 125

3. ——— Debt incurred by managing members of a joint family—*Personal liability of other members* Three brothers, being the managing members of their joint Hindu family, borrowed money from the plaintiff for a family purpose. The plaintiff now sued the survivor of the brothers and the sons of all three to recover the amount of the debt.

not entitled to a personal decree against the other defendants. *CHALAKAYYA v. VARADAYYA*  
I. L. R. 22 Mad. 166

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(a) MANAGER—*contd.*

4. ——— Debt contracted by a manager for family purposes—Decree against the managing member alone—Sale in execution of such decree—Effect of such sale. Where a debt is incurred by a Hindu as manager of the family for family purposes, the other members of the family, though not parties to the suit, will be bound by the decree passed against him in respect of the debt, and, if in execution of the decree any joint property is sold, the interest of the whole family in such property will pass by the sale. *SAKHARAN v. DEVI*  
I. L. R. 23 Bom. 372

5. ——— Transactions of manager, liable to be questioned—*Fraudulent contract*. Every member of a family of proprietors who has an interest in the estate has a right to question any transactions entered into by the elder member as manager whereby the former would be defrauded. The right of a person defrauded by a contract between a manager and a third party is to have the contract altogether rescinded. *RAVJI J. SHARANGPANI v. GANGADEHARSHAT* . . . . . I. L. R. 4 Bom. 29

6. ——— Money expended in improvement or repair—*Agreement by one coparcener in respect of expenditure of family property*. While the members of a Hindu family enjoy in

repayment of self-acquired funds; and such an agreement is rendered more reasonable and probable where portions of the family property are occupied and enjoyed by each of the members living separately. *MUTTASWAMI GAUNDAN v. SUBRAMANYA GAUNDAN* . . . . . 1 Mad. 309

7. ——— Discretion of managing member to expend moneys for improvements—*Mortgage for improvements to family property*. Where a mortgagee of a house, the ances-

not be narrowly scrutinised. *Saravanan Teran v. Mutlay Ammal*, 6 Mad. 371, and *Hunooman*

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(a) MANAGER—*contd.*

*Persaud Panday v. Munray Koonveree*, 6 Moo I. A. 373, discussed and followed. *RATNAM v. GOVINDARAJULU*. I. L. R. 2 Mad. 339

8. ——— Costs incurred by manager in protecting property of joint family —Liability of shares of members of joint family for.

The decrees for costs were sold by the defendant to a third person, who caused certain property which belonged to the estate of the plaintiff to be sold in execution. *Held*, in a suit by the minor sons to recover possession of the shares in the property sold, that, as all the sons were interested in the litigation, all their shares were liable for the costs, and the suit was dismissed. *JUTADHARI LAL v. RUDHOREE PERSAD*. I. L. R. 9 Cal. 508; 12 C. L. R. 255

9. ——— Alienation by manager—Sale by manager of joint family. The manager of an undivided Hindu family can sell his own share of the family property only. *DAMODHAR VITHAL KHARE v. DAMODHAR HARI SOMANA*

1 Bom. 183

*KOTLASHESWAR BOSE v. NARAINEE DOSSEE*  
10 W. R. 303

## 10. ——— Acquiescence

family, without refusing to participate in it. *WHITE v. BISTO CHUNDER BOSE*. 2 Hay 567

11. ——— Sole of family property by manager when binding on an adult member of family absent at time of sale—Consent to such sale. B and C were half-brothers and members of an undivided family. C left his native place, and in his absence B carried on the family

to bind C without his expressed assent. *Held*, confirming the decree of the lower Appellate Court, that the sale was binding on C, who, under the circumstances, must be presumed to have intended that B should continue as *de jure* and *de facto* manager to exercise such powers as the family necessities required. *CHHOTIRAM v. NARAYAN DAS*

I. L. R. 11 Bom. 805

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(a) MANAGER—*contd.*

12. ——— Mortgage by member of Hindu family. A member of an undivided Hindu family has a right to mortgage his own share of the family estate, and, if he be acting as representative and manager of the undivided family to mortgage the interests of the other members of the family therein on any common family necessity, or for the common benefit and use of the undivided family. *GUNDO MAHADEV v. RAMBHAT BIN BHATBHAT*. 1 Bom. 39

13. ——— Power of manager to alienate joint family property. The holder of an impartible zamindari governed by the law of primogeniture having a son executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards) now sued the assignee of the lease to have the lease set aside. *Held*, per *MUTTESAM AYYAR and WILKINSON, JJ.* (affirming the judgment of *PARKER, J.*), that the lease was not one which a managing member of an ordinary joint family governed by Mitakshara law could providently enter into. *BERESFORD v. RAMASUBRA*

I. L. R. 13 Mad. 197

14. ——— Sole by widow, as manager of the joint family, of immoveable property left by husband—Family necessity—Effect of sale as against minor sons—Deed of sale—Intention of parties. A Hindu died in debt, leaving two minor sons. His widow, who after his death was the manager of the family, borrowed money for family purposes, and as security mortgaged some of the immoveable property left by her husband. She subsequently sold it, and the Court held that the evidence showed that it was sold to pay off the family debts. *Held*, that the

15. ——— Gift by manager of part of family property—Illegitimate daughters—Maintenance, right to. R, the manager of an undivided Hindu family, gave certain shares in a spinning and weaving company, which had been purchased out of family funds, to G for and on behalf of the plaintiffs, who were R's illegitimate daughters. After the death of R and G, R's illegitimate daughter sued the surviving members of

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(a) MANAGER—*contd.*

the family for a declaration that the shares belonged to them, and that they had a right to have them transferred to their names in the company's books. *Held*, without deciding whether illegitimate daughters were entitled to simple maintenance from the family property, that in any case *R* as manager could not alienate the shares for that purpose, as there were no emergent circumstances requiring it. *PANVATI v. GANPATRAO BALAL*. I. L. R. 18 Bom. 177

16. ———— *Gift of undivided share by adults of family—Minor co-sharer not a party to gift.* According to Hindu law, under ordinary circumstances, a gift by a co-parcener of his undivided share in immovable property is invalid, and a minor's share cannot be given away by a manager except in case of necessity or for certain specified purposes. Certain land which was joint family property was given by the adult members of the family to the plaintiff as the worshipper of a deity. A minor co-parcener did not join in the gift. The plaintiff sued the occupier for possession. *Held*, that the plaintiff could not recover. The gift, not being made from necessity, nor for the performance of any pious duties obligatory on the minor or the family, was invalid, and could not be given effect to even with respect to the shares of the donors. *KALU v. BANSU*. I. L. R. 19 Bom. 803

17. ———— *Manager of lunatic appointed under Act XXXV of 1858—Mortgage of interest of minors.* Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property. A Hindu married woman having a lunatic husband and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property without the sanction of the Court, as required by s. 14 of the Act. *Held*, that the mortgages were invalid as regards the lunatic's interest in the property, but as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes. *ANURUBAI v. DANDAVA MAHALAPA NAIK*. I. L. R. 20 Bom. 150

18. ———— *Debts contracted by manager for family purposes—Evidence required where there has been a series of transactions—Onus of proof and presumption as to loans being for family purposes.* Although there is no presumption that money borrowed by the manager of a Hindu family are borrowed for family purposes, and a plaintiff seeking to make the family property liable must prove that the loans were contracted for the family, it is not incumbent on the plaintiff to show, in

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(a) MANAGER—*contd.*

respect of each item in a long series of borrowings, the particular purpose for which it was borrowed. It will be sufficient for him to show that the family was in chronic need of money for the current outgoings of the family life or its trade necessities, and that the moneys were advanced on the representation of the manager that they were needed for such objects. And if the fair inference to be drawn from all the circumstances of the case leaves no doubt that the moneys were borrowed for family reasons, the plaintiff is entitled to succeed, although he is not able to indicate the particular purpose for which such sum has been borrowed. *KAISHNA RAMAYA NAIK v. YASUDEV VENKATESH PAL VASUDEV VENKATESH PAL v. MHAJTI*. I. L. R. 21 Bom. 808

19. ———— *Purchaser from member of joint family.* If a person dealing with a Hindu representing himself to be the representative and manager of an undivided family, comprising infant members, can show that, after reasonable enquiry, he believed in good faith that the person so representing himself was entitled to act, and was acting, for the family, and that he acted in good faith, such act of the manager is valid and binding on the minor members of the family. *TRIVAK ANANT v. GOPALSHET BIV MAHADESH MAHADEU*. I. L. R. 27 Bom. 27

20. ———— *Power of manager to alienate or charge shares of other members of family—Necessity—Onus of proof.*

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in support of the existence of the condition necessary to give the legal capacity to make the disputed disposition lies upon the party claiming to have acquired under it a title to the minor's share of the property. Upon the question of what is the amount of proof which the law renders necessary to discharge that burden of proof:—*Held* that the dispute of family property or an old debt incurred by an ancestor; the case of the vendee or mortgagee, as regards the existence of a family

**HINDU LAW—JOINT FAMILY—contd.****5. POWERS OF ALIENATION BY MEMBERS—contd.****(a) MANAGER—contd.**

need or sufficient beneficial purpose requiring the advance of the consideration-money, must be established by positive proof. But that between a *bona fide* sale or mortgage for an advance made to pay off a pre-existing mortgage claim or an unsecured debt of an ancestor, and one not made for that purpose, there was this distinction to be observed, that the burden of establishing by direct proof that such prior claim or debt was incurred for a proper family purpose is not cast upon the vendee or mortgagee. He is only required to show this presumptively. But to do so it is incumbent on him to give proof not only of the consideration-money for the sale or mortgage having been bond

21. *Mortgage of joint family property—Powers of karta—Acknowledgment by karta or by executor under Hindu will—Acquiescence.* *H.*, a Hindu, died leaving two

**HINDU LAW—JOINT FAMILY—contd.****5. POWERS OF ALIENATION BY MEMBERS—contd.****(a) MANAGER—contd.**

a suit by the mortgagee for an account and sale, or foreclosure of the mortgaged property, it appeared that one of the minors had attained his majority when the mortgage was executed, and the other some years thereafter, and that both had been informed of the mortgage several years before the suit, and had then raised no objections. No

question it. A member of a joint Hindu family is bound, when he comes of age, to make himself

executed or that *L's* widow knew of the mortgage, the suit must be dismissed as against her. *Held*, on appeal, by COUCH, C.J., and PONTREX, J., that

executor of a Hindu will, has no power by acknowledgment to revive a debt barred by the law of limitation except as against himself. *G* as karta

*MOZOOMDAR v. MUDDOMUTTY GUPTEE.* *SHOSHEE-  
BHOOSUN MOZOOMDAR v. MUDDOMUTTY GUPTEE.*  
*MUDDOMUTTY GUPTEE v. BAMAQONDERY DOSSEE*  
14 B. L. R. 21

22. *Mortgage of joint family property.* An alienation made by a managing member of a joint Hindu family is not

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(a) MANAGER—*contd.*

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23. ————— *Mitalshara law*

—*Loan by Karta—Ancestral property.* A, the karta of a Hindu family governed by the Mitakshara law, living with his two sons, B and C, in joint enjoyment of the family property, took a loan from certain persons, and executed to them a mortgage bond on the joint family property. The bond-holders obtained a decree on their bond, in execution of which they caused the property to be sold, and themselves became the purchasers. C was a minor at the time of the alienation. In a suit by B on behalf of himself and C to set aside the alienation, on the ground that it had been made without their consent and without legal

authority for the alienation; and that, C being a minor, the alienation was not the joint act of all the members of the family. *Held*, that, under

and favouring the equity the purchasers clearly had against A and B, directed that, on recovery of the

of the family property, without having come to an actual partition among themselves of that property, or an ascertainment and partition of their rights in it, no member of the family has any separate pro-

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(a) MANAGER—*contd.*

obtained a decree against N on the mortgage, and

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seized and sold in execution of the decree, viz., the right, title and interest of N in the land, and H's share was not affected by the sale. *Held*, also, following *Maruti Narayan v. Lilachand*, I. L. R. 6

ant under the mortgage-decree, the defendant and H were simply tenants-in-common, and there could be no objection to H doing what he liked with his remaining share. *KISANSING JIVANSING v. MOR-ESHWAR VISHNU* I. L. R. 7 Bom. 81

See, also, *PANDURANG KANTIL V. VENKATPESH PAI* I. L. R. 7 Bom. 85 note

25. ————— *Mortgage of family property, effect of, on minor members—Sadda, Raghoba, and Sambhapa were members of an*

Court of first instance awarded him possession of the house until he should receive payment of the mortgage-debt. In execution of the decree, the plaintiff was obstructed by the widow and sons of Sambhapa, but after enquiry the Court, on 14th January 1879, overruled the objection and directed

24. ————— *Attachment and sale of the interest of manager where manager is not the father of other co-sharers—Tenants-in-common.* N and H (uncle and nephew) were members of an undivided Hindu family. On the 22nd April 1872, N mortgaged the land in dispute (part of the family property) to J, who, on the 10th June 1876,

**HINDU LAW—JOINT FAMILY—*contd.*****5. POWERS OF ALIENATION BY MEMBERS—*contd.*****(a) MANAGER—*contd.***

possession of the house to be given to the plaintiff. On 28th January 1879, the plaintiff complained that he was prevented from obtaining possession of one of the rooms in the said house; the defendant

not joint with him and the other sons of Sambhapa, and that the loan was not required for family necessity. The Subordinate Judge dismissed the plaintiff's application. In 1882 the plaintiff brought the present suit against the defendant, in which he prayed for a decree giving him possession of the said room on the terms of the decree passed in 1877. The defendant alleged that the house in question was not the joint property of his uncles Sadoba and Raghoba, but that his father Sambhapa was the sole owner; that his uncles Sadoba and Raghoba and his brother Rajaram had no right to mortgage it, and that the money was not required for family necessity. He contended that the decree of 1877 was not binding on him, and, further, that the present suit was barred. *Held*, that the plaintiff was entitled to a decree against the defendant. There was nothing to show that at the date of the mortgage in 1875 the defendant was not still a member of the same joint family with Rajaram into which he had been born. In the mortgage transaction all the branches of the family were represented by their eldest members, and the mortgagee (the plaintiff) might reasonably

BEN SAMBAPPA . . . I. L. R. 8 Bom. 602

28. — *Mortgage for family purposes—Decree against manager for mesne profits—Execution against family property.* D, the manager of an Aiyasantana family, having

the land mortgaged, and obtained a decree for possession against D and two other members of the family and for payment of mesne profits from the date of the mortgage against D only. After the death of D, F sought in execution proceedings against the surviving members of the family to obtain payment of the mesne profits decreed, by sale of the equity of redemption of the land mortgaged to him by D. *Held*, that F was not entitled to execute the decree for mesne profits against the family. VENKATA KRISHNAYYAR v. KAVEPI SHERATI . . . I. L. R. 7 Mad. 201

27. — *Polygar, position and liabilities of—Debts incurred by—Acquisition of movable property by—Assets in hands of successor—Duty of lender dealing with polygar.*

**HINDU LAW—JOINT FAMILY—*contd.*****5. POWERS OF ALIENATION BY MEMBERS—*contd.*****(a) MANAGER—*contd.***

Per KERNAN, J.—A simple loan and an express charge require the same foundation to bind the

there is no mortgage) and not on the credit of the family estate, and the rule requiring a lender to satisfy himself of the existence of family necessity or of the family benefit which justifies the manager in borrowing would not be sufficiently complied with by similar enquiries in the case of a polygar borrowing money. To entitle a creditor, obtaining a charge from a polygar on the corpus of the estate, to the security of the estate, proof of imminent pressure or danger of loss, or of such close enquiries as to the position of the estate and the immediate circumstances of the manager as comprehended

be said to derive any benefit thereby, when the annual rents of the estate are more than sufficient to pay for all proper charges on the estate, so as to entitle the creditor to recover from the family estate. When a creditor has made no enquiry as to the necessity for a polygar borrowing money, he cannot remedy the omission by showing that if he had enquired he would have been informed that the money was wanted to pay for Government kist due by the polygar. Per KERNAN, J.—When the rightful owner of a pollam has stood by and allowed another to take and remain in possession of the

MUTTUSAMI AYYAR, J.—The moveable property acquired by means of the income of the pollam by a *de facto* polygar is not available as assets for his creditors in the hands of *de jure* polygar who succeeded him and who has not admitted his predecessor's title, nor accepted maintenance from him, but moveable property acquired by means of borrowed money may be pursued by the creditor as assets. KOTTU RAMASAMI CHETTI v. BANQARI SESHAMA NAYANIVARU . . . I. L. R. 3 Mad. 145

28. — *Agreement made by manager of family.* Every member of a joint family is not bound by an agreement made by the head of that family. The rent of a joint undivided tenure cannot be enhanced on the strength of an *ikrar* executed by one of the co-parceners. HEMUNTYOOLAH CHOWDREY v. NIL KANTH MULLICK

17 W. R. 139

**HINDU LAW—JOINT FAMILY—contd.****5. POWERS OF ALIENATION BY MEMBERS—contd.****(a) Manager—contd.**

29. *Authority of elder brother to sell.* In the absence of authority in the eldest brother from his brothers to sell their rights, the sale by the eldest brother is not the act of all the brothers. *OAHAD BUKSH v. BINDOO BASHINEE DOSSEE* . . . 7 W. R. 298  
*See BHUJONKUND MITTEE v. RADHA CHURU MITTEE* . . . 7 W. R. 335

30. *Permanent lease by elder brother—Necessity.* The elder brother in a joint Hindu family cannot grant a valid permanent lease of land without some consideration being proved to have been paid or applied towards meeting any necessary expenses of the joint family. *BRUJO MOHUN GHOSH v. LUCHMUN SINGH* . . . W. R. 1864, 83

31. *Agreement made by adult members of family.* Arrangements relating to the enjoyment of joint family property and

Upheld by Privy Council . . . 26 W. R. 17

32. *Allegation of managership—Contract for sale of land by one of three brothers—Allegation in plaint that vendor was managing member—No allegation of authority or ratification by others—Suit for specific performance against all—Cause of action.* A plaint alleged that first defendant, as managing member of an undivided

it disclosed no cause of action as against the second and third defendants, and that (the allegations in the plaint having been proved as against first defendant) plaintiff was entitled to a decree for specific performance against first defendant, without determining whether the sale by him would or would not bind the interests of the other defendants in the property. *KOSCRI RAMARAJU v. IVALURY RAMALINGAM* (1902) . . . I L. R. 28 Mad. 74

33. *Minority—Joint Hindu family—Mitalshara—Appointment of guardian of family—Liability of members on mortgages executed by karta.* A guardian of the property of an infant

**HINDU LAW—JOINT FAMILY—contd.****5. POWERS OF ALIENATION BY MEMBERS—contd.****(a) Manager—contd.**

cannot properly be appointed in respect of the infant's interest in the property of an undivided *Mitalshara* family, such interest not being individual property, and therefore not property with which a guardian, if appointed, would have anything to do. In a suit to enforce mortgage-deeds against the members of a joint Hindu family governed by the *Mitalshara* law, it appeared that one of the three brothers constituting the family was a minor; that the mother had obtained a certificate of guardianship; that one at least of the mortgage-deeds was executed in her

entered into by the *karta* of the family, with the concurrence of the other adult members of the family, and could so far as they were concerned

whether he was not also under the

equally liable with the *karta* of the family to a money decree for advances as to which necessity had not been established. *GHARIB-ULLAH v. KULAK SINGH* (1903) . . . I L. R. 25 All. 407; s.c. I L. R. 30 I. A. 185 7 C. W. N. 881

34. *Power of manager—Karta, power of, to pledge family credit—Ancestral business.* A *karta* of a Hindu joint family possessing an ancestral business has an implied power to pledge the credit and property of the family, but only for the ordinary purposes of that business; he cannot do so for the purpose of embarking in a business which was not the ancestral business. *Ramlal Thalursidas v. Lakhmi Chand Muniram* (1861), 1 Bom. H. C. Civ. App. 51, referred to *MORRISON v. VERSCHOTLE* (1901) . . . 8 C. W. N. 429

35. *Younger member as manager—Mitalshara law—Junior or dependent member of family—Karta—Mortgage of family property—Necessity—Zarpeshgi lease.* Hindu law authorizes a younger member of a *Mitalshara*

**HINDU LAW—JOINT FAMILY—*contd.*****5. POWERS OF ALIENATION BY MEMBERS**  
*—contd.***(a) MANAGING—*contd.***

joint Hindu family to alienate or otherwise deal with immovable property belonging to the family, for family necessity, whenever he is put forward to the outside world by the elder members of the family, as the managing member. **MUDIT NARAYAN SINGH v. RANGLAL SINGH (1902)**

**I. L. R. 29 Cal. 797**

**(b) FATHER.**

*See HINDU LAW—ALIENATION—ALIENATION BY FATHER.*

**36. ————** *Alienation by father—Mitakshara law—Interest of father in ancestral property*  
Before partition, a Hindu father has, under Mitakshara law, no definite share in joint ancestral property which he can alienate. **Nowatt Ram v. Durbaree Singh** . . . . . **2 Agra 145**

**37. ————** *Sale by father of joint family of his own share.* A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate. There is no distinction according to the Madras school between a father and other co-parceners. **Palanivelappa Kaundan v. Mannabai Nairan** . . . . . **2 Mad. 418**

**38. ————** *Mitakshara law—Sale of ancestral property.* According to *Sadadati Prasad Sahu v. Footbath Koer*, **3 B. L. R. F. B. 31**, a sale of undivided ancestral property by a

the purchase-money, or to be placed in the position of an encumbrancer as against the joint family in the particular case. **HANUMAN DUTT ROY KISHEN KISHOR NARAYAN SINGH** . . . . . **8 B. L. R. 358**

**S.C. HONOGMAN DUTT ROY v. BHAGBUT KISHEN**  
**15 W. R. F. B. 6**

**39. ————** *Mitakshara law—Power of father to alienate.* A Hindu father in a Mitakshara joint family has no power to settle

**HINDU LAW—JOINT FAMILY—*contd.*****5. POWERS OF ALIENATION BY MEMBERS**  
*—contd.***(b) FATHER—*contd.***

father. **HURDOOT NARAIN SINGH v. BEER NARAIN SINGH** . . . . . **11 W. R. 480**

**40. ————** *Mitakshara law—Alienability by a co-parcener of his undivided share of ancestral estate—Will.* A Hindu of the

claim failed, because they were *situato* beyond the jurisdiction of the Court. It having been contended that, as a father and his sons were during his life co-parceners in the family estate, one of such co-parceners being able, according to the decisions of the Courts, by act *inter vivos* to make an alienation of his undivided share binding on the others, it

not be extended in the above manner beyond the decided cases. The Bombay Court had ruled that a co-parcener could not without his co-sharer's consent, either give or devise his share, and that the alienation must be for value. The Madras Court had ruled that, although a co-parcener could alienate his share by gift, that right was itself founded on the right to partition, and died with the co-parcener, the title of the other co-sharers vesting in them by survivorship at the moment of his death. Without a decision as to which of these

**I. L. R. 7 I. A. 181**

**41. ————** *Ancestral property—Joint property earned by a father and his sons—Effect of contribution by the father of a nucleus of property earned by himself exclusively—Power of disposition by will over.* D (defendant



**HINDU LAW—JOINT FAMILY—contd.****5. POWERS OF ALIENATION BY MEMBERS—contd.****(b) FATHER—contd.**

which his father had bought for him before his death. *D* had two sons, viz., *M*, born in 1816, and *H*, born in 1819. At the end of the year 1850, *D* and his two sons came to Bombay, where *D* continued to practice medicine and established a dispensary. In 1862, having saved Rs.5,000 by his medical practice, he set up business as a merchant, and acquired a considerable fortune. His two sons, *M* and *H*, who were joint with him, assisted him in his business. On the 7th October 1882, *M* separated from his father and brother and received as his share of the property a sum of Rs.6,000 and jewels and clothes worth about Rs.5,000. On the same day *M*

the 16th October 1882, *M* died leaving the plaintiff, his son, him surviving. The plaintiff in this suit contended that the whole of the said property was ancestral property in the hands of *M* and as such came to him (the plaintiff) unaffected by the will. The defendants contended that the property previously to the division was the joint, but not the ancestral, property of *M*, his father, and brother; that it was property earned by the joint exertions of *D* and his sons, that at the division in October 1882, the portion taken by *M* was his self-acquired property, and that he was entitled to dispose of it by will. *Held*, that whether, previously to the division in October 1882, the joint property of *D* and his two sons was ancestral or not, as soon

that it was acquired by the equal exertions of the father and his two sons. The father contributed the nucleus of Rs.5,000, and on that nucleus the property was formed by the joint exertions of himself and his sons. The portion, therefore, that came to *M* did not represent the equivalent of his own exertions only. It represented also a portion of the father's original capital. The property thus being ancestral in the hands of *M*, he could not, in the town of Bombay, dispose of it by will, even though it consisted of moveables, to the prejudice of the plaintiff's rights. **CHATTERHOOD MEORJI v. DHARAMJI NARANJI**. I. R. L. 9 Bom. 438

**42.** ——— Mortgage by a father—Decree against father on mortgage giving possession with interest and costs—Son's liability to satisfy the decree as to interest and costs. The plaintiff's father mortgaged certain ancestral pro-

**HINDU LAW—JOINT FAMILY—contd.****5. POWERS OF ALIENATION BY MEMBERS—contd.****(b) FATHER—contd.**

erty for a limited term. A suit was brought on the mortgage against the father, and a decree was passed directing the mortgaged property to be handed over to the mortgagee for a certain time, and awarding payment of interest and costs by the father. In execution of this decree, the mortgagee sought to recover the costs by sale of the property in question.

found by the court at all. The Court of first instance found that the debts had not been incurred for any immoral purpose, and dismissed the suit. On appeal to the High Court. *Held*, that

liable if the father had compromised the suit, unless the transaction were tainted with fraud or immorality. In a united family the father is capable of acting as the representative of the family, except in the case of borrowing for fraudulent or immoral purposes. In this case he entered into litigation, which resulted in loss to himself and the family which he represented, and he could make the family responsible for any loss so incurred. The judgment creditor could also make them liable. Although where the father desires to represent the

I. R. L. 12 Bom. 451

**43.** ——— Mortgage by father and one of the sons—Agreement by father alone that mortgagee should enjoy the property for a term of years in satisfaction of debt—Agreement not binding on sons—Alienation—Decree against father—When binding on his sons—*Delkan Agriculturists' Relief Act (XVII of 1897)*, s. 41. In 1888, one *D* and his eldest son *B* mortgaged certain ancestral property for Rs.1,500. In 1890 *D* alone came to an arrangement with the mortgagee by which it was agreed that the mortgagee should enjoy the income of the mortgaged property till 1900 A.D.

mortgaged. *D* having died in the meantime his sons objected to the attachment on the ground that the

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(b) FATHER—*contd.*

redeem. *Held*, that the agreement was not binding upon the plaintiffs. By the agreement the right to

enjoying advantage or benefit. Such an agreement by a Hindu father is not binding on his sons in respect of ancestral property. It amounts *pro tanto*

MARTAND . . . I. L. R. 22 BOM. 600

44. ——— Joint Hindu family.—Sale of ancestral property by the father with no antecedent debt or valid necessity to support it.—Sut by sons to set aside sale so far as affecting their interests.—A sale of ancestral property by the father in a joint Hindu family may be set aside on suit by the sons so far as it affects their interests in the property, if there is no antecedent debt or valid necessity to support it, although the transaction may not be shown to be tainted with immorality. *Manbahal Rai v. Gopal Mirra*, *Weekik Notes*, 1901, p. 57, followed. *Debi Prasad v. Jai Karan Singh*, I. L. R. 24 All. 479, referred to. *Debi Singh v. Jai*

appeal was decreed without these matters having been brought to the notice of the Court. *Held*, that

(1906) . . . I. L. R. 28 All. 328

## (c) OTHER MEMBERS.

45. ——— Alienation by one member.—Alienation without consent of others.—*Mitakshara law* *Quare* Whether, under the law of the *Mitakshara* in Bengal, a voluntary alienation by one co-sharer, without the consent of the rest, of his

I. L. R. 49  
A. 247

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(c) OTHER MEMBERS—*contd.*

46. ——— Transfer by one member of his share in the joint family property to another member.—Consent of co-sharers.—

47. ——— Investment of proceeds of estate by one member. If a member of an undivided Hindu family invests the proceeds of the joint ancestral estate in the purchase of other

S W. R. 182

48. ——— *Mitakshara law*. Under the *Mitakshara law*, a single member of a family was empowered to sell immovable property

49. ——— Power to alienate share of joint family property. Where the

mortgage his undivided share of the joint property without the consent of his co-sharers, in order to raise money for the benefit of the family, e.g., to pay debts or liquidate demands under legal necessity. *JUGGERNATH KHOTIA v. DOOBO MISSEY*

14 W. R. 80

50. ——— Alienation of joint property.—*Mitakshara law* As long as a

51. ——— Sale by co-parceners, effect of.—*Mitakshara law*. A sale by one member of a joint family held to be bad under the *Mitakshara law*, as being an appropriation by him, without any partition, or joint family property. *CHANDER COOMAR v. HARBUNN SAHAI*

I. L. R. 18 Calc. 137

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(c) OTHER MEMBERS—*contd.*

52. *Mitakshara law*  
—*Survivorship*—*Mortgage of share in joint family property.* A member of a Hindu family living

time on his own account, and decrees were obtained

obtained possession of it *held, that the share of*

has no authority, without the consent of his co-sharers, to mortgage his undivided share in a portion of the joint family property, in order to raise money on his own account, and not for the benefit of the family. *SADABART PRASAD SAHOO v. FOOLBASH KOER* 3 B. L. R. F. B. 31; 12 W. R. F. B. 1

*COSSERAT v. SUDABURT PERSHAD SAHOO*  
3 W. R. 210

*PHOOLBAS KOER v. LALLA JOGESHWAR SAHOO*  
18 W. R. 48

Affirming on review *SADABURT PERSHAD SAHOO*  
*LOTFAI KHAN* 14 W. R. 339

53. *Suit by one member to set aside alienation by another.* There is nothing in *Rajaram Tewari v. Luchman Prasad*, B. L. R. Sup. Vol. 731: 8 W. R. 15, or in *Sadabart Prasad Sahu, v. Foolbash Koer*, 3 B. L. R. F. B. 31, to justify the contention that, where there is an alienation made by one shareholder and another sharer sues to set aside that alienation it follows as a consequence that a party who sues to set aside the alienation must obtain a decree. *SRI PRASAD v. RAJGURU TRIANBURNATH DEO*  
6 B. L. R. 555; 14 W. R. 388

54. *Mitakshara law*  
—*Mortgage of undivided share in joint family property*—*Succession*—*Survivorship*—*Decree in suit against widow*—*Minority*—*Parties.* On the death without issue of a member of a Hindu family joint in estate and subject to the *Mitakshara law*, his undivided share in the joint family property

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(c) OTHER MEMBERS—*contd.*

of a joint Hindu family governed by the *Mitakshara law*, without the consent of his co-sharers, and in order to raise money on his own account, and not for the benefit of the joint family, mortgages in his lifetime his undivided share in portion of the joint

the suit, where it appears that the only other surviving member of the family as already sued for and recover his moiety of the property, and disclaims all further interest, and is joined as a co-defendant in the suit *PHOOLBAS KOONWAR v. LALLA JOGESHWAR SAHOO* L. L. R. 1 Calc. 228  
25 W. R. 285; L. R. 3 L. A. 7

55. *Power of one member to alienate his right to rent.* Where members of a Hindu family are so far separate in estate that each collects his quota of rent separately, there is no reason why one of should not make over either in exchange or sale, his right of receiving a part of the rents. *KALIKA SAHOO v. GOURNATH SEN.*  
12 W. R. 287

56. *Mitakshara law*  
—*Alienation by a member of his own share.* One member of a joint and undivided Hindu family governed by the law of the *Mitakshara*, cannot mortgage or sell his share of the family property without the consent express or implied, of the other members. *Chamaili Kuar v. Ram Prasad*, I. L. R. 2 All. 267, followed. *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R. 3 Calc. 193, and *Suroj Buxa Koer v. Sheo Persad Singh*, I. L. R. 5 Calc. 143, referred to. *RAMANAND SINGH v. GOMIN SINGH* I. L. R. 5 All. 384

*SHEO PERSAD JHA v. GUNGA RAM JHA*  
5 W. R. 231

57. *Mitakshara law*  
—*Alienation by one member of his own share.* According to the law of the *Mitakshara*, joint family property cannot be alienated by any member of the family, save for urgent and necessary expenses of

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(c) OTHER MEMBERS—*contd.*

necessary purposes was void. *BHAWANI GHULAM v. DEO RAJ KUMAR* . . . I. L. R. 5 All. 542

58. ———— *Power of member to give stranger interest in property.* Until a division of ancestral property is effected, no member of a joint family governed by the Mitakshara law can give a stranger any interest in the property. *MUDDUN GOPAL LALL v. GOWURBUTTY*

21 W. R. 190

59. ———— *Introduction of stranger—Effect of introduction of stranger into family—Auction-purchaser—Gift by member of family—Co-sharers, Assent of.* The introduction of a stranger in blood as auction-purchaser of a portion of the rights and interests of an undivided Hindu family breaks up the constitution of such family as undivided, and destroys the character of such property as joint and undivided family property, and a gift subsequently made by the remaining members of the original undivided Hindu family of their rights to a third person, without the assent of the auction-purchaser is not invalid by reason of the principle of Hindu law which requires the assent of co-parceners in an undivided Hindu family to give validity to such a gift. *BALLABH DAS v. SUNDER DAS*

I. L. R. 1 All. 420

60. ———— *Joint undivided family property—Assent of co-parceners—Stranger.* The member of a joint Hindu family who alienates his rights and interests in the family property to a stranger in blood thereby incapacitates himself from objecting to similar alienation by another member of such family of his rights and interests in such property, on the ground that such alienation was made without his consent, and such stranger is not competent to make such objection. *Ballabh Das v. Sunder Das*, I. L. R. 1 All. 429, followed. *CANRAJ DUBEY v. SHROZORE SINGH*

I. L. R. 2 All. 898

61. ———— *Sale of share in execution of decrees.* According to the Hindu law current in Madras, the member of an undivided family may alienate the share of the family property to which, if a partition took place, he would be individually entitled, and there may be a valid sale of such share on an execution in an action of damages for a tort. *VIKASVANI GRAMINI v. AYYASVANI GRAMINI* . . . I Mad. 471

62. ———— *Suit to enforce purchase.* The right of a co-parcener to alienate his vested interest in the property held in co-parcenary is limited to the extent of the co-parcener's share in the particular property which is the subject of the alienation. In a suit to recover a moiety of a village which was a portion of the joint family property, and which had been sold by the managing

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(c) OTHER MEMBERS—*contd.*

member without the assent of the plaintiff's father and not for family purposes, the entire village being less in quantity and value than the share of the managing member: *Held*, that the plaintiff was entitled to the relief prayed. *VENKATA CHELLA PILLAY v. CHINNAYA MUDALIAR* . . . 5 Mad. 166

63. ———— *Power to dispose of portion of property by will.* A long course of decisions in this presidency recognize the right of a co-parcener to dispose of his interest in the joint

———— *Assent of death with the survivorship, the exclusion of YAMEN.* . . . 8 Mad. 6

64. ———— *Alienation of impartible polliaput—Impartible polliaput held by single member, rights of disposition or alienation over.* The words "we and our offspring shall have no interest in the said polliaput (an impartible one), but you alone shall be zamundar and rule and enjoy the same," must be construed with due regard to the person using them and the occasion when they were used. *Held* by the High Court, that in the present case they were not a release, by the person using them for himself and his heirs, of all future rights of succession which might accrue to them as members of an undivided family. Possession under such a relinquishment was not a new and separate acquisition. No question upon the law of limitation can arise between the different members of the joint family in respect of the property thus held by a single member. An estate so possessed, free from present co-parcenary rights in others, is not entirely at the disposal of the holder for his own purposes. The possessor has only the qualified powers of disposition of a member of a joint family, with such further powers, or it may be with such restrictions, as spring from the peculiar character of his ownership. These powers fall short of a right of absolute alienation of the estate. *PAREYASAMI alias KOTTAI TEVAR v. SALUCKAI TEVAR alias OYYA TEVAR* . . . 8 Mad. 157

In the same case an appeal to the Privy Council this decision, however, was reversed, and it was held that the construction to be put on the words was that they were a renunciation by the person using them for himself and his descendants of all interest in the polliaput either as the head or as a junior member of the joint family, and that their effect was to make the polliaput, with its incidents of impartibility and peculiar course of succession, the

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(c) OTHER MEMBERS—*contd.*

property of the other members of the family as effectually as if it had been assigned on partition. *SIYAGNANA TEVAR v. PERIASAMI*

I. L. R. 1 Mad. 313

S. C. PERIASAMI v. PERIASAMI I. L. R. 5 I. A. 61

85. ——— Law in Bombay Presidency. On the western side of India a member of an undivided Hindu family can, without the consent of his co-parceners, sell his share in the undivided property. *TUKARAM AMBAIDAS v. RAMCHANDRA VALAD BHIMANNA DECOI*

6 Bom. A. C. 247

86. ——— *Right to alienate share—Liability to attachment.* It is settled law in the Presidency of Bombay that one of several parceners in a Hindu undivided family may, without the assent of his co-parceners, sell, mortgage, or otherwise alienate, for valuable consideration, his share in the undivided family estate, moveable or immovable. It is also settled law in the same

*DEV BHAT v. VENKATESH SANBHAT* 10 Bom. 139

87. ——— *Right to alienate share—Consent.* Held by a Full Bench, following

erty. *Tukaram v. Ramchandra*, 6 Bom. A. C. 4, approved and adopted. *Bayte v. Pandurang, Morris, Part II, 43*, disapproved. *FAKIRAH BIN SATTAPA v. CHANAPA BIN CHANDMALAPA*

10 Bom. 182

89. ——— Mortgage by one co-parcener in undivided estate—Sale of interest of one co-parcener—Rights of purchaser Partition. In 1843 two members of an undivided Hindu

him, as being the property of the mortgagor, whose right and interest therein had been attached and sold. Held, that the share of a co-parcener, being in the estate as a whole and not in any particular part of it, can be ascertained only by taking a general account of the whole estate, making a distribution in accordance with the results of such account. In

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(c) OTHER MEMBERS—*contd.*

taking such account, however, and in making the consequent distribution, it would be only equitable that the share of the co-parcener who affected to deal

obtain possession of the land purchased by himself the purchaser must file against the other members of the family a partition suit for the ascertainment of the share of the co-parcener, whose interest he has purchased, as it stood in 1818, and for the allotment to himself of that share so far as it can legally and equitably be identified with the land purchased by himself, and that consequently the suit in its present form will not lie. *PANDURANG ANANDRAY v. BHASKAR SHADASHIV* 11 Bom. 73

69. ——— Alienation by one holder of inam—*Right of alienate.* Held, that it was competent for an inamdar to alienate a third share of whatever interest he himself had in a family inam, in consideration of services rendered in recovering the inam itself; and that the grantee had a right to have the award made by the decree in the terms of the grant, which purported to bestow the third share in perpetuity. *SILTAJI T. PATIL SHIVAJI v. RAOHUNATH R. MARATHE*

2 Bom. 48; 2nd Ed. 45

70. ——— Mortgage by a co-parcener—*Liability of his share after his death to satisfy the mortgage.* Where a member of a joint Hindu family makes a mortgage, such mortgage, being

71. ——— Mortgage—*Attempt by one co-sharer to mortgage his undivided share on his own account—Effective sale of part of such a share in execution of a decree against the co-sharer.* Under the *Mitakshara*, as administered by

estate. An attempted mortgage by one of them does not create a charge which can have priority over purchases at execution-sales made *bona fide* and without notice of it; such purchasers having acquired the right of compelling the partition which

F. B. 31, referred to and approved. As to the right of the purchaser of the share at a judicial sale. *Deen Dayal Lal v. Jugdeep Narain Singh, I.*

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(c) OTHER MEMBERS—*contd.*

*L. R. 3 Calc. 198; L. R. 4 I. A. 217*, followed, and reference made to the distinction mentioned in the latter case, between a voluntary alienation without such consent and an involuntary one as the result of the execution of a decree against the co-partner and a judicial sale thereunder. A father and son composed a joint family, holding a share of an

so sold passed to the father, whose rights therein as purchaser at the judicial sales were not affected by the  
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perty as had not already been sold, but not in virtue of the mortgage *BALGOBIND DAS v. NARAIN LAL* I. L. R. 15 All. 339 L. R. 20 I. A. 118

72. — Sale by one member of his share—Ancestral estate held jointly by family under the *Mitakshara*—Effect of partition—On death of vendor, right by survivorship of other members—Equity of purchaser to have a lien against survivor. As to ancestral estate under the *Mitakshara*, so long as the estate is undivided and the share of a member of the family is indefinite, he cannot dispose of it without the consent of his co-parceners. *Held*, that in a joint family a nephew, having taken by survivorship the undivided share of an uncle, deceased, was entitled to recover that share from a purchaser, to whom the uncle in his lifetime had sold it without the consent of his co-parceners and without necessity. *Held*, also, that the purchaser could have no lien on the share for return of the purchase money. As soon as partition is made—actual partition not being in all cases essential, as, for instance, where the family has agreed to hold their estate in definite shares, or a member's undivided share, in execution of his creditor's decree, has been attached—that will be regarded as sufficient to support the alienation of a member's interest, as if it had been his acquired property. As regards members of a family living at the time when their alienation was set aside at the instance of another member, the Court, in *Mahabier Persad v. Ramayad Singh*, 12 B. L. R. 90, justly ordered that the property should be thenceforth possessed in defined shares, and that the shares of the members who had joined in the sale should be subject to a lien for the return of the purchase money. But that case must be distinguished from the present. Here the accrued right of survivorship precluded any such course. The nephew not

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS  
—*contd.*(c) OTHER MEMBERS—*contd.*

passed to a surviving co-parcener. *MADHO PARSHAD v. MEHRBAN SINGH* I. L. R. 18 Calc. 157 L. R. 17 I. A. 194

73. — Right of son to alienate joint ancestral property—*Mortgage*. A member of a joint Hindu family has no power in his father's lifetime to make a mortgage of any part of the ancestral family property. *Balagobind Das v. Narain Lal*, I. L. R. 15 All. 339; *L. R. 20 I. A. 116*, and *Madho Parshad v. Mehrban Singh*, I. L. R. 18 Calc. 157; *L. R. 17 I. A. 194*, referred to. *BRAGHATHI MISHR v. SREEDHAR* I. L. R. 20 All. 325

74. — Mortgage—*Mitakshara* law—*Mortgage of undivided shares in joint family property*—Consent of co-sharer. A, B, and C together formed a joint *Mitakshara* family. On the 27th June 1872, A and B without the consent of C for their own benefit and without legal necessity, executed a bond in favour of J and I (defendants, 2nd party), mortgaging to them certain joint pro-

chased by H (defendant, 1st party). Prior to the institution by J and I of their suit, A, B, and C, on the 21st August 1881, together mortgaged mouzah Pipra and Bangra to N. On the 13th March 1884, N obtained an *ex parte* decree on his mortgage, and in execution thereof, mouzah Pipra was sold on the 21st November 1884. The plaintiffs purchased

confirmation of possession, and in the alternative that if the mortgage-bond was valid the amount due thereunder and chargeable on mouzah Pipra might be determined, and the plaintiffs declared entitled to redeem upon payment of such amount:—*Held*, that, although A and B had no authority, without the consent of their co-sharer C, to mortgage their undivided shares to J and I, yet as the plaintiffs derived their title from those mortgagors, they were not entitled to recover such shares without paying to H, who by his auction-purchase had acquired the rights of the mortgagors, the money advanced on the mortgage-bond of 1872 with interest, and that the same was a charge on such shares. *Mahabier Persad v. Ramayad Singh*, 12 B. L. R. 90, applied in principle. *Sadabari Prasad Sahu v. Fookshah Kori*, 3 B. L. R. F. B. 31, and *Madho Parshad*

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(c) OTHER MEMBERS—*contd.*

v. *Mehrban Singh*, I. L. R. 18 Calc. 157; L. R. 17 I. A. 194, distinguished *Nalakant Banerji v. Suresh Chandra Mullick*, I. L. R. 12 Calc. 414, referred to. *JAMUNA PARSHAD v. GANOA PARSHAD SINGH, HARDHANI LALL v. GANOA PARSHAD SINGH*, I. L. R. 19 Calc. 401

75. ——— Alienation to pay off mortgage executed by widow to pay debt of husband—*Revival of a barred debt by the widow of a deceased Hindu*. Although a managing member of a joint Hindu family cannot as such revive a barred debt as against his co-parceners, it is competent to the widow of a deceased member of the family, who represents the inheritance for the time being and in whom it is a pious duty to pay her husband's debts, to bind the reversion by a mortgage executed to secure such debts though they were barred at the time of its execution. Where therefore the managing members of an undivided Hindu family, after the death of the widow, sold family property for the purpose of discharging such a mortgage: *Held*, that the sale was binding on the co-parcenary. *KONDAPPA v. SUBBA*

I. L. R. 13 Mad. 189

76. ——— Sale by co-parcener—*Alienation of his share by a co-parcener—His position and rights after such alienation—Position and rights of purchaser—Subsequent death or birth of other co-parceners—Effect on position of purchaser and on right of survivorship* (i) The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own position. The purchaser becomes a sort of tenant in common with the co-parceners, admissible as such to his distributive share upon a partition taking place. (ii) Such an alienation before partition does not deprive the alienating co-parcener of his rights in the joint family. (iii) As the purchaser does not by the death of the vendor lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition. (iv) The purchaser like his alienor is liable to have his share diminished upon partition by the birth of other co-parceners if he stands by and does not insist on an immediate partition. Three undivided brothers, viz. *S. N.* and *M.* were the owners of a certain house which, on the 1st August 1845, *N.* mortgaged with possession to one *A*. In 1878, the house was vested in the respective sons of the said three brothers, viz. *B.* (son of *S.*), *R.* (son of *N.*), and *K.* (son of *M.*). In September 1878 the interest in the purchase with the no other an interest

HINDU LAW—JOINT FAMILY—*contd.*5. POWERS OF ALIENATION BY MEMBERS—*contd.*(c) OTHER MEMBERS—*contd.*

no partition having been made between them and *B.* In March 1891, *R.* sold his interest in the house to *A*. The sale was valid as against the other co-parceners, *S.* and *M.*, and consequently took nothing by survivorship as to the share of *S.* and *M.*

and *K.* to their respective shares. *GURLINGAPPA SATWATHA GIDWIR v. NAYDAPA CHANNASAPPA SOLAPURI*, I. L. R. 21 Bom. 797

77. ——— Sale of land not joined in by all co-parceners—*Partial application of consideration towards debt binding on all—Suit for ejectment—Rights of purchaser*. In a sale of land the consideration was expressed to be the discharge by the purchaser of a debt owing by the vendor and secured by mortgage on the land, and of sundry other debts which had been incurred by the vendor for family necessity. In a suit for ejectment by the vendor's co-parceners, who were

found that a portion of the consideration had been applied to the discharge of a mortgage debt

liable to the extent of their share of the mortgage debt. *Held*, that in making the purchase defendant was, with reference to plaintiffs, a mere volunteer, and could not as against them claim by way of equity a charge on their shares, even though part of the consideration had been applied towards the discharge of their joint debt; also that, if a purchaser wishes to stand by a sale which is only partially valid, he must be content with the vendor's share; and that, if he wishes to repudiate the transaction altogether, his only remedy is to sue to set aside the sale for the return of the consideration. *APPA GAUNDAN*, 23 Mad. 89

78. ——— Alienation by co-parcener—*Suit for possession—Limitation*. When immovable property is alienated by a co-parcener in a Mitakshara joint family, the co-parceners who were not parties to the deed may institute a suit for recovery of possession within 12 years

HINDU LAW—JOINT FAMILY—*contl.*5. POWERS OF ALIENATION BY MEMBERS—*contl.*(c) OTHER MEMBERS—*contl.*

from the time when the alienor took possession of the property, Art. 91 of Sch. II of the Limitation Act not applying to the case. *Rajaram Tewary v. Luchmun Pershad*, 8 W. R. 15; *Girdharelal v. Kantoolal*, L. R. 1 I. A. 22; 14 R. L. R. 187. *Bhola Nath v. Kartick Kissen*, 1. L. R. 34 Calc. 372, relied on. *Janki Kunwar v. Apt Singh*, L. R. 14 I. A. 148; 1. L. R. 15 Calc. 58, distinguished. A Court will grant relief in the case of an alienation of joint family property by one co-parcener without the assent of the others subject to the equities of the purchaser. *Mahabir Pershad v. Ramyad Singh*, 12 B. L. R. 90 20 W. R. 192. *Jamuna Parshad v. Ganga Parshad*, 1. L. R. 19 Calc. 401, followed. In setting aside such an alienation the Court will order that the property should be possessed in defined shares and the share of the transferor should be subject to the lien of the transferee for the return of the purchase-money. *Held*, accordingly, that the plaintiffs would be entitled to recover three-fourths of the property unconditionally and the remaining one-fourth share belonging to the transferor on payment of the purchase-money within a specified date, failing which the claim for this one-fourth share will stand dismissed. The death of the transferor after the decree of District Judge was passed in favour of the plaintiffs, did not bring into operation the rule of survivorship so as to deprive the purchaser of his equitable claim. *Madho Parshad v. Mehrban Singh*, L. R. 17 I. A. 194 s.c. 1. L. R. 19 Calc. 197, distinguished. In the case of a joint Mitakshara family where a right is vested in all the members jointly the managing member may within the meaning of s. 8 of the Limitation Act give a discharge without the concurrence of the minor members of the family and time may consequently run against all the members of the undivided family including the minor members thereof. *Surya Prasad Sing v. Khwakhish Ali*, 1. L. R. 4 All. 512; s.c. 2 All. W. N. 114. *Vigneswara v. Bapayya*, 1 L. R. 16 Mad. 436. *Hari Har Pershad v. Bhola Pershad*, 6 C. L. J. 353, 393, relied on. *Anando Kishore Dass Bakshi v. Anando Kishore Bose*, 1. L. R. 14 Calc. 50, distinguished. *Annamalai v. Murugasa*, L. B. 30 I. A. 220, referred to. *BUXWARI LAL DAYA SUNKER MISSE* (1909) . . . 13 C. W. N. 815

## 79. — Release by co-parcener

—Release by a co-parcener of his rights in favour of another co-parcener. In a joint Hindu family, consisting of four brothers, A, B, C, and D. A and B obtained their shares by a partition suit. In the plaint they stated that they relinquished their shares of the moveable property in favour of C. In a suit by C against D to recover his share C claimed three-fourths of the moveable property. D contended that the release by

HINDU LAW—JOINT FAMILY—*contld.*5. POWERS OF ALIENATION BY MEMBERS—*contld.*(c) OTHER MEMBERS—*contld.*

A and B in favour of C could not, according to Hindu law, add to the share of C as a co-parcener *Held*, that C was entitled to the share claimed *PERDAYTA v. RAMALINGAM* . . . I. L. R. 11 Mad. 406

## 6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.

## See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

1. — Sale of interest of one member. The right, title, and interest of one co-sharer in joint ancestral estate may be attached and sold in execution to satisfy a decree obtained against him personally, under the law of the Mitakshara, as well in Bengal as in Bombay and Madras. The purchaser at such a sale acquires merely the right to complete the partition amongst the other co-sharers with *DEENDYAL LAL* . . . I . . .

L. R. 4 I. A. 247

SOOMRUT THAKOOR v. CHUNDER MOX MISSE

3 C. L. R. 262; 5 C. L. R. 26

2. — *Mitakshara law*—Right of purchaser. The principle laid down in the case of *Deendyal Lal v. Jugdeep Narain Singh*, 1. L. R. 3 Calc. 193, that the right, title, and interest of a Hindu father in a joint family estate under the Mitakshara law can be attached and sold in execution.

## B. NOWNIT LAL

I. L. R. 3 Calc. 609; 4 C. L. R. 67

3. — Alienation by father, and decree against son—*Mitakshara law*—Purchaser of son's interest at sale in execution of decree—Partition. Where property belongs to a father and son governed by the Mitakshara law, the son's interest vests at birth and is saleable. The son may obtain a partition and separate possession of his share of ancestral property, and his share, once partitioned, will be liable to sale. There is, therefore, no reason why the interest of the son in the property while undivided should not be sold in satisfaction of his debts, but in such case the purchaser should bring a suit to obtain partition of the property. *JALLIDAR SINGH v. RAM LAL* . . . I. L. R. 4 Calc. 723

4. — Sale under decree against one member—Purchaser, right of. The purchaser of the rights and interests of a judgment-debtor who is a member of a joint family, at a



**HINDU LAW—JOINT FAMILY—*contd.*****6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.***

sale in execution of a decree, does not acquire any title to the rights and interests of the other members of the family.

5. ——— **Right of purchaser at sale in execution of decree—*Bond fide purchaser.*** Although a purchaser at an execution-sale can ordinarily get no greater rights than the rights of the vendor.

tended on the ground that members of such a family, other than the judgment-debtor, contesting a sale under a decree, when shown to be bound to pay the debt, for the realization of which the sale has been brought about, are in equity not entitled to relief against a *bond fide* purchaser without notice. Where the property is sold to a purchaser without notice.

*bond fide* without notice *Gridhree Lall v. Kanto Lall and Muddun Thakoor v. Kanto Lall*, 1 L. A. 321, *Deendyal Lall v. Jydeep Narain*, 1 L. R. 3 Cal. 193 10 L. R. 44; 1 R. 41. A 247, and *Ram Sahai v. Sheo Prasad Singh*, 4 C. L. R. 166, discussed *GONESH PANDEY v. DABEE DOYAL SIMON*, 5 C. L. R. 36

6. ——— **Mortgage—*Mitakshara law*—Mortgage of family property by one of several co-sharers in a joint estate.** In a suit on a mortgage against a member of a joint Hindu family governed by the *Mitakshara* law, the whole of the interest of the joint family in the estate was decreed to the mortgagees, who subsequently obtained possession of it. Afterwards a suit was brought by another member of the family, who had attained majority prior to the mortgage, to set it and the decree aside so far as he was concerned, and to recover possession of his share of the joint family property. Held, that the mere circumstance of an antecedent debt was not in itself sufficient to bind him, and that the alienation was not good as against him, unless it could be shown that he had either expressly or impliedly given his consent to the mortgage. *UPROOR TEWARI v. LALLA BANDHJEE SUHAY*, 1 L. R. 8 Cal. 749; 8 C. L. R. 192

7. ——— **Judgment debtor's share in joint ancestral estate—*Mitakshara law*—Execution of decree by sale of such share—Rights of co-sharers not being parties to the decree or execution proceedings—*Sale-certificate.*** The question was whether the whole estate belonging to a joint family, living under the *Mitakshara*, including the shares of sons or the share of their father alone,

**HINDU LAW—JOINT FAMILY—*contd.*****6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.***

respect of transfers made by, or execution against, the head of the family has been thus, viz, what, if there was a conveyance, the parties contracted about, or what, if there was only a sale in execution the purchaser had reason to think he was buying. Each case must depend on its own circumstances. *Uproor Tewari v. Lalla Bandhjee Suhay*, 1 L. R. 8 Cal. 747, distinguished. *SIMRONATH PANDE v. GOLAP SIMON*

1 L. R. 14 Cal. 572  
1 L. R. 14 I. A. 77

8. ——— **Mortgage by sons of an insane person—Sale in execution of decree—Suit by Committee to recover possession—Purchaser, Rights of.** Although a co-partner in a *Mitakshara* family has a right (in a suit properly framed for that purpose) to recover the whole property from an execution-purchaser, subject to the rights of the other co-partners.

parceners *RAM SARYE BRUKUT v. LALLA LALJEE SARYE*

1 L. R. 8 Cal. 149; 9 C. L. R. 457

9. ——— **Sale under decree against adult members—Sale of right, title, and interest**

parties to the suit, instituted a suit to recover their shares in the property sold. The debt for which the property had been mortgaged was one which the plaintiffs and their predecessors were morally bound to pay. Held, on review, reversing the decision of *Hanooman Sahai v. Parsadh Narain*, 7 C. L. R.

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

10. — *Mitakshara law*  
—Family trade—Alienation of ancestral property by some members of family—Interest of son

the defendants in a large amount in respect of advances made for the purposes of the trade, some of the head members of the family executed a bond in favour of the defendants for the amount due, and hypothecated certain family properties which stood in their names as collateral security therefor. The amount not having been paid on the due date, the defendants brought a suit on the bond against the persons who had executed it, and obtained a decree which, however, did not direct that the properties

defendants, who subsequently, under their purchase, obtained possession of the shares of the judgment-debtors and of those of their sons. The decree not having been satisfied by those sales, the defendants

instituted. In suits brought, many years after the sales, by members of the family who had not been parties to the previous suits, to recover their shares in the family properties—*Held*, that the interests of all the members of the family had passed on the sales. *Per MITTER, J.*—There is no distinction in principle between the case of an adult son and that of a minor son as regards a son's interest in ancestral property being liable to pass on a sale of such property in execution of a decree against his father only; but if an adult son proves that he would have been able to save the property by paying off the debt out of his private funds, if he had been a party to the suit, *quære*, whether he should not be allowed to have the sale set aside on payment of the debt due under the decree. *BASO KOER v HUREY DASS*

L. I. R. 9 Calc. 495; 12 C. L. R. 292

11. — Sale under decree against joint family property—Liability of family for debts contracted by co-sharer—Debts binding on joint family When one member of a Mitakshara family contracts a debt which is binding not only on the persons executing the contract, but on the

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

other members of the joint family to which he belongs, the creditor has two courses open to him: (a) he may elect to treat the debt as a personal debt; and (b) he may elect to treat the debt as a joint family debt.

was the case of *Deendyal Lal v. Jugdeep Narain Singh*, L. I. R. 3 Calc. 198; L. R. 4 I. A. 24; or (b) he may treat the borrower as acting for the family, sue him as representing the joint family, and, when he has obtained a decree against the borrower in that capacity, proceed to sell the right, title, and interest of his judgment-debtors (i.e., all the members of the joint family) or any of them. That was the case of *Bissessur Lal Sahoo v. Luckmessur Singh*, L. R. 6 I. A. 533. *JUMBOONA PERSAD SINGH v. DIG NARAIN SINGH*

I. I. R. 10 Calc. 1; 13 C. L. R. 74

12. — *Rights of purchaser of co-sharer's interest in joint family property.* When the right, title, and interest of a

to and followed. A money-decree having been made against the father of a family, and the decree-holder having caused to be attached the family

by the Mitakshara consisted of father, mother, and minor son at the time of the decree, and the Court below had decreed to mother and son one-third each, leaving one-third to the purchaser. A second son was born, and the mother died pending this appeal, the two sons becoming parties in respect of her share: *Held*, that on this appeal preferred by the purchaser, the decree should stand, the appellant having got quite as much as he would have got if the decree had been more correct in form, as he had obtained all that he would have been entitled to on a partition without being left to demand it. *HARDI NARAIN SAHU v. RUDER PERSKASH MISSEER*

I. I. R. 10 Calc. 626; L. R. 11 I. A. 26

13. — *Alienation—Liability of the joint undivided family property for family debts—Sale in execution of decree against one member of family property—Rights of other members.* During the minority of S, a member of a joint Hindu family, consisting of himself, his father J,

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

and his uncle H, and while he was living under the natural guardianship of his father, R sued J and H, but not S, as the heirs of P, S's grandfather, and as the heads and representatives of the joint family, to recover a joint family debt incurred to R by P before S's birth, by the sale of

and interests of J and H in such estate were put up for sale and were purchased by R, who took possession of such estate. *Held*, in a suit by S to re-

the record of the suit in which such decree was made, and S could not recover his share of such estate. *Bissessar Lall Sahoo v. Luchemessur Singh*, L. R. 6 I. A. 233, followed. *Deendyal Lall v. Jugdeep Narain Singh*, I. L. R. 3 Calc. 193, distinguished. *RAN SEVA DAS v. RAGHUBAR RAI*

I. L. R. 3 All. 72

14. — "Ancestral property"—Right of occupancy at fixed rates—Liability of son for father's debts—Purchaser at execution sale—Notice. A decree was made against a Hindu governed by the law of the Mitakshara, for money which he had criminally misappropriated

a vested interest by birth. *Held*, also, that, as the decree was not one to satisfy which the family property could be sold, being a mere money-decree

*Kantoo Lall*, 14 B. L. R. 187, and *Suraj Bansi Koer v. Sheo Persad Singh*, I. L. R. 5 Calc. 148, be protected as a bona fide purchaser for value, without notice that the family property was not liable to be sold in satisfaction of the decree, but must be taken to have had constructive notice of that fact. *MAHABIR PRASAD v. BASUDEO SINGH*

I. L. R. 6 All. 234

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

15. — Joint ancestral property—Execution against deceased son's interest in hands of the father—Death of Judgment-debtor after attachment and before sale—Civil Procedure Code, s. 274. In execution of a money-decree, an order was issued under s. 274 of the Civil Procedure Code for the attachment of property which was the joint ancestral estate of the judgment-debtor and his father. The sale was ordered and a day fixed for sale, but in consequence of postponements made at the judgment-debtor's request, no sale took place

decree-holder had, by the proceedings taken in

16. — Alienation by father—Co-sharers—Sale of minor's share—Right of purchaser. Plaintiff's father (first defendant)

*I. L. R. 3 Calc. 193*, followed. *VENKATASANI NAIK v. KUPPAIYAN*. I. L. R. 1 Mad. 354

17. — Mortgage by father—Minor's interests. The plaintiffs, minors,

No. 28 of 1871, a decree for money due under a mortgage-bond was passed against S D, the father

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

attache being claim, prayed share might be released from attachment. Prior to that suit, the attached property had been sold, but the sale was limited to the right, title, and interest of the father in the joint property; however, in suit No 33 of 1872, the Court, having decreed a partition, further entertained the question as between the sons and the creditor of the father "whether the attachment of the rest of the family property specified in the plaint ought not, in respect of plaintiff's shares, to be cancelled," and decreed it in favour of the creditor on the ground that the debt had been contracted for purposes binding on the family, and further decided that the property so under attachment ought to be sold to discharge the debt, and it was sold accordingly. Subsequently to the decree for partition, and when the defendants were divided from their father, *S D* (who was the sole judgment-debtor in suit No 28 of 1871), the house and lands now in issue, which formed no part of the property mortgaged for the debt, the subject of suit No 28 of 1871, were attached and sold and bought by the father of the present plaintiffs. The question in the present suits was whether the properties last mentioned, not having been attached in execution of the decree in

the High Court (*MORGAN, C.J., INNES and KINDERSLEY, JJ.*), affirming the decree of the Court of first instance, that these properties were not so liable; that under the decree and execution proceedings in suit No 28 of 1871 merely the rights of *S D* were sold; that nothing in that litigation indicated that it was intended to enforce the debt against the whole property as a debt due from the family, and that the decision in the partition suit (No. 33 of 1872) covered only what was then in question, and could not be viewed as authorizing the attachment of the items of property now in question in execution of that decree. That the present suits were therefore rightly dismissed. *By INNES, J.*—That the prayer of the plaintiffs (the sons) in suit No. 33 of 1872, so far as it related to the removal of the attachment in execution of the decree in suit No. 28 of 1871, should have been at once granted. That the creditor in suit No 28 of 1871 had elected to sue the father alone, and that, though it might have been open to him (the creditor) to have so framed his suit as to have obtained a decree making the joint family liable in person and property having failed to do so, he could not afterwards seek

HINDU LAW—JOINT FAMILY—*contd.*6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

creditor, in effect instituted against them a new suit. *Deendyal Lal v. Jugdeep Narain Singh, 1. L. R. 3 Cal. 198*, followed. The authorities reviewed on the question whether in execution of a decree the interests of any but those who were actual parties to it, or those who, on the death of such parties, became their representatives in interest, could be affected. *VENKATARAMAYAN v. DIKSHITAR*

I. L. R. 1 Mad. 358

18. — *Rights of creditors and purchasers—Partition* *Per INNES, J.* A creditor of an undivided Hindu family as such has no right to intervene in a partition suit among co-parceners, and to claim that the debt owing to him be distributed over the several parcels of the family property so as to charge all the co-parceners. *Per MURUGAN AYYAR, J.*—Although an account is taken between co-parceners as a convenient matter of procedure for resolving their joint rights and liabilities into several rights and liabilities, this does not create an additional right in the creditors of the family to forbid partition until their debts are paid, or in purchasers at a Court sale to add to the determinate interest that has been sold to them by a fresh enquiry into the real character of the decree debt. *VELLIYANMAL v. KATHA CHETTI*

I. L. R. 5 Mad. 61

19. — *Mortgage by one co-parcener—Suit to declare shares of other co-parceners liable.* *C*, one of two undivided Hindu brothers, hypothecated family property as security for money lent. The creditor having obtained a decree, in a suit brought against *C*, against the property hypothecated only, the personal remedy being barred by limitation, attached the property hypothecated *S*, the brother, and the minor sons of *C* intervened, and their shares in the property were

the decree against *C* and having proved that the debt was incurred by the managing member for purposes which would render it binding on the defendants: *Held*, that the suit must nevertheless be dismissed. *CHOCKALINGA MUDALI v. SUBBARAYA MUDALI*

I. L. R. 5 Mad. 133

20. — *Mortgage made by managing brother—Rights of purchaser at Court sale.* If one of several undivided Hindu brothers mortgages the family lands, and the creditor sues upon the mortgage-bond without making the brothers of the debtor parties to the suit, and a decree is passed against the mortgagor personally,

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

directing payment of the debt and costs, and declaring the property mortgaged liable for the amount decreed, and the property is subsequently

partition of the family property, to recover their

DHI V. JODDUMONT I. L. R. 5 Mad. 193

21. ———— Suit by co-par-

in a parcel of the family land, the other co-parcener may either repudiate the sale or affirm it and claim by partition to recover from the stranger his share of the parcel sold to which the alienation could not extend and which has now become his separate property. CHINNA SANTASI V. SUBIYA

I. L. R. 5 Mad. 196

22. ———— Decree on mortgage-bond—Rights of purchaser Where the property of an undivided Hindu family consisting of father and sons has been sold in execution of a decree against the father only in suit upon a mortgage-bond executed by the father to raise money for no improper purposes, and it does not appear whether the sale was carried out in execution of so much of the decree as was personal or in execution of the order for enforcement of the mortgage, the sons in a suit for partition of the family property are not entitled to recover their share of the property sold from the purchaser. SRINIVASA NAYUDU V. SELAYA NAYUDU

I. L. R. 5 Mad. 251

23. ———— Undivided family—Uncle and nephew—Decree against uncle—Sale of ancestral land—Interest of purchaser—Nature of debt immaterial K, a Hindu, the undivided uncle of D, a minor, executed a bond whereby certain ancestral property was hypothecated to secure the repayment of a sum borrowed by K. In

in suit by D to recover one moiety of the land in A's possession, that whether or not the decree against K was founded upon a debt incurred for paying a debt of D's grandfather, D was entitled

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

to recover a moiety of the land purchased by A. DORASAMI VAJAPPAR V. ATTRATHA DIKSHITAR I. L. R. 7 Mad. 136

24. ———— Debt binding on family—Suit against one of two undivided brothers—Personal decree—Attachment of family property—Effect of decree. The creditor of a joint

attached the family property. In a suit by the younger brother to set aside the attachment *quod*

gished. VIRARAGAVANIAM V. SAMUDRAIA I. L. R. 8 Mad. 208

25. ———— Mortgage by father—Suit to enforce against manager of family—Decree for sale—Attachment—Order for sale of property—Sale of right, title, and interest—Rights of purchaser. F, a Hindu, and his son P, executed

made for sale by a warrant, dated 27th December

that as the mortgagee intended to enforce his rights under the mortgage by sale, and the Court intended to sell the house as mortgaged property, K was entitled, by virtue of his purchase, to recover possession of the house. *Dinnessur Lall Sahoo v. Luckmessur Singh*, L. R. 6 I. A. 238, referred to and followed. KRISHNAMA V. PERUMAL I. L. R. 8 Mad. 388

26. ———— Mortgage of family property by son during father's temporary absence how far binding on the family—Subsequent sale of such mortgaged property in execution of money-decree against father—Rights of purchaser at such a sale. The land in dispute was the ancestral property of H and his son, J, who were members of an undivided Hindu family. This land had been mortgaged to one B, to whom the father and

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

absence, J, being pressed for payment of his debt, compromised B's entire claim for Rs200, which he obtained on loan from the plaintiff, to whom he gave as security a mortgage with possession of the land in question. The plaintiff continued in possession until he was dispossessed by defendant No. 2, who

ranced to J, should be decreed to be paid by the defendants. Both the lower Courts rejected the plaintiff's claim. On appeal by the plaintiff to the High Court:—*Held*, that the plaintiff's claim

nor did he assume to act for him when he mortgaged the property. The mortgage to the plaintiff was therefore in his regarded as the act of J in his individual capacity, and as such could receive no ratification by the mere reticence of his father. The plaintiff, however, having been in possession, was entitled, if he could establish his title to a lien on J's share, to be put into possession jointly with the defendant if the latter's title was proved.

PATIL HARI PRENJI v. HAKAMCHAND

I. L. R. 10 Bom. 363

27. — Joint and undivided property—Debt of deceased member—Liability of his interest J, a member of a joint Hindu family, felt two sons, R and S. S borrowed money upon a simple bond, and, after his death, the

it was the joint property of S and himself, and could not be attached and sold in satisfaction of S's debt. *Held*, that, on the death of S, his interest passed to

not obtain execution  
Bunsil Koe  
148, and  
7 All. 737, referred to. BALBHADAR v. BISHWESWAR  
I. L. R. 8 All. 495

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

28. — Liability of ancestral estate for separate debt of deceased co-parcener. Undivided family property is not, in the hands of surviving co-parceners, generally speaking, liable to separate debts of a deceased co-parcener. Where therefore a Hindu, undivided in estate from his father, died separately indebted to the plaintiffs, who obtained a decree against the father and wife of the deceased, as his legal heirs and representatives to recover, from the estate and effects of the deceased, the amount of their debt and costs, and sought, in satisfaction of the decree, to attach a shop which during the lifetime of the deceased and subsequently to his death had been in the possession of his father, there being no proof of any separate estate of the deceased having devolved upon his

fore the plaintiffs could not render the shop available for their claim. In the Bombay Presidency the share of one of the co-parceners in a Hindu undivided family in the ancestral estate may, before partition, be seized and sold in execution for his separate debt in his lifetime. Such a co-parcener cannot, however, by simple voluntary gift or by devise, alienate his share to a stranger, so as to bind his surviving co-parceners after his decease. The purchaser, mortgagee, or other alienee, for valuable consideration, of such an unascertained share, cannot, before partition, insist upon the possession of any particular portion of the undivided family estate. The mortgagee or purchaser of a share in the undivided ancestral estate of a Hindu

possession of such portion can, on partition be given to the mortgagee or purchaser, without injustice to prior encumbrancers or to co-parceners, it is this

mortgagee or purchaser. *Quere* Whether, in the event of it being impossible, consistently with the rights of others, to give possession of the portion mortgaged or sold to the mortgagee or purchaser, he would be entitled to be recouped out of such other portion as might, on partition, be allotted to the parcener whose share in the special portion had been mortgaged or sold. The attachment of a parcener's share in the family property under an ordinary money-decree should go against the share, right, title, and interest of the judgment-debtor in such parts of the family property (naming and describing them) as the judgment creditor can specify, and against his share, right, title, and interest in all other parts of the family pro-

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

erty. *Kalyanbhai v. Motiram Jamnadas*, 10 Bom. 378; *Vasudev Bhat v. Venkatesh Sanbhav*, 10 Bom. 139; and *Fakirappa v. Ghanappa*, 10 Bom. 162, commented on and distinguished *Door Pershad v. Sheodin*, 4 N. W. 137, approved. *UDARAM SIRTARAM v. RANGU PANDUJI* . . . 11 Bom. 78

29. *Mortgage made by one co-parcener without consent of the others—Onus probandi.* Where joint family property is mortgaged by one parcener, in order that it may bind the co-parceners, the mortgagee must prove affirmatively that the mortgage was assented to by the other co-parceners, or was necessary for family purposes. *LILA MORJI v. VASUDEV MORESHVAR GANPULE* . . . 11 Bom. 283

*OODHUN MISSER v. HOODAR SINGH*

1 N. W. Ed. 1873, 271

30. *Sale in execution of decree of one of several co-parceners' share in joint family property—Right of purchaser—Right of parceners to partition.* The purchaser at a Court's sale of the right, title, and interest of one of the co-parceners in the undivided estate, by his certificate, under s 259 of the Civil Procedure Code, can take no more than the interest of such co-parcener in the property disposed of, as a member of the united family. Course pointed out as to the ascertainment of what that interest is, and how the transaction can be made good for the benefit of the purchaser of a co-parcener's interest in a particular piece of property forming only a part of the common estate. Where, however, the purchaser got into possession and held it with such an accompanying right as the judgment-debtor could transfer to him.—*Held*, that the purchaser was in as a tenant-in-common with the judgment-debtor's co-parceners, and that they were entitled to possession in common with him, and might enforce their right for a share of the enjoyment, or for a definition of the portions in which each party in future was to have a sole interest. Such co-parceners, however, are not, entitled to eject the purchaser wholly from a defined moiety of any particular portion of the joint property. *MAHABALAYA BIN PARWAYA v. TIMAYA BIN APPAYA* . . . 12 Bom. 136

31. *Alienation of joint family property—Mortgage by manager—Decree against manager—Sale in execution of decree.* G, the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority. The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued G on the mortgage, and obtained a decree. A house, which

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

share in the property by virtue of the sale to him under the decree obtained against G alone. *Held*, also, that the plaintiff was entitled to be put into possession of the whole house, the defendant being left to his remedy by a suit for partition. The plaintiff, however, having claimed only the restoration of his half share, the decree was limited accordingly. *Held*, also, that it was not competent for the Court in this suit to go into the question whether the mortgage by G was binding on the minor plaintiff. *MARUTI NARAYAN v. LILACHAND*

I. L. R. 6 Bom. 564

32. *Son's liability*

followed *BHURAJI RANCHANDRA OKI v. YASH-VANTRAY SHRIPAT KHOPKAR*

I. L. R. 8 Bom. 489

33. *Decree against father alone for unsecured debts—Purchaser at a sale in execution of such decree—Liability of family property—Sons.* How far such decree and sale binding on Where father alone is sued, not expressly in his representative capacity, and without his sons being joined as co-defendants, for unsecured debt contracted by him, whatever be the nature of such debts, the decree does not bind the interest of the sons in the family estate. Nor when the judgment-debtor is sole owner of the property sold in execution of such

*LIHURI*

34. *Decree against the father alone—Attachment of family property in execution of such decree—Son's interest in the family property when bound by decree against the*

is sold under proceedings taken against the father alone, the son's interest is bound, unless the son can show that the sale was on account of an obliga-

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

tion to which he was not subject. The father is, in fact, the representative of the family both in transactions and in suits, subject only to the right of the sons to prevent an entire dissipation of the estate by particular instances of wrong-doing on the father's part. *JAGADHAI LADDEHAI v. VISHUKANDAS JAGJIVANDAS*. I L R. 11 Bom. 37

35. — Civil Procedure Code, Act VIII of 1859, s 264—Execution of decree against a member of an undivided family by sale of his personal interest in the family estate which was an impartible zamindari, such interest, by reason of the death before the sale, consisting only of the rents and profits then uncollected. On a sale of the right, title, and interest in an impartible zamindari in execution of decrees against the zamindar, the head of an undivided family, the question was whether (a) only his own personal interest or (b) the whole title to the zamindari, including the interest of a son and successor, passed to the purchaser. The proclamation of sale, purported to relate to (a) only; and between the debts of pro-

under execution, not having been incurred by the late zamindar for any immoral purpose, the

Court had sold. If (a) only was put up for sale,

CHITRETTI : SANGILI VIRA PANDIA CHINNA-TAMBIAR. I L R. 10 Mad. 241  
L R. 14 I. A. 84

36. — Decree against an undivided brother—Mortgage of joint property. A, an undivided member of a Hindu family, mortgaged part of the family property by way of conditional sale to B, to secure a loan B having

in execution. Held, that the decree, not being passed against the joint family or its representative,

THEMISA. I L R. 10 Mad. 510  
37. — Purchaser at a sale in execution of a decree directing sale of the

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

whole right, title, and interest of grandfather—Assignment by grandsons of the same property subsequently to such sale, Effect of. In 1858, S mortgaged certain ancestral property to the first defendant for a term of nine years. In 1864, S being then

for re-trial. Against this order of remand, the defendant appealed to the High Court. Held, restoring the decree of the Court of first instance, that the language of the decree showed that the intention was to make the land itself liable for the debt, and not merely S's interest. By his purchase the defendant was to be regarded as having bargained for and purchased the entire interest in the land. *Nonomi Babuasin v. Modhun Mohun*, I L R. 13 Cal. 21, followed. *SAKARAY SHET v. SITARAM SHET*. I L R. 11 Bom. 42

38. — Mortgage by father—Decree subsequently to father's death against eldest son as heir of father—Minor sons not parties—Sale in execution of family property other than that comprised in mortgage—Subsequent suit by minor sons to recover their shares—Minor sons when bound by decree against eldest son as heir of father. One K mortgaged certain land to B, and died leaving four sons, viz, P and three minor plaintiffs. Subsequently B brought a suit on the mortgage against K by his heir, R, for the amount due, and obtained a decree whereby it was ordered that the amount should be recovered from the mortgaged property, and if that proved insufficient, from the other estate of the deceased. The minor sons were not made parties to that suit, nor was R



HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

sons were therefore bound by the sale, unless they could prove that the father's debt had been incurred for an immoral and improper purpose. The case was accordingly sent back for trial of an issue upon that point, with a direction that the burden of proof should lie upon the plaintiffs. *JAIRAM BAJARSHET v. JOYA KONDIA*

I. L. R. 11 Bom. 361

39. ————— *Manager, decree against—Sale in execution of such decree passing his interest only—Effect of sale on shares of co-parceners not parties to the suit.* A sale under a decree obtained against the manager of a Hindu family only passes the right, title, and interest of those who are parties to the suit. Accordingly, where, in execution of a decree obtained against two of the brothers of the plaintiff as managers in a suit to which the plaintiff was not a party, the house, which was the family property, was sold:—*Held*,

KASHINATH

I. L. R. 11 Bom. 700

40. ————— *Mortgage of family property by father—Decree against father enforcing mortgage—Decree for money against father—Sale in execution of decree—Rights of sons.* The members of a joint Hindu family brought suits in which they respectively prayed for decrees that their respective proprietary rights in certain ancestral property might be declared, and that their interests in such property, which were about to be sold in execution of two decrees against their father, might be exempted from such sale. One of these decrees was for enforcement of a hypothecation by the plaintiff's father of the property in suit. It was admitted on behalf of the plaintiffs in connection with this decree that, although the judgment-debtor was a person of immoral character, the creditor had no means of knowing that the moneys advanced by him were likely to be applied to any other purpose than that for which they were professedly borrowed, namely, for the purpose of an indigo factory in which the family had an interest. *Held*, that the plaintiffs were not entitled to any declaration in respect of the execution-proceedings under the decree for enforcement of hypothecation. The second of the decrees above referred to was a simple money-decree for the principal and interest due upon a handi executed by the father in favour of the decree-holder. The suit terminating in that decree was brought against the father alone, and the debt was treated as his separate debt. *Held*, that the creditor's remedy was to have brought his suit, if he desired to obtain a decree which could execute against the family property and not against the father's interest only, and if he could maintain such suit, either against those members of the family against

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

whom he desired to execute his decree, or against the father as head of the family, expressly or impliedly, suing him in that capacity; but that, not having taken this course, his decree was not enforceable against the plaintiff's rights and interests in the attached property. *Mullayya Chelliar v. Saagili Virupanda Chinnasambhar, I. L. R. 6 Mad. 1*, distinguished. *Nanami Ebnasia v. Modhus Mahua, I. L. R. 13 Cal. 21*, and *Pava Mal v. Maharaj Singh, I. L. R. 8 All. 205*, referred to. *BALBER SINGH v. AJODHA PRASAD*

I. L. R. 9 All. 142

41. ————— *Fraudulent hypothecation by father—Suit upon the personal obligation against the father only—Money-decree, Sale in execution of—Sale-certificate referring to right and interests of father only in joint family property—Suit by sons for declaration of right to their shares—Form of decree.* If a person in possession of property which originally belonged to the members of a joint Hindu family of whom the father was one can produce as his document of title only a sale-certificate showing him to have bought, in execution of a money-decree against the father only, the right of the joint interest of the father, then

Hindu family executed a deed whereby he hypothecated certain zamindari property, covenanting to put the mortgagee in proprietary possession thereof if the debt should not be paid on a certain date. This transaction afterwards turned out to be

The auction-purchasers, having obtained possession, asserted a right to the whole of the joint family estate, upon the ground that, as the judgment-debtor was father of the family, the decree must be assumed to have been passed against him in his capacity as karta, and that the other members of the family were therefore bound by the decree and sale. The other members brought a suit to recover possession of their shares. *Held*, that, inasmuch as upon the terms of the sale-certificate nothing more passed to the defendants at the sale

might come in and claim a partition of that share

HINDU LAW—JOINT FAMILY—*contd.*G. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

out of the joint estate. *Per* MAHMOON, J., that the plaintiffs were entitled to succeed on the further ground that the debt for which the decree against the father was passed was immoral within the meaning of Hindu law. *Simbbhūnath Pande v. Golap Singh*, I. L. R. 14 Calc. 572; L. R. 14 14 I. A. 77; *Drendyal v. Jyadeep Narain Singh*, L. R. 4 I. A. 247; I. L. R. 3 Calc. 198; and *Hurdey Narain Sahu v. Ruder Perkash Misser*, L. R. 11 I. A. 26; I. L. R. 10 Calc. 676, referred to *RAM SARAI v. KEWAL SINGH* I. L. R. 9 All. 672

42. *Mitakshara law*

*Sale of joint family property in execution of decree, as the result of a mortgage by managing member—Liability of shares of members of family not parties to the decree.* Although some of the members of a joint family had not been made parties to a suit upon a mortgage effected by the managing members, the entire family estate was bound by the act of the latter, and passed at the sale in execution of a decree upon the mortgage. Whether the shares of all were bound depended on the authority of those who executed the mortgage. By this authority they had to raise money to pay a debt owed by the family as joint members of an ancestral trading firm. The managing members of a joint trading family, having purported to mortgage the family estate, to pay a debt due by the firm were sued upon it by the mortgagee, who afterwards purchased the property at the execution sale. In a suit brought by the latter against the other members of the family to obtain a declaration that he had purchased the entire family estate, the defendants, without showing that the mortgage did not validly bind the family estate, contended that, not having been made parties to the suit, they were not affected by the decree, and their shares had not passed at the sale in execution. *Held*, that, as the defence was substantially on the latter ground only though there was every opportunity given to the defendants to raise the former ground also, the suit need not be remanded; and that the whole estate had passed to the purchaser *Nanomi Babuasin v. Modhun Mohun*, I. L. R. 13 Calc. 21; L. R. 12 I. A. 1, referred to and followed *Pursid Narain Singh v. Honoonan Sahay*, I. L. R. 5 Calc. 545, referred to and approved *DAULAT RAM v. MEER CHAND* I. L. R. 15 Calc. 70; L. R. 14 I. A. 187

43. *Sole of joint family estate in execution of decree upon the father's debt—Exoneration of son's share only where debt*HINDU LAW—JOINT FAMILY—*contd.*G. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

been parties to the decree, unless the sons can establish that the debt has been contracted for an

decree against indebted fathers, in a family consisting of fathers and sons, charged the family estate, and the sale in execution was not merely of the right, title, and interest of the debtors, but of the property being such interest. On the other hand, before the sale notice was given on behalf of the sons that the property was ancestral and joint. *Held*, in a suit on behalf of the sons against the purchaser at the sale to recover their shares, that it was for the plaintiffs to show affirmatively that the debts were contracted for an illegal or immoral purpose, and that to establish general extravagance against the fathers was insufficient. It was not necessary for the purchaser to show that

44. *Decree against father—Sale of ancestral estate in execution of money-decree—Son's rights and liabilities.* A purchased the half-share of the judgment-debtors in certain immoveable family property, at a Court-sale held in execution of money-decrees against B and his brother, who were members of an undivided Hindu family. B's undivided son sued A—B and the remaining members of his family being also joined as defendants—to recover a share in the land, alleging that his interest was not bound by the sale, but he did not prove that the debt for which the decrees were passed was immoral, and it appeared that A had bargained and paid for the entire estate. The plaintiff was a minor at the time of the sale, and B was not the managing member of the family. *Held*, that the Court-sale was binding on the plaintiff's share *Nanomi Babuasin v. Modhun Mohun* L. R. 13 I. A. 1; I. L. R. 13 Calc. 21, discussed and followed *KUNALI BEARI v. KISHAY SHANBAGA*, I. L. R. 11 Mad. 64

45. *Decree on mortgage for ancestral debt of family—Minor.* In a suit by a minor to set aside a sale in execution of a decree on a mortgage for a debt of his father's—*Held*, on the merits, that the debt for which the decree was passed, being a family and ancestral debt, was binding upon the whole family, including the plaintiff, who was therefore not entitled to disturb the execution-purchaser. *DAJI HIMAT v. DHIRAJ RAM SADARAM*, I. L. R. 12 Bom. 18

46. *Ancestral property—Alienations by father—Son's liability for father's debts—Purchaser—Notice.* Where a Hindu

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

governed by the Mitakshara law seeks to set aside his father's alienations of ancestral property, if the alienees are purchasers at Court-sales held in execution of decrees against the father, it is not enough for him to show that the debts, for which the decrees were passed, were contracted by the father for immoral purposes, it must also be shown that the auction-purchasers had notice that the debts were so contracted. The points to be determined in such case are—(i) What was the interest that was bargained for and paid for by the purchaser? Was it the father's interest only, or was it the interest of the entire family? (ii) Were the debts for which the decrees were obtained, under which the property was sold, contracted for immoral purposes? and (iii) Had the purchaser notice that the debts were so contracted? *Suroj Bunsu Koer v. Sheo Prashad Singh, L. R. 6 I. A. 18; I. L. R. 5 Cal. 14*, and *Nanomi Babuasin v. Modhun Mohun, L. R. 13 I. A. 1; I. L. R. 13 Cal. 21*, followed. The plaintiff sued in 1883 for partition of ancestral property, consisting (*inter alia*) of certain thikans which had been sold in execution of decrees passed against his father. The plaintiff

nothing to show that the purchasers bargained for and paid for the entire family estate. Moreover the plaintiff's possession and enjoyment of the thikane in question was never disturbed, though the shares had each a separate possession of distinct portions of the ancestral property. *Held*, that, under the circumstances, the father's interest alone passed to the auction-purchasers. *KRISHNANI LAKSHMAN v. VITHAL RAVI RENGE, I. L. R. 12 Bom. 625*

47. ———— *Ancestral zamindari sold in execution of decree for money against the father, including the son's right of succession—Debt not immoral.* A sale in execution of a decree against a zamindar for his debt purported to compromise the whole estate in his zamindari. In a suit brought by his son against the purchaser, asking the father also a party defendant, to obtain a declaration that the sale did not operate as against the son as heir, not affecting his interest in the estate, the evidence did not establish that the father's debt had been incurred by him for any immoral or illegal purpose. *Held*, that, the impeachment of the debt failing, the suit failed, and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay. *Hardi Narain Sahu v. Ruder*

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

*Perkash Misser, I. L. R. 10 Cal. 626* (where the sale was only of whatever right, title, and interest the father had in property), distinguished. *MINAKSHI NAYUDU v. INIMUDI KANAKA RAMAYA GOUNDAN*

*I. L. R. 12 Mad. 142; I. L. R. 16 I. A. 1*

48. ———— *Money-decree—Decree against father alone—Purchaser at execution-sale under such decree—How far such sale binding on the interest of the sons not parties to the suit or execution-proceedings.* In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property or only his interest in it passes by the sale, is to inquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money-decree. In the case of an execution-sale the mere fact that the decree was against the father does not

the property to be sold is not a complete test. The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person who had purchased it at an auction-sale held in execution of a money-decree obtained against the first defendant alone. The first defendant was the father of the remaining defendants, and they con-

*GANPATY v. MANJAPPA, I. L. R. 12 Bom. 604*

49. ———— *Money-decree against deceased member—Execution after judgment-debtor's death against joint family property*

ment-debtor's death and a subsequent partition, to

*Bhushan, I. L. R. 8 All. 195, referred to. JAGANNATH PRASAD v. SITA RAM, I. L. R. 11 All. 302*

50. ———— *Money-decree against father—Attachment of ancestral estate.*

**HINDU LAW—JOINT FAMILY—contd.****G. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—contd.**

denied by the decree-holder. It was held by the lower Courts that nothing more than the father's share was liable to be attached, as the sons were not parties to the decree. *Held*, that the nature of the debt should be determined, since the creditor's power to attach and sell depends on the father's power to sell, which again depends on the nature of the debt. *Nanomi Babuass v. Modhun Mohun*, L. R. 13 I. A. 1; I. L. R. 13 Cal. 21, discussed, and followed. *RAMANADAN v. RAJAGOPALA*

I. L. R. 12 Mad. 309

51. *Money-decree against father—Auction-purchaser at such sale.* In the absence of special circumstances showing an intention to put up the entire interest of the family in the property sold in execution of a money-decree against the father, only the interest of the

*Simbbhunath v. Golab Sing*, L. R. 14 I. A. 77; I. L. R. 14 Cal. 572. *MARUTI SAKHARAM v. BABAJI*

I. L. R. 15 Bom. 87

52. *Money-decree against father—Execution against son after the death of the father—Ancestral property in the hands of the son—Civil Procedure Code, 1882, s. 234.* A money-decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property that has come into their hands, even if the debt has been incurred for the sole purposes of the father, provided that it is not tainted with immorality or illegality. *UNED HATHIVIKO v. GOMAN BHAIJI*

I. L. R. 20 Bom. 385

53. *Son's liability for father's debt—Decree against father—Son's interests when not affected by sale.* When ancestral property is sold in execution of a decree against a Hindu father, there are only two cases in which the son's interests do not pass under the sale; first, when they are not sold; second, when the debt is not binding upon the sons by reason of its having been contracted for an illegal or immoral purpose. *JOHARMAL v. EENATH*

I. L. R. 24 Bom. 343

54. *Sale of joint family estate in execution of a decree against the father upon debts contracted by him—Liability of son's share—Alienation by father.* It is only on condition of the son's showing that the father's debt has been contracted for an illegal or immoral purpose that the son, upon a decree against the father alone being executed by the attachment and sale of the family estate, can claim to have the liability

**HINDU LAW—JOINT FAMILY—contd.****G. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—contd.**

limited to the father's own share under the Mitakshara law. In the absence of such proof, whether the entirety of the family estate has been transferred at the sale in execution or not, is a question of fact in each case dependent on what was understood to be brought, and has been brought to sale. *Nanomi Babuass v. Modhun Mohun*, L. R. 13 I. A. 1; I. L. R. 13 Cal. 21, and *Bhagabut Pershad Singh v. Girja Koer*, L. R. 15 I. A. 99; I. L. R. 15 Cal. 717, referred to and followed. The description of the property in a certificate of sale as to right, title, and interest of the judgment-debtor is insisted

*NATH SATHI* . . . I. L. R. 17 Cal. 584

*S. C. MAHABER PERSHAD v. MANKUNDA NATH SATHI* . . . I. R. 17 I. A. 11

55. *Decree against Hindu father—Interest of undivided son—Certificate of sale.* In execution of a decree for sale passed

56. *Decree against manager for debt due by the family—Sale in execution of such decree, effect of, on the other co-sharers, though not parties to the decree.* The plaintiffs and their brother E were in joint occupation of certain thikans in a khoti village. E, being the

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

tion passed the shares of the plaintiffs, as well as that of their brother, to the auction-purchasers.

*Cole 70 : I.  
Ashman Ven-  
man 700, and  
R. 6 Bom*

*MAHARAJA V. JAGRAM VITHAL  
I. L. R. 14 Bom. 587*

57. — Mortgage decree—*Mortgage for debt due by father of joint family—Sale in execution of decree—Effect of sale on members of family not made parties.* When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the sale, simply because they are not parties on the record. This principle of law applies as much to a Hindu family governed by the Mitakshara law as to a Mahomedan family. *Hari v. Javara, I. L. R. 14 Bom. 587, and Khurshid Ali v. Keso, I. L. R. 12 Bom. 101, referred to and followed. DIALATA v. BHIVAJI DHONDO I. L. R. 20 Bom. 338*

58. — Mortgage of ancestral property by father of joint family—Decree on mortgage—Sale in execution of decree—Extent of the right, title, and interest sold. A mortgaged his family property to C. Subsequently C got a decree upon his mortgage and purchased the property at an auction-sale held in execution of the decree. In a suit brought by C's son against the heirs of A to recover possession of the property:—*Held*, that, having regard to the language of the mortgage-deed, there could be no doubt that the entire family property was intended to be mortgaged.

*CHANDRABHAU T. SAVALTA GADABA  
I. L. R. 15 Bom. 293*

59. — Ancestral property—Father's debt—Decree against father—Liability of family property—Purchaser, rights of—Civil Procedure Code (Act XIV of 1852), ss. 318, 332, 333. In a suit for specific performance of a certain contract for the sale of land which the defendant had failed to complete, the plaintiff obtained a decree against the defendant for the repayment of the earnest-money and his costs of suit. In execution of this decree, the plaintiff attached

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

the whole of the property, which the defendant had agreed to sell. A warrant for sale was duly issued and claims were advertised for. The sons of the defendant thereupon appeared before the Commissioner and claimed to be entitled to three-fourths of the property, which they alleged was ancestral. Their claim was not investigated, but to save time it was agreed that a note should be made in the proclamation of sale, that the sons claimed to be interested in the said lands and premises on the ground that they were ancestral, and that the one-fourth share of the defendant only could be sold by the attaching creditor. Under this proclamation, the right, title, and interest of the defendant in the property were sold. At the sale the sons gave notice of their claim, the property was duly sold, and the purchaser was put into possession, the claimants being dispossessed. The claimants then took out a summons under s. 332 of the Civil Procedure Code, against the purchaser to restore to possession the debt due by

plaintiff could enforce, if necessary, against ancestral property in the hands of the defendant to the extent of the whole interest therein of the defendant and his sons, as it was not an immoral or illegal debt; (ii) that, assuming that the property in question was ancestral, what the purchaser bought was the whole property, and not merely the right which the defendant might have as the father of the family to a share of it on partition. The plaintiff evidently did not acknowledge any right in the claimants, but intended to sell the very largest right the defendant might have in the property, which, as the judgment-debt was one for which the family property was liable, was the whole estate of the joint family; (iii) that the purchaser, who had bought the whole of the rights of the family in the property, was entitled to the possession of what he bought, and was not required to file a suit for partition, because the shares of all the co-parceners had passed to him; (iv) assuming that the property was ancestral, the claimants were not in possession on their own account, and were therefore not entitled to be restored under s. 332 of the Civil Procedure Code. A member of a joint Hindu family cannot say that he is in possession of any particular portion of the joint property on his own account. His possession is the possession of the family; (v) what all the sons were entitled to was to try the fact or nature of the debt due to the plaintiff, in a suit of their own. In such suit they would have to prove that the debt was not such as to justify the sale. *COOVENTH HIRJI R. DEWSEY BHOVA*

*I. L. R. 17 Bom. 718*

60. — Execution of mortgage-decree against the estate of a deceased judgment-debtor, member of a joint family under Mitakshara law—Survivorship—Hindu law. On an

**HINDU LAW—JOINT FAMILY—contd.****6 SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—contd.**

application for the execution of a mortgage-deed the following order was made: "In this case the

against his estate. The heirs of the judgment-debtor objected to the application on the ground that, the decree having been passed against their father alone it could not be executed against the joint family estate, now theirs by operation of Mitakshara law. *Held*, that, inasmuch as there was

148: *L. R. 6 I. A. 88*, relied on *Karnataka Hanumantha v. Andukuri Hanumayya*, *I. L. R. 5 Mad. 232*, distinguished. **BENI PERSHAD v. PARBATI KOER** . . . *I. L. R. 20 Calc. 895*

61. ——— Debts incurred by agent of joint family—*Mitakshara law*—Suit and

members of a joint Hindu family, sought to recover a share in certain properties on the allegation that they were joint family properties, but wrongfully sold in execution of a decree upon a bond executed by their paternal uncles, L and S, and one B. S. The family was a trading family, and carried on a money-lending business under the supervision of L and S. One Z M had dealings with L and S, and in the course of such dealings, he deposited a certain sum of money with them, for which the above bond was executed, in which certain properties belonging to the family were pledged as security. Subsequently, Z M sued on this bond, obtained a decree, and put up the properties for sale, which were purchased by some of the defendants, who dispossessed the plaintiffs. The share of the properties advertised for sale, certified in the sale-

referred to. *Acia*, also, that, the sale having been

**HINDU LAW—JOINT FAMILY—contd.****6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—contd.**

under a decree in respect of a joint-debt of the

*Calc. 815*; *Bisessur Lall Sahoo v. Luchmessur Singh*, *L. R. 6 I. A. 233*. 5 C. L. R. 477; *Nanomi Babunni v. Modhun Mohan*, *I. L. R. 13 Calc. 21*; *Daulat Ram v. Mehr Chand*, *L. R. 14 I. A. 187*; *I. L. R. 15 Calc. 70*; *Gaya Din v. Raj Bansu Kuar*, *I. L. R. 3 All. 191*; *Ram Narain Lal v. Bhowani Prasad*, *I. L. R. 3 All. 443*; *Phul Chand v. Lachmi Chand*, *I. L. R. 4 All. 486*; *Bemola Dossee v. Mohun Dossee*, *I. L. R. 5 Calc. 792*; *Baso Koer v. Hurry Dass*, *I. L. R. 9 Calc. 495*; *Samalbhai Nathubhai v. Someshwar*, *I. L. R. 5 Bom 38*; and *Hari Vilhal v. Jauram Vilhal*, *I. L. R. 14 Bom 597*, referred to. *Held*, further, that in execution-proceedings the Courts will look at the substance of the transaction, and will not be dis-

**PERSHAD SINGH v. SANEH LAL RAJKUMAR LAL v. SANEH LAL** . . . *I. L. R. 20 Calc. 453*

62. ——— Decree against manager—*Family debt—Liability of family property—Sale in execution of decree—Rights of auction-purchaser.* Where the manager of a joint Hindu family is sued for the recovery of a debt, and his right, title, and interest in the family property are sold in execution, the questions which the Court has to decide in determining the quantum of interest which has passed to the auction-purchaser are (1) whether the debt was one for which the entirety might, by proper procedure, have been

of the family. A decree was passed against them as A's representatives, directing the recovery of the debt by sale of A's estate. In execution of this decree, A's right, title, and interest in certain family property was put up to sale. *Held*, that the sale affected the rights of all the members of the joint family. Under the circumstance, what was meant to be brought to sale was the right, title, and interest of the family of which A had been the manager, and for the benefit of which the debt had been incurred. **JANKINAI v. MARADEV**

*I. L. R. 18 Bom. 147*

63. ——— *Mitakshara law*—*Sale of joint property in execution of decree against father—Decree for damages for theft or*

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

*misappropriation—Antecedent debt—Pious duty of sons to pay father's debt—Bonâ-fide purchaser, Equities of.* In execution of a decree for damages for theft or misappropriation against *M* and *S*, two of the members of a joint Hindu family under the Mitakshara law, ancestral property of the family was sold, and the purchasers took possession. In a suit by the sons of *M* and *S* and several other members of the family for recovery of their interests in the property:—*Held*, that there was no debt "antecedent" to the decree in this case: that even if the right to obtain damages for the theft or misappropriation could be said to have created a "debt," the debt was tainted with illegality or immorality, the sons were not under a pious duty to pay the debt, and the interests of the sons did not pass by the sale. *Held*, also, that the purchasers in this case were not entitled to the equities of a bonâ fide purchaser, as the decree, if examined, would have put them upon inquiry. *PAREMAN DASS v. BHATTU MAHTON*. I. L. R. 24 Calc. 672

64. Family debt, liability of family property in execution of—Decree against a manager—Parties, non-joinder of—Where family property is sold in execution of a decree, obtained against a brother as manager of a joint Hindu family, for a family debt contracted by his father and himself and a brother, the interest of all the members of the family passes to the auction-purchaser, though they have not been joined as parties to the suit or to the execution-proceedings. *BRANA v. CHINDHU*. I. L. R. 21 Bom. 616

65. Benares school of law—Joint family property—Ancestral property assigned to wife in lieu of maintenance, Devolution of—Collateral succession—Decree passed by mistake against father, Effect of, on sons—Sale in execution of decree against father—Purchase by decree-holder—Interest passed by sale—Nature and extent of mother's share in joint family property, Nature and devolution of—A Hindu, governed by the Benares school of law, died leaving a joint family consisting of four sons, *A*, *B*, *C*, and *D*, and a widow, *R*, to whom he assigned an ancestral mouzah in lieu of her maintenance. All the sons predeceased the widow, *C* and *D* dying childless. After the widow's death, a separation

recovered a decree for 4 annas of the mouzah in 1864, and *G* also recovered a similar decree for 4 annas in 1866. Some time after *H* brought an action for mesne profits and recovered a decree in 1875 against *M*, heir of *E*, and also against *G*, although there

HINDU LAW—JOINT FAMILY—*contd.*6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—*contd.*

was no allegation of wrong against the latter and no finding in the Court's judgment to that effect. In execution of this decree, *H* caused the interest

said mouzah—a three-fifths in their own right and a one-fifth in right of their mother. Among the objections raised by the defendants and pressed by them on appeal to the High Court it was urged (i) that out of the four-anna share, two annas were acquired by *G* collaterally from his uncles *C* and *D*, and therefore were not "ancestral property" of the plaintiffs. *Held*, that the mouzah in question retained the character of ancestral property during the lifetime of the widow *R*, and that, upon her death, it devolved upon her grandsons *E*,

was conclusive as to the liability of *G*, and the plaintiff could not raise any question on the existence of a debt binding on them. *Held*, that the

a executory family  
Proshad  
A. 83;

*Lachmon Dass v. Guranath Choudhary*, I. L. R. 5 Calc. 855, *Nanoms Babuasin v. Modun Mohun*, I. L. R. 13 Calc. 21; *L. R. 13 I. A. 1*; *Deendyal Lal v. Jugdey Narain Singh*, I. L. R. 3 Calc. 198; *L. R. 4 I. A. 247*; *Hurdey Narain Sahu v. Rooderperash Misser*, I. L. R. 10 Calc. 625; *L. R. 11 I. A. 25*; and *Simbhunath Panday v. Golab Singh*, I. L. R. 14 Calc. 573; *L. R. 14 I. A. 77*, referred to. (ii) It was further urged that the claim being for a four-fifths share, the present suit should be treated as one for partition, and shares distributed according to the state of the family on the date of the suit, and in that case plaintiff's

share of their mother would not stand.

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**HINDU LAW—JOINT FAMILY—contd.****6. SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS—contd.**

portionate share of the mother, passed absolutely to the purchaser, and plaintiffs could not recover that portion of the share. *Held*, that the mother was

referred to. *BENI PARSHAD v. PUTAN CHAND*  
I. L. R. 23 Cal. 262

86. — Suit for redemption—Joint Hindu family—Mortgage of ancestral property by father—Sale under decree on mortgage—Suit by sons to redeem their interests. Where ancestral property of a joint Hindu family has been sold in execution of a decree upon a mortgage executed by the father, no suit for redemption of their interests is maintainable by the sons upon the ground solely that they were not made parties to the suit under the decree in which the ancestral property was sold. *Debi Singh v. Jas Ram*, I. L. R. 25 All. 214; *Banke Rai v. Raghuraj*, S. A. No. 641 of 1903, decided 6th August 1904, followed. *Girdharee Lall v. Kantoo Lall*, I. L. R. 1 A. 311, referred to. *LAL SINGH v. PULANDAR SINGH* (1905). I. L. R. 28 All. 182

87. — Suit on promissory note—Suit against father and son on promissory note given by father—Son exempted from liability on the note—Liability of son as member of a joint family. In a suit brought against father and son in a joint Hindu family upon a promissory note executed by the father alone, the son was exempted from liability on the note on the ground that he was no party to it; in other words the suit as against the son was dismissed. A decree, however, was

**HINDU LAW—JOINT FAMILY—contd.****7. SUITS FOR POSSESSION—contd.**

the lower Court in holding that the plaintiff had failed to prove his right to exclusive possession,

claim in the plaint was only for exclusive possession. *NARANBHAI VAGHISHAI v. RANCHOD PREMCHAND* (1901). I. L. R. 28 Bom. 141

2. — Right to sue on behalf of co-parceners—Limitation Act (XV of 1877), s. 22—Civil Procedure Code (Act XIV of 1852), s. 32—Suit to recover possession—Suit by one of the plaintiffs as manager of the family—Right of manager to sue—Objection as to non-joinder at a late stage—Joinder of co-plaintiffs after the period of limitation—Limitation. A suit to recover possession of a house was originally brought by two plaintiffs, the second plaintiff being described as the manager of the family. Subsequently at a late stage of the suit, the defendants having raised an objection of non-joinder of parties, the other members of the family who, it was stated that they were entitled to be re-

and dismissed the suit as time-barred under s. 22 of the Limitation Act (XV of 1877). *Held*, reversing the decree of the Judge and restoring that of the first Court, that s. 22 of the Limitation Act (XV of 1877) does not in itself purport to determine

Court to award such relief as may be given in the

**7. SUITS FOR POSSESSION.**

1. — Co-parcener, right of—Possession—Suit by co-parcener for exclusive possession—Failure to prove right to exclusive possession, but right to joint possession proved—Decree for joint possession. The plaintiff



HINDU LAW—JOINT FAMILY—*contd.*7. SUITS FOR POSSESSION—*concl.*

at an early stage, the objection on the score of want of authorization being one of a character, which it would clearly be open to the defendant to waive.  
GURUAYYA v. DATTATRAYA (1904)

I. L. R. 28 Bom. 11

## 8. PARTITION.

1. ——— Purchaser of portion of property belonging to a joint Hindu family—*Partition*—Such purchaser competent to obtain partition of a part only of the property purchased by him. It is competent to the purchaser of property belonging to a joint Hindu family to have, if he is so desirous, a portion only of the property, which he has purchased, partitioned. he is not bound to include in his suit for partition the whole of the property which he has purchased.  
*Sreemati Padmamani Das v. Sreemati Jagadamba Das*, 6 B L R. 134 followed. RAM MOHAN LAL v. MUL CHAND (1905) . I. L. R. 28 All. 39

2. ——— Right to sue for partition of a portion of the joint family property. One of two brothers, who formed a joint Hindu family, sold his own interest in a portion of the joint family property. Held, that it was competent to the other brother to sue for partition of his share in the property so dealt with without asking also for partition of the remainder of the joint family property. *Lakshmi Narain v. Janki Das*, 1 L R. 23 All 216, and *Subramanya Chettyar v. Padmanabha Chettyar*, 1 L. R. 19 Mad. 267, followed. RAM CHAND v. AJIDHIA PRASAD (1905) . I. L. R. 28 All. 50

3. ——— Right of minor member of a joint family to sue for partition—*Joint family*—Minor Held, that a minor member of a joint Hindu family may institute a suit for and obtain partition of his share in the joint family property if there exist circumstances such as, in the interest of the minor, render it advisable that his share should be set aside and secured for him.  
*Bhola Nath v. Ghazi Ram* (1907)  
I. L. R. 29 All. 373

4. ——— Family arrangement—*Amongst co-partners not to partition, to what extent binding.* Persons jointly entitled to lands may, as amongst themselves, come to an agreement as to the manner in which they will mutually enjoy the property and the arrangement is binding on all the parties to it.

HINDU LAW—JOINT FAMILY—*contd.*8. PARTITION—*contd.*

to sue for partition, the parties obtained a right to take advances from family funds in excess of what

5. ——— Partial partition—*Limitation Act, Act XV of 1877, Sch. II, Arts. 32, 127*—When debts recovered by one member after division in status, right of other members to recover their shares, falls under Art. 62 and not 127—*Funeral expenses, liability for.* Where a partial partition is proved or admitted to have taken place between members of a Hindu family, the presumption is that there has been an entire partition both with reference to rights and properties. Where the greatest portion of the properties have been divided, and where the parties subsequently continue to live separately and have separate accounts, and there is no managing member of the family and no reason is shown why they should have been continued joint in respect of the other properties, the parties must be considered as having become divided in status. Where the members of a joint family become divided in status, no member has a right, on behalf of the others, to recover any debt due to the family; but each member has a right to recover any debt due to him from the family.

*Chelam v. Ramaswamy*, 1 L R. 6 Mad 402, followed. The principle that the possession of one tenant-in-common is to be deemed possession on behalf of all, and limitation begins to run only after the exclusion of any tenant-in-common or

of the family funds; but where, at the partition,

motive for the arrangement is proved, the Court will not consider the quantum of the consideration too nicely. *Williams v. Williams*, 1 L R. 2 Ch. App. 294. Where in return for binding themselves not

**HINDU LAW—JOINT FAMILY—concl'd.****8. PARTITION—concl'd.**

an agreement is made regarding such expenses,

6. ——— Right to account—*Partition, suit for—Claim for share of specific items bar to claim for a general account.* Under the Mitakshara law, a member of an undivided family who sues for partition, and who has not been excluded from the family, is not, unless he establishes fraud or misappropriation, entitled to call upon the managing member to account for his past dealings with the family property. *Abhaychander Roy Choudhry v. Pyari Mohan Guha*, 5 B. L. R. 317, not followed *Narayan bin Balaji v. Nathaji Durgaji*, 1 L. R. 28 Bom. 201, followed. Where a plaintiff, suing for partition, prays for general account and claims a share in specific items alleged to have been received by the manager of the family, and attempts to prove the receipt of such items, he will not, on failing to prove such receipt, be allowed to claim a general account *BALAKRISHNA IYER v. MUTHUSAMI IYER* (1908) L. L. R. 32 Mad. 271

**HINDU LAW—MAINTENANCE**

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See DECREE—FORM OF DECREE—MAINTENANCE.

**HINDU LAW—MAINTENANCE—concl'd.**

See PARTIES—PARTIES TO SUITS—MAINTENANCE, SUITS FOR.

I. L. R. 2 Bom. 140  
I. L. R. 7 Mad. 428

**1. NATURE OF RIGHT.**

1. ——— Nature of right to maintenance—*Right not based on contract.* Ordinarily, the right to maintenance does not rest upon contract. It is a liability created by the Hindu law, and arises out of the jural relation of the Hindu family. It is enforceable in numerous instances in which there is no connection with contract. *SIDLINGAPA v. SIDAVA* . . . I. L. R. 2 Bom. 624

2. ——— Charge on immoveable property—A claim for maintenance held not to be a charge upon immoveable property. *BEER CHUNDER MANIKHYA v. RAJ COOMAR NOBODDEP CHUNDER DES BURNOMO* I. L. R. 9 Calc. 535 : 12 C. L. R. 465

3. ——— *Danpatra* in favour of sister—*Maintenance, grant for—Construction—Absolute estate, though donee's heirs wrongly enumerated—Ayanutula sridhan—Succession—Dispossession by natural guardian by untrue representation—Decree for possession—Mesne profits.* O executed in favour of his younger sister a *danpatra*, which declared that the donor did of his own free will make a gift to the donee of an eight annas share of a certain mouzah for her maintenance. The document further provided that "you (the donee) shall pay the annual Government revenue of the said share to the Collectorate and get your name registered" to that extent "and enjoy possession during your lifetime. On your death, your husband, sons, grandsons and other heirs in succession will continue to enjoy and possess. The power to dispossess the said estate will successively rest in your heirs." *Held*, the donee was entitled to succeed as such. *Held*, further, that the property having been given to the donee, when married, became her "*ayanutula sridhan*," so that on her death her only unmarried daughter became entitled to succeed to it in preference to her husband. The donee died on 31st May 1879 and thereupon her husband applied to have his name registered in lieu of the donee's, falsely stating that she had died childless and had his name registered on the 27th May 1880. The present suit was brought by the daughter to recover possession of the property and mesne profits from the date of her mother's death and not merely for three years before suit.

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tained a decree for possession it was held, that having regard to the fact that the plaintiff was dispossessed by her natural guardian and that by means of an untrue representation she was entitled to get mesne profits from the date of her mother's death and not merely for three years before suit.

HINDU LAW—MAINTENANCE—*contd.*1. NATURE OF RIGHT—*contd.*

BASANTA KUMARI DEBI v. KAMKESHA KUMARI DEBI (1905).  
I. L. R. 33 Cal. 23  
S.C. 10 C. W.N. 1

## 2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.

1. ——— Impartible raj—*Allowance to younger sons—Matters which may be considered in*

sources of income, whencesoever derived, possessed by the incumbent of the raj. MAHESH PARTAP v. DIRGAPAL SINGH  
I. L. R. 21 All. 233

2. ——— Power of Court to fix maintenance—*Husband and wife—Wife residing apart from husband.* A Civil Court has power to fix the rate of maintenance payable by a husband to his

24 W. R. 428

3. ——— Form of allowance—*Fixed annual sum—Share of income—Widow.* In a case where a Hindu widow is entitled to maintenance, it is better to award a fixed annual sum and not a share of the income of the estate. JYOTNA v. RAMSAREX  
I. L. R. 2 All. 777

4. ——— Assignment of mortgaged property as maintenance of a widow—*Subsequent redemption of the mortgage—Widow's right to the redemption money—Form of decree.* A field held in mortgage by the family of the parties was assigned to a widow in the family for her maintenance when the family divided. The mortgage money was subsequently paid into Court in pursuance of a decree for redemption. Held, that it was clear on the assignment that the widow was entitled to the money just as she was entitled to the field, i.e., to the usufruct of it for her life. GAMBHIRMAL v. HAMIRMAL  
I. L. R. 21 Bom. 747

5. ——— Calculation of amount—*Maintenance of widows and daughters.* The question of the adequacy of the maintenance granted to widows and daughters must depend in each case on its own peculiar circumstances. DINOBUXDHOO CHOWDRY v. RAJMOHINEE CHOWDRY  
15 W. R. 73

6. ——— Maintenance, widow's right to—*Arrears of maintenance.* A widow has by Hindu law a right to maintenance, and the amount is to be determined on a consideration not merely of her absolute necessities, but also of the

HINDU LAW—MAINTENANCE—*contd.*2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*contd.*

circumstances of her family. SAKTARSHAI v. BRAHMANJI RAJE GHATJI ZANJARRA DESHMUKH  
1 Bom. 194

7. ——— Widow's maintenance—*Separate savings.* In a suit by a widow against her step-son for separate maintenance on the ground of ill-treatment, the Court held that, the ill-treatment being proved, a reasonable maintenance ought to be provided. Taking the income tax return as evidence of the amount of defendant's income, Rs 25 a month out of an annual income of Rs 600 was held to be sufficient.

8. ——— Maintenance of a Hindu widow is expected to live in a matter of ceremonial observance rather than of law. HARRY MONTY ROY v. NYANTARA  
25 W. R. 474

8. ——— Stridhan—*Hindu widow.* *Semble:* The stridhan of a Hindu widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her. SAVITRIBAI v. LAXMINARAI  
I. L. R. 2 Bom. 573

9. ——— Valuable movable property—*Jewels.* The fact that a widow has in her possession jewels and other property unproductive of income does not deprive her of, or diminish

10. ——— Discretion of Court. The quantum of maintenance to be awarded

SATHUPATHY  
1 B. L. R. P. C. 1 : 12 Moo. L. A. 397  
10 W. R. P. C. 17

11. ——— Widow—*Style of*

12. ——— Annual proceeds of husband's share of family property. A Hindu widow is not entitled to a larger portion of the annual produce of the family property as maintenance than the share to which

GUNABAI  
13. ——— Penalty for vexatious defence—*Reduction of maintenance.* Case in

HINDU LAW—MAINTENANCE—*contd.*2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*contd.*

which some of the elements in determining what is a suitable amount of maintenance for a Hindu widow out of her deceased husband's estate were considered. A Court is not justified in reducing, as

14. *Increase or decrease for sufficient cause.* There is nothing in the law to prevent an increase or a decrease of the amount of maintenance allowed to a Hindu widow, should sufficient cause be shown for either. The increase, if allowed, should be made from date of suit. *SREERAM BHATTACHARJEE v. PURNOMOKHER DEBIA*, 9 W. R. 162

15. *Widow's second suit for maintenance—Enhancement of rate of maintenance—Res judicata.* A Hindu widow in 1867 obtained a decree for maintenance against her husband's co-parceners, but the decree created no

circumstances had changed. *Held*, that the decree in the suit of 1867 was not a bar to the present suit. *BANGARU ANMAL v. VIJAYANACHI REDDIAR*, I. L. R. 22 Mad. 176

16. *Widow—Reduction of amount, ground for.* *Held*, in a suit by a

17. *In estimating the amount of maintenance which should be allowed to a Hindu widow out of her husband's estate, regard should be had to the value of the estate as gauged by the annual income derivable therefrom, to the position and status of the deceased, and to the position and status of the widow, and the expenses involved by the religious and other duties which she has to discharge.* *NITTO KISSOREE DASSEE v. JOGENDRO NATH MULLICK*, L. R. 5 I. A. 55, and *NARHAR SINGH v. DIRGNATH KUAR*, I. L. R. 2 All. 407, referred to. *Per MANMOOD, J.*—The amount of maintenance should not be determined with

HINDU LAW—MAINTENANCE—*contd.*2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*contd.*

18. *Maintenance of widow by her husband's brothers and nephew—Death of the plaintiff's husband prior to his father's death.* In a joint Hindu family governed by the Mitakshara law, the property of S, the father, con-

person in her position of life, but also the means of the family of her husband. *NITTO KISSOREE DASSEE v. JOGENDRO NATH MULLICK*, L. R. 5 I. A. 55; *BAIRAV v. RUP SINGH*, I. L. R. 12 All. 558, referred to. *DEVI PENSAD v. GUNWANTI KOER*, I. L. R. 22 Calc. 410

19. *Suit for reduction of maintenance where fund from which it is paid has decreased—Right of suit.* A Hindu lady

firm having diminished, the proprietor of the same brought a suit for the reduction of such rate of maintenance. *Held*, that such suit was maintainable. *RUKA BAI v. GANDA BAI*, I. L. R. 1 All. 594

20. *Decrease of estate in value on which maintenance is charged.* A suit brought by a widow against the adopted son of her husband, for possession of her husband's estates, was compromised on the terms of a solamah under which the defendant agreed to pay to the plaintiff a certain sum for maintenance, the same to be secured by assignment of the rents payable by certain rayats. Subsequently the holding the rents of which were assigned having become unfit for cultivation by reason of an inundation of salt water, and the defendant himself having become greatly impoverished by his estate having been injured by the same cause, the amount due for maintenance was not paid, and the widow brought a suit to recover that amount. *Held*, that, inasmuch as the amount of maintenance must be taken to have been fixed with reference to the extent and value of the property, the Court had power to reconsider the allowance and to re-adjust it to the altered circumstances. *RAJENDRO NATH ROY v. PUTTOO SOONDERY DASSEE*, 6 C. L. R. 18

HINDU LAW—MAINTENANCE—*contd.*2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*contd.*

21. *Reduction in value of property on which maintenance is charged—Natural equity.* A zamindar bequeathed the whole of his zamindari to his eldest son, leaving certain fixed stipends to his other children. In con-

GREES CHUNDER ROY & SUMBHOO CHUNDER ROY  
5 W. R. P. C. 88

22. *Suit to reduce rate awarded by decree.* S, a Hindu, obtained a decree for maintenance at a certain rate against R, her father-in-law. After the death of R, V, who was adopted by R subsequent to the decree, sued S to have the rate reduced on the ground that the estate of R, which came to his hands, was considerably diminished in value. *Held*, that, as the estate had been diminished by the voluntary acts of R and V, the claim could not be allowed. *VITAYA v. SRIPATHI*. I. L. R. 8 Mad. 84

23. *Widow's maintenance—Withholding of maintenance—Demand and refusal—Arrears of maintenance—Limitation—Decree providing for reduction of maintenance in event of altered circumstances of persons paying it—Decree, form of.* K, a Hindu widow, sued the undivided brothers of her deceased husband for maintenance. She also claimed arrears of maintenance for six years prior to the institution of the

father and been maintained by him, and that a formal demand had only been made on the defendants three years previously. On appeal, the District Court increased the rate of maintenance to Rs 65 per annum, and awarded the plaintiff arrears of six years, holding that the fact of the demand having been made only three years before suit did

would amount to a refusal of maintenance. The decree of the lower Appeal Court was, therefore, confirmed, except so far as it gave the plaintiff arrears of maintenance for six years, which period

HINDU LAW—MAINTENANCE—*contd.*2. FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*contd.*

was altered to three years. The clause as to the reduction of maintenance in the event of altered circumstances was also struck out. *MOTILAL PRANNATH v. BAI KASHI*. I. L. R. 17 Bom. 45

24. *Decree for maintenance—Suit for altering the rate of maintenance fixed by a decree.* A suit will lie to obtain a reduction in the amount of maintenance decreed to a Hindu widow on a change of circumstances, such as a permanent deterioration in the value of the family property. But where such deterioration is due to the plaintiff's own default in not keeping the property in a proper state of repair, he has no right to ask for a reduction. *Per PARSONS, J.*—Courts should insert words which would enable them on

## 3 ARREARS OF MAINTENANCE

1. *Power to award arrears.* Arrears of maintenance may be awarded. *PITHHEE SINGH v. RAJ KOER*  
12 R. L. R. 238 : 20 W. R. 21  
I. L. R. 1 A. Sup. Vol. 203

Affirming decision of Court below in  
12 N. W. 170

2. *Right to recover arrears—Limitation.* No rule of Hindu law precludes the

to the plaintiff. *2 Mad. 36*  
*HENGUSU*.

*SINTHAYEE v. THANAKAPUDAYEN alias PONDILY UDAYAN*. 4 Mad. 183

3. *Limitation—Hindu widow—Demand and refusal—Arrears of maintenance.* A Hindu widow has a legal right,

*JIVEJI RAMJI*.

4. *Award of arrears—Form of decree—Charge on property of husband.* Arrears of maintenance as well as prospective allowance

5. *Suit for arrears of maintenance—Proof of wrongful withholding of maintenance.* In a suit for arrears of maintenance it is incumbent on the plaintiff to prove that there has

HINDU LAW—MAINTENANCE—*contd.*3. ARREARS OF MAINTENANCE—*contd.*

been a wrongful withholding of the maintenance to which he is entitled. *Jiti v. Rami*, I. L. R. 3 Bom. 207, and *Mahalakshamma v. Venkataratnamma*, I. L. R. 6 Mad. 53, followed. *MALLIKARJUNA PRASADA NAIDU v. DURGA PRASADA NAIDU*, I. L. R. 17 Mad. 382

6. ———— *Suit to recover arrears of maintenance due under a personal decree and to establish a charge for future maintenance on the family property.* A Hindu widow obtained a personal decree against her father-in-law for maintenance. Her late husband's five brothers were made parties to the suit, but no personal decree was made against them, nor did the widow ask that her maintenance be made a charge on the family property. On the death of her father-in-law, the family property devolved on his sons and grandsons, who sold certain of the property. There were arrears of maintenance due and the widow instituted the present suit, in which she asked for a decree establishing her right to receive maintenance for her life and for the arrears of maintenance on the responsibility of the property. *Held*, (i) that, the maintenance not having been declared a charge upon the portion of the property which had been alienated, this property was free from any charge for her maintenance; (ii) that the arrears of maintenance constituted a personal debt of the plaintiff's deceased father-in-law, and that his sons and grandson (the defendants) incurred his liability on his decease, and were bound to discharge the same out

7. ———— *Previous demand—Right to arrears of maintenance.* A Hindu widow brought a suit against her husband's brother to establish her right to maintenance, and to recover arrears for six years; she had made no demand before suit. *Held*, that she was not entitled to a decree for the arrears. *SESHANNA v. SUBBARAYADU*, I. L. R. 18 Mad. 403

8. ———— *Discretion of Court in allowing arrears.* Where a Hindu widow sues for maintenance from the family and estate of her deceased husband, with arrears of such maintenance, the allowance of arrears of maintenance is a question for the discretion of the Court, and the Court, if it allows arrears of maintenance at all, will not necessarily allow arrears at the same rate as it

WANI LUNAR . . .

8. ———— *Past non-payment of arrears—Right of suit—Proof of wrongful withholding—Unwillingness of holder of estate to pay, and denial of right.* With regard to arrears of maintenance, past non-payment does not necessarily

HINDU LAW—MAINTENANCE—*contd.*3. ARREARS OF MAINTENANCE—*contd.*

10. ———— *Maintenance, decree for—When such decree can be executed after death of person against whom it is passed against other members of joint family.* A decree for maintenance obtained against a member of an undivided family, can, after his death, be executed against joint property in the hands of other members, if the member against whom the decree was passed, was sued as representing the family or if the decree created a charge on the joint family property. *Muthia v. Virammal*, I. L. R. 10 Mad. 253, referred to. *SUBBANNA BHATT v. SUBBANNA* (1907). I. L. R. 30 Mad. 324

## 4. EFFECT OF DEATH OF RECIPIENT.

1. ———— *Death of person maintained where sum has been awarded for maintenance—Reversion to donor.* There seems no authority for the proposition that, on the death of junior members of a family to whom certain properties were awarded for maintenance, not only the property so awarded, but the profits made upon it, by the donee, revert to the donor. *HUREHTRA PERSHAD DOSS PUNRAJ v. GOCOLANUND DOSS MOHAPATTUR*. 17 W. R. 129

## 5. RIGHT TO MAINTENANCE.

## (a) GENERAL CASES

Collector, every month Rs300 on account of the maintenance of yourself, your younger brothers, three in all, and the rest of your family." The son

limited to the one of one, or all, of the brothers, but that the issue of each of the three were included, and

I. L. R. 16 Mad. 288  
I. L. R. 20 I. A. 9

**HINDU LAW—MAINTENANCE—contd.****5. RIGHT TO MAINTENANCE—contd.****(a) GENERAL CASES—concl'd.**

2. ——— Junior members of raj family—Impartible property, maintenance out of. *Suit for—Limitation.* The plaintiff was the second

1888, during which period that officer granted the

I. L. R. 20 Bom. 181

3. ——— Suit for partition in part unsuccessful—Partible and impartible property—Right of junior member of family to maintenance. In a suit for general partition of Hindu family estate the plaintiff succeeded only with regard to a small portion thereof, the bulk being found to be impartible. *Held*, that the family did not, in consequence of these proceedings, become a divided one, and that, as regarded the impartible estate, the younger members retained their rights of maintenance. *YARLAGADDA MALLIKARJUNA PRASADA NAYUDU v. YARLAGADDA DEEPA PRASADA NAYUDU*. I. L. R. 24 Mad. 147

I. L. R. 27 I. A. 161

**(b) CONCUBINE.**

4. ——— Incontinence of a co-parcener's concubine disentitling her to maintenance. Continued continence is, under the Hindu law, a condition precedent to a deceased co-parcener's concubine claiming maintenance. *YASHVANTRAY v. KASHIBAI*. I. L. R. 12 Bom. 26

5. ——— Right of discarded concubine to maintenance. A woman who has been kept by a man as his concubine for a number of years continuously, and then discarded, is not entitled under the Hindu law to claim maintenance from him. *RAMANARASU v. BECHANNA*. I. L. R. 23 Mad. 283

6. ——— Gift to concubine by way of maintenance—Permanent connection—Gift of joint family property—Father—Son's liability. Where, in a joint Hindu family, a father makes a gift of a portion of the family property, during

**HINDU LAW—MAINTENANCE—contd.****5. RIGHT TO MAINTENANCE—contd.****(b) CONCUBINE—concl'd.**

his lifetime, by way of maintenance, to his concubine, in consideration of part cohabitation, the gift is not binding on his son; though the son is bound to provide maintenance for a concubine who lived with his father till his death. Under Hindu law, a concubine gets no right of maintenance against her paramour, unless, having been kept continuously till his death, it can be said that the connection had become permanent. It is only on his death that his estate, in the hands of those who take it, becomes liable for her maintenance. *NINGAREDDI v. LAKSHMAYYA* (1901)

I. L. R. 26 Bom. 163

**(c) DAUGHTER.**

7. ——— Daughter living separate from father. A daughter living apart from her father for no sufficient cause cannot sue him for maintenance. *ILATA SHIVATHI v. ILATA NARAYANNA NAMBUDHI*. I. L. R. 372

8. ——— Widowed daughters—Their right of maintenance out of their father's estate. According to Hindu law, it is only the unmarried daughter who has a legal claim for maintenance

family. If this provision is strict, and the daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs. *BAI MAYAL v. BAI RENUKINI*. I. L. R. 23 Bom. 291

in indigent circumstances is not entitled to separate maintenance out of her father's estate.

The position of a sonless widowed daughter is not the same as that of a disqualified owner or disqualified heir. *THE ESTATE OF THE LATE SRI R. N. S. RAMANATHAN*. I. L. R. 23 Bom. 291, *NAND LALL H.*

10. ——— Sonless widowed daughter—Right of such daughter to claim separate maintenance—Obligations of the husband's family—Costs. A sonless widowed daughter in indigent circumstances is not entitled, under the Bengal school of Hindu law, to separate maintenance out of her father's estate which has descended to his heirs. A Hindu widow

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(c) DAUGHTER—*contd.*

v. *Kashinath Das* (1868), 2 B. L. R. (A. G.), 15, there is not a legally enforceable right by which a widowed daughter's maintenance can be claimed as a charge on her father's estate in the hands of his heirs, when she is unable to obtain maintenance from her husband's family. *MOKHADA DASSEE v. NENDO LALL HALDAR* (1901)

I. L. R. 28 Calc. 278  
s.c. 5 C. W. N. 297

## (d) GRANDMOTHER.

11. ——— Right of grandmother to maintenance—*Division of estate*. On a division of an estate, the Hindu law recognizes the right of a grandmother to maintenance but not her title to any share of the estate. *PUDUMMOOKEE DASSEE v. RAYZEMOONEE DOSSEE* 12 W. R. 409

12. ——— Mortgagee selling the estate—*Right of residence secured on sale of house by mortgagee*. Although according to the Mitakshara a mother may, on partition, or if the estate is being wasted or her maintenance is not duly provided for, claim an assignment of a portion of the estate, yet she cannot call for partition.

## (e) GRANDSON.

13. ——— Grandson or other more remote descendant of a Raja—*Impartible raj*—*Pachete raj*. In the case of the impartible raj of Pachete there is no law or custom under which any one, not being a son or daughter of a deceased Raja, can claim of right either maintenance or a grant in lieu of maintenance, from the person in possession for the time being of the raj. *NILMONEY SINGH DEO v. HINDU LALL SINGH DEO*

I. L. R. 5 Calc. 256

## (f) ILLEGITIMATE CHILDREN.

14. ——— Children of Sudra caste. According to Hindu law, illegitimate children of the Sudra caste can inherit, and are entitled to maintenance. *INDERAN VALUNOTPULY TAVER v. RAMASWAMY PANDIA TAVER*

3 B. L. R. P. C. 1: 12 W. R. P. C. 41  
13 Moo. I. A. 141

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(f) ILLEGITIMATE CHILDREN—*contd.*

Affirming s. c. in Court below, *PANDAYA TELAYVER v. PALLI TELAYVER* 1 Mad. 478

15. ——— Adult illegitimate son—*Bengal law*. An adult illegitimate son has not, by Hindu law as prevalent in Bengal, any right to maintenance. *NILMONEY SINGH DEO v. BANESHWAR I. L. R. 4 Calc. 91*

16. ——— Illegitimate son. By Hindu law an illegitimate son has a claim only to maintenance, and an agreement, not appearing to be made on valuable consideration between a nephew who was the legitimate heir of his uncle and that uncle giving up the nephew's right to about 70 acres of land in favour of the illegitimate son of the uncle, was declared void as against the nephew. *SANKHARAM TRINIDAD v. RAM VALAD VITAL ARAJI* 1 Bom. 191

17. ——— Under the Mitakshara law, an illegitimate son is entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family and by reason of his position as a member of the family.

I. L. R. 17 Mad. 160

18. ——— Concubine—*Daughter-in-law*. Where the claimants to maintenance were the daughter-in-law, concubine, and illegitimate sons: *Held*, that the heirs were entitled to possession of the property, paying a sum equal to the whole of the profits to the persons entitled to maintenance if the profits are found to be insufficient to provide for their maintenance. *CHITTO SINGH v. MAN KOONWER* 2 Agra 136

19. ——— Charge on impartible zamindari. In a suit for maintenance brought by an illegitimate son of a Hindu zamindar, deceased: *Held*, that it was established that the plaintiff was the natural son of such zamindar and recognized by him as such, it not having been essential to the plaintiff's title to maintenance that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein. Case remanded for the Courts in India to try whether such maintenance can be a charge upon an impartible zamindari, or, if not, out of what property or fund, if any, the son was entitled to be paid. *MUTUSWAMY JAGATPRA YETTAFFA NAIKEN v. VENKATASWARA YETTAFFA*

2 B. L. R. P. C. 15: 11 W. R. P. C. 6  
12 Moo. I. A. 203



HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(f) ILLEGITIMATE CHILDREN—*contd.*

20. ————— *Charge on estate.*  
According to Hindu law, and usage, illegitimate sons are entitled to maintenance from their father, and his estate is liable for the payment of it. *Chaturya Run Murdan Syn v. Parhlad Syn*, 7 Moo. I. A 18, followed. *Nurbibi v. Hussein Lall*, I. L. R. 7 Bom. 538, referred to. *PARICHTAT v. ZALIM SINGH* . . . . . I. L. R. 4 I. A. 185

21. ————— *Son of Sudra—Charge on estate.* The legitimate son of a zamindar of the Sudra caste is entitled to maintenance, and the maintenance is a charge upon the revenues of the zamindari. *COOMABA YETTAPA NAIKAR v. VENKATISMARA YETTI* . . . . . 5 Mad. 405

22. ————— *Son of Sudra.* The illegitimate son of a Sudra, his mother having been a married woman at the time of her forming an adulterous connection with his father, is entitled to maintenance out of his father's estate. *VIRABHIMUTHI UDAYAN v. SINGARAVELU* . . . . .

I. L. R. 1 Mad. 308

23. ————— *Sons of female slave or concubine—Obedience to head of family.* It is immaterial whether the illegitimate sons have been brought up by their father or by their mother.

of the illegitimate descendant or his capacity to earn his own livelihood, but obedience to the head of the family. This test cannot be applied till he has reached full age. By docility or obedience in the presence of the head of the family.

24. ————— *Issue of adulterous intercourse—Son of Sudra.* A Sudra, having been the wife of a Sudra.

of the illegitimate son, that he was entitled to recover. *KUPPA v. SINGARAVELU* . . . . . I. L. R. 8 Mad. 325

25. ————— *Suit for partition by illegitimate son of undivided brother against sons of other brothers—Sudra caste.* In a joint Hindu family of the Sudra caste, consisting of

of the illegitimate son, that he was not entitled to a share, but only to maintenance. *RANOJI v. KANDOLI* . . . . . I. L. R. 8 Mad. 557

26. ————— *Right to maintenance of illegitimate member of joint family—Suit by legitimate son of illegitimate member of family to*

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(f) ILLEGITIMATE CHILDREN—*contd.*

*release mortgage made by legitimate member—Right of redemption.* An allowance for maintenance was received by the plaintiff's father, that father having been an illegitimate son born to a collateral relation of the head of a family. The ancestral property was in the possession of the latter, who was in a senior line of descent. The plaintiff, who was himself the legitimate son of his father, claimed to be entitled to redeem a mortgage of part of the ancestral estate, that mortgage having been effected by the above-mentioned head of the family. His ground of claim was that he had inherited the right to maintenance and had thus an interest of charge within the meaning of s. 91 of the Transfer of Property Act, 1884, to entitle him to redeem. *Held*, by the High Court, that the right of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and does not descend to his son. The legitimate son of an illegitimate member of a Hindu family who as such illegitimate son might have had a right to maintenance from the property of his father, had no such interest in the estate belonging to the

illegitimate birth has no part in the family inheritance, but is entitled to maintenance out of his father's estate—a right personal to him and not inherited by his offspring. *Chaturya Run Murdan Syn v. Sahub Purkulad Syn*, 7 Moo. I. A. 18, referred to and followed. *Held*, also, that the High Court had rightly concluded that the plaintiff had not inherited that right. The authority of the *Mitakshara* in Ch. I, ss. 11 and 12, was more consistent with a personal right of the illegitimate son. *ROSHAN SINGH v. BALWANT SINGH*

I. L. R. 22 All. 181

L. R. 27 I. A. 51

4 C. W. N. 353

Upholding the decision of the High Court in *BALWANT SINGH v. ROSHAN SINGH*

I. L. R. 18 All. 253

27. ————— *Claim by illegitimate son of a Hindu by a woman not a Hindu to maintenance.* There is no text of Hindu law under which an illegitimate son of a Hindu by a woman, who is not a Hindu, can claim maintenance. Plaintiff (who sued for maintenance out of the assets of his deceased father, a Sudra) was an illegitimate son, his mother being a Christian. *Held*, that plaintiff could not be regarded

castes (amongst the four recognised main castes)

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(f) ILLEGITIMATE CHILDREN—*contd.*

the dharma or religious rites applicable to the offspring are those prescribed for the mother's caste. Though an illegitimate child is entitled to claim maintenance from his father under s. 483 of the Criminal Procedure Code, such claim can only be enforced during the lifetime of the father and the right terminates with his death. Such a statutory right is cumulative and does not deprive persons otherwise entitled to maintenance, by the common

law to claim maintenance from the father, the right conferred by statute can only be enforced by the particular remedy provided by the statute and to the extent provided therein. Plaintiff therefore, who could only rely on the statutory right, could not seek to enforce it by suit; nor did the right exist after the father's death. *LINGAPPA GOUNDAN v. ESUDASAN* (1904) . . . I. L. R. 27 Mad. 13

28. ——— *Illegitimate son—Right to maintenance—Evidence Act (I of 1872), s. 112—Presumption as to paternity applicable only to offspring of married couple.* In a suit by an illegitimate son of a deceased Chetti against the adopted son and brother of his late father for a share in his father's estate, or, in the alternative, for maintenance: *Held*, that the claim for a share must fail, as it was

had any ancestral property, but it had acquired property by trade in which the father and the two sons were jointly engaged. There being no indication of an intention to the contrary, it must be presumed that the property thus acquired was held

illegitimate, he could not represent his father in the undivided family. *Ramalinga Muppan v.*

entitled to maintenance. An illegitimate member of a family, who is not entitled to inherit, can be allowed only a compassionate rate of maintenance and cannot claim maintenance on the same principles and on the same scale as disqualified heirs and females, who have become members of the family by marriage. But regard should be had to the interest which the deceased father of the illegitimate son had in the joint family property and the

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(f) ILLEGITIMATE CHILDREN—*contd.*

position of his mother's family. Arrears of maintenance awarded for a period of nine years prior to the suit. The presumption as to the paternity in s. 112 of the Indian Evidence Act only arises in connection with the offspring of a married couple. A person claiming as an illegitimate son must establish his alleged paternity in the same manner as any other disputed question of relationship is established. *GOPALASAMI CHETTI v. ARUNACHELLAM CHETTI* (1904) . . . I. L. R. 27 Mad. 32

29. ——— *Illegitimate child—Maintenance, suit for—Criminal Procedure Code (Act V of 1893), s. 483, refusal of application under, if bars suit—Right to maintenance—Hindu law.* An order by a Magistrate refusing an application for maintenance under s. 483 of the Criminal Procedure Code does not preclude a civil suit for the recovery of maintenance. *Subas Donni v. Kotram Dome, 20 W. R. Cr. 58 and Subhadra v. Basdeo, I. L. R. 13 All. 29*, distinguished. Both

*v. Banu Purnima Dny, 1 Moo. I. A. 18*, referred to *GHANA KANTA MAHANTA v. GRETA* (1904) . . . 13 C. W. N. 150

## (g) MOTHER.

30. ——— *Parent and child—Duty of son to mother—Hindu law, as to whether father.*

I. L. R. 8 Mad. 238

31. ——— *Maintenance of mother on partition between her son and step-sons.* A widowed mother, on a partition taking place between her son and her step-sons of the property left by her husband, is not entitled to have the whole property charged with her maintenance, but only that portion of it which is allotted to her son on the partition. A separation in food and worship took place between a Hindu widow, her son, and her two step-sons, after which the mother had no maintenance from any of them.

charged on the whole estate left by her husband. *Held* that, from the separation of the mother from the son, the mother was not entitled to maintenance from the son.

HINDU LAW—MAINTENANCE—*contd.*5 RIGHT TO MAINTENANCE—*contd.*(g) MOTHER—*concl'd.*

But, inasmuch as she had during the former period been maintained by her son, and could not claim maintenance over again from her step-sons, whatever claim her son might have against them for contribution for her maintenance during that time, the suit as against them must be dismissed. Where the annual value of the whole estate was found to be Rs. 600.

HEMANGINI DASSI . . . I. L. R. 13 Calc. 338

32. ——— Widow's right to a share in lieu of maintenance on a partition. A Hindu mother is entitled under the law to be maintained by her son. If the son dies, her right comes into existence. *AMRITA LAL MITTAL v. MANICK LAL MULLICK*

I. L. R. 27 Calc. 551

## (h) MOTHER-IN-LAW.

33. ——— Liability of son's widow for maintenance of her mother-in-law—Family house—Proceeds of *stridhan*. Where a Hindu widow sued the widow of her predeceased son for maintenance, and it was found that the only property in the possession of the defendant were the proceeds of her own *stridhan* and family house, which yielded no rent and was jointly occupied by the plaintiff and defendant; *Held*, that the defendant was not liable for the maintenance claimed. *Savitribai v. Lakshmbai*, I. L. R. 2 Bom 573, followed. *Bai Kanu v. Bai Jadav*

I. L. R. 8 Bom. 15

## (i) SISTER-IN-LAW.

34. ——— Suit by sister-in-law against brother-in-law—Joint family—Death of plaintiff's husband prior to his father's death and before devolution of estate, which was self-acquired by his father—Amount of maintenance

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(i) SISTER-IN-LAW—*concl'd.*

and the defendant *C*, survived him. *M* died in 1883. After *N*'s death, the plaintiff continued for a time to reside in the family house with *C*. Disputes, however, arose, and she left the house, and went to reside with her brother. She now sued her brother-in-law, *C*, for maintenance, alleging that she had been obliged to leave his house in consequence of ill-treatment. She claimed Rs. 1,000 per month by way of maintenance, and also prayed for the delivery of certain ornaments belonging to her, which she said were in the defendant's possession. The defendant denied possession of the plaintiff's ornaments; and, as to her claim for maintenance, he contended that all the property of his father, *N*, was self-acquired, and that as such the plaintiff's husband, *P*, had never any interest in it, having

intestate, his property devolved upon his sons

incidents to which ancestral property is liable. If he is male, he is entitled to inherit. If he is female, he is disqualified from inheriting in

whether the brother-in-law has ancestral property in his hands. *Held*, also, that the plaintiff being legally entitled to claim maintenance from the defendant, she was entitled to separate maintenance, and that the defendant could not insist upon her living in his house. The property left by *N* at his death was of the value of Rs. 1,50,000. *Held*, that an allowance of Rs. 40 per month should be paid to the plaintiff by the defendant as maintenance. If *P* (the plaintiff's husband) had survived his father, *N*, one-fourth for

against her husband, the plaintiff ought not to be allowed less than one-third of such interest, her husband having left no sons. *ADHIBAI v. CHANDAN DAS NATHU* I. L. R. 11 Bom. 190

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*

## (f) SLAVE.

35. ——— Slave or chela—*Proof of deprivation of ordinary means of livelihood.* The fact of A having been long supported by B, or of his having been purchased either as a slave or as a chela, will not entitle him to claim perpetual maintenance for himself and his heirs, especially where A does not show that he has been deprived of ordinary means of livelihood which he might otherwise have commanded. *NARAIN DASS v. MAHATAB CHUND BAHADOOR*. . . . . 7 W, R, 137

## (i) SON

36. ——— Adult son. According to the Hindu or Jain law, a father is not bound to maintain a grown-up son. *PREMCHAND PEPARAH v. HULAS CHAND PEPARAH*. . . . . 4 B, L, R, Ap. 23; 12 W, R, 484

37. ——— Right of son to maintenance out of impartible property—*Right to partition.* A suit for maintenance out of ancestral estate by Hindu son lies against his father where the property in the hands of the latter is impartible. *Quere: Whether a like suit lies where the son might sue for partition.* *HEMCHAND BECHARING v. GANPATISING*. . . . . 12 Bom. 84

38. ——— Maintenance, right of adult son to—*Father with no partible property.* If a Hindu father possesses practically no partible property, his legitimate son, though adult, suffering from no disability to inherit, is entitled to maintenance from him. *RAMCHANDRA SAKHARAN v. SAKHARAN GOPAL*. . . . . I, L, R. 2 Bom. 348

39. ——— Self-acquired property. A Hindu is under no obligation to maintain his adult son out of his self-acquired property. *AMMAKANN v. APPU*. . . . . I, L, R. 11 Mad. 81

40. ——— Adopted son when adoption is invalid—*Period between adoption and possession of estate.* A Hindu whose adoption is invalid is entitled to maintenance in his adopter's family. A son, whether adopted or begotten, can claim maintenance of his father until put into possession of his share of the ancestral property. *AYAYU MUFFANAR v. NILADATCHI ANNAL*. . . . . 1 Mad. 45

41. ——— Right to maintenance, nature of. The adopted son of one whose alleged adoption has been held invalid can make no

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*

## (j) SON'S WIDOW.

42. ——— Claim on father-in-law—

43. ——— Son's widow remaining chaste—*Right to choose residence.* According to Hindu law, a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations. *KOODER MONEE DABEA v. TARA CHAND CHUCKRABUTTY*. . . . . 2 W, R, 134

*RUPTAN CHAND SHOOREE v. HUREE MONEE*. . . . . 5 W, R, 225

44. ——— Son's widow residing with her father—*Liability of father-in-law for maintenance.* A Hindu died possessed of no property, but leaving a widow. On his death she left the house of her father-in-law, and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. *Held*, that she could not sue her father-in-law for a sum of money on account of maintenance. *KHETRAMANI DAST v. KASIRATH DAS*. . . . . 2 B, L, R. A. C. 15  
9 W, R, 413; 10 W, R, F. B. 89

*UMACHARAN CROWDHRY v. NITAMBINI DEBI*. . . . . 2 B, L, R. 8, N. 11  
10 W, R, 350

45. ——— Son's widow refusing to live with father-in-law—*Bengal and . . . . . Mitak.*

the question is whether the father and son were joint in estate, and whether any joint estate was left by the son burdened with the payment of such maintenance. *HEMA KOOREE v. AJOOBHIA PERSHAD*. . . . . 24 W, R, 474

46. ——— Grandson—*Misconduct of mother.* A widowed Hindu mother, who refuses to dwell with her minor son in her father-in-law's house, and sells her infant daughter in marriage to a low-caste person, thereby injuring the social position of her father-in-law's family, is not entitled to recover maintenance on account of her son from her father-in-law. *MANMAHINI DAST v. BALAK CHANDRA PANDEIT*. . . . . 8 B, L, R. 22; 15 W, R, 498

47. ——— The refusal of a widow to live in her father-in-law's house as one of his family does not disentitle her to maintenance. *VISALATCHI ANNAL v. ANNASSAMMY SATRAY*. . . . . 5 Mad. 150

48. ——— Obligation of father-in-law to maintain son's widow. A Hindu father-in-

## 5. RIGHT TO MAINTENANCE—contd.

## (1) Son's Widow—contd.

tenance. UDARAM SITARAM v. SONKADAI

10 Bom. 483

49. ——— Right to maintenance as against a father-in-law where there is no family property. A Hindu widow sued her father-in-law for maintenance for herself and her infant children. It was found that the defendant held no ancestral property, and that the property which he possessed was exclusively his own self-acquired property. *Held*, that they had no legal right to be supported by the defendant, notwithstanding that they were in indigent circumstances.

KALU v. KASHIBAI alias LAESINIBAI

I. L. R. 7 Bom. 127

50. ——— Maintenance of son's widow—*Self-acquired property*. A Hindu is under no obligation to maintain his adult son or son's widow out of his self-acquired property. Thus a daughter-in-law can enforce no claim for maintenance against the self-acquired property of her father-in-law which has passed to his grandson, unless the father-in-law showed by conduct or otherwise an unequalled intention that it should be taken subject to the obligation of providing for his support. *AMMARANNU v. APPU*

I. L. R. 11 Mad. 91

51. ——— Suit by sister-in-law against brother-in-law—*Death of plaintiff's husband prior to his father's death and therefore before devolution of father's self-acquired estate*—“Ancestral property”—*Legal obligation of heir to fulfil moral obligations of last proprietor*. In a

tenance, but had always resided with, and been maintained by, her own father. After her father-in-law's death, she sued her brother-in-law and her father-in-law's widow for maintenance, which she claimed to have charged upon the immovable

## 5. RIGHT TO MAINTENANCE—contd.

## (2) Son's Widow—contd.

rectly described as “ancestral property” in the defendants' hands from which she would be entitled to maintenance; inasmuch as during the father's lifetime, it was not in any sense ancestral, and the sons had no co-parcenary interest in it, but merely the contingent interest of taking it on their father's death intestate, and in the case of the plaintiff's husband, such interest, by reason of his predeceasing his father, never became vested. *Adhibhai v. Cursandas Nathu*, I. L. R. 11 Bom. 179, dissented from on this point. *Saitribai v. Luxumbai*, I. L. R. 2 Bom. 513, referred to. *Held*,

property for her maintenance after his death; and that such moral obligation in the father became, by reason of his self-acquired property having come by inheritance into the hands of his surviving son, a legal obligation enforceable by suit against that son (who took the estate not for his own benefit, but for the spiritual benefit of the last proprietor) and against the property in question. *Adhibai v. Cursandas Nathu*, I. L. R. 11 Bom. 179; *Ganga Bai v. Sita Ram*, I. L. R. 1 All. 170; *Kalu v. Kashibai*, I. L. R. 7 Bom. 127; *Khetramani Das v. Kashi Nath Das*, 2 B. L. R. A. C. 15; *Rajamoney Doss v. Shib-chunder Muck*, 2 Hyde, 103; and *Tulsha v. Gopal Ram*, I. L. R. 6 All. 632, referred to. *JANKI v. NAND RAM* . . . I. L. R. 11 All. 194

52. ——— Son's widow—*Self-acquired property*—*Property inherited from maternal grandfather*. A Hindu died, leaving property with his widow, of which a portion was self-acquired and the remainder had been inherited by him from his maternal grandfather. He had also by will devised certain items to his wife. His son, who had predeceased him, had also left a widow, who now claimed maintenance from her mother-in-law. *Held*, that, inasmuch as property inherited from a maternal grandfather is not self-acquired, the rule of non-liability for maintenance relating to self-acquired property ought not to be extended to property of this description, which was therefore liable to the maintenance claimed. *Semble*: That the moral obligation to support a son's widow, to which her father-in-law is subject, acquires on his death the force of a legal obligation as against his self-acquired assets in the hands of his heir; and that a testamentary disposition of such

RANGANNAL v. ECHANNAL I. L. R. 22 Mad. 305

53. ——— Claim of daughter-in-law against self-acquired property of

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(I) SON'S WIDOW—*contd.*

her father-in-law in hands of his heirs. The widow of a predeceased son, who lived in union with his

father. YAMUNABAI MANUBAI

I. L. R. 23 Bom. 608

54. ——— Daughter-in-law  
—Her claim to maintenance against self-acquired property devised by her father-in-law. The widow of a predeceased unseparated son has no right to maintenance from a person to whom her father-in-law has bequeathed the whole of his self-acquired property. *Yamunobai v. Manubai*, I L. R. 23 Bom. 608, referred to and distinguished *Bai Parvati v. Tarwadi Dolairam* (1900)

I. L. R. 25 Bom. 263

55. ——— Bengal school—*Mitalshara*—Widowed daughter-in-law, maintenance of—Moral obligation—Heir of father-in-law—Legal obligation—Moral right, forfeiture of—Severance from father-in-law's family. It is the duty of the father-in-law to maintain his widowed daughter-in-law. This obligation is legally enforceable where the father-in-law has by survivorship obtained property in which his son had a vested interest, as in a *Mitalshara* family. Where the father, on the death of his son, does not become entitled to any interest or property which the son had, the obligation to maintain the son's widow is only moral, and cannot be enforced in a Court of law. *Khetramoni v. Kashinath*, 2 B L R (A. C.) 15, followed. The moral obligation in the father to maintain his widowed daughter-in-law

he maintained, where it exists, is not necessarily forfeited by a widow who resides away from her father-in-law's house, as long as she remains chaste. *Raja Pirthee Sing v. Rani Raj Kauer*, 20 W. R. 21, *Kasturbai v. Shivajiram*, I L R 3 Bom. 372, and *Coliba v. Lakshmidas Khimji*, I L R. 14 Bom. 490, followed. If, therefore, the daughter-in-law remains a dependent member of her husband's family, the mere fact of her residence elsewhere will not disentitle her to maintenance. Where a daughter-in-law leaves her father-in-law's house during his lifetime, with the intention of residing permanently in her father's house as a member of his household, and demands and obtains from her father-in-law a Government Promissory Note belonging to her husband, which was all the money

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(I) SON'S WIDOW—*contd.*

she considered herself entitled to, and intends to

56. ——— Separate maintenance of widowed daughter-in-law—Dependent member—Non-residence with the husband's family—Moral obligation of the father-in-law—Legal obligation of his heir—No distinction between *Dayabhaga* and *Mitalshara* law. A Hindu widow does not forfeit her right to separate maintenance out of the property inherited from her father-in-law by reason of non-residence with the family of her deceased husband, unless such non-residence be for unchaste or immoral purposes. The fact that a widowed daughter-in-law has taken up her residence apart from her father-in-law with her own parents or relations does not annul his moral obligation to maintain her. It may remain dormant or in abeyance, but it subsists continuously; and, whether it be dormant or active at the death of the

her. There is no valid ground for making any distinction between the rights of maintenance of a Hindu widow under the Bengal and under the *Mitalshara* law. *Raja Pirthee Sing v. Rani Raj Kauer*, 12 B L R (P. C.) 238, *Kasturbai v. Shivajiram*, I L R. 3 Bom. 372; *Narayanrao Barsi Chandra Pant v. Ramabai*, I L R. 3 Bom. 415; *Janki v. Nand Ram*, I L R. 11 All. 194; *Mokhya Das v. Nundo Lal Halder*, I L R. 28 Calc. 278, *Khetramoni Das v. Kashinath Das*, 2 B L R (A. C.) 15; *Ranqummal v. Echammal*, I L R. 22 Mad. 304; *Yamunbai v. Manubai*, I L R. 23 Bom. 609, *Kamini Dassee v. Chandra Pote Mondle*, I L R. 17 Calc. 373, referred to and discussed *SINDSURY DASSEE v. JONARDAN SARKAR* (1902)

I. L. R. 29 Calc. 557. s.c. 8 C. W. N. 530

## (II) STEP-MOTHER.

57. ——— Obligation of step son to support step-mother—Family property. Under the Hindu law, there is no legal obligation upon a step-son to support a step-mother independently of the existence in his hands of family property. *Bai Daya v. Natha Gorindlal* I L R. 9 Bom. 279

58. ——— Step-mother and step-sister—Liability of zamindari property for, after parti-

HINDU LAW—MAINTENANCE—*contd.*5 RIGHT TO MAINTENANCE—*contd.*(n) STEP-MOTHER—*concl.*

*tion.* A suit was brought for maintenance by the step-mother and step-sister of a zamindar to be paid out of the income of the zamindari. The defendant contended that a partition having taken place of all the partible property of the family, and shares having been allotted to the defendant's step-brothers, the sons and brothers of the plaintiffs, the plaintiff's claim to maintenance was limited to the property of the defendant's brother, and the plaintiffs had no claim to maintenance against the defendant. *Held*, that the defendant was liable to pay and contribute to the maintenance of the plaintiffs, not only out of the partible property which he had obtained upon the partition, but also out of the income of the zamindari. *SIYANANJALI PERUMAL SETHURAYAR v. MEENAKSHI AMMAL*. 5 Mad. 377

## (n) WIDOW.

59. ——— Nature of widow's right—Maintenance to widow not expressed nor denied by will—Gift of *stridhan*. The right to maintenance being one given to a widow by the Hindu law, that right cannot be taken away except by express language to that effect. A gift of *stridhan* is not equivalent to a provision for maintenance. *JYOTARA v. RAMHARI SIRDAR*. I. L. R. 10 Cal. 636

60. ——— Widow, right of, to be maintained. A Hindu widow has a right to be treated with kindness and suitably maintained. *RAMNATH ROY CROWDERY v. ARNEE KALLY DEBIA*. W. R. 1864, 177

61. ——— *Mitakshara* law. —Widow with sons. A Hindu widow has simply a right to be maintained out of her husband's property by *Mitakshara* law, where there are sons. *MEHERRAN SINGH v. SUEO KOONWER* 1 Agra, 106

62. ——— Destitute widow. A Hindu widow, if destitute of the means of living, is entitled to maintenance from her husband's relatives, although she may have shared her husband's estate and supported herself for a long period by trading. *BAI LAKSHMI v. LAKSHMI DAS GOTAL DAS*. 1 Bom. 13

63. ——— Joint ancestral property. It was held that a Hindu widow was entitled to maintenance out of the joint ancestral property. *W. 261*

64. ——— Right of widow to maintenance from relations with assets of husband.

entitled to be maintained out of the husband's

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

estate to the extent of the proceeds of one-third thereof. *RAMABAI v. TRIMBAK GANESH DESAI*. 9 Bom. 263

65. ——— Relatives of husband—Ancestral property—*Mitakshara* law. *Held*, by the Full Bench, that a Hindu widow is not entitled under the *Mitakshara* to be maintained by her husband's relatives, merely because of the relationship between them and her husband. Her right depends upon the existence in their hands of ancestral property. *Held*, on the case being returned to the Division Bench, that the fact that the defendant in this case was in possession of ancestral immovable property at the death of his son and had subsequently sold such property to pay his own debts, did not give the son's widow any claim to be maintained by him. *GANGA BAI, SITA BAI*. I. L. R. 1 All. 170

66. ——— Relatives of husband—Ancestral property—Widow voluntarily living apart from husband's relatives. In the Island or Presidency of Bombay, a Hindu widow, voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from him at the time of his death, nor is she entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands. The doctrine, that in certain relationships and independently of the possession of ancestral estate, maintenance is a legal and imperative duty, while in other relationships it is only a moral and optional duty, discussed. *Semle*. A Hindu widow, who has received a full share as and for her maintenance, cannot, when she has exhausted it, enforce from the relatives of her husband, or from

*Hydr.* 105; *Khetromani Dasi v. Kashinath* 1815, 2 B. L. R. A. C. 15; and *Gangabai v. Sitaram*.

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

*J. L. R. 1 All. 170*, approved and followed.  
*SAVITRIBAI v. LUXMIBAI*. I. L. R. 2 Bom. 573

67. ———— *Relatives of husband—Ancestral property.* In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage: *Held* (following the case of *Savitribai v. Luxmibai*, I. L. R. 2 Bom. 573), that the defendant was not liable, inasmuch as he was not in possession of any ancestral property and had not received any property from the plaintiff's husband.  
*APAJI CHINTAMAN v. GUNGADEVI*

I. L. R. 2 Bom. 632

68. ———— *Obligation of brothers to maintain widow of a brother who predeceased their father whose property they have inherited.* The principle that an heir succeeding to

immovable. In each case it must be determined whether, having regard to the relationship, the means, and various other circumstances of the party claiming maintenance, the late proprietor was, according to the principles of the Hindu law and to the usages and practice of the Hindu people,

69. ———— *Right of a widow to receive maintenance from her husband's brothers and nephews—Death of the plaintiff's husband prior to his father's death.* In a joint Hindu family governed by the Mitakshara law, the property of S, the father, consisted, at any rate partly, of ancestral property. He died leaving three sons and one grandson (son of a predeceased son). A, a brother son of S, died childless before his father, leaving his widow, the plaintiff. In a suit by her against the brothers and the nephew of her husband for main-

that property, and as the Hindu law provides that the surviving co-parceners should maintain the

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

widow of a deceased co-parcener, the plaintiff was entitled to maintenance. *Khetramani Dasi v. Kashinath Das*, 2 B. L. R. A. C. 15; 10 W. R. F. B. 39; *Laljeet Singh v. Raj Coomarr Singh*, 12 B. L. R. 373; 20 W. R. 337, *Suraj Bansi Koer v. Sheo Persad Singh*, 1. L. R. 5 Calc. 118, *Janaki v. Nand Ram*, 1 L. R. 11 All. 194, *Kamini Dassie v. Chandra Podd Mondle*, 1. L. R. 17 Calc. 373; and *Adhibai v. Cursandas Nathu*, 1. L. R. 11 Bom. 199, referred to. *DEVI PERSAD v. GUNWANTI KOER*. I. L. R. 22 Calc. 410

70. ———— *Execution of decree for maintenance of widow—Liability of ancestral estate.* Maintenance decreed to a co-parcener's widow by reason of her exclusion from

I. L. R. 10 Mad. 100

71. ———— *Right of maintenance out of property fraudulently alienated by husband without consideration—Right of suit.* *Quare*: (*Per COLLINS, C. J.*, and *BEXSON, J.*)—Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud. *RAYGAMMAL v. VENKATACHARI*. I. L. R. 20 Mad. 923

72. ———— *Private agreement, effect of, on right—Widow residing in family house—Waiver of right to maintenance.* A right to maintenance bequeathed to a person is not affected by any private arrangement entered into by the members of the testator's family who are liable to pay the maintenance as a charge on the testator's estate. A plaintiff, however, who has resided in and been supported by the family for twelve years after the testator's death without claiming the maintenance bequeathed to her is presumed to have waived her right. *RAM LALL MOOKERJEE v. TARA SOONDERY DEBIA*. W. R. 1884, 3

73. ———— *Obligation of husband's brother—Separation of widow Held*, that a Hindu widow is entitled to maintenance from her husband's brother, whether separated or not,

commented on. *TIMMAPPA BRAT v. PARAMESH-RIANNA*. 5 Bom. A. C. 130

74. ———— *Widow leaving husband's house.* A widow's right to maintenance does not cease on her leaving her husband's house. *SREEKAM BHUTTACHARJEE v. PUDDOMOOKHER DEBIA*. 9 W. R. 152



HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

75. \_\_\_\_\_ Widow leaving husband's house. A Hindu widow who, for no improper purpose, leaves her husband's family does not thereby forfeit her right to maintenance. *ANOLYA BHAI DEBIA v. LUNKER MONER DEBIA* 6 W. R. 37

76. \_\_\_\_\_ Widow leaving husband's house. Where the maintenance of a

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77. \_\_\_\_\_ Widow leaving husband's house—Widow in needy circumstances. *Semle*. Separation from her husband's family does not deprive a Hindu widow of her right to claim maintenance from them, if she happens to be in needy circumstances. *CHANDRABHAGABAI v. KASHINATH VITHAL* 2 Bom. 341 : 2nd Ed. 323

78. \_\_\_\_\_ Widow leaving husband's house and family. Although the Shastras

the non-performance does not deprive the widow of her right to inherit. By consent of the parties, and for the protection of the estate, which consisted of cash, the Court ordered the amount to be invested in Government promissory notes in the joint names of the widow and brothers of the deceased, and directed that the interest should be paid to the sole receipt of the widow, with liberty for her to apply to the Court to order a sale if any necessity arose which would justify a sale under the Hindu law. *UMRIT KOWERES v. KIDERNATH GHOSE*

3 Agra 162

79. \_\_\_\_\_ Widow leaving husband's house and family—Separate residence. The widow of a co-parcener in a Hindu family is not entitled to separate maintenance in the absence of special circumstances necessitating her withdrawal from the family and separate residence. Authorities on the subject reviewed. The widow of a co-parcener is not in Bombay entitled, as in Bengal, to her husband's share to use at her discretion for life. All she can strictly demand is a suitable maintenance when necessary, and whatever is required to make such a demand effectual. *RANOD VINAYAK DEV v. YAMUNABAI*

I. L. R. 3 Bom. 44

80. \_\_\_\_\_ Right to select

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

able. In a suit brought by the widow against the eldest son for maintenance, it was pleaded that under the will of the husband it was a condition precedent to the plaintiff's right to maintenance that she should live under the same roof and in joint family with the defendant. It was further pleaded that there having been no demand and refusal of maintenance the plaintiff had no cause of action.

RAMABAI . . . I. L. R. 3 Bom. 415  
I. L. R. 6 I. A. 114

81. \_\_\_\_\_ Separate maintenance—*Right to select residence*. A Hindu widow is not bound to reside with the family of her husband, and, if he were in union with them at the time of his death, she is entitled to a separate maintenance where the family property is sufficiently large to admit of an allotment of separate maintenance to her. Where, however, the plaintiff, a Hindu widow, was satisfied for several years with the maintenance, viz., Rs 16 per annum, fixed in an agreement executed by her and the defendant, and where the family of the husband was large and the family

BAPAT v. SAGUNABAI . . . I. L. R. 4 Bom. 281

82. \_\_\_\_\_ Right of a

non-residence be for unchaste or immoral purposes. Where there is family property available for main-

family for immoral purposes, or that the family property is so small as not reasonably to admit of an allotment to her of a separate maintenance. *KASTURBAI v. SHIVAJIRAM DEVKURNA*

I. L. R. 3 Bom. 372

83. \_\_\_\_\_ Separate maintenance and residence—Family property too small to admit of allotment of separate maintenance.

HINDU LAW—MAINTENANCE—*contd.*5 RIGHT TO MAINTENANCE—*contd.*(a) WIDOW—*contd.*

Where the family income was too small to admit of an allotment to a widow of a separate maintenance, and there was no family house, but a small portion of land which was the site of a house.—*Held*, that the widow was not entitled to a separate maintenance, but might be allowed, if she so desired, to occupy during her lifetime a portion of the land, not exceeding one-third. *GODAVARIBAI v. SAGUNARAI*

I. L. R. 22 Bom. 62

84. — *Suit against father-in-law—Defence that plaintiff was provided for by her husband's will—Effect of direction in husband's will that widow should reside in family house.* The plaintiff, after the death of her husband A, sued her father-in-law for maintenance. A,

with A's widow M. A died in 1876 without issue, leaving the plaintiff, his widow, who was then a minor of the age of fourteen. A left a will and appointed M his executrix. In his will he spoke

house and went to live with her mother; and in 1880 she filed this suit against her father-in-law, the defendant, for maintenance. The defendant pleaded that the plaintiff was provided for by her husband's will, and further that the plaintiff had failed to obey her husband's direction to reside either in M's house or the defendant's house, and that therefore she was not entitled to a separate maintenance. *Held*, that the plaintiff was not bound to enforce her claim under her husband's will in lieu of claiming maintenance from her father-in-law. In answer to plaintiff's claim, the defendant was bound to show that she was possessed of property out of which she could maintain herself, and that defendant's defence failed on this point that by

maintaining herself, also, maintenance from the defendant. The general rule of law is that a Hindu widow is not bound to reside in her deceased husband's family house and does not forfeit her right to maintenance out of her husband's estate by going to reside elsewhere, unless she goes elsewhere for an improper purpose. *Quere*. Whether that rule applies if she goes to reside elsewhere notwithstanding a direction in her husband's will that she should reside in the family house. *GOKIBAI v. LAKHMIDAS KHIMJI*

I. L. R. 14 Bom. 490

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(a) WIDOW—*contd.*

85. — *Residence in family house directed by husband.* A Hindu widow, whose husband has directed that she shall be maintained in the family house, is not entitled to maintenance if she resides elsewhere without cause. *GIRIANNI MURKUNDI NAIK v. HONAMA*

I. L. R. 15 Bom. 236

86. — *Widow directed by the husband to be maintained in the family house—Just cause for not living in family house—Imputation of unchastity.* A Hindu widow, who is directed by her husband to be maintained in the family house, is not entitled to maintenance if she resides elsewhere without a just cause. P. a Brahmin, resided at Kava and died there in 1874, while his wife (the plaintiff) was living with her parents at Dabhor. By his will he devised the greater part of his property to his nephew M, and bequeathed a house and certain other property to his wife "if she came to live at Kava." In 1883 the plaintiff

plaintiff led an immoral life, and had therefore forfeited her right to maintenance. They further contended that she was not entitled to maintenance unless and until she came to reside at Kava, as directed by her husband's will. The Assistant

deavoured to blot her character. He awarded the plaintiff's claim. *Held*, by the High Court, confirming the decree, that the plaintiff had "a just cause" for not living with the defendant.

*MULJI BHAI SHANKAR v. BAI UJAM*

I. L. R. 13 Bom. 218

87. — *Unchastity—Residence in husband's family house.* A Hindu widow is not bound to reside in her deceased husband's family house; and she does not forfeit her right to maintenance out of her husband's estate by going to reside elsewhere, unless she leaves her husband's house for the purpose of unchastity or for any other improper purpose. *PRITHVI SINGH v. RAJ KOOER*

12 B. L. R. 238

20 W. R. 21

L. R. I. A. Sup. Vol. 203

Affirming decision of Court below in

2 N. W. 170

88. — *Act XXI of 1850—Unchastity—Loss of caste—Forfeiture of rights of property.* Since Act XXI of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights of property. A Hindu widow entitled to a bare or starving maintenance under a decree made in a suit, brought by her for maintenance against the representatives of her deceased husband,

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(a) WIDOW—*contd.*

is not to be deprived of the benefit of that decree by the fact that she has since its date been leading an incontinent life. *Pirthee Singh v. Raj Kover*, 12 B. L. R. 233; 20 W. R. 21, distinguished. *HONAMA v. TIMANNABHAT*. I. L. R. 1 Bom. 559

89. *Unchastity* An unchaste widow is not entitled to a bare maintenance. *HONAMA v. TIMANNABHAT*, I. L. R. 1 Bom. 559, followed. *VALU v. GANGA* I. L. R. 7 Bom. 84

90. *Decree liable to be set aside or suspended for unchastity* A

91. *Suit on a consent decree to recover arrears of maintenance—Unchastity of widow—Starving maintenance.* A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by the husband's relatives, either in a suit

*Dasi, I. L. R. 17 Cal. 674*, approved *DAULTA KUMAR v. MEHRO TIWARI*. I. L. R. 15 All. 383

92. *Forfeiture of widow's right to maintenance by reason of unchastity*

and *Vishnu Shambhoj v. Manjamma*, I. L. R. 9 Bom. 104, followed. *NAGAMMA v. VIRABHADRA* I. L. R. 17 Mad. 392

93. *Charge on property for maintenance—Sale of estate* A Hindu widow's claim to maintenance upon an estate does not necessarily render the sale of the property subversive of her right; for even if there be no other property out of which that maintenance can be derived, there is nothing to prevent her from suing to establish her right to make her maintenance a charge upon the property sold. *AKUND MOLEY GOGRO v. GOPAL CHANDR BANERJEE*. W. R. 1894, 310

94. *Husband's property* A wife is under the Hindu law, in a subordinate sense, a co-owner with her husband, he cannot alienate his property, or dispose of it by will in such a wholesale manner as to deprive her of main-

HINDU LAW—MAINTENANCE—*contd.*5 RIGHT TO MAINTENANCE—*contd.*(a) WIDOW—*contd.*

ance. *Held*, therefore, where a husband in his lifetime made a gift of his entire estate leaving his widow without maintenance, that the donee took and held such estate subject to her maintenance. *JAMNA v. MACHUL SAHU*. I. L. R. 2 All. 315

95. *Husband's property—Gift of his property by a husband in fraud of his widow's right to maintenance—Nature of wife's interest in her husband's property—Right to partition—Transfer by her of her interest—Release to her husband—Arrears and future maintenance a charge on property of deceased husband.* A Hindu

suitable provision to take effect after his death. After the husband's death, she is entitled to follow such property in the hands of her step-sons to recover her maintenance her right to which is not affected by any agreement made by her with her husband in his lifetime. A Hindu wife has no property or co-ownership in her husband's estate, in the ordinary sense, which involves independent and co-equal powers of disposition and exclusive enjoyment. Her right is merely an inchoate right to partition which she cannot transfer or assign away by her own individual act; and, unless such right has been defined by partition or otherwise, it cannot be released by her to her husband. *NARBAPATI v. MAHADEO NARAYAN* I. L. R. 5 Bom. 99

96. *Husband's property alienated by heirs.*

KOUSILLAH. 2 Agr. 42

TARUNJEE DASSEE v. CHOWDRI DWARKANATH MURSAH. 20 W. R. 196

97. *Liability of heir* The heir who takes and becomes possessed of the estate of the deceased must be held to continue to be primarily responsible, both in person and property, for the maintenance of the widow, even though he should have fraudulently transferred that estate, or otherwise have improperly vested it in some one else to look to the heir for her maintenance. *Primarily wasted, t resort, EWAREE* v. JUSSODA KOONWER. 2 Agr. 134

98. *Nature of charge.* The maintenance of a widow is by Hindu law

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

a charge upon the whole estate, and therefore upon every part thereof. *RAICHANDRA DIKSHIT v. SAVITRIBAI* . . . 4 Bom. A. C. 73

99. ——— *Family property*  
A Hindu widow's maintenance is a charge upon the family estate in whosoever hands the estate may fall. *KHURBOO MISRAH v. JHOOBUCK LALL DASS* . . . 15 W. R. 283

100. ——— *Family property*  
—*Mitakshara law—Moveable ancestral property—Property liable for maintenance—Immoveable property purchased with profits.* Under the Mitakshara law, moveable ancestral property which remains in the hands of a father, and has not been partitioned among his sons, is to be regarded as a fund chargeable with the maintenance of those members of the family who under Hindu law have claims for maintenance on the undivided estate of the family. All ancestral property is, while it remains undisposed of and unpartitioned, charged with the maintenance of all persons who are entitled to maintenance from the estate. Immoveable property purchased with the capital or profits of ancestral moveable property does not retain the character of ancestral moveable property, but those incidents attach to it which ordinarily attach to immoveable property acquired by and inherited from an ancestor. Hindu widow with a minor son is as much entitled as a childless widow to maintenance. Where a husband dies leaving separate estates and also an undivided share in joint family property, the widow's maintenance

recourse to the joint estate to meet the deficiency. *SHIB DAYEE v. DOOROA PERSHAD* 4 N. W. 63

101. ——— *Right of widow to follow property into hands of purchaser—Liability of heir* Under the Hindu law property purchased from the heir with notice that a widow is entitled to be maintained out of it continues, while in the hands of the purchaser, to be charged with that maintenance. Before following properties from which she is entitled to obtain her maintenance in the hands of the purchaser a Hindu widow is not bound in all cases to attempt recovering her maintenance from the heir-at-law. *GOLUCK CHUNDER BOSE v. OHILLA DAYEE* . . . 25 W. R. 100

102. ——— *Suit for arrears of maintenance—Charge on estate of husband in hands of co-parcener.* In a suit by the widow of one undivided brother against the survivor for

HINDU LAW—MAINTENANCE—*contd.*5. RIGHT TO MAINTENANCE—*contd.*(n) WIDOW—*contd.*

the claim. *SUBBRAMANIA MUDALIAR v. KALIAN AMMAL* . . . 7 Mad. 228

103. ——— *Widow's right to have maintenance charged on inheritance* A Hindu widow entitled to maintenance may have the payment thereof secured by a charge on part of the inheritance in the hands of the heir. *MAHALAKSHMANA v. VENKATASWAMIA* . . . I. L. R. 6 Mad. 83

104. ——— *Charge of ancestral land encumbered with debt of family and deemed with self-acquired funds by one member.* A

by the defendant with self and separately acquired funds. *VISALATCHI AMMAL v. AGNASAY SASTRY* 5 Mad. 150

105. ——— *Purchaser for value, and bond file right of widow against.* The maintenance of a Hindu widow is not a charge on any ancestral property in the hands of a bond file purchaser from her late husband's successors any

106. ——— *How far maintenance is a charge on husband's estate—Notice.*

has no lien on the property for her maintenance against all the world irrespective of such notice. *BHAGABATI DAS v. KANAI LALL MITTER*

8 B. L. R. 225 : 17 W. R. 433 note  
*JOGERNATH SAWUNT v. OBBIRANEE NARAY KOOHAREE* . . . 20 W. R. 126

*See NISTARNI DAS v. MAHENDRALL DUTT*  
9 B. L. R. 11 17 W. R. 432

107. ——— *Lien on estate of husband—Notice of lien—Bond file purchaser.* The lien of a Hindu widow or maintenance out of the estate of her deceased husband is not a charge on that estate in the hands of a bond file purchaser

HINDU LAW—MAINTENANCE—*contd.*

#### 5. RIGHT TO MAINTENANCE—*cont'd*

(n) WIDOW—contd.

irrespective of notice of such lien. A Hindu widow, before she can enforce her charge for maintenance against property of her deceased husband in the hands of a purchaser from his heir, must show that there is no property of the deceased in the hands of the heir. Debts contracted by a Hindu take precedence of his widow's claim for maintenance, and *semble*, that, if a portion of his property is sold after his death to pay such debts, the widow cannot enforce her charge for maintenance against such property in the hands of the purchaser. *Quare*. Whether a Hindu widow, by obtaining against her husband's heir a personal decree for maintenance unaccompanied by any declaration of a charge on the estate, does not lose her charge upon the estate.

ADINRANEE NARAIN COOMARY v. SHONA MALEE  
PAT MARADAI . I. L. R. 1 Calc. 365

108. *Charge on estate in the hands of purchaser with notice.*—Notice. In a suit for maintenance brought by a Hindu widow against her husband's brother who was the sole surviving member of that husband's family, and against *bona fide* purchasers for value from him (the defendant) of certain immoveable ancestral property of the family Held, that the mere circumstance that such purchasers had notice of her claim is not conclusive of the widow's rights against the property in their hands. If the property were sold in order to pay debts (not incurred for immoral purposes) of her husband, or his father, or grandfather, or for the benefit of the undivided family, or to satisfy a former decree obtained by the plaintiff herself against the same defendant for maintenance, such sale would be valid against her, whether or not the purchasers had notice of her claim. *Per WEST, J.*—According to the Mitakshara, sons must, from the moment of their father's death, be regarded as sole owners of the estate, yet with a liability to provide for the maintenance of the father and

in the estate before its partition, but she has an equity to a provision which the Court will enforce to guard her against attempted fraud. 'The debts of the deceased owners take precedence of the maintenance of the widow. The estate is properly applied, in the first instance, by the sons as managers in payment of such debts. By a sale of the property the sons cannot evade a personal liability to provide for the widow. If a mother forgoing her claim to a separate provision out of the paternal property, resides with her sons or step-sons, and is maintained by them, she must submit to their dealing with the estate. A fraudulent alienation for the purpose of defeating her claims will not be supported, but the particular assignments for value

## HINDU LAW--MAINTENANCE--*cont'd*

#### 5. RIGHT TO MAINTENANCE—*contd.*

(n) WIDOW—*contd.*

acquires a complete title. In the case of a widow

If there is an ample estate left, out of which to provide for the widow, or, if knowing of a proposed sale, she does not take any step to secure her own interest, no imputation of bad faith, or of abetting

sufficient, it is the vendee's duty, before purchasing to enquire into the reason for the sale, and not by a clandestine transaction to prevent the widow from asserting her right against the intending

The... ..  
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co-parceners to a single person makes no difference in the widow's legal position. The rights and obligations of the original co-parceners fall at last to

HINDU LAW—MAINTENANCE—*contd*5. RIGHT TO MAINTENANCE—*contd*(n) WIDOW—*contd*.

the sole survivor. The widows must be maintained by him out of the property, but he may still deal with the estate at his discretion in the absence of actual fraud or of a decree which has converted some widow's claim into an actual right *in re*. The purchaser from him takes a perfectly good title, and one which, if good at the time, cannot be impaired by subsequent changes in the circumstances of the vendor's family. Authorities on the subject of Hindu widow's maintenance reviewed. **LAKSHMAN RANCHANDRA P. SATYABHARMARAI**

I. L. R. 2 Bom. 404

**See DALSUKHRAM MAHESKHAR P. LALLUBHAI MOTICHAND**

I. L. R. 7 Bom. 282

109. ———— *Widow's maintenance—Right of maintenance charged on property left by testator—Sale of such property in fraud of widow's right of maintenance—Right of widow as against purchaser—Transfer of Property Act (IV*

special purpose. It was found by the lower Courts

*Held*, that the plaintiff was entitled to recover her share of the property in the hands of the defendant, who had been aware of her right of maintenance maintained unaffected, whether under s. 39 of the Transfer of Property Act or the law previously in force and irrespective of the possibility of her claim being satisfied from other property. **BEHARILALJI BHAGWATPRASADJI v. BAI RAJBAI**

I. L. R. 23 Bom. 342

110. ———— *Transfer of Property Act (IV of 1882), s. 39—Transfer for consideration and without notice—Mortgagee—Decree declaring charge on immovable property for maintenance—Notice of charge—Constructive notice—Vendor and purchaser. S. 39 of the Transfer of Property Act does not protect a transferee for con-*

111. ———— *Hindu widow—Right to maintenance—Sale of property in respect of which the widow's right to maintenance might*

HINDU LAW—MAINTENANCE—*contd*.5. RIGHT TO MAINTENANCE—*contd*.(n) WIDOW—*contd*

*be enforceable—Transfer of Property Act (IV of 1882), s. 39* The maintenance of a Hindu widow is not a charge upon the estate of her deceased husband until it is fixed and charged upon the estate by a decree or by agreement; and the widow's right is liable to be defeated by a transfer of the husband's property to a *bond fide* purchaser for value even with knowledge of the widow's claim for maintenance, unless the transfer has further been made with the intention of defeating the widow's claim. **Sham Lal v. Banna, I. L. R. 4 All. 296**, and **Lakshman Ranchandra Joshi v. Satyabharmarai, I. L. R. 2 Bom. 491**, referred to. **RAM KUNWAR P. RAM DAI** I. L. R. 22 All. 328

112. ———— *Notice by possession of widow of her right to maintenance—Sale of family property to discharge previous mortgage. Immoveable property of a joint Hindu family was sold by a member of the family and his two sons to the plaintiff and the purchase-money was expended in redeeming a mortgage. The character of the mortgage-debt was not shown. In a suit by the plaintiff for possession it appeared that the property in question had been in the exclusive possession of another member of the family, and after his death in that of his widow, for more than 20 years; and that neither of them had concurred in the sale to the plaintiff; it was also found that the widow was entitled to possession on account of maintenance. *Held*, that the separate possession of the widow was notice to the plaintiff of her interest in the land, and that he was not entitled to defeat it. **IMAM V. BALAMMA** I. L. R. 12 Mad. 334*

113. ———— *Charge on husband's estate—Bond fide purchaser for value without notice. The maintenance of a Hindu widow is not, until it is fixed and charged on her deceased husband's estate by a decree or by agreement, a*

charge in the hands of a purchaser, even if it be shown that the heirs to such estate have retained enough of it to meet such charge; but such estate will not be liable if its transfer has taken place to satisfy a claim for which it is liable under Hindu law, and which under that law takes precedence of a claim of maintenance. **SHAM LAL V. BANNA**

I. L. R. 4 All. 296

114. ———— *Charge for, on ancestral property—Liability of purchaser for arrears of maintenance. A decree obtained by a*

was not entitled, by virtue of such decree, to recover



**HINDU LAW—MAINTENANCE—contd.****5. RIGHT TO MAINTENANCE—contd.****(n) Widow—contd.**

husband, and a decree for mesne profits was given against the widow. *Held*, on appeal in execution of the decree for mesne profits, (i) that, in absence of evidence of negligence, the decree holder was entitled only to the rents actually collected; (ii) that the widow was entitled to set off her claim for maintenance, which was to be fixed with due regard to the extent of the property and the social position of the widow; and (iii) that the widow was entitled to set off such reasonable amounts as might have been expended by her on the funeral ceremonies of her late husband, which the adopted son would otherwise have been bound to perform. What was a reasonable maintenance, and what sum should be allowed in respect of the funeral ceremonies under the circumstances, considered. *Srinmully Natholsa. v. Dasse v. Jegendra Nath Mullick*, L. R. 5 L. J. 5, referred to. *Datta Kumar v. Ambika Parthar Singh* (1903). L. L. R. 25 All. 260

**122** *Hindu widow—Maintenance—Forfeiture for unchastity—Suit by Hindu widow to recover income of property assigned by way of maintenance—Provincial Small Cause Court Act (1857), Sec. 11, Arts 31 and 32.* In pursuance of a compromise between a Hindu widow and the brothers of her deceased husband, to whose estate the widow had laid claim, the brother assigned to the widow certain property by way of maintenance, but themselves remained in possession as managers on behalf of the widow. It was not made a term of the agreement that the income of the property assigned should be payable to the

widow would not, even if unchastity were proved against her, forfeit her right to the income of the assigned property in the absence of an express stipulation to that effect. *Bute Singh v. Lachman Kumar* (1904). L. L. R. 26 All. 321

**123.** *Hindu widow's right of maintenance out of husband's estate—Principles on which Court should ascertain amount of such maintenance.* Case in which the principles to be followed in ascertaining the amount of separate maintenance payable to a Hindu widow out of her husband's estate are discussed and defined. *Karoonamoyee Dabee v. Administrator-General of Bengal* (1905). 9 C. W. N. 651

**124** *Transfer of Pro-*

*Purchaser with notice, position of.* When immovable property, from the profits of which a Hindu widow was entitled to receive her maintenance was sold and the sale-deed recited that the amount

**HINDU LAW—MAINTENANCE—contd.****6 RIGHT TO MAINTENANCE—contd****(n) Widow—contd.**

of maintenance would continue to be paid to the widow by the vendor and that the property sold would not be subject to any charge for it. *Held*, that this mere recital was not enough for holding that the conveyance was executed with the intention of defeating the right of the maintenance-holder, within the meaning of s. 39 of the Transfer of Property Act. It was necessary to enquire whether at the time of the sale, there was sufficient property left in the hands of the vendor out of which the amount of maintenance could be realised, and, if there was not, whether the vendee was aware of the fact. The intention to defeat the right of the maintenance-holder against which provision is made in s. 39 of the Transfer of Property Act, involves

**125** *Re-marriage of widow—Hindu Widow—Maintenance—Act No. XV of 1936.* During the lifetime of her husband the

in the hands of certain donees from him. The

**(o) WIFE**

**126** *Wife's right to maintenance—Separate maintenance—Ground for living apart from husband.* Although by Hindu law a husband is bound to maintain his wife, she is not



**HINDU LAW—MAINTENANCE—contd.****5. RIGHT TO MAINTENANCE—contd.****(n) WIDOW—contd.**

arrears of the allowance from D and S personally, alter such property had left their hands. **DHARAM CHAND v. JANKI** I. L. R. 5 All. 389

**115.** *Maintenance—right to, out of confiscated property.* A Hindu widow held not entitled to maintenance out of property belonging to her husband which had become forfeited to Government on his conviction for rebellion. **GUNGA BAE v. HOOD**

2 Ind. Jur. N. 5. 124

**116.** *Property sold in execution of decree for maintenance—Subsequent suit to recover maintenance and to follow property in hands of auction-purchaser.* A Hindu widow's right to recover maintenance is subject to the right of a purchaser of a portion of the family estate for valid consideration. A obtained a personal decree against B for maintenance; at the sale in execution of this decree a portion of the family property was sold and purchased by C. At this sale the widow gave notice that she claimed a right to recover maintenance from the family property. In a subsequent suit by A against B and C to recover arrears of maintenance, A sought to follow the property in the hands of C. *Held*, that the fact of such notice being given at the time of the auction-sale would not affect the rights of the auction-purchaser C, he having purchased at an auction-sale held under a decree obtained in satisfaction of a valid family debt. **SOORJA KOER v. NATH BEKHSIN** I. L. R. 11 Cal. 102

**117.** *Hindu widow—Maintenance—Ancestral property not alienable in defiance of widow's right of maintenance.* The holder of ancestral property cannot, where there exists a widow having a right to be maintained out of that property, alienate such property so as to defeat the widow's right to maintenance. **Mussummat Lalli Kuar v. Ganai Bishen, N. W. P. H. C. (1875) 261**; **Jamna v. Machul Sahu, I. L. R. 2 All. 315**; and **Devi Persad v. Gunwanti Koer, I. L. R. 22 Cal. 410**, followed **BECHA v. MORTHIA (1900)**

I. L. R. 23 All. 86

**118.** *Widow's right to maintenance—Maintenance not a charge on the joint-family property, unless made so by a decree or by agreement.* The right of a Hindu widow to maintenance is not a charge upon the estate of her deceased husband unless and until it is fixed, and charged upon the estate by a decree or by agreement; and, if such estate has been alienated and

lost maintenance. **Sheo Bux Singh v. Mussummat Gunnesher Koonwur, S. D. A. N. W. P. 1864, I. 228**; **Lakshman Ramchandra Joshi v. Satyambhambai (1877), I. L. R. 2 Bom. 494**; and **Ram Kuw**

**HINDU LAW—MAINTENANCE—contd.****5. RIGHT TO MAINTENANCE—contd.****(n) WIDOW—contd.**

**war v. Ram Das (1900), I. L. R. 22 All. 326**, referred to. **BHARATUR STATE v. GOPAL DEVI (1901)**

I. L. R. 24 All. 160

**119.** *Decree against representative of family creating charge on family property—Right to execute against sons of defendants, though not actually made parties—Civil Procedure Code (Act XIV of 1852), s. 241.* Where it is clear from the terms of a decree for maintenance that it was intended to create a charge on property, and the representative of the family

obtained a decree which created a charge on certain family property in respect of the maintenance sued for. The son of the first defendant was a minor at the date of the decree, and was not a party to it. The widow attached the property. Upon the death of the first defendant, subsequent to the decree, his son was added as legal representative, and claimed the property by right of survivorship, and sought to have it released from attachment on the ground that it was not liable for the widow's maintenance. *Held*, that, as the property was charged by the decree with maintenance, it could be sold in execution of the decree, even though the son had not been made a party to the decree, there being no contention that the debt was either illegal or immoral, and the decree being not merely a personal one.

**120.** *Unchastity of widow, as disentitling her to maintenance—Charge not specifically raised in pleadings or issues.* A charge of unchastity, as disentitling a widow to maintenance, must be specifically raised in the pleadings or issues. Where there was no averment of, nor issue as to, such unchastity: *Held*, that the defendants could not found any such allegation on their general denial in the pleadings that the plaintiffs (the widow and her daughter) were entitled to maintenance, and on an issue "whether the plaintiffs are entitled in any event to maintenance or marriage expenses." **Haji Saboo Sidick v. AYESHABAI (1903)**

I. L. R. 27 Bom. 455;  
30 C. L. R. 30 I. A. 127;  
7 C. W. N. 685

**121.** *Hindu widow—*

deceased husband, was ousted by a claimant who proved his title as an adopted son of the said deceased

# HINDU LAW—MAINTENANCE—contd.

## 5. RIGHT TO MAINTENANCE—contd.

### (a) Widow—contd.

husband, and a decree for mesne profits was given against the widow. *Held*, on appeal in execution of the decree for mesne profits, (i) that, in absence of evidence of negligence, the decree holder was entitled only to the rents actually collected; (ii) that the widow was entitled to set off her claim for maintenance, which was to be fixed with due regard to the extent of the property and the social position of the widow; and (iii) that the widow was entitled to set off such reasonable amounts as might have been expended by her on the funeral ceremonies of her late husband, which the adopted son would otherwise have been bound to perform. What was a reasonable maintenance, and what sum should be allowed in respect of the funeral ceremonies under the circumstances, considered. *Sremuttu Nitalisore Dosse v. Jegendra Nath Mullick*, L. R. 5 L. J. 5, referred to. *DITTA KANWAR v. AMRITA PARTAR SINGH* : (1903) . I. L. R. 25 ALL 260

122 ————— *Hindu widow—Maintenance—Forfeiture for unchastity—Suit by Hindu widow to recover income of property assigned by way of maintenance—Provincial Small Cause Court Act (IX of 1857), Sec. 11, Arts. 31 and 35*  
In pursuance of a compromise between a Hindu

made a term of the agreement that the income of the property so assigned should be payable to the widow only so long as she remained chaste. *Held*, that a suit by the widow for recovery of the income of the property so assigned was not a suit cognizable by a Court of Small Causes. *Held*, also, that the widow would not, even if unchastity were proved against her, forfeit her right to the income of the

123. ————— *Hindu widow's right of maintenance out of husband's estate—Principles on which Court should ascertain amount of such maintenance* Case in which the principles to be followed in ascertaining the amount of separate maintenance payable to a Hindu widow out of her husband's estate are discussed and defined. *KARONAMOYEE DABEE v. ADMINISTRATOR GENERAL OF BENGAL* (1905) . 9 C. W. N. 651

124 ————— *Transfer of Property Act (IV of 1882), s. 39—Maintenance of Hindu widow—Whether charge upon the estate—Hindu Law—Mistakshara School—Transfer of estate with intention to defeat right—Fraudulent intention—*

# HINDU LAW—MAINTENANCE—contd.

## 5. RIGHT TO MAINTENANCE—contd.

### (a) Widow—contd.

of maintenance would continue to be paid to the widow by the vendor and that the property sold would not be subject to any charge for it. *Held*, that this mere recital was not enough for holding that the conveyance was executed with the intention of defeating the right of the maintenance holder, within the meaning of s. 39 of the Transfer of Property Act. It was necessary to enquire whether at the time of the sale there was

maintenance holder against which provision is made in s. 39 of the Transfer of Property Act, involves the idea of a fraudulent intention. *Ram Kunwar v. Ram Datt*, I. L. R. 22 ALL 326, approved. Under the Mitakshara the maintenance of a widow is not

*Kunwar v. Ram Datt*, I. L. R. 22 ALL 326; *Bharti v. State of Punjab*, I. L. R. 27 ALL 100

*DIGAMBARI DEBI v. DHAN KUMARI DEBI* (1906)  
16 C. W. N. 1074

125 ————— *Re-marriage of widow—Hindu Widow—Maintenance—Act No XX of 1856*. During the lifetime of her husband the

### (c) WIFE.

126. ————— *Wife's right to maintenance—Separate maintenance—Ground for living apart from husband*. Although by Hindu law a husband is bound to maintain his wife, she is not

**HINDU LAW—MAINTENANCE—contd.****5. —RIGHT TO MAINTENANCE—contd.****(o) WIFE—contd.**

entitled to a separate maintenance from him unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence or other justifying cause, she is compelled to live apart from him. *SIDLINRAFA v. SIDAYA*

I L R 2 Bom. 634

**127.** *Wife leaving husband's house without sanction* Under the Hindu law, a wife who, without her husband's sanction, leaves him to live with her own family has no right to ask maintenance from her husband. *KULLYANESSUREE DEBEE v. DWARKANATH SURMA*

6 W R 116

**128.** *Wife leaving husband's house without sanction*

the husband declined to maintain her, she was entitled to maintenance. *NITYE LAMA v. SOONDAREE DASSEE*

9 W R 475

**129.** *Deed of separation—Agreement for separate residence and maintenance—Consideration—Right to enforce such agreement.* Where, by a registered deed executed by the defendant in favour of the plaintiff, his wife, after reciting certain quarrels and disagreements, none of which indicated such a condition of affairs as would warrant the wife under the Hindu law in

enforceable by suit. *RAJLUKHY DABEE v. BROOTNATH MOOKERJEE*

4 C W N 496

**130.** *Husband's second*

Hindu husband married a second wife and his money for *APFASANI*

1 Mad. 375

**131.** *Misconduct of husband—Wife compelled to leave husband's house on account of misconduct of husband* A Hindu kept a Maho-

*GOBIND PARSAD v. DOULAT BATTI*

6 B L R Ap 65; 14 W R 451

**HINDU LAW—MAINTENANCE—contd.****5. RIGHT TO MAINTENANCE—contd.****(o) WIFE—contd.**

**132.** *Cruelty of husband—Justification for wife leaving husband—Unkindness or neglect—Cruelty—Criminal Procedure Code, 1898 s. 492*

house. Reference being had to the first Code of Criminal Procedure (XXV of 1861) and to the existing Code (X of 1872), s. 436, unless a husband refuses to maintain his wife in his house, or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to maintenance while living apart from her husband. *SITANATH MOOKERJEE v. HATMABUTTY DABEE*

24 W R 377

**133.** *Wife leaving her husband's protection—Cruelty of husband.* A Hindu wife is justified in leaving her husband's protection, and is entitled to separate maintenance from his income, when he habitually treats her with cruelty and such violence as to create the most

**134.** *Unchastity—Adulteress living apart from her husband* A Hindu adulteress living apart from her husband cannot recover maintenance from him so long as the adultery is uncondoned. *ILLATA SAVATRI v. ILLATA NARAYAN NAMBURI*

1 Mad. 373

**135.** *A woman divorced for adultery who had continued in adultery during her husband's life, and in unchastity after his death, is not entitled to maintenance out of the property of her deceased husband according to Hindu law.* *MUTTAHMAL v. MALAKSHY ANMAL*

2 Mad. 337

**136.** *Wife's right of maintenance among Sudras—Continued unchastity and misconduct.* In 1837, a suit was instituted against a Sudra by his wife, and a decree was passed

conceded to her, and that her child was legitimate. It was found that the plaintiff's case was established,

HINDU LAW—MAINTENANCE—*contd.*5 RIGHT TO MAINTENANCE—*contd.*(a) WIFE—*contd.*

137. — *Allyasantana law—Liability of husband to maintain wife.* A female, who is a member of a family governed by the Allyasantana system of law, living apart from the family with her husband, is not entitled to a separate allowance for maintenance out of the income of the

138. — *Sagai wife—Marriage, validity of. Quære* Whether a Sagai wife is entitled to maintenance. *JUTANOO SAGOO v. JERONA KOOR* 17 W. R. 230

139. — *Hindu embracing Mahomedanism—Daughter's right—Residence—Marriage expenses—J.* A Hindu, embraced the Mahomedan religion and married a Mahomedan woman whom he took to live with him. At the time of his

expenses had been incurred or were at present required for her, and since if she lived to reach a

doubted, and that, when the Court has made an order directing a sum to be paid by way of main-

*Ramabai v. Trimbak Ganesh Desai*, 9 Bom 283; *Sham Lal v. Banna*, I. L. R. 4 All. 296; and *Mahalaishamma Garu v. Venkatacalnamma Garu* I. L. R. 6 Mad. 53, referred to. *MANSHA DEBI v. JIWAN MAL* I. L. R. 6 All. 617

140. — *Right to maintenance from paramour—Woman living in adultery—*

HINDU LAW—MAINTENANCE—*contd.*RIGHT TO MAINTENANCE—*contd.*(a) WIFE—*contd.*

141. — *Woman marrying again in lifetime of husband—Right to maintenance.* Among the Sompura Brahmins a widow who has re-married in the lifetime of her first husband without his consent cannot be regarded as the lawful wife of her second husband, but she is entitled to maintenance as his concubine. *KNEZKOR v. UNIA SHANKAR BHANCHOR* 10 Bom. 381

142. — *Charge on husband's estate—Transfer of estate for payment of debts.* The bond *vide* purchaser for value of the estate of a Hindu husband, sold in order to satisfy the husband's debts, does not take such estate subject to the wife's maintenance, even if such maintenance is fixed and charged on the estate. *Jaman v. Machul Sahu*, I. L. R. 1 All. 315, and *Sham Lal v. Banna*, I. L. R. 4 All. 296, referred to. *GUR DAYAL v. KAUSHALA* I. L. R. 5 A. 367

143. — *Right of maintenance against purchaser at sale for payment of family debt.* Though the maintenance of a wife and children may in certain circumstances be a

*NATCHIARAMMAL v. GOFALA KRISHNA* I. L. R. 2 Mad. 126

144. — *Partition—Mitakshara—Maintenance, wife's right to* A suit by a Hindu wife against her husband to establish

I. L. R. 31 Calc. 478

145. — *Right of wife, who had lived apart from her husband during his life time, to claim maintenance after his death—Father-in-law having ancestral property bound to maintain under such circumstances.* A wife living apart from her husband without any justifying cause is not entitled to claim maintenance

any time, return and claim to be maintained. Her right is not forfeited but only suspended during the time she commits a breach of duty by living apart and is revived when at his death such duty ceases to exist. The Court may, under the circumstances, be justified in awarding her maintenance on a less

**HINDU LAW—MAINTENANCE—*concl'd.*****5 RIGHT TO MAINTENANCE—*concl'd.*****(a) WIFE—*concl'd.***

liberal scale than it otherwise would. *Per SANKARAN-NAIR, J.*—The father-in-law is under a moral obligation to maintain his daughter-in-law, which ripens into legal obligations against the assets in the hands of his heirs *Ranganmal v. Echammal, I. L. R. 22 Mad. 305, 307*, referred to. The husband is under a moral obligation to support a wife, when she is living apart from no corrupt motive; and this moral obligation ripens into a legal obligation on the father-in-law when, on the death of the son, he takes ancestral property. The rights of a wife and widow respectively to maintenance, rest entirely on different grounds. The former is a personal obligation on the husband based on the identity arising from marriage relations and is not dependent on the possession of property. The right of a widowed daughter-in-law to claim maintenance from her father-in-law is based on the possession of ancestral property by the latter and cannot be defeated by any breach of duty on her part towards her husband, which might disentitle her to enforce a distinct claim in respect of a different relation and on account of considerations peculiar to that relation *SURAMPALLI BANGARANMA v. SURAMPALLI BRAMBAYE (1903)*

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**6 BABUANA PROPERTY.**

1. ——— Babuana property, nature of—Grant to junior members of family for maintenance—Power of Grantees to alienate—Custom of Darbhanga Raj—Property not inalienable merely because it is impartible—Liability of "Babuana" to sale in execution of decree—Evidence of Custom. Property granted as "babuana" to a junior male member of the Darbhanga Rajfamily in lieu of money maintenance was admittedly impartible, descending to the eldest male heirs of the grantee and being held and managed by the person to whom it descended for the maintenance of himself and his family. The Government revenue was conditioned to be paid by the grantee, or the person to whom the property descended, not directly to Government but through the Maharaja:—Held, that such property, though impartible, was not by reason of that fact inalienable. Property so granted may be alienable. *Udaya Aditya Deb v. Jadablat Aditya Deb, I. L. R. 8 Cal. 394. I. L. R. 51. A. 248, Saraj Kuari v. Deoraj Kuari, I. L. R. 10 All. 272. I. L. R. 15 I. A. 51, and Venkata Surya Mahipati Rama Krishna Rao v. Court of Ward, I. L. R. 22 Mad. 351. I. L. R. 26 I. A. 53*, followed. Notwithstanding its impartibility

**HINDU LAW—MAINTENANCE—*concl'd.*****6. BABUANA PROPERTY—*concl'd.***

an alienation would have been made, cannot be accepted as proof of a custom of alienability. *Saraj Kuari v. Deoraj Kuari, I. L. R. 10 All. 272. I. L. R. 15 I. A. 51*, followed. *DURGADUT SIKON v. RAMESHWAR SINGH (1903)*

I. L. R. 38 Cal. 943

**HINDU LAW—MARMAKATAYAM.**

——— *Marmakatayam Law*  
—Division amongst joint owners, when binding on minors—Arrangement not binding to which all members are not parties. Joint owners governed by the Marmakatayam Law can allow one or more of themselves to take any portion of the joint property as his or their separate property. Such transaction requires the consent of every one interested in the property, and where there are

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## I. INFANT MARRIAGE, THEORY OF.

1. ——— Infant marriages—Presump-  
tion of age—Age of discretion. The foundation for

wife permanently quits her father's house, to which  
she had returned after the celebration of the mar-  
riage ceremony, for that of her husband. The  
presumption, therefore, is that the husband, when  
called upon to receive his wife for permanent co-

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2. RIGHT TO GIVE IN MARRIAGE, AND  
CONSENT.

1. ——— Right of giving away  
daughter in marriage—Delegation of authority.  
Though by the Hindu law no one but the father,  
while he is alive, can give his daughter in marriage,  
yet the father can delegate his authority to another  
GOLANEE GOPPEE GHOSE v. JUGGESUR GHOSE  
3 W. R. 193

2. ——— Guardian of  
daughters. The plaintiff, the divided brother of

marriages. Held, that the exclusive right sought  
to be enforced by the plaintiff was not warranted

HINDU LAW—MARRIAGE—*contd.*2. RIGHT TO GIVE IN MARRIAGE, AND  
CONSENT—*contd.*

3. ——— Consent of guardian to

4. ——— Marriage of a  
girl without her father's consent—Husband and  
wife—Suit by the father to declare such marriage  
void—Factum valet. The plaintiff, a Hindu father,  
sued for a declaration that the marriage of his  
daughter, which had been celebrated by his wife  
without his consent, was null and void. It ap-

wife, filed a suit, and obtained an injunction re-  
straining his wife from celebrating the marriage.  
The marriage nevertheless was solemnized with  
due ceremonies. The Court of first instance de-

Quere: Whether Civil Courts would set aside a  
marriage if a clear case was established of fraud,  
by both the parties intermarrying, on the rights  
of the father as guardian of his daughter for the pur-  
poses of marriage. KHUSHALCHAND LALCHAND v.  
BAY MANI . . . I. L. R. 11 Bom. 247

5. ——— Custody—Guar-  
dianship—Right of father to give his daughter in  
marriage—Conduct of father forfeiting such right  
—Suit by a father to restrain his wife from giving  
their daughter in marriage without his consent.

**HINDU LAW—MAINTENANCE—concl'd.****5. RIGHT TO MAINTENANCE—concl'd.**

(c) WIFE—concl'd.

liberal scale than it otherwise would. *Per SAK.*

*I. L. R. 22 Mad. 305, 307*, referred to. The husband is under a moral obligation to support a wife, when she is living apart from no corrupt motive; and this moral obligation ripens into a legal obligation on the father-in-law when, on the death of the son, he takes ancestral property. The rights of a wife and widow respectively to maintenance, rest entirely on different grounds. The former is a personal obligation on the husband based on the identity arising from marriage relations and is not dependent on the possession of property. The right of a widowed daughter-in-law to claim maintenance from her father-in-law is based on the possession of ancestral property by the latter and cannot be defeated by any breach of duty on her part towards her husband, which might disentitle her to enforce a distinct claim in respect of a different relation and on account of considerations peculiar to that relation. *SURAMPALLI BANGARAYNA v. SURAMPALLI BRAMBARE (1908)*

**I. L. R. 31 Mad. 338****6. BABUANA PROPERTY**

**1** ——— **Babuana property, nature of—Grant to junior members of family for maintenance—Power of Grantees to alienate—Custom of Darbhanga Raj—Property not inalienable merely because it is impartible—Liability of "Babuana" to sale in execution of decree—Evidence of Custom Property granted as "babuana" to a junior male member of the Darbhanga Raj family in lieu of money maintenance was admittedly impartible, descending to the eldest male heirs of the grantee and being held and managed by the person to whom it descended for the maintenance of himself and his family. The Gov-**

impartible, was not by reason of that fact inalienable. Property so granted may be alienable.

*I. A. 83*, followed. Notwithstanding its impartible

**HINDU LAW—MAINTENANCE—concl'd.****6. BABUANA PROPERTY—concl'd.**

descendant in whom property so granted was for the time being, failed to pay the Government revenue as stipulated, and the Maharaja was himself

accepted as proof of a custom of alienability. *Sartaj Kuari v. Deoraj Kuari, I. L. R. 10 All. 272; I. R. 15 I. A. 51*, followed. *DURGADUT SINGH v. RAMESHWAR SINGH (1909)*

**I. L. R. 36 Cal. 943****HINDU LAW—MARMAKATAYAM**

*Marmakatayam Law*  
—Division amongst joint owners, when binding on minors—Arrangement not binding to which all members are not parties. Joint owners governed

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I. L. R. 1 All. 549

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See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.

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See RESTITUTION OF CONJUGAL RIGHTS.

I. L. R. 28 Calc. 37

## 1. INFANT MARRIAGE, THEORY OF.

I. ——— Infant marriages—Presump-

tion of age. *See* *Infant marriages—Presumption of age.*

*See* *Infant marriages—Presumption of age.*

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*See* *Infant marriages—Presumption of age.*

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## 2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT.

1. ——— Right of giving away daughter in marriage—*Delegation of authority.*

Though by the Hindu law no one but the father, while he is alive, can give his daughter in marriage,

yet the father can delegate his authority to another.

GOLANEE GOFEE GHOSE v. JUGGESUR GHOSE

3 W. R. 193

2. ——— *Guardian of daughters.* The plaintiff, the divided brother of

the defendant's daughter, had

obtained a decree for the

return of the daughter to

him, and for the costs of

the proceedings.

The defendant appealed.

The appeal was allowed.

The daughter was returned

to the defendant.

The costs were awarded

to the defendant.

The appeal was allowed.

The daughter was returned

to the defendant.

The costs were awarded

to the defendant.

HINDU LAW—MARRIAGE—*contd.*2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT—*contd.*

3. ——— Consent of guardian to marriage—*Effect of want of consent.* The want of a guardian's consent will not invalidate a marriage otherwise legally contracted and performed with all the necessary ceremonies. MUDOSOODUN MOOKERJEE v. JADUN CHUNDER BANERJEE 3 W. R. 194

4. ——— Marriage of a girl without her father's consent—*Husband and wife—Sust by the father to declare such marriage void—Factum valet.* The plaintiff, a Hindu father, sued for a declaration that the marriage of his daughter, which had been celebrated by his wife without his consent, was null and void. It ap-

peared that the marriage was celebrated

in the presence of the plaintiff's wife

and of a priest, and that the plaintiff

had not been present at the ceremony.

The Court held that the marriage

was valid, and dismissed the suit.

The appeal was allowed.

The marriage was declared

void, and the plaintiff was awarded

costs.

The appeal was allowed.

The marriage was declared

void, and the plaintiff was awarded

costs.

The appeal was allowed.

The marriage was declared

void, and the plaintiff was awarded

costs.

The appeal was allowed.

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The marriage was declared

void, and the plaintiff was awarded

costs.

The appeal was allowed.

The marriage was declared

void, and the plaintiff was awarded

costs.

The appeal was allowed.

The marriage was declared

daughter S had been born to them. In 1880 the plaintiff was convicted of theft, and sentenced to



**HINDU LAW—MAINTENANCE—*contd.*****5. RIGHT TO MAINTENANCE—*conclld.***(c) WIFE—*conclld.*liberal scale than it otherwise would. *Per Sax.*

when she is living apart from no corrupt motive; and this moral obligation ripens into a legal obligation on the father-in-law when, on the death of the son, he takes ancestral property. The rights of a wife and widow respectively to maintenance, rest entirely on different grounds. The former is a personal obligation on the husband based on the identity arising from marriage relations and is not dependent on the possession of property. The right of a widowed daughter-in-law to claim maintenance from her father-in-law is based on the possession of ancestral property by the latter and cannot be defeated by any breach of duty on her part towards her husband, which might disentitle her to enforce a distinct claim in respect of a different relation and on account of considerations peculiar to that relation. *SURANPALLI BANGARANNA v. SURANPALLI BRAMBHZE* (1908)

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**6 BABUANA PROPERTY.**

1. — *Babuana property, nature of—Grant to junior members of family for maintenance—Power of Grantees to alienate—Custom of Darbhanga Raj—Property not inalienable merely because it is impartible—Liability of "Babuana" to sale in execution of decree—Evidence of Custom. Property granted as "babuana" to a junior male member of the Darbhanga Raj family in lieu of money maintenance was admittedly impartible, descending to the eldest male heirs of the grantee and being held and managed by the person to whom it descended for the maintenance of himself and his family. The Government revenue was conditioned to be paid by the grantee, or the person to whom the property des-*

*I. A. 53, followed. Notwithstanding its impartibility the subject of such a grant came, in the absence of any special custom regulating its enjoyment within the principle laid down in Manu's Hindu Law, 7th edition, page 415, paragraph 321, that "in cases governed by the Mitakshara Law a father may sell or mortgage, not only his own property in order to satisfy an antecedent debt of his own,*

**HINDU LAW—MAINTENANCE—*conclld.*****6. BABUANA PROPERTY—*conclld.***

descendant in whom property so granted was for the time being vested failed to pay the Government revenue as stipulated, and the Maharaja was himself obliged to discharge the claim of the Government, he might sue the defaulter for the amount so paid, and execute his decree by sale of the "babuana" property. A family custom to the effect that pro-

accepted as proof of a custom of alienability, *Sardaj Kuari v. Deoraj Kuari, I. L. R. 10 All. 272. L. R. 15 I. A. 51, followed. DURGADUT SINGH v. PAMESHWAR SINGH* (1909)

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**HINDU LAW—MARMAKATAYAM**

*Marmakatayam Law*  
—Division amongst joint owners, when binding on minors—Arrangement not binding to which all

interested in the property, and where there are minor incapable of consenting the transaction to be

consideration

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See DIVORCE ACT, s. 7.  
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See HINDU LAW—CUSTOM—MARRIAGE.

HINDU LAW—MARRIAGE—*contd.*

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I. L. R. 28 Cal. 37

## 1. INFANT MARRIAGE THEORY OF

1. \_\_\_\_\_ Infant marriages—Presumption of age—Age of discretion. The foundation for

she had returned after the celebration of the marriage ceremony, for that of her husband. The presumption, therefore, is that the husband, when

## 2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT.

1. ——— Right of giving away daughter in marriage—*Delegation of authority.* Though by the Hindu law no one but the father,

23. 24. 25. 26.

2. Guardian of  
daughters The plaintiff, the divided brother of

to be enforced by the plaintiff was not warranted by Hindu law, apart from the legal position and

HINDU LAW—MARRIAGE—*contd.*

## 2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT—*contd*

3 \_\_\_\_\_ Consent of guardian to

JEL: O30; O40; O50; O53; O54; O55; O56; O57; O58; O59; O60; O61; O62; O63; O64; O65; O66; O67; O68; O69; O70; O71; O72; O73; O74; O75; O76; O77; O78; O79; O80; O81; O82; O83; O84; O85; O86; O87; O88; O89; O90; O91; O92; O93; O94; O95; O96; O97; O98; O99; P00; P01; P02; P03; P04; P05; P06; P07; P08; P09; P10; P11; P12; P13; P14; P15; P16; P17; P18; P19; P20; P21; P22; P23; P24; P25; P26; P27; P28; P29; P30; P31; P32; P33; P34; P35; P36; P37; P38; P39; P40; P41; P42; P43; P44; P45; P46; P47; P48; P49; P50; P51; P52; P53; P54; P55; P56; P57; P58; P59; P60; P61; P62; P63; P64; P65; P66; P67; P68; P69; P70; P71; P72; P73; P74; P75; P76; P77; P78; P79; P80; P81; P82; P83; P84; P85; P86; P87; P88; P89; P90; P91; P92; P93; P94; P95; P96; P97; P98; P99; Q00; Q01; Q02; Q03; Q04; Q05; Q06; Q07; Q08; Q09; Q10; Q11; Q12; Q13; Q14; Q15; Q16; Q17; Q18; Q19; Q20; Q21; Q22; Q23; Q24; Q25; Q26; Q27; Q28; Q29; Q30; Q31; Q32; Q33; Q34; Q35; Q36; Q37; Q38; Q39; Q40; Q41; Q42; Q43; Q44; Q45; Q46; Q47; Q48; Q49; Q50; Q51; Q52; Q53; Q54; Q55; Q56; Q57; Q58; Q59; Q60; Q61; Q62; Q63; Q64; Q65; Q66; Q67; Q68; Q69; Q70; Q71; Q72; Q73; Q74; Q75; Q76; Q77; Q78; Q79; Q80; Q81; Q82; Q83; Q84; Q85; Q86; Q87; Q88; Q89; Q90; Q91; Q92; Q93; Q94; Q95; Q96; Q97; Q98; Q99; R00; R01; R02; R03; R04; R05; R06; R07; R08; R09; R10; R11; R12; R13; R14; R15; R16; R17; R18; R19; R20; R21; R22; R23; R24; R25; R26; R27; R28; R29; R30; R31; R32; R33; R34; R35; R36; R37; R38; R39; R40; R41; R42; R43; R44; R45; R46; R47; R48; R49; R50; R51; R52; R53; R54; R55; R56; R57; R58; R59; R60; R61; R62; R63; R64; R65; R66; R67; R68; R69; R70; R71; R72; R73; R74; R75; R76; R77; R78; R79; R80; R81; R82; R83; R84; R85; R86; R87; R88; R89; R90; R91; R92; R93; R94; R95; R96; R97; R98; R99; S00; S01; S02; S03; S04; S05; S06; S07; S08; S09; S10; S11; S12; S13; S14; S15; S16; S17; S18; S19; S20; S21; S22; S23; S24; S25; S26; S27; S28; S29; S30; S31; S32; S33; S34; S35; S36; S37; S38; S39; S40; S41; S42; S43; S44; S45; S46; S47; S48; S49; S50; S51; S52; S53; S54; S55; S56; S57; S58; S59; S60; S61; S62; S63; S64; S65; S66; S67; S68; S69; S70; S71; S72; S73; S74; S75; S76; S77; S78; S79; S80; S81; S82; S83; S84; S85; S86; S87; S88; S89; S90; S91; S92; S93; S94; S95; S96; S97; S98; S99; T00; T01; T02; T03; T04; T05; T06; T07; T08; T09; T10; T11; T12; T13; T14; T15; T16; T17; T18; T19; T20; T21; T22; T23; T24; T25; T26; T27; T28; T29; T30; T31; T32; T33; T34; T35; T36; T37; T38; T39; T40; T41; T42; T43; T44; T45; T46; T47; T48; T49; T50; T51; T52; T53; T54; T55; T56; T57; T58; T59; T60; T61; T62; T63; T64; T65; T66; T67; T68; T69; T70; T71; T72; T73; T74; T75; T76; T77; T78; T79; T80; T81; T82; T83; T84; T85; T86; T87; T88; T89; T90; T91; T92; T93; T94; T95; T96; T97; T98; T99; U00; U01; U02; U03; U04; U05; U06; U07; U08; U09; U10; U11; U12; U13; U14; U15; U16; U17; U18; U19; U20; U21; U22; U23; U24; U25; U26; U27; U28; U29; U30; U31; U32; U33; U34; U35; U36; U37; U38; U39; U40; U41; U42; U43; U44; U45; U46; U47; U48; U49; U50; U51; U52; U53; U54; U55; U56; U57; U58; U59; U60; U61; U62; U63; U64; U65; U66; U67; U68; U69; U70; U71; U72; U73; U74; U75; U76; U77; U78; U79; U80; U81; U82; U83; U84; U85; U86; U87; U88; U89; U90; U91; U92; U93; U94; U95; U96; U97; U98; U99; V00; V01; V02; V03; V04; V05; V06; V07; V08; V09; V10; V11; V12; V13; V14; V15; V16; V17; V18; V19; V20; V21; V22; V23; V24; V25; V26; V27; V28; V29; V30; V31; V32; V33; V34; V35; V36; V37; V38; V39; V40; V41; V42; V43; V44; V45; V46; V47; V48; V49; V50; V51; V52; V53; V54; V55; V56; V57; V58; V59; V60; V61; V62; V63; V64; V65; V66; V67; V68; V69; V70; V71; V72; V73; V74; V75; V76; V77; V78; V79; V80; V81; V82; V83; V84; V85; V86; V87; V88; V89; V90; V91; V92; V93; V94; V95; V96; V97; V98; V99; W00; W01; W02; W03; W04; W05; W06; W07; W08; W09; W10; W11; W12; W13; W14; W15; W16; W17; W18; W19; W20; W21; W22; W23; W24; W25; W26; W27; W28; W29; W30; W31; W32; W33; W34; W35; W36; W37; W38; W39; W40; W41; W42; W43; W44; W45; W46; W47; W48; W49; W50; W51; W52; W53; W54; W55; W56; W57; W58; W59; W60; W61; W62; W63; W64; W65; W66; W67; W68; W69; W70; W71; W72; W73; W74; W75; W76; W77; W78; W79; W80; W81; W82; W83; W84; W85; W86; W87; W88; W89; W90; W91; W92; W93; W94; W95; W96; W97; W98; W99; X00; X01; X02; X03; X04; X05; X06; X07; X08; X09; X10; X11; X12; X13; X14; X15; X16; X17; X18; X19; X20; X21; X22; X23; X24; X25; X26; X27; X28; X29; X30; X31; X32; X33; X34; X35; X36; X37; X38; X39; X40; X41; X42; X43; X44; X45; X46; X47; X48; X49; X50; X51; X52; X53; X54; X55; X56; X57; X58; X59; X60; X61; X62; X63; X64; X65; X66; X67; X68; X69; X70; X71; X72; X73; X74; X75; X76; X77; X78; X79; X80; X81; X82; X83; X84; X85; X86; X87; X88; X89; X90; X91; X92; X93; X94; X95; X96; X97; X98; X99; Y00; Y01; Y02; Y03; Y04; Y05; Y06; Y07; Y08; Y09; Y10; Y11; Y12; Y13; Y14; Y15; Y16; Y17; Y18; Y19; Y20; Y21; Y22; Y23; Y24; Y25; Y26; Y27; Y28; Y29; Y30; Y31; Y32; Y33; Y34; Y35; Y36; Y37; Y38; Y39; Y40; Y41; Y42; Y43; Y44; Y45; Y46; Y47; Y48; Y49; Y50; Y51; Y52; Y53; Y54; Y55; Y56; Y57; Y58; Y59; Y60; Y61; Y62; Y63; Y64; Y65; Y66; Y67; Y68; Y69; Y70; Y71; Y72; Y

4 \_\_\_\_\_ Marriage of a  
girl without her father's consent—Husband and  
wife—Suit by the father to declare such marriage  
void—*Factum rati*. The plaintiff, a Hindu father,  
sued for a declaration that the marriage of his  
daughter, which had been celebrated by his wife  
without his consent, was null and void. It ap-  
peared that the plaintiff had been absent from the

eleven years, married, but had neglected to do so.

straining his wife from celebrating the marriage. The marriage nevertheless was solemnized with due ceremonies. The Court of first instance de-

tion precedent to the validity of a marriage. The plaintiff, having been informed of his wife's intention to marry her daughter, made no bond fide attempt to marry her, and, after entirely foregoing his claim to all control over his daughter for many years, merely attempted to assert his right without any regard to her interests, and with the sole object of annoying the mother, from whom he

5. \_\_\_\_\_ Custody—Guardianship—Right of father to give his daughter in marriage—Conduct of father forfeiting such right—Suit by a father to restrain his wife from giving their daughter in marriage without his consent.

HINDU LAW—MARRIAGE—*contd.*2. RIGHT TO GIVE IN MARRIAGE, AND  
CONSENT—*contd.*

two years' imprisonment. At the end of his term of imprisonment he did not return to live with his father-in-law, but went to reside in his own father's house, where in 1884 he requested his wife *R* to join him with their daughter *S*. *R* refused, and she and *S* continued to live in the house of the first defendant, her father. The plaintiff then married a second wife. In November 1885, *S* having attained nine years of age—an age at which it is customary for Prabhoo to seek husbands for their daughters—demanded his daughter *S* from the defendants, who, however, refused to deliver the girl to the plaintiff. In May 1886, the plaintiff filed this suit against the defendants, complaining that they were about to have his daughter *S* married to her cousin without his (the plaintiff's) consent. He prayed that he might be declared entitled to the custody of his daughter and for an

DHARITAYAN v. JANARDHAN VASUDEY

I L R 12 Bom 110

8. ———— *Alleged improper marriage of minor threatened pending application for guardianship—Injunction against person not party to application and out of jurisdiction—Guardian and Wards Act (VIII of 1890), ss. 11, 12—Civil Procedure Code (Act XI of 1852), s. 622.* During the pendency of an application for guardianship of a minor girl, it was alleged on

the Court to make such order for the temporary

vent the Court from granting an injunction to

NATH CROWDHURY v. BRINDA RANI DASSI

2 C. W. N. 521

7. ———— *Marriage of a girl without her father's consent—Suit by father to have marriage declared void—Factum calet—Applicability of the doctrine to marriage.* Under the Hindu law, a duly solemnized marriage cannot be set aside in the absence of fraud or force on

HINDU LAW—MARRIAGE—*contd.*2. RIGHT TO GIVE IN MARRIAGE, [AND  
CONSENT—*contd.*

the ground that the father did not give his consent to the marriage. The texts relating to the eligibility of persons who can claim the right of giving a girl in marriage are directory, and not mandatory. *MULCHAND KUBER v. BHUDMA*

I L R. 22 Bom. 812

8. ———— *Guardianship—Paternal relatives—Their authority to give a girl in marriage—Civil Court's jurisdiction to*

very gross misconduct and disregard of paternal duty, the Court may interfere even in the case of a father. A Hindu died, leaving a widow and an infant daughter named *B*. After his death, his widow was forced, through the unkindness of her

And as the

tioners, one was approved by the Court. He was a resident of Vazapur, a town in the Nizam's dominions. The Court passed an order authorizing the petitioners to give the girl in marriage to this person, and directing the girl to be made over into the petitioner's custody a month before the day

HINDU LAW—MARRIAGE—*contd.*2. RIGHT TO GIVE IN MARRIAGE, AND CONSENT—*contd.*

lity of their abusing their authority to the minor's prejudice. *Held*, also, that the girl should not be married to a person living in foreign territory, as the effect of marriage with such a person would be to place the minor beyond the protection of the Court in British India. *Held*, also, that the girl ought not to be forced into marrying a person whom she did not like. *SHRIDHAR v. HIRALAL VITHAL* . . . I. L. R. 12 Bom. 480

## 3. BETROTHAL

1. ——— Betrothal how far treated as marriage. *Seemle*: That according to Hindu law, a betrothal is not to be treated as an actual and complete marriage. *UNDEL KIKI v. NAGINDAS NAROTYNDAS* . . . 7 Bom. O. O. 122

2. ——— Nor does it by Hindu law amount to a binding irrevocable contract of which a Court would give specific performance. *In the matter of GUNPAT NARAIN SINGH* I. L. R. 1 Cal. 74

*GUNPAT NARAIN SINGH v. RAJANI KOER*  
24 W. R. 207

3. ——— Betrothal, suit to enforce—*Ceremonies of betrothal*. The plaintiff, on behalf of her infant son, sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that, under the Hindu law, betrothment was the same as marriage and could not be repudiated, and that the defendant had, on demand, refused to give up *M B*. The defendant pleaded, *inter alia*, that the betrothment had been repudiated, as the family to which the plaintiff belonged were guilty of female infanticide, and that it would be illegal, under the Hindu law, to enter into relationship with it. *Held*, that, as according to Hindu law a betrothment is effected by the bride and bridegroom walking seven steps hand in hand during a particular recital, and the contract is perfected upon their arriving at the seventh step, and may be enforced by the husband on completion of the time, and as the evidence adduced did not show, nor was it alleged or pre-

4. ——— Breach of promise of marriage—*Reciprocal contingent contract—Damages—Uparyaman—Halai Bhatia caste*. The plaintiffs alleged that by a written agreement, dated the 18th March 1882, the first defendant and her deceased son *L* agreed that the second defendant *K*, who was the daughter of the first defendant, should

HINDU LAW—MARRIAGE—*contd.*3. BETROTHAL—*contd.*

complained that the first defendant subsequently

and Rs10,000 as damages. The first defendant

had been a contingent contract, inasmuch as her son *L* had agreed to give *K* (defendant No. 2) in marriage to the second plaintiff only on condition that he (*L*) should obtain in marriage *U*, the daughter of the third plaintiff, and that *L* and *U* were accordingly betrothed, that *L* had died in 1881, and that the contract had been thereby determined;

ages of the  
When you  
I also am at  
marriage"

titled to recover from the first defendant the value of the ornaments and the Rs700 paid by the plaintiffs as uparyaman together with Rs600 damages for the breach of contract. The second defendants being a minor, was held not liable, and the suit as against her was dismissed. *MULJI THAKERSKY v. GOURI* . . . I. L. R. 11 Bom 412

5. ——— Suit against father of betrothed girl to have betrothal declared void and for damages for breach of contract—*Contract of marriage—Kapole Bania caste*. The plaintiff, who had been betrothed to the de-

marry the plaintiff within the period mentioned and that he had no right to force his daughter against

**HINDU LAW—MARRIAGE—contd.****3 BETROTHAL—contd.**

her will. At the trial K stated that she was unwilling to be married for three or four years. The Court found that in the Kapole Bania caste, to which the parties belonged, marriages ordinarily took place when the bride was between twelve and fifteen years of age. K was born on the 2nd May 1881, so that she was nearly fifteen at the date of suit (16th January 1896). Before filing the suit, the plaintiff had called upon her and the defendant (her father) to fix a date for the marriage, but the defendant had declined to do so on the ground that his daughter did not wish to marry at that time, and that he would not force her to marry against her will. *Held*, that the plaintiff was entitled to the declaration prayed for. The marriage of Hindu children is a contract made by the parents, and the children themselves exercise no volition. This is equally true of betrothal, and there is no implied condition that fulfilment of the contract depends on the willingness of the girl at the time of marriage. It was contended that plaintiff could not obtain damages; that defendant had not broken the contract, the plaintiff assuming that the contract of betrothal was still in force, and the defendant having a *locus penitentiae* until Barakh 1952. *Held*, that the plaintiff was entitled to damages. There was practically a repudiation of the betrothal. The plaintiff's willingness to marry K at any time before the end of Barakh did not disentitle him to damages, seeing that K had declared her unwillingness to be married to plaintiff then, and the defendant had declared that he could not compel her to change her mind. **PURSHOTAMDAS TRIVHAVANDAS v. PURSHOTAMDAS MANOALDAS** I. L. R. 21 Bom. 23

**4. CEREMONIES.**

1. ——— **Boring of the ears—Necessary ceremonies—Sudras** The boring of the ears is not one of the ten initiatory ceremonies of marriage; it is unnecessary even for a twice-born Hindu; and all ceremonies except that of marriage are dispensed with in the case of Sudras. **MONKE-MOTHONATH v. ARSHOOTOSH DEX**

1 Ind Jur O. S. 24

2. ——— **Ceremony of rasee bibaha—Custom.** The question whether the ceremony of rasee bibaha was a part of the marriage ceremony during the continuance of which gifts to the bride

16 W. R. 304

3. ——— **Ceremony of nandimukh or bridhi-shradh—Restitution of conjugal rights—Consent of lawful guardian—Presumption of validity of marriage—Non-performance of ceremonies** The ceremony of nandimukh or bridhi-shradh is not an essential of Hindu marriage, nor would the want of consent by the lawful guardian

**HINDU LAW—MARRIAGE—contd.****4. CEREMONIES—contd.**

necessarily invalidate such marriage. In a suit for restitution of conjugal rights the fact of the celebration of marriage having been established, the presumption, in the absence of anything to the contrary, is that all the necessary ceremonies have been complied with. **BRINDAVAN CHENDRA KERNOKAR v. CHENDRA KERNOKAR** I. L. R. 12 Cal. 140

4. ——— **Consummation ceremony—Marriage—Consummation** According to Hindu law, a marriage between Brahmans is binding although the consummation ceremony or consummation never takes place. **ADMINISTRATOR-GENERAL, MADRAS v. ANANDACHARI**

I. L. R. 9 Mad. 406

5. ——— **Ganadharva marriage, necessary ceremonies for** In order to constitute a valid marriage in Ganadharya form, nuptial rites are essential. **BRINDAVANA C. RADHAMANI**

I. L. R. 13 Mad. 72

6. ——— **Presumption as to completion of marriage ceremonies** If there is sufficient evidence to prove the performance of some of the ceremonies usually observed on the occasion of a marriage, a presumption is always to be drawn that they were duly completed until the contrary is shown. **BU DIWALI v. VORI KASBOY**

I. L. R. 22 Bom. 509

7. ——— **Ceremonies of Griha Pravasa and Ruthusanti—Legitimate marriage expenses—Contract Act (IX of 1872), s. 68—Person**

in marriage of a girl of the Brahmin caste, and form a part of the marriage ceremonies. A Hindu widow performed these ceremonies for her daughter, and sued to recover their cost from her late husband's undivided brother. In a previous case between the same parties it had been decided that the defendant was liable to be charged with the expenses of the marriage of the plaintiff's daughter. *Held*, that plaintiff was entitled to recover the cost of these two ceremonies. The expenses were legitimate.

(1922)

I. L. R. 20 Mann. 197

**5. VALIDITY OR OTHERWISE OF MARRIAGE.**

1. ——— **Marriage between persons of different castes—Custom** The general Hindu law being against a marriage between persons of distinct castes (e.g., Domes and Harees), local custom can alone sanction it. **MELARAM NUDIAL v. TRANOORAM BANUN** 9 W. R. 552

HINDU LAW—MARRIAGE—*contd.*5 VALIDITY OR OTHERWISE OF MARRIAGE—*contd.*

2. ———— *Sudras—Custom*  
*Per MITTER, J.*—Marriage between parties in different sub-divisions of the Sudra caste is prohibited unless sanctioned by any special custom, and no presumption in favour of the validity of such a marriage can be made, although long cohabitation has existed between the parties. *Per MARKAY, J.*  
*—Quare:* Whether there is any legal restriction upon such a marriage. *NARAIN DHARA v. RAKHAL GAIN* I. L. R. 1 Cal. 1; 23 W. R. 334

3. ———— *Marriage of widow with husband's brother—Jats in North-Western Provinces.* Among the Jats of the North-Western Provinces *kura* *dureecha*, or the marriage of a widow with the brother of a deceased husband, is

4. ———— *Marriage with daughter of wife's sister.* A marriage between a Hindu and the daughter of his wife's sister is valid *RAO V. VEDHA RAO v. JAYARAM RAO*

I. L. R. 20 Mad. 283

5. ———— *Inter-marriage between persons of different sections of the Sudra caste, validity of.* There is nothing in Hindu law prohibiting marriages between persons belonging to different sections or sub-divisions of the Sudra caste *Narain Dhara v. Rakhal Gain*, I. L. R. 1 Cal. 1; *Inderun Nalungpoozy Taver v. Ramasamy Talaver*, 13 Moo. I. A. 111, and *Ramamani Ammal v. Kulanthas Natchiar*, 14 Moo. I. A. 316, referred to *Urova Kuchai v. Bholaram Dhuri* I. L. R. 15 Cal. 708

6. ———— *Marriage between members of different sects of Lingayats—Burden of proof of invalidity of marriage.* According to the Lingayat religion, as well as according to Hindu

custom. *FAKINGAUDA v. GANGI*

I. L. R. 22 Bom. 277

7. ———— *Brahmin bride given in marriage by her mother without her father's consent—Injunction.* A Vaishnava Brahmin girl was given to the plaintiff in marriage by her mother without the consent of her

HINDU LAW—MARRIAGE—*contd.*5. VALIDITY OR OTHERWISE OF MARRIAGE—*contd.*

from marrying the bride to any one else. *VEY-KARACHARYULU v. RANGACHARYULU*

I. L. R. 14 Mad. 316

8. ———— *Marriage without consent of the father of the girl.* Under the Hindu law,

*Katcharyulu v. Rangacharyulu*, I. L. R. 14 Mad.

316, referred to. *GHUZI v. SEKRU*

I. L. R. 19 All. 515

9. ———— *Conditional marriage—Restitution of conjugal rights—Husband and wife—Kudva Kunbi caste—Custom—Public policy.*

caste the marriage in 1927 (1870) between the

ing to the custom relied on, there was no complete

HINDU LAW—MARRIAGE—*contd.*5. VALIDITY OR OTHERWISE OF MARRIAGE—*contd.*

parents to marry their daughters, and although, according to the strict Brahminical law, a marriage is complete when the religious ceremony has been performed, there would seem to be no sufficient reason for refusing to recognize a custom, at any rate among the lower castes, by which such transactions, rendered necessary by the paucity of women in the caste, although performed with religious ceremonies, are still regarded by the parents on both sides as incomplete and conditional marriages. *Bai Uanu v. Patel Purshottam Bhudar*

I. L. R. 17 Bom. 400

10. — Marriage of a minor in disobedience of Court's order—*Doctrine of factum valet—Guardian and Wards Act (VIII of 1890), s. 24—Court's power to make order as to marriage of minor.* A Hindu widow, who was appointed guardian of the person of a minor, was held to be bound to marry the minor to the person named in the Court's order.

purpose of getting her married. *Held*, that the principle of *factum valet* applied. Neither the disobedience of the Court's order, nor the disregard of the preferable claims of the male relations, would invalidate the marriage. *Quare*—Whether the marriage of a minor eight or nine years old can be regarded as falling within the scope of s. 24 of Act VIII of 1890, especially when the marriage of a minor female terminates the power of the guardian of the person? *Bai Diwali v. Moti Karson*

I. L. R. 22 Bom. 509

11. — Asura form of marriage—*Nagar Vissa Vania caste—Palu, giving of.* The Hindu law, at least as evidenced by usage, though it permits the Asura form of marriage among the mercantile and servile classes, does not prohibit to those classes the more approved forms of marriage. The form of marriage in use among the Nagar Vissa section of the Vania caste corresponds to one or other of the approved forms, and not to the Asura and the giving of palu does not constitute a purchasing of the bride. In the goods of *NATHIBAI JAKISONDAS GOPAL DAS v. HARKISONDAS HUL-LOCHANDAS*

I. L. R. 2 Bom. 9

12. — Hindus of Bhandari and other inferior castes—Amongst Hindus of the Bhandari and other inferior castes, the Asura form of marriage is not prohibited.

form is the giving by the bridegroom of dez, or a money payment to the father of the bride. *VIJAYARAM v. LAKSHMIAN*

8 Bom. O. C. 244

13. — Marriage by "gandharp" form—*Legitimacy of children.* *Held*, that a marriage by the "gandharp" form is nothing more or

HINDU LAW—MARRIAGE—*contd.*5. VALIDITY OR OTHERWISE OF MARRIAGE—*contd.*

less than concubinage, and has become obsolete as a form of marriage giving the status of wife and making the offspring legitimate. *BHAONI v. MANARAJ SINGH*

I. L. R. 3 All. 738

14. — Custom of Tipperah. According to the law and custom of marriage prevailing at Tipperah, the Rajah can legitimize his children born of a kachooa by going through a marriage ceremony with the mother. Assuming that no marriage ceremony is necessary to institute a gandharp marriage, mere cohabitation,

1 W. L. R. 102

15. — Marriage between legitimate children of illegitimate parents—*Illegitimate children—Sudras.* According to the Hindu law prevalent in Madras, legitimate children of illegitimate parents of the Sudra caste can contract legal and valid marriages. The marriage between persons of different sections of the Sudra caste is valid and legal. *INDERIAN VALTUNUTU TAYER v. RAMASWAMY PANDIA TAYER*

3 B. L. R. P. C. 1

12 W. R. P. C. 41; 13 Mod. I. A. 141

*Affirming s.c. in* *PANDITA TELAYER v. PULLI TELAYER*

1 Mad. 478

16. — Pat marriage—*Marriage among Mahralas—Inheritance—Sons of twice-married woman.* The custom of Pat marriage

is a legal marriage. *RAINI v. GOVINDA WALAD TEJA*

I. L. R. 1 Bom. 87

17. — Polygamy—*Prohibition against plurality of wives. Semble:* The prohibition against a plurality of wives, save under certain circumstances, is merely directory, and not imperative. *VIJAYAM CHETTI v. APPASWAMI CHETTI*

1 Mad. 375

18. — Sagai marriage—*Custom.* A man who is a member of the Hulwase caste may contract a marriage in the sagai form with a widow, even if he has a wife living, provided, in the latter case, that he is a childless man. *Quere*—Whether a married woman may not contract a sagai marriage, notwithstanding that her husband is living, if the panchayet has examined the case, and reported that her husband is unable to support her. *KALLY CHURN SHAW v. DYKHEE BIBER*

I. L. R. 5 Calc. 692; 5 C. L. R. 505

# HINDU LAW—MARRIAGE—contd. & VALIDITY OR OTHERWISE OF MAR- RIAGE—contd.

10. — Sagal and Shunga marriages—Widow re-marriage—Custom. *A* became a widow. . . . .  
longer—*held*, that such a custom was valid, and that *A* was entitled to succeed as heir to her father, under the Hindu law. *HARRY CHURN DASS v. NIMAI CHAND KEYAL*

I. L. R. 10 Cal 138 : 13 C. L. R. 207

20. — Re-marriage—Presumption of legality of marriage—Act XI of 1856. *A* sued . . . . .

of such marriage until the contrary was shown, — i.e., until the defendants had established that, according to the custom of the caste of Gaur Rajputs, the marriage of a cousin with his deceased cousin's widow was prohibited. *LACHMAN KUAN v. MURDAN SINGH*

I. L. R. 8 All 143

21. — Re-marriage in husband's lifetime without his consent—Sompura Brahmans. Among the Sompura Brahmans a widow, who has re-married in the lifetime of her first hus-

22. — Langants—Desertion of wife. According to custom obtaining among the Langants of South Canara, the re-marriage of a wife deserted by her husband is valid. *VIKARAN-CHAPPA v. REDDAPPA*

I. L. R. 8 Mad. 440

23. — Karao marriage—Jats—Right of children. A "Karao" marriage among the Jats is valid, and the offspring of such a union are entitled to inherit. *QUEEN v. BANADUR SINGH*

4 N. W. 128

# HINDU LAW—MARRIAGE—contd. & VALIDITY OR OTHERWISE OF MAR- RIAGE—contd.

24. — Lodh caste—Consent of Brotherhood. The custom of "Karao" marriage is prevalent among the Lodh caste, but in the lifetime of a wife by a regular marriage it can only take place with the consent of the brotherhood. *KESHAB C. JANARDHAN*

5 N. W. 94

25. — Marriage between Vaidya and Kayastha—Marriage between persons of different castes—Validity of such marriages in Tippera—Custom—Pouya Sultan. Where plaintiff's father was a Vaidya and his mother a Kayastha, and the defendant took an objection that plaintiff was therefore an illegitimate son, *Held*, that it could not be disputed that plaintiff's

such marriages are recognised by local custom in the district of Tippera, and are therefore valid. *RAM LAL BOOKACH v. ARHAY CHAMAN MITTER* (1903)

7 C. W. N. 610

26. — Marriage between a Brahman and Chhatttri—Succession *Held*, that whatever may have been the case in ancient times, and whatever may be the law in other parts of India, at the present day a marriage between a Brahman and a Chhatttri is not a lawful marriage in these Provinces, and the issue of such a marriage is not legitimate. The defendant pleaded that the parties were governed by a Nepalese custom by which a Brahman could lawfully marry the daughter of a Chhatttri. *Held*: That the custom set up, not being an ancient family

27. — Asura form—Brahma form—Construction of *terti*. Under Hindu law, where the paternal or maternal relation of a girl, who is given in marriage, receives money consideration for, the substance of the transaction makes it not a gift but a sale of the girl. The money received is what is called the "bride-price"; that is the essential element of the Asura form. The fact that the rites prescribed for the Brahma form

importance and where there is a conflict between



**HINDU LAW—MARRIAGE—*contd.*****5. VALIDITY OR OTHERWISE OF MARRIAGE—*contd.***

two or more writers, the Court is free to choose any it likes. *CHUNILAL v. SHARADAM* (1909)

I. L. R. 33 Bom. 433

28. ——— Marriage between Panchal and Kurbar castes—Sub-divisions of Shudra tribe—*Inter-marriage valid—Custom as to illegality—Burden of proof.* A marriage between a man of the Panchal caste and a woman of the Kurbar caste is valid. The Panchals and the Kurbars are sub-divisions of the Shudra tribe. The onus lies upon the party alleging an illegality by reason of immemorial custom to prove such prohibiting custom. *Inderun Valungyooly Taver v. Ramasawmy Pandia Talaver*, 13 Moo. I. A. 141, and *Fokirgunda v. Gangi*, I. L. R., 22 Bom. 277, followed. *MAHANTAWA v. GANGAWA* (1909) I. L. R. 33 Bom. 693

**6. EVIDENCE AS TO, AND PROOF OF, MARRIAGE.**

1. ——— Evidence of marriage—*Inference and probabilities weighed against direct testimony.* Upon a widow's claim for maintenance the question was whether the relation between her and a person, deceased many years before her suit, whom she alleged to have been her husband, had been the relation of marriage or of concubinage. The decision of this question, one way or the other, rested on considerations whether the substantial testimony of witnesses, who gave their testimony to the fact of the marriage in their presence, was, or was not, outweighed and negatived in judicial estimation by the antecedent and inherent improbability that such marriage, under the circumstances of the parties alleged to have entered into it, would have taken place. The oral evidence was, however, corroborated by inferences drawn from several facts well established. The present suit was defended by the successor in estate of the deceased, and it was common ground between this defendant and the plaintiff

NATH DAS I. L. R. 27 Cal. 971  
I. R. 27 I. A. 142  
4 C. W. N. 685

2. ——— *Cutchi Memons—Marriage, evidence of, where disputed—Omission to mention nika wife in will made after marriage.* The omission in a will made after an alleged nika

**HINDU LAW—MARRIAGE—*contd.*****6. EVIDENCE AS TO, AND PROOF OF, MARRIAGE—*contd.***

testamentary bounty and improbable that he should have left her to depend on her legal right to maintenance. In this case it was held, that the cir-

rejected as evidence, not being a written statement by the testator. *Haji Saboo Sidick v. AYESHA-BAI* (1903) I. L. R. 27 Bom. 485  
S.C. L. R. 30 I. A. 127. 7 C. W. N. 885

**7. LEGITIMACY OF CHILDREN.**

1. ——— Procreation before marriage—*Legitimacy of children.* Under Hindu law, it is not necessary, in order to render a child legitimate, that the procreation as well as the birth should take place after marriage. *GOLAGATTA CHETTY v. ARBUTHNOT COLLECTOR OF TRICHINOPOLY v. LEXAMANI, PANDA AMANI v. ZAMINBAR OF MARUDGATTU*

14 B. L. R. 115; 21 W. R. 858  
L. R. 1 I. A. 288, 282

2. ——— Presumption of legitimacy—*Treatment of child by father as legitimate.* A marriage *de facto* being established and supported by recognition by the deceased zamindar of the children of the marriage as legitimate, the very strongest evidence will be required to show that the law denied to such children their presumable legal status on the ground of their mother's incapacity to contract a marriage. The legal presumption in favour of a child who was born in his father's house of a mother lodged and

*ved. RAMANANI ANNAL v. KULANTHAI NAUGHEAN*  
17 W. R. 1; 14 Moo. I. A. 348

**8. RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE.**

1. ——— Injunction to restrain mar-

held that the lower Courts properly refused to cause the intended husband in this case to be medically

**HINDU LAW—MARRIAGE—contd.****8 RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE—contd.**

2. ———— **Loss of caste, effect of, on marriage tie—Caste, question of.** While the Courts have generally accepted the decisions of properly-constituted panchayets on questions of caste, they have accepted them, subject to the qualification that the decision of the panchayet does not estop the Courts from enquiring into the civil rights of any member of the caste, and securing to him the

privation of caste, which may be temporary, a mem-

not dissolve the marriage tie *BISHNESUR v. MATIOHOLAK* . I. L. R. 8 Mad. 300

See, however, *SINAMMAL v. ADMINISTRATOR GENERAL OF MADRAS* . I. L. R. 8 Mad. 189

3. ———— **Change of religion—Divorce—Degradation—Death of husband while outcast—Dissolution of marriage—Suit by widow to recover husband's estate.** In 1850 *K* married *S*, both being Brahmans. *K* subsequently became a convert to Christianity. In 1881 *K* died and *S* claimed his

mained to *S* *SINAMMAL v. ADMINISTRATOR GENERAL OF MADRAS* . I. L. R. 8 Mad. 189

4. ———— **Divorce—Restitution of conjugal rights, suit for—Custom.** Where a Hindu husband sued his wife for restitution of conjugal rights, and the defendant pleaded divorce, it was

5. ———— **Illegitimacy of parties to marriage—Convert to Mahomedanism—Apostate.** *R*, originally a Hindu woman and the illegitimate offspring of Chattri parents, was duly married

**HINDU LAW—MARRIAGE—contd.****8 RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE—contd.**

*Hindu law dissolved by her conversion to Mahomedanism. Rahmed Hebbe v. Roheya Dhee, 1 Norton's L. C. on Hindu Law, 12, dissented from. In the matter of RAM KUMARI*

I. L. R. 18 Cal. 264

**9 NO OBLIGATION TO GET SON OR DAUGHTER MARRIED.**

1. ———— **Liability of father to get his daughter married.** Under the Hindu law, a father is under no legal obligation to get his daughter married. *Yakuntam Ammanar v. Kallipram Ayyangar, I. L. R. 23 Mad. 512*, explained. Where a wife expended money on her daughter's marriage and then sued her husband for the amount so expended: *Held*, that she was not entitled to recover *SUNDARI ANNAL v. SUBRAMANIAM AYYAR (1902)* . I. L. R. 28 Mad. 505

2. ———— **Obligation on father to get his son married—Sale by father of family lands for expenses of one son's marriage—No assent by other sons—Effect of sale on interest of the other sons.** A Hindu father sold certain ancestral lands to defray the marriage expenses of one of his four sons. That son and another assented to the sale. On its being contended that the sale was invalid in so far as the shares of the other two sons were concerned there being no family necessity, and there being no moral or religious obligation on a Hindu father to get his son married, so as to make the sale valid as against the other sons. *Held*, that there is no authority for the proposition that the omission to perform the ceremony of marriage in the case of a male Brahman entails a forfeiture of his caste or status, and in consequence there is no moral or religious obligation on a father to bring about the marriage of his son. The sale of land was therefore invalid in so far as the shares of the other brothers were concerned. *GOVINDARAJULU NARASIMHAN v. DEVARASHOTLA VENKATANARASAYYA (1904)* . I. L. R. 27 Mad. 206

**10 RE-MARRIAGE.**

1. ———— **Re-marriage of widow—Death of the son by first husband—Succession to the son.** A re-married Hindu widow is entitled to succeed to the property left by her son by her first husband, the son having died after the re-marriage. *Akora Suth v. Boreani, 2 B. L. R. 199*, followed. *BASAPPA v. RAYAYA (1905)* I. L. R. 29 Bom. 91

## HINDU LAW—MITAKSHARA.

1. Survivorship—Mitakshara family  
—Civil Procedure Code (Act XIV of 1872), ss.  
234, 244—Decree—Mortgage decree against father  
—Execution against representative—Right to raise  
question as to validity of decree—Immoral debt.  
A mortgage decree made against a person governed by the Mitakshara law may after his death be executed against his son, who claimed the mortgaged properties by survivorship, although the latter was no party to the suit upon the mortgage. The son would be permitted to have the question tried under s. 244 of the Civil Procedure Code as to whether the debt had been contracted for immoral purposes. CHANDER PERSHAD & SHAM KOER (1905) I. L. R. 33 Cal. 678

2. Re-union—Mitakshara—Re-  
union between two first cousins, if valid. Under  
the Hindu law as laid down in the Mitakshara, there  
cannot be a valid re-union between two first cousins  
who were originally joint, but had subsequently  
separated. **RASANTA KUMAR SINGH v. JOGENDRA-**  
**KATH SINGHA (1905)** . I. L. R. 33 Cal. 371  
b.c 10 C. W. N. 236

3 *Mitakshara—Hindu joint family—Separation—Partition—Re-union—Jointness without re-union—Tenants in common—Act of father binding on sons. The fact of living together and eating together on the same floor with food taken from the same cook-room or even the superintendence and control by the eldest and the most intelligent of the members cannot alone suffice to constitute either a joint or a reunited family as contemplated by Vijnaneswara and his followers, if there be satisfactory proof of previous ascertainment of the shares of individual members. The constitution of a joint Hindu family consisting of the father and his sons is such that the father represents the sons without express written authority and is considered to be the accredited agent of the joint family. He may sue and be sued and may bind the family by the result of the litigation. In a family arrangement settling disputed rights and liabilities his action as representative of the family is binding on the dependent members. *Stapilton v. Stapilton*, 2 W. & T. 839, applied. *Putam Singh v. Ujagar Singh*, 1 L. R. 1 All 651, and *Ujagar Singh v. Putam Singh* L. R. 8 I. A. 150 a. c. 1 L. R. 4 All 120, relied on. *GAJENDRA NARAIN v. HARINAR NARAIN* (1908)*

12 C. W. N. 687  
4. Succession—Competition between full sister and half-brother's son—Mitakshara—Sister's place in the line of heirs—Vyasa-

and—able us to harmonising the difference. In cases governed by the Mitakshara, a sister comes in as heir to a deceased Hindu male, and she often

HINDU LAW—MITAKSHARA—*contd.*

3 Bom. 353, commented upon and dissented from except in cases where the Vyavahara Mayukha alone is applicable. *Rudrapa v. Irava*, I. L. R. 28

apply more or less to Nanda Pandita also. It is a well established rule of the Bombay High Court that where the Mitakshara is silent or obscure, the Court must, generally speaking, invoke the aid of the Vyavahara Mayukha to interpret it, and harmonise both the works, so far as that is reasonably possible. BHAGWAN v. WARDHABAI (1908)

6. Succession—  
Shudra—Illegitimate daughters. Under Hindu law among Shudras an illegitimate daughter cannot succeed to her father's property in preference to the son of a divided brother. BHUKYA S. BAHU  
 (1903) I. L. R. 32 Bom. 562

8 Mitakshara  
Adopted son—Succession to the adopted son—Adoptive mother entitled to succeed in preference to adoptive father. Under the Mitakshara school of Hindu law the adoptive mother is entitled to succeed in preference to the adoptive father, to a son taken in adoption.  
(1909) ANANDI v. HARI SUBA  
I. L. R. 33 Bom. 404

7. Succession—Undivided son succeeds to father's self-acquired property, to the exclusion of divided son. Under the

**HINDU LAW—MITAKSHARA—contd.**

8. ———— Marriage—*Mitakshara—Mayukha—Marriage—Samskara—Marriage of a coparcener—Family purpose.* According to Hindu law, a debt contracted for the purpose of a marriage is not binding on the Mitakshara family.

*Katanarasayya, I. L. R. 27 Mod. 206, dissented from.* Under the Mitakshara as well as the Mayukha the word "Samskara" ordinarily includes marriage. *SUNDRABAI v. SHYAMARTANA (1907)*

I. L. R. 32 Bom. 81

9. ———— Stridhan—*Mitakshara—Succession—Stridhan—Maiden's stridhan—Priority between maternal grandmother and father's mother's sister.* Under the Mitakshara, the father's mother's sister is entitled to succeed to the stridhan of a maiden in preference to her maternal grandmother. *JANGLUBAI v. JETHA APPAI (1908)*

I. L. R. 32 Dom. 400

10. ———— *Mitakshara—Stridhan—Succession—Competition between husband and step-son.* Under the Mitakshara school of Hindu law, when a married Hindu woman dies,

11. ———— Gift by widow—*Mitakshara—Widow—Moveables inherited from husband—Gift*

I. L. R. 33 Bom. 60

12. ———— Minor—*Joint Mitakshara family—Next friend—Minor's money in Court—Managing member of Mitakshara family—Withdrawal of money from Court.* The managing member of a joint Hindu family governed by the Mitakshara school, who is also appointed guardian ad litem of his minor brother for the purpose of a rent suit, in which both the brothers obtained a decree for arrears of rent against their tenant, is exempt from the restrictions imposed by s. 461 of the Civil Procedure Code. *Sham Kuar v. Mohanunda Sahay, I. L. R. 19 Calc. 301, Appovier v. Rama Subha Aiyar, 11 Moo. I. A. 75, Garibulla*

13. ———— Liability of sons to pay father's debt—*Mitakshara—Money decree—*

**HINDU LAW—MITAKSHARA—contd.**

Hindu family governed by the Mitakshara law can be executed after his death against his sons to the extent of the ancestral property that has come to their hands, even if the debt has been incurred for

substantial distinction, in regard to questions arising in execution, between the position of legal representatives added as parties to the suit before decree and legal representatives brought in

14. ———— Mortgage—*Mitakshara—Joint Hindu Family—Mortgage of joint family property by father—Liability of sons in suit to enforce mortgage—Antecedent debt—Family necessity—Burden of proof.* The father of a Joint Hindu family governed by the Mitakshara law cannot execute a mortgage of the joint family property which will be binding on his sons where the loan is not obtained for family necessity or to meet an antecedent debt. A debt is not "antecedent" if it is incurred at the time of the execution of a mortgage for the purpose of securing such debt. A creditor suing to enforce against the sons a mortgage executed by the father in a joint Hindu family over the joint family property is bound to prove that the loan secured by such mortgage was taken to satisfy an antecedent debt or was justified by some family necessity, or at least that he had before advancing the loan made inquiries which reasonably led to the belief

by the father of a joint Hindu family who had sons living at the time. The mortgage was for valuable consideration but it was not shown that it was executed to meet any antecedent debt or for any family necessity, on the other hand it was not alleged that the debt secured by the mortgage was tainted with immorality. *Held by STANLEY, C. J., and KNOX and ARKMAN, JJ.,* that the mortgage in question could not be enforced against the sons' interests in the joint family property. *Per BANERJI, J. (RICHARDS, J., concurring):*—As regards a Hindu son's liability to pay his father's debts not tainted with immorality there is no distinction in principle between a debt secured by a mortgage and an unsecured debt. Unless the debt is of such a nature that it is not the pious duty

**HINDU LAW—MITAKSHARA—contd.**

of the son to pay it, a mortgage of joint ancestral property made by the father is binding on and enforceable against the son and his interest in the property whether the loan secured by the mortgage was incurred at the time of the mortgage or had been taken at some date anterior to that of the mortgage. In a suit brought against the son to enforce the mortgage the onus is not on the plaintiff to prove that the debt was incurred for the benefit of the family, but it is for the son to prove that, having regard to the nature of the debt, it was not his pious duty to discharge it. The following cases were referred to:—*Debi Dal v. Jadu Rai*, I. L. R. 3 All 439, *Jamna v. Nan Sukh*, I. L. R. 9 All 493, *Badri Prasad v. Madan Lal*, I. L. R. 15 All 75, *Lal Singh v. Deo Narain Singh*, I. L. R. 8 All 279, *Manbahal v. Gopal Misra* All Weekly Notes, (1501), 57, *Hanuman Kamat v. Daulat Mundar*, I. L. R. 10 Cal. 525, *Ram Dayal v. Apudhia Prasad*, I. L. R. 28 All 323, *Surja Prasad v. Golob Chand*, I. L. R. 27 Cal. 762, *Venkataramanaya Pantulu v. Venkataramanna Doss Pantulu*, I. L. R. 29 Mad. 200, *Suraj Bansi Koer v. Sheo Parshad Singh*, I. L. R. 5 Cal. 143, I. R. 6 I. A. 88, *Babu Singh v. Bihari Lal*, I. L. R. 30 All 156, *Karan Singh v. Bhup Singh*, I. L. R. 27 All 16, *Girdharee Lal v. Kanoo Lal*, I. L. R. 11 A. 321, *Nanoms Babuasia v. Modhun Mahum*, I. L. R. 13 I. A. 1, I. L. R. 13 Cal. 21, *Hanoomanpersaud Panday v. Mussamat Babooce Munraj Koonveree*, 6 Moo. I. A., 393, *Kameswar Pershad v. Run Bahadur Singh*, I. L. R. 6 Cal. 813, *Maharaj Singh v. Baiwant Singh*, I. L. R. 28 All 508, *Jamsethji N. Tata v. Kashinath Jivan Manjia*, I. L. R. 26 Bom 326, *Chidambaram Mudaliar v. Koothaperumal*, I. L. R. 27 Mad 326, *Sams Ayyangar v. Poonamal*, I. L. R. 21 Mad. 28, *Luchman Dass v. Girdhar*

Cal. 534, *Sita Ram v. Zulim Singh*, I. L. R. 8 All 231, *Kishan Lal v. Garuruddhica Prasad Singh*, I. L. R. 21 All 233, *Charl Behari Lal v. Gulzari Mal*, 6 All. L. J. 133, *Kallu v. Fateh*, 1 All. L. J. 316, *Chintamanray Mehendale v. Kashinath*, I. L. R.

SINGH & MATA PRASAD (1909)

I. L. R. 31 All 176

15. *Mitakshara*—Mortgage of ancestral property by one member—No decree can be passed against his share. A member of a joint Hindu family governed by the

**HINDU LAW—MITAKSHARA—contd.**

*Mitakshara* cannot validly mortgage his undivided share in ancestral property held in co-parcenary on his own private account without the consent of his co-sharers. Hence where a father in such a family purports to mortgage the ancestral property neither for a lawful necessity nor for an antecedent debt: Held, that a decree for sale cannot be passed even in respect of the share of the father alone. *Chandra Deo v. Mata Prasad*, I. L. R. 31 All 176, and *Balgabind v. Narain*, I. L. R. 15 All. 339, P. C. followed. KALI SHANKAR & NAWAB SINGH (1909)

I. L. R. 31 All 507

16. Decree for family debt—*Mitakshara*—Joint Hindu family—Position of minor member of the family not properly represented in the suit. A Hindu family firm was sued for a debt contracted in the course of business by the firm. In execution of the decree in such suit

chased by his father, that the only plea tenable by the minor defendant was that the debt in respect of which the decree had been obtained was tainted

(1909)

I. L. R. 31 All 500

17. Partition—Property gifted away to one son to the detriment of another—Share in the property gifted. When a Hindu father governed by the *Mitakshara* makes a gift of his moveable property to one son to the detriment of the other, not on account of affection for that son, but to punish and disinherite the other son: Held, that the alienation is bad and that in a suit for partition the son can claim a share in the property gifted to the other son. NAND RAM & MANOJ SEN (1909)

I. L. R. 31 All 359

18. Father's liability as surety, if and how enforceable against son—*Mitakshara*—Liability, if personal or extends to property—Antecedent debt—Limitation. Where a

debt would be recoverable with interest

**HINDU LAW—MITAKSHARA—concl.**

binding on the family property in the hands of his son. The son was, if at all, personally liable to discharge the debt, and the personal remedy against the son being time-barred, there was no means of following ancestral property in his hands. *Quere*: Whether a Mitakshara son is bound to discharge the debt in his hands. *RAI LAL*

12 C. W. N. 9

10. ——— Succession (Property Protection) Act (XIX of 1841)—*Jurisdiction Provisions*—*Ex parte order*. The provisions of Act XIX of 1841 do not apply to the case of a family governed by the Mitakshara Law, inasmuch as in the case of the death of a member the property passes not by way of succession, but by survivorship. Before it can be held that a Court has jurisdiction under Act XIX of 1841, it must be found that the provisions of the law have been strictly complied with. Case in which it was held that Act XIX of 1841 could not be applied under any circumstances. *SATO KOER v. GOPAL SINGH* (1907)

12 C. W. N. 65

**HINDU LAW—MORTGAGE.**

1. ——— Mortgage executed in name of minor—*Civil Procedure Code* (Act XIV of 1852) s. 562—"Preliminary point." A mortgage in favour of a joint Hindu family is not void because it is executed in the name of a

ment, which formed the basis of the suit was void in consequence of its having been executed in favour of a minor was a decision on a preliminary point which was not binding on the merits of the case.

2. ——— Liability of sons for father's debts—*Defence that debts were incurred for immoral purposes—Burden of proof*. According to the Hindu law of the Mitakshara school it is not necessary in order to establish a son's liability for his father's debt that it should be shown that the debt has contracted for the benefit of the family. It is sufficient, in order to establish the liability of sons to pay a personal debt of his father, if the debt be proved, and the sons cannot show that it was contracted for immoral purposes or was such a debt as does not fall within the pious duty of

**HINDU LAW—MORTGAGE—contd**

creditor. *Debi Dal v. Jadu Rai*, 1. L. R. 24 All. 459, followed *Jamna v. Nain Sukh*, 1. L. R. 9 All. 493, discredited from. And merely general evidence of profligacy on the part of the father is not sufficient. *Chintamanur Mahendral v. Kashinath*, 1. L. R. 11 Bom. 320, referred to. *BARU SINGH v. BHANU LAL* (1908) 1. L. R. 30 All 156

3. ——— Sons' right to redeem—*Foreclosure of mortgage—Sons not made parties*. The mortgagees of a mortgage of joint family property executed by the father alone sued for and obtained a decree for foreclosure. At the time the suit was instituted the mortgagees knew that there were sons and grandsons jointly interested with the mortgagor in the mortgaged property, but, notwithstanding this, they omitted to make them parties to their suit. *Held*, that the sons and grandsons were not precluded from instituting a suit for redemption. *Bhawan Prasad v. Kallu*, 1. L. R. 17 All 537, referred to. *Debi Singh v. Jas Ram*, 1. L. R. 25 All. 214, distinguished. *RAM PRASAD v. MAN MOHAN* (1909)

1. L. R. 30 All 256

4. ——— Liability of other members of family for managing member's debts. *R. R.*, a member with *G. L.*, his uncle, of a joint Hindu family, got a decree for costs against *G. L.* and had him arrested in execution thereof. *G. L.* thereupon borrowed money on a mortgage of joint family property and procured his release. *Held*, on a suit by the mortgagee for the sale of the mortgaged property, that the mortgage could not under the circumstances proceed against *R. R.*'s share. *Singh* istin.

1. L. R. 30 All 460

5. ——— Mortgage by a Hindu widow without legal necessity—*Destruction of property by fire—Mortgagees rebuilding the property—Suit by reversioner at widow's death to recover possession of property—Mortgagee not entitled to claim repairs or to remove the construction before delivering possession*. A Hindu widow inherited a shop from her son and mortgaged it without any legal necessity recognised as such by Hindu law. The property having been destroyed by floods, the mortgagees rebuilt it with their own money. At the widow's death, the reversioner sued to recover possession of the property free from all encumbrances. *Held*, that the mortgagees, spent the money while holding the property under a mortgage not binding on the reversioner, and what they did must be presumed in law to have been done unauthorisedly so far as that reversioner was concerned. *Held*, further, that the building having been treated by the mortgagees as property mortgaged to them by the widow without legal

**HINDU LAW—MORTGAGE—*concl.***

*Casum Juma Ahmed, I. L. R. 20 Bom. 295, and Narayan v. Bhologir, 6 Bom. H. C. (A. C. J.) 82 distinguished VEJIBHUKANDAS v. DAYARAM (1907) I. L. R. 32 Bom. 32*

**HINDU LAW—PARTITION.**

|   |           |
|---|-----------|
| 1. REQUISITES FOR PARTITION                               | Col. 5235 |
| 2. PROPERTY LIABLE OR NOT TO PARTITION                    | 5234      |
| 3. PARTITION OF PORTION OF PROPERTY                       | 5260      |
| 4. RIGHT TO PARTITION—                                    |           |
| (a) GENERALLY   | 5267      |
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STRIDHAN—

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I. L. R. 24 All. 82

**1. REQUISITES FOR PARTITION.**

1. ———— *Necessaries to create partition—Definition of shares—Independent enjoyment.* Under the Hindu law, two things at least are necessary to constitute partition: the share must be defined, and there must be distinct and independent enjoyment. *SHEO DYAL TEWARIE v. JUDOONATH TEWARIE. SHEO DYAL TEWARIE v. BISHONATH TEWARIE. SHIB DYAL TEWARIE v. BISHONATH TEWARIE. JUDOONATH TEWARIE v. BISHONATH TEWARIE.* 9 W. R. 61

allotment of these parcels to the different shares to be held by them in severalty. *JOSODA KOOTWAR v. GOPIE BISHONATH SINGH SINGH*

6 W. R. 139

*LALLA SHREEKESHAD v. AKOONJOO KOONWAR*  
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*ULBETH RAI v. SHEO NUNDEN SINGH*  
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1 N. W. Ed. 1873, 42

*BADARETH TEWARY v. JAGANNATH DASS*  
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*SORHA KOOBEREE v. HURDET NARAIN MOHANTUN*  
25 W. R. 87

3. ———— *Intention to divide—Partition without division by metes and bounds.* An actual partition by metes and bounds is not necessary to render a division of undivided property complete. But when the members of an

and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and each member thenceforth has in the estate a definite and certain share which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided. *APPOTHEE v. RAMA SUBBA AITAN*

8 W. R. P. C. 1: 11 Moo. I. A. 75

4. ———— *Declaration of intention to divide—Partition without division by*

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

*metes and bounds.* *Quere:* Is a mere signification of intention on the part of a joint Hindu family sufficient to constitute a separation without an actual partition by metes and bounds? *SADANANT PERSHAD SANO v. LOTI ALI KHAN, PHOOLBAS KOOL v. LALL JUGGESSUR SAHL, BIKRAMJEET LALL v. PHOOLBAS KOOL, RAM DHYAN KOOLWAR v. PHOOLBAS KOOL.* 14 W. R. 340

Review of s. c. rejected. 18 W. R. 48

5. *Declaration of*

8. *Intention of parties.* In ascertaining whether property once joint

A partition between surviving co-sharers and the widow of a deceased co-sharer may operate as a complete severance of the joint property. *RAM PERSHAD v. CHAVERAM*

1 N. W. 11; Ed. 1873, 10

7. *Arrangement by*

8. *Agreement to di-*

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

ancestral property in preference to the surviving brothers. The fact of the family having separate house and field is, according to the *Mitakshara*, sufficient evidence of partition. The onus of proving re-union is upon the party pleading that there has been re-union after partition. *SURANENT VENKATA GOPALA NARASIMHA ROY v. SUBANENT LAKSHMI VENKAMA ROY*

3 B. L. R. P. C. 41; 12 W. R. P. C. 40  
13 Moo. I. A, 113

Confirming decision in Court below. *SURANENT LAKSHMI VENKAMA ROY v. SURANENT VENKATA GOPALA NARASIMHA ROY* 3 Mad. 40

10. *Effect of deed as creating or not creating partition.* A, the son of a deceased zamindar, sued B and C, his widow and

only a partial partition, and that the last clause must be referred to the co-parcener's right in

11. *Effect of agreement to divide.* To constitute a partition, there need not be an actual partition by metes and bounds. An agreement to divide is sufficient to constitute partition. Two brothers drew up a memorandum of partition, whereby they agreed

document; neither was to take more than was mentioned in the document. *Held*, that this agree-

12. *Agreement to hold separately.* To effect a partition of ancestral property, there must be, in the absence of division by metes and boundaries, at any rate an agreement that each party interested shall henceforth enjoy the produce of a certain definite share of the joint property. *ASHABAI v. TYEB HAJI RAHMATULLA*

I. L. R. 9 Bom. 115

13. *Unequivocal act or declaration of intention to separate—Suit for declaration of right by one member of joint family.* Undisputed joint Hindu vocal act or of their in-

KISSEN SINOH v. SHEONUNDUN SINOH

23 W. R. P. C. 412

s. c. in High Court

9 B. L. R. 310 note; 16 W. R. 142

9. *Agreement for partition—Mitakshara law—Onus probandi.* According to the *Mitakshara*, an agreement for a



**HINDU LAW—PARTITION—contd.****1. REQUISITES FOR PARTITION—contd.**

tention to be separate. *Held*, that a suit for declaration of his right by one of the members, without stating that he asked for a divided or undivided share, was not a sufficient declaration of such intention. *In re PHUL KOERI alias CHINA KOERI* 8 B. L. R. 388 note

S.C. DEBI PERSHAD v. PAUL KOERI *alias* GHUSA KOERI 12 W. R. 510

MUKTAKASI DEBI v. UBABATI

8 B. L. R. 398 note. 14 W. R. 31

14. ——— *Held*, on the evidence that there was sufficient evidence that the family had separated. *In re NOWLAKHU KUNWARI* 8 B. L. R. 389 note

S.C. CHINTANUN SINGH CHOWDERY v. NOWLAKHU KUNWARI 13 W. R. 489

*In re* SAMANDRA KUNWAR

8 B. L. R. 390 note

S.O. SUMUNDRA KOONWAR v. KALEE CHURN SINGH 13 W. R. 109

*In re* PURNASHASI DAI

8 B. L. R. 395 note

15. ——— *Partition effected without taking into account a minor co-partner—Invalid partition.* A partition effected without reserving any share for a minor member of the family and without the consent of some one authorized to act on his behalf is invalid as against the minor. Three brothers, S, L, and K, were members of a joint Hindu family. In 1862, S and L divided the whole of the family property between them without reserving any share for their brother K, who was then a minor. K lived with L as a member of his family. L died in 1867, leaving a childless widow, with whom K continued to live till his death in 1876. K left an infant son (the plaintiff) only a year old. Subsequently S died in 1887, leaving two widows without issue. In 1889 the plaintiff, being still a minor, sued by his next friend to recover either the whole or one-third of the family property in the possession of the widows of L and S. The principal defences to this suit were (i) that it was time-barred, and (ii) that the plaintiff was not entitled to claim more than one-third of the property in suit. *Held*, that the partition made by S and L in 1862 was invalid, as it was made without reserving any share for their minor brother K and without taking him into account. K's son was therefore entitled to recover the whole of the ancestral property as the sole surviving male member of the family. *KRISHNARAI v. KHANDOOODA*

I. L. R. 18 Bom. 197

16. ——— *Separate appro-*

priation of distinct shares, it was held sufficient to constitute a legal partition under Mitakshara law, following *Appover v. Rama Subba Aiyar*,

**HINDU LAW—PARTITION—contd.****1. REQUISITES FOR PARTITION—contd.**

11 Moo I. A. 75. The fact of one of the members of the family being a minor is not sufficient to render the partition invalid, provided the interests of the minor are properly represented as by a manager appointed under s. 12, Act XL of 1858. Every member of a joint undivided family has a right to demand a partition of his own share. *DEWANTI KUNWAR v. DWARRAKATH*

8 B. L. R. 363 note

10 W. R. 273

17. ——— *Mitakshara law—Deed declaring each member entitled to definite share of property.* By a deed of Sharakatnama the members of a Hindu family, governed by the Mitakshara law, declared that each of the members was entitled to a definite fractional part of the whole estate. *Held*, that this was not sufficient to constitute a valid partition according to the Hindu law. *Appover v. Rama Subba Aiyar* 11 Moo I. A. 75, and *Suraneni Venkata Gopala Narashima Roy v. Suraneni Lakshmi Venkama Roy*, 13 Moo I. A. 113, distinguished. *In the matter of the petition of PHULJARI KOERI*

8 B. L. R. 365; 17 W. R. 102

18. ——— *Agreement to separate—Appropriation and recognition of separate holdings.* To constitute property separate property, it is not necessary that a division should be made by a revenue officer, nor is it necessary that the estate itself should be partitioned in accordance with a private agreement of the co-sharers

*MONROO KOEREE v. GUNSOO KOEREE*

8 W. R. 385

*MUNSOOROODDEEN v. MAHOMED SUFAR*

23 W. R. 259

19. ——— *Construction of deed—Intention of parties—Alteration of status of parties.* In all cases of division of joint property

it is necessary to show that the parties property, Doorga

10 W. R. 214

L. R. 1 I. A. 55

S.O. in High Court. *LALLA MOHABEER PERSHAD v. KUNDUN KOEREE* 8 W. R. 118

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

20. *Deed of settlement—Joint carrying on of business—Separation of interest.* Where four joint sharers made a deed by which they were entitled to the lands and profits of the kothu in equal fourth shares, and they were each in possession of one fourth share of the lands, and contributed in those shares to payment of revenue—*Held*, that the lands stood some in the name of one

that the deed constituted a partition in interest among them as to their shares, though under the

21. *Intention to divide.* Where a widow sued to recover from the brothers of her deceased husband a share of property which remained undivided at his death, a division of part of the family property having taken place during the lifetime of the husband, and she alleged an agreement to divide the rest of the property: *Held*, that the plaintiff had no right to recover the property which was actually undivided at the death of her husband, an intention to divide without more not being evidence of partition. The doctrine propounded in a 291 of *Strange's H. L.*, dissented from. *TIMMI REDDY v. ACHAMMA* Mad. 326

22. *Decision of punchayat as to division—Evidence of partition.* In a suit in which the question was whether there had been a division, the sole evidence of division was the decision of a punchayat reciting that division, the question, however, not having been at all material to the point then in dispute. *Held*, that the decision was not sufficient evidence of the division. *RAMASHESWARAYA PANDAY v. BHAGAVAT PANDAY* 4 Mad 5

23. *Agreement to*

*Held*, and enjoy the income of the land.

*Held*, that, when the members of an undivided family agree among themselves with regard to the particular property that it shall thenceforth be the subject of ownership in certain defined shares, each

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

member has thenceforth a definite and certain share in the estate, which he may claim.

*Appar v. Mima Subba Aiyar*, 11 Moo. I. A. 75, followed. *NARAIN ATTAR v. LAKSHMI ANNAL* 3 Mad. 280

*SCRANENY LAKSHMY VENKAMA ROW v. SCRANENY VENKATA GOPALA NARASIMHA ROW* 3 Mad. 40

s.c. on appeal to Privy Council  
3 B. L. R. P. C. 41; 12 W. R. P. C. 40  
13 Moo. I. A. 113

*LALLA SREE PERSHAD v. AKOONJO KOONWAR*  
7 W. R. 488

*SHIB NARAIN BOSE v. RAMNIDHEE BOSE*  
8 W. R. 87

24. *Deed of relinquishment effecting partition—Impartible estate—Inheritance.* P, an impartible zamindari descendible by inheritance according to the custom of

allowing maintenance to C, the third brother. R's widow gave birth to a daughter. V entered on possession of R's estates, and M took over the zamindari P. C died without issue. M died in 1835, and was succeeded by his only son, D, who died in 1861, leaving a widow, but no sons. In a suit instituted in 1873 by S, a son of V, to recover certain villages belonging to the zamindari P from defendants in possession and claiming as purchasers for value from D—*Held*, by the Judicial Committee, reversing the judgments of the Courts below, that the instrument of 1829 was a renunciation by V for himself and his descendants of all interest in P, either as the head or as a junior member of the joint family, and that its effect was to make P, with its incidents of impartibility and peculiar course of succession, the property of the husband of V.

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

with the rule of succession affirmed in the *Shivagunga Case*, 9 Moo I. A. 539. *SIYAGNANA TEVAR v. PERIASAMI* I. L. R. 1 Mad. 312

S. C. PERIASAMI v. PERIASAMI L. R. 5 I. A. 61

25. *Definition of shares—Intended separation—Separate enjoyment of profits* Definition of shares in joint ancestral property recorded as separate estate in the revenue records in pursuance of an alleged intended separation between the members of a joint and undivided Hindu family does not necessarily amount to such separation, which must be shown by the best evidence, viz., separate enjoyment of profits, or an unmistakable intention to separate interests which was carried into effect. *AMBIKA DAT v. SUKHMANI KUAR* I. L. R. 1 All. 437

26. *Evidence of separation—Definition of shares in ancestral property.* A four-anna ancestral share in ancestral property was owned by H, son of one remaining half

the descendants of the other brother. In the village records there had been a definition of shares followed by entries of separate interest in the revenue records, and since 1284 Fakh the two

favour of the defendants and caused mutation of names to be made in their favour, surrendering to them at the same time possession of the air land

the Court of first instance, and on appeal the District Judge affirmed the decree, holding that the four-anna share was not joint and undivided property between the co-sharers, and that H was in separate possession of the two-anna share of which the defendants were the donees. On second appeal it was contended that, inasmuch as since 1844 there could have been no separate enjoyment of the four-anna share which was in the possession of the mortgagees, the evidence afforded by separate registration could not prove actual separation. *Held*, that from evidence of definition of shares followed by entries of separate interest in the revenue records, if there be nothing to explain it, separation as to estate may be inferred. Joint family property in the hands of mortgagees may

I L R. 10 All. 480

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

27. *Execution of*

respect of the father's share, but also of their own shares, provided that it is made subject to the restrictions mentioned in the Hindu law. It becomes obligatory by the will of the father as regulated and restrained by the law, irrespective of the consent of the sons. When a father having five sons, three by one wife and two by another, executed in his last illness a document whereby, after retaining a small portion for himself, he directed that the family property should be divided into three-fifths and two-fifths shares, with the manifest intention that from the date of the execution of the document it should

was not a will, but a partition; that it was competent to the father thus to alter the status of his sons; that the question was whether the transaction was *bona fide* and in conformity with Hindu law, and not one of contract as in the case of a partition between brothers. *KANDASAMI v. DORASAMI AYYAR* I. L. R. 2 Mad. 317

28. *Intention as to joint or several ownership.* No right vests in any member of a joint Hindu family to a specific share in the family property until some act has been done which has the effect of turning the joint ownership into a several ownership. This may be done by signification of intention. It is by such signification of intention taking place, having the effect of making the share of each member both several and defined, that a member of a joint Hindu family is enabled to dispose of his own share by sale whilst the family remains joint. *RAJIBRANUND DOSS v. SADRU CHETU DOSS*

I. L. R. 4 Cal. 425; 3 C. L. R. 534

BULAKKE LALL v. INDURPOTTEE KOWAR

3 W. R. 41

29. *Ascertainment and definition of shares—Income enjoyed in distinct shares.* In order to show separation in a Hindu family, it is not necessary to establish a partition of the joint estate into separate shares or holdings; it is enough that there has been ascertainment and definition of the extent of right and interest of the several co-sharers in the whole, and of the proportion of participation each of them is to have in the income derived from the property, to effect a severance and destruction of the joint tenancy so to speak, and to convert it into a tenancy-in-common. *Appouier v. Rama Subba Aiyar*, 11 Moo. I. A. 75, followed. *Held*, therefore, where, although the ancestral property of a Hindu family had not been formally and completely partitioned by metes and bounds, the income of it had been enjoyed by

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

the different members of it in distinct and defined shares, that the family was not a joint and undivided Hindu family. *ADI DEO NANAI SINGH v. DUKHARAN SINGH* I. L. R. 5 AIL 533

30. — *Intention—Suit for separate share of joint estate.* Although a suit by a member of a joint Hindu family against his co-sharers for a separate share of the joint estate be not in terms a suit for partition, yet, if it appear that the intention of the plaintiff was to obtain the share which he would be entitled to on a separation, and the decree passed in the suit assigns him that share, such decree does in fact effect a partition, at all events, of rights, which, under the doctrine laid down in the case of *Appovier v. Ramana Subba Aiyar*, 11 Moo. I. L. J. 15, is effectual to destroy the joint estate. *JOY NARAIN GHRI v. GHOSH CHUNDER MITT*

I. L. R. 4 Calc. 434; I. L. R. 5 I. A. 228

31. — *Specification and registration of shares under the Land Registration Act (Eng. Act VII of 1876).* B, a Hindu governed by the Mitakshara law, died, leaving two minor sons, J and K, and also a widow, L, and two minor sons by her, the mother of J and K having predeceased him. On J's attaining majority, the Court of Wards, which had taken possession of all the property, withdrew from the management, and L then applied under Act XL of 1858 and obtained a certificate with respect to the shares of K and her two minor sons, and the names of the four brothers were recorded under the Land Registration Act with the specification of the shares of each. *Held*, that neither the granting of the certificate to L, nor the registration of the specific shares of each of the co-owners under the provisions of the Land Registration Act amounted to a partition such as to justify the Court in granting the certificate asked for. *HOOLASH KOER v. KALSEE PROSHAD*

I. L. R. 7 Calc. 369

32. — *Mitakshara law—Separation of joint family how effected—Agreement for partition, effect of—Right of survivorship.* Two brothers, members of a joint Mitakshara family, executed an *ikarnama* (agreement), whereby, after reciting that the declarants had remained joint and undivided and in commensality up to a certain date, and that portions of their properties, both moveable and immoveable, had been partitioned between them, they provided for the partition of the remaining joint properties by certain arbitrators appointed in that behalf. *Held*, that this agreement of itself amounted to a separation of the brothers as a joint family, and extinguished all rights of survivorship between them. *Sheo Doyal Tewaree v. Judoonath Tewaree*, 9 W. R. 61, and *Babaji Parshram v. Kashiuni*, I. L. R. 4 Bom. 157, distinguished. *Ambika Datt v. Sakhamani Kuar*, I. L. R. 1 AIL 437, commented upon. *Tes Pratap Singh v. Champa Kalsee Koer*

I. L. R. 12 Calc. 98

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

33. — *Decree effecting partition—Separate estate.* In a suit brought by the younger of two Hindu brothers against his elder brother for the partition of lands belonging to an ancestral joint estate and against other defendants,

cept in as far as such interests might be valid as against the plaintiff under the Hindu law, the Court passed an order to the effect that the property claimed was partible, and that the plaintiff was entitled to a moiety, but directed that, with a view to ascertain how far the money awarded to the plaintiff was affected by the acts of the plaintiff's father and elder brother, a commissioner should be appointed to investigate accounts and report thereon to the Court. Before the enquiry thus directed to be made was completed, and before a final decree was passed for the division of the property, the plaintiff died. *Held*, that the order passed by the Court was tantamount to a declaratory decree determining that there was to be a partition of the estate into moieties, and making the brothers separate in estate from its date, if they had not previously become so, and consequently that the plaintiff's interest in the property in suit would not pass to the defendant, his elder brother, as joint estate by survivorship, but to his own representatives as separate estate. *Appovier v. Ramana Subba Aiyar*, 11 Moo. I. A. 75, referred to and followed. *CHEDAMBARAM CHETTIAR v. GAURI NACHIAH*

I. L. R. 2 Mad. 83; I. L. R. 6 I. A. 177

34. — *Decree for partition—Decree awarding plaintiff's share, but postponing possession thereof till plaintiff attained majority—Effect of such decree.* On the 21st February 1891, a decree in a partition suit provided as follows: "Plaintiff is a minor twelve years old; until he attains twenty-one years, N (defendant) should for the next nine years annually deliver to him twenty maunds of paddy, and for this year ten maunds; and that plaintiff should be given one-sixth of the family lands, until then defendant is not to alienate the lands." The minor died, and

entitled to execute, inasmuch as the decree had not effected a partition, and that the property at his death still remained joint family property which passed to the male survivors of the family, and that she was only entitled to maintenance. *Held*, that the effect of the decree was to make the applicant's husband a divided member of his family. It awarded him a one-sixth share of the family estate, and assigned to him a separate allowance. The mere fact that it postponed the actual possession of the share until he had attained the age of twenty-

**HINDU LAW—PARTITION—contd.****1. REQUISITES FOR PARTITION—contd.**

one years made no difference. The share vested in him from the date of the decree, and descended to his heirs. **LAKSHMAN SARKA v. NARAYAN LAKSHMAN** . . . **I. L. R. 24 Bom. 183**

**35.** . . . *Death of plaintiff subsequent to decree for partition—Right of survivorship—Effect on vested right of plaintiff's representative.* A decree for partition operates as a severance of the joint ownership. Where, therefore, *M*, a minor and only son, by his next friend sued his father and certain alienees of the family property for partition and obtained a decree, and subsequent to decree and pending appeal the plaintiff died, and *M*'s mother was brought on the record as deceased plaintiff's legal representative:—*Held*, that the rights of *M*'s representative were not affected, as they would have been had the plaintiff died before decree; the right of survivorship which the defendant then possessed being extinguished by the decree. **SUBBARAYA MUDALI v. MANIKA MUDALI** **I. L. R. 19 Mad. 345**

**36.** . . . *Distribution of family estate, followed by separate possession, equivalent to informal partition.* The Courts below found that a distribution of ancestral estate among the members of a family had taken place in former years, and had been followed by continuous possession.

brother now claimed from the son of another, joining a third who still survived, partition of the property which had descended from the grandfather, with the increment since his time. That an actual partition had been effected, although probably no formal document of partition had been executed, appeared to their Lordships to be a just inference from the evidence. **BUDHA MAL v. BHADWAN DAS** **I. L. R. 15 Calc. 302**

**37.** . . . *Arrangement for separate enjoyment.* A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons and died. The plaintiff, a female, the sole surviving member of the testator's family,

dence merely arrangements for separate enjoyment. **SANKU v. PUTTANNA** . . . **I. L. R. 14 Mad. 289**

**38.** . . . *Separate enjoyment of portions of family property for several years—Entries in survey records—Dealings with portions of property—Sole enjoyment of a certain property by a branch of the family—Separate acquisition.* In a

**HINDU LAW—PARTITION—contd.****1. REQUISITES FOR PARTITION—contd.**

partition suit, it being found that the several branches of a Hindu family had lived separately for forty or fifty years, had enjoyed during that period separate and distinct portions of the family property or portions of the property in regular rotation, and had dealt with the separate portions in every respect as their own property, and that in the survey records the lands were entered in the names of the several branches in respect of their separate shares:—*Held*, that the evidence as to the mode of enjoyment by the several branches of a family during so long a period ought to be taken as establishing a tacit agreement of enjoyment according to their shares. There being no evidence on the record to show when and by what member of the family certain property in the possession of a particular branch of the family was acquired, and the entry in the survey records with respect to it being different from that of the ancestral fields, that is, the entry being in the name of the representative of that particular branch with no sub-division of shares, and the party seeking partition of such property having failed to give evidence to rebut the presumption arising from the sole enjoyment of the particular branch and the entry in the survey records. *Held*, that such property was the separate acquisition of that particular branch. **Moro v. Ganesh**, 10 Bom. 444, **Appoorier v. Rama Subba Aiyar**, 11 Moo. I. A. 75, and **Bannoo v. Kashree Ram**, I. L. R. 3 Calc. 515 referred to. **MURARI VITTHAL v. KURUND SHIVAJI NAIK** . . . **I. L. R. 15 Bom. 201**

**39.** . . . *Award of arbitrators as to division of property followed by division of some of it—Decree in suit to enforce award—Date from which partition operates.* Disputes between the members of a Hindu family were referred to arbitrators who made an award as to how the whole of the property should be divided. In pursuance of the award, part of the moveable property was divided. Subsequently one of the members of the family died. The plaintiff, another member of the family, now sued to enforce the award and

**40.** . . . *Effect of award and record at settlement of widow's estate for life*

the widow was recovered

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

Collector in the settlement records as owner of an 8 anna share of the estate for her lifetime, that did not operate a separation in title or alter its devolution. S. 87 of the Land Revenue Act, Central Provinces (XVIII of 1881), did not affect the appellant's claim, for the award related solely to the widow's interest. *REWA PRASAD SEKAL v. DEO DUTT RAM SEKAL*. I. L. R. 27 Cal. 515

L. R. 27 I. A. 39

4 C. W. N. 582

41. ———— *Possession of one member of joint family at a time—What constitutes partition—Evidence as to impartibility—Compromise—Right of suit—Limitation.* A zamindari granted by the Government in 1893 to a Hindu descended in his family, possession being held by one member at a time. The estate, however, was not impartible. But whether it was, or was not, impartible was a local immaterial to the question

compromised a suit brought against him by his

and the suit compromised. *Held*, that there was nothing in the above which was inconsistent with the zamindari, remaining part of the common family property; and that the course of the inheritance had not been altered. *Held*, also, that the claimant was not precluded by the family compromise of 1871, or in any way, from maintaining this suit, and that it was not barred by limitation. *VIRA-*

42. ———— *Unsuccessful suit for general partition of estate—Estate consisting of partible and impartible property—Effect of suit as*

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

*regards rights of members to maintenance.* In a suit for general partition of Hindu family estate the plaintiff succeeded with regard only to a small portion thereof, the bulk being held to be impartible.

43. ———— *Effect of an unexecuted decree for partition—Agreement to divide.* Where there is no indication of an intention to presently appropriate and enjoy in a manner inconsistent with the ordinary state of enjoyment of an undivided family, an agreement to divide without more is not of itself sufficient to effect a partition. Nor is a direction to divide in a decree—which in principle is not distinguishable from a material agreement to divide—more than an inchoate partition insufficient to change the character of the property, which continues a joint estate until there has been an actual partition by metes and bounds, or a division of title so as to give to each member thenceforth a definite and certain share which he may claim the right to receive and enjoy in severalty. *BABAJI PURSHERAM v. KASHI. BAI*. I. L. R. 4 Bom. 157

44. ———— *Decree for partition—Severance.* A decree for partition does not operate as a severance so long as it remains under appeal. *SAKHARAM MAHADEV v. HARI KRISHNA*. I. L. R. 6 Bom. 113

45. ———— *Evidence—Joint family—*

result of former litigation had been to ascertain the shares of individuals of a Hindu family, and that, although there had been, from the nature of the property no partition, by metes and bounds, there was undoubtedly a numerical division, by which the share of each member was fixed, and (u) that petitions by the various members under the Land Registration Act, 1876 (Ben Act VII of 1876), clearly indicated individual and not joint ownership under the final decree in the litigation; *Held*, looking at the conduct of the parties, in order to arrive at their intention as to separation, and at the whole circumstances of the case, that, not-

46. ———— *Partition, proof of—Presumption of general division from the separation of one.* Separate residence is not, of itself,

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

conclusive or even strong evidence of partition. There is no presumption of a general division among all the members of a co-parcenary from the

(1908) I. L. R. 31 Cal. 103

## 47. ————— Deed defining and

the members of a joint family, some of whom were minors, stated in unambiguous terms that defined

his own business. *Held*, that the effect of the deed was to cause a separation in estate and interest between all the co-parceners. The clause giving the parties the option of being joint or separate was inconsistent with a separation in estate. It conferred on the parties no longer liberty of choice than they would have had without it. They might elect either to have a partition of their shares by metes and bounds or to continue to live together and enjoy their property in common as before. Whether they did one or the other would affect the mode of enjoyment, but not the tenura of the property or their interest in it, which was, on the principle of the case of *Appovier v. Rama Subba Aiyar II*, Moo I. A. 75, determined by the allotment to them of defined shares by the *eknam*. The legal effect of the *eknam* could not be controlled or altered by evidence of the subsequent conduct of the parties; but such conduct in this case was not inconsistent with an intention to subject the

majority set it aside so far as it concerned themselves. *Quare*: Whether in Bengal a member of a joint family once separated can re-unite only (according to the text of *Prihaspati* quoted in the *Mitakshara*, Ch II, s. 9) with a father, brother or paternal uncle. *BALKISHAN DAS v. RAM NARAIN SAHU* (1903) I. L. R. 30 Cal. 738 s.c. 7 C. W. N. 578; L. R. 30 I. A. 139

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## Partition—Re-

quisites for partition—Agreement amongst members of joint family to hold the property in defined shares—Agreement embodied in petition to Collector—Entry of names in village papers in accordance with peti-

HINDU LAW—PARTITION—*contd.*1. REQUISITES FOR PARTITION—*contd.*

tion—Mode of considering documentary evidence.—After the death of one of the members of a joint family in 1861 the other members mutually agreed

the transactions and conduct of the members of the family with respect to the management of the property had been on the basis that it was held in separate shares from that time. The principles laid down in *Appovier v. Rama Subba Aiyar II*, Moo I. A. 75, and *Balkishan Das v. Ram Narain Sahu*, I. L. R. 30 Cal. 735; L. R. 30 I. A. 139, followed. The High Court had proceeded on an erroneous method in considering whether each document was by itself sufficient to rebut the *prima facie* presumption that as the family was joint before 1861 it continued to be joint and omitting to take into account the cumulative effect of all the documents, which taken together showed that all the transactions of the 38 years from 1861 to 1899 could only be reconciled and made consistent on one

embodied  
141 SINGH  
(1905) 1 All. 412.

## 2. PROPERTY LIABLE OR NOT TO PARTITION.

1. ————— Liability to partition—*Onus probandi*. *Prima facie* all property is subject to partition on the party seeking a general rule of *INON ROW*

W. N. P. C. 67

ound—In of several of a convenience to such EWAREE v W. R. 162

## 3. ————— Dwelling-house—Right to par-

4. ————— Suit by member of family or purchaser. A suit for partition of a

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

family dwelling-house may be brought either by one of the members of the family or by a purchaser from such member. *JUDHROO LALL SAKHO v. KNOOR LALL*. 22 W. R. 204

5. ——— House built on family site by one member at his own expense—*Right of co-partners*. Where a member of a joint Hindu family built (at his own expense, with borrowed money) a house upon ground belonging to the family, it was held that each of the co-partners was entitled to a share in the house and the site upon which it was built, equal in value to his share of the site. *VITHORA BAYA v. HANBA BAYA*. 6 Bom. A. C. 54

6. ——— Office of dignity or pattam. The pattam, or office of dignity in a family governed by the Aiyasantana law, is indivisible, and whether the family be divided or not, the pattam, no special arrangement having been made about it, descends to the eldest male of the surviving members of the family. The passage set out in a note to the case of *Munda Chetti v. Timmaju Hensu*, 1 Mad. 350, is not a correct interpretation of the original Canarese text of Bhutala Pandiya's work. *TIMMAJU HEGGADE v. MAHALINGA HEGGADE*. 4 Mad. 28

7. ——— Hereditary, secular, and religious offices—*Mode of partition of such offices*

*MITTA KUNTH AUDHICARRY v. NEERUNJUN AUDHICARRY*. 14 B. L. R. 166

8. ——— Trust property—*Joint trustees of temple—Suit for partition of rights as trustees*. Held, that rights as joint trustees to the management of, and superintendence of worship at, certain temples, none of the trustees having any personal pecuniary interest in the temples or their income, could not be made the subject of partition by a Civil Court, that is to say, that a Civil Court was not competent to grant a decree declaring that each of such trustees in rotation should for a certain definite period enjoy exclusively the rights of management and superintendence. *Mitta Kunth Audhicarry v. Neerunjun Audhicarry*, 14 B. L. R. 166; *Mancharam v. Pranshankar*, 1 L. R. 6 Bom. 293; *Limba bin Krishna v. Rama bin Pimpda*, 1 L. R. 13 Bom. 543; *Anund Moyee Chowdrain v.*

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

9. ——— Inam villages granted by Government—*Incestral estate*. Inam villages granted by Government to the grantee and his male heirs for services rendered to the State, are not, by the Hindu law in force in the Southern Mahratta country, distinguishable from other ancestral real estate, and are divisible among the heirs of the grantee. *BODHRAO HENMOST v. NERSING RAO*. 6 Moo. I. A. 426

10. ——— Nuptial gifts to one member of family—*Marriage expenses defrayed out of common funds*. Nuptial gifts to a member of a joint Hindu family do not, by reason of the marriage expenses having been defrayed out of the common fund, fall into and form part of the common fund so as to be subject to partition. *SHEO GOBIND v. SHAM NARAIN SINGH*. 7 N. W. 75

11. ——— Places of worship and sacrifice—*Division by giving turns of worship*. Under the Hindu law, places of worship and sacrifices are not divisible. The parties can enjoy their turn of worship, unless they can agree to a joint worship; and any infringement of the right to a turn in the worship can be redressed by a suit. *ANAND MOYEE CHOWDHRAIN v. BOYEANTNATH ROY*. 8 W. R. 193

12. ——— Religious offices—*Custom—Right to turn of worship*. According to Hindu text-writers as regards public endowments, religious offices are naturally indivisible, though modern custom has sanctioned a departure in respect of allowing the parties entitled to share to officiate by turns and of allowing alienation within certain restrictions. *TRIMBAK RAMKRISHNA RAMADE v. LAKSHMAN RAMKRISHNA RAMADE*. 1 L. R. 20 Bom. 495

13. ——— Property acquired at charge of patrimony. Whatever is acquired at the charge of the patrimony is subject to partition. *JUDDOONATH TEWARKE v. BISHONATH TEWARKE*. *SHEO DYAL TEWARKE v. JUDDOONATH TEWARKE*. *SHEO DYAL TEWARKE v. BISHONATH TEWARKE*. *SHIB DYAL TEWARKE v. BISHONATH TEWARKE*. 9 W. R. 61

14. ——— Property acquired by Hindu while drawing income from his family—*Alteration of mode of investment*. Property acquired by a Hindu while drawing an income from his family is liable to partition, and the quality of the fund cannot be altered by the mode of its investment. *RAMASHESHVARAY PANDAY v. BHAGVAT PANDAY*. 4 Mad. 5

15. ——— Property acquired after agreement to divide—*Private partition, effect of, as regards subsequently-acquired property*. Where there has been an agreement as to division of property, the Court will hold it to apply to property subsequently acquired. *...*



HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

16. ———— *Impartible estate—Zamindari.* In 1803, *G* being in possession of the zamindari of *M*, the permanent settlement was made with him and a sanad was granted to him as prescribed by Regulation XXV of 1802. In 1827, *G*, the only son of *G*, being in possession of the zamindari, got into debt, and the zamindari was sold in execution of a decree and bought by Government. In 1835 the zamindari was granted to *A*, the son of *G*, by

defendant and allowed his uncle, plaintiff No. 1, to receive the rents of the zamindari as renter. *J* and his three uncles lived in the same house and participated in the joint family property until 1872, when the plaintiffs claimed to have the zamindari divided. By an agreement between the plaintiffs and the Court of Wards all the moveable and immoveable property, except the zamindari talukh, was divided into four shares and distributed in 1874 between the plaintiffs and defendants. In 1884 the plaintiffs sued for partition of the zamindari, alleging that their cause of action arose in 1872, when the Court of Wards denied their right to a partition of the zamindari talukh. The defendant pleaded that the estate was not partible. *Held*, distinguishing the *Hunsapore Case*, 12 Moo 1 1 1, and the *Shivagunga Case*, 1 L R 3 Mad 290, and following the principle laid down in the *Nuzid Case*, 1 L R 2 Mad 12, that the zamindari was partible. *JAGANNATHA v. RAMABHADRA*  
I. L. R. 11 Mad. 380

17. ———— *Saranjam—Impartibility—Descent of saranjam.* A saranjam is ordinarily impartible and descends entire to the eldest representative of the past holder. *NARAYAN JAGANNATH DIXSHIT v. VASUDEO VISHNU DIXSHIT*  
L. R. 15 Bom 247

18. ———— *Cash allowances payable from the Government treasury—Impartibility—Custom of the family as to partibility—Senior member of the family—Right of eldership—Amount set apart for the celebration of a festival—Separate celebration of the festival after division—Expenses of the separate celebration—Expenses of collecting the saranjam and pension incomes—Omission of the lower Court to pass a decree for partition among all the co-sharers—Decree for partition among the co-sharers passed in appeal.* *Saranjams are primæ*

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

justified in concluding that the saranjams were either originally partible or had become so by family usage. The plaintiff, an undivided member of a Hindu family, sued his co-sharers for division of saranjam and other family property. The defendant No. 1 contended that the saranjam was impartible. In any case, he claimed to retain certain sums in his capacity as the eldest representative of the family for the performances of certain offices. *Held*, that, the parties having effected division of the saranjams on previous occasions, the saranjams were either originally partible or had become so by

Where in a suit for partition a certain sum was claimed by the eldest representative of the family

celebration of the festival could not be left undivided. The Court of first instance having omitted to decree the shares of the defendants other than defendant No. 1, who demanded partition, their shares were declared and allowed in appeal. *Ramchandra v. Venkatray*, 1 L R 6 Bom 395, and *Bhujingray v. Malojiray*, 5 Bom. A. O 161, referred to. *MADHAVRAY MANOHAR v. ATMARAJ KESHAV*  
I. L. R. 15 Bom. 519

19. ———— *Sheri lands—Lease by Government for term of years.* The general Hindu law as to partition, which lays down that, except in

Government for a certain number of years; there is no Act of Legislature which excludes lands leased by Government from its operation. *DATTATRAYA VITHAL v. MAHADAJI PARASHIRAM*  
I. L. R. 18 Bom. 528

20. ———— *Proceeds of sale of a co-*

comes and saranjams :—*Held*, that the Court was

were not divested of the character of co-

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

his widow. KRISHNASAMI AYYANGAR v. RAJA GOPALA AYYANGAR . I. L. R. 18 Mad. 73

21. ——— Enfranchisement—Enfranchisement of *inam* service land in name of office-holder—Effect of enfranchisement—Liability to partition. Three items of land, numbered 5, 6 and 7, were ori-

February, 1890, R. resigned the office of *karnam* in

that when a personal *inam* is enfranchised by the imposition of a quit-rent, the resumption by the Government simply consists of so much of the assessment or *melvaram* as is equal to the quit-rent, neither the land nor the assessment in excess of quit-rent being resumed. Similarly, the enfranchisement of a service *inam* does not operate as a

22. *Narasimha v. Narayana* v. Venkata Ramayya, I. L. R. 15 Mad. 284, the plaintiff was entitled, as his son, to his share. As to items 6 and 7, there was no enfranchisement and no fresh grant or title-deed in favour of second defendant. They were liable to partition, and it was unnecessary, therefore, to decide whether *Narayana v. Chengal-*

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

*ammal*, I. L. R. 10 Mad. 1, or *Dharnipragada v. Kadambari*, I. L. R. 21 Mad. 47, and *Venkatarayudu v. Venkata Ramayya*, I. L. R. 15 Mad. 284, were correctly decided. *Venkata v. Rama*, I. L. R. 8 Mad. 249, explained. *Per* CURIAM, that items 5, 6 and 7 were liable to partition. GUNNAIYAN v. KANAKCHU AYYAN (1902) . I. L. R. 28 Mad. 339

22. ——— Lease—Suit for partition—Eti-

was sought had, a few years before suit, been let on lease for a period of twenty-four years. *Held*, that

Delivery  
be in the  
der s. 264

RAGHAVA

CHARLU v. UPPALLA RANANTJA CHARLU (1902) .  
I. L. R. 26 Mad. 78

23. ——— Expenses for ceremonies of brother's sons—Share of step-mother—Value of *stridhan* to be deducted from share—Ex-

and marriage ceremonies—such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share equal to that of a son but from her share must be deducted the value of any *stridhan* received by her as a gift from her father-in-law, or husband. The children of a brother on such partition are not entitled to any sum for the performances of their prospective thread, betrothal or marriage ceremonies. JAIRAM v. NATHU (1906)

I. L. R. 31 Bom. 54

24. ——— Impartible Raj—Separation in estate, whether possible—*Spes successiois*—Cause of action—Leave to amend plaint. In the case of an impartible Raj, during the life of the holder, the interest of a member of his family is only a *spes successiois*, which is not a subject for

being made at too late a stage of the case. LALIT-ESHWAR SINGH v. RAMESHWAR SINGH (1909)

I. L. R. 36 Calc. 461

## 3. PARTITION OF PORTION OF PROPERTY.

1. ——— Partial partition—Arrangement between members of family. It is very doubtful whether, under the Hindu law, any partial parti-

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

## 16. ———— Impartible estate—Zamindari.

In 1803, *G* being in possession of the zamindari of *M*, the permanent settlement was made with him and a permanent

the zamindari was granted to *A*, the son of *C*, by

*C*, his eldest son. *C* died in 1869 leaving an only son *J*, the defendant. In 1869 the Court of Wards took charge of the estate on behalf of the infant defendant and allowed his uncle, plaintiff No. 1, to receive the rents of the zamindari as renter. *J* and his three uncles lived in the same house and participated in the joint family property until 1872, when the plaintiffs claimed to have the zamindari divided. By an agreement between the plaintiffs and the Court of Wards

the plaintiffs sued for partition of the zamindari, alleging that their cause of action arose in 1872, when the Court of Wards denied their right to a partition of the

ble. *JAGANATHA v. RAMABHADRA*  
I. L. R. 11 Mad. 380

17. ———— Saranjam—Impartibility—Descent of saranjam. A saranjam is ordinarily impartible and descends to the eldest son as representative.  
*JAGAN-*

I. L. R. 10 Bom. 247

18. ———— Cash allowances payable from the Government treasury—Impartibility—Custom of the family as to partition—Senior member of the family—Right of eldership—Amount set apart for the celebration of a festival—Separate celebration of the festival after division—Expenses of the separate celebration—Expenses of collecting the saranjam and pension incomes—Omission of the lower Court to pass a decree for partition among all the co-sharers—Decree for partition among the co-sharers passed in appeal. Saranjams are *prima facie* impartible, the holders being required to make a suitable provision for their younger brothers. Where, however, it appeared that the members of a family had treated saranjams as partible, and had dealt with them as such in effecting partitions of the entire family estate, which consisted both of incomes and saranjams:—*Held*, that the Court was

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

justified in ordering a division of the saranjam and other family property. The defendant No. 1 contended that the saranjam was impartible. In any case, he claimed to retain certain sums in his capacity as the eldest son.

missible to the eldest representative of the family. Where in a suit for partition a certain sum was claimed by the eldest representative of the family for the celebration of a festival, the Court *Held*, that the claim was not a claim for the celebration of a festival for the entire family, but for the celebration of a festival for the eldest representative of the family.

to decree the shares of the defendants other than defendant No. 1, who demanded partition, their shares were declared and allowed in appeal. *Ramchandra v. Venkatrao*, I. L. R. 6 Bom. 598, and *Bhuyangrao v. Maloji Rao*, 5 Bom. A. C. 161, referred to. *MAHARAJA MANOHAR v. ATMARAJ KESHA*  
I. L. R. 15 Bom. 516

19. ———— Sheri lands—Lease by Government for term of years. The general Hindu law as to partition, which lays down that, except in cases of joint property, the shares of the co-sharers are determined by the Court, is not applicable to Sheri lands.

I. L. R. 16 Bom. 528

20. ———— Proceeds of sale of a co-parcener's share—Claim of co-parceners to proceeds—Joint or separate property. In a suit for partition of family property it appeared that one

of the sale of the co-parcener's share, so far as they were in excess of the requirements of his creditor's equity, were not divested of the character of co-parcenary property, and the lands purchased therewith were consequently property subject to partition and not separate property as contended by

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

his widow. *Krishnasami Ayyangar v. Raja Gopala Ayyangar*. I. L. R. 18 Mad. 73

21. ———— **Enfranchisement—Enfranchisement of inam service land in name of office-holder—Effect of enfranchisement—Liability to partition.** Three items of land, numbered 5, 6 and 7, were originally village service inams, having been annexed by the State as emoluments to the office of *karnam* in a *raiyanicari* village. *R*, the father of plaintiff and first defendant and grandfather of second defendant, in March, 1889, established his right, as the heir to the late incumbent to this office of *karnam*; and the lands were, in November, 1889, ordered to be delivered to *R* and were actually delivered to him in December, 1889. Before the actual delivery, *R* applied that the lands might be registered and a title-deed be issued in his name, as the Government were taking steps to enfranchise service inams in the district, and the *Inam* Commissioner in November, 1889, notified to *R* that his name was included in the register. In January, 1890, second defendant's father, the eldest son of *R*, died, and in February, 1890, *R* resigned the office of *karnam* in favour of his grandson, second defendant, who was duly appointed by the Collector. Item No. 5 was enfranchised, and a title-deed issued to and in the name of *R*. The *Inam* Commissioner, in 1891, passed an order that items 6 and 7 had been "re-

that when a personal inam is enfranchised by the imposition of a quit-rent, the resumption by the Government simply consists of so much of the assessment or *melwarum* as is equal to the quit-rent, neither the land nor the assessment in excess of quit-rent being resumed. Similarly, the enfranchisement of a service inam does not operate as a resumption and a fresh grant by the Government subject to the payment of a quit rent, any more than it is so in the case of the enfranchisement of a personal inam. It stands on the same footing, as far as the family in which the village office is hereditary is concerned. The enfranchisement only

HINDU LAW—PARTITION—*contd.*2. PROPERTY LIABLE OR NOT TO PARTITION—*contd.*

annul, I. L. R. 10 Mad. 1, or *Dharnipragada v. Kadambari*, I. L. R. 21 Mad. 47, and *Venkatayadu v. Venkata Ramayya*, I. L. R. 15 Mad. 284, were correctly decided. *Venkata v. Rama*, I. L. R. 8 Mad. 249, explained. *Per* CHENIAH, that items 5, 6 and 7 were liable to partition. *GUNNAIYAN v. KASIAKCHI AYYAR* (1902). I. L. R. 28 Mad. 339

22. ———— **Lease—Suit for partition—Evidence that the joint property had been leased—Available for partition—Maintainability of suit.** In the course of the hearing of a suit for partition, brought by one of several joint *shrotriamdars* against the rest, it transpired that the lands of which partition

CHARLU C. UPPALLA RAVANUJA CHARLU (1902)  
I. L. R. 28 Mad. 78

23. ———— **Expenses for ceremonies of brother's sons—Share of step-mother—Value of *stridhan* to be deducted from share—Expenses for ceremonies of grandchildren.** In a suit for partition brought by a Hindu against his father and brothers, the brothers are entitled to have set apart from the family property a sum sufficient to defray the expenses of their prospective thread, betrothal and marriage ceremonies—such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share equal to that of a son but from her share must be deducted the value of any *stridhan* received by her as a gift from her father-in-law, or husband. The children of a brother on such partition are not entitled to any sum for the performances of their prospective thread, betrothal or marriage ceremonies. *JAIRAM v. NATHU* (1906)

I. L. R. 31 Bom. 54  
24. ———— **Impartible Raj—Separation in estate, whether possible—*Spes successionis*—Cause of action—Leave to amend plaint.** In the case of an impartible Raj, during the life of the holder, the interest of a member of his family is only a *spes successionis*, which is not a subject for partition; also, there can be no separation in estate, as there is nothing upon which such separation can operate. An application for leave to amend the plaint, so as to disclose a cause of action, refused as being made at too late a stage of the case. *LALIT-ZSHWAR SINGH v. RAMESHWAR SINGH* (1909)

I. L. R. 36 Cal. 461

## 3. PARTITION OF PORTION OF PROPERTY.

1. ———— **Partial partition—Arrangement between members of family.** It is very doubtful whether, under the Hindu law, any partial parti-

HINDU LAW—PARTITION—*contd.*3. PARTITION OF PORTION OF PROPERTY  
—*contd.*

tion of the family property can take place except by arrangement. RADHA CHURN DASS v. KRIPA SINDHU DASS

I. L. R. 5 Calc. 474; 4 C. L. R. 428

2. ———— *Suit for partition of portion of property.* A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore, where in a suit for partition it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the moiety property were included, and that thereupon the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. PADMANANI DASI v. JAGADANNA DASI

6 B. L. R. 134

3. ———— *Suit for partition of portion of joint property.* A member of an undivided family cannot sue his co-sharers for his share in a single undivided field, portion of the family property. He must sue for a general partition of all the property liable to partition. NANA-BHAI VALLABHDAS v. NATHABHAI HARIBHAI

7 Bom. A. C. 46

CHYET NARAIN SINGH v. BUNWALI SINGH

23 W. R. 395

4. ———— *Partition of part of family property—Suit for ejectment—Right of suit—Parties.* A Hindu sued for possession of a one-third part of a house, a portion of his family property. Defendant No. 1 claimed title from the purchaser at a Court sale held in execution of a decree against the plaintiff's father; the other defendants were undivided brothers of the plaintiff's father.

benami for him. *Held*, that the suit was not maintainable, being a suit for partition of a specific item of the family property, but that the plaintiff might sue to eject defendant No. 1, joining his own brothers as defendants. VENKATTA v. LAKSHMAYYA

I. L. R. 18 Mad. 98

5. ———— *Omission to mention certain portion of property—Subsequent consent to divide omitted property.* In a suit for partition plaintiff, when filing his plaint and schedules, made no mention of certain jewels in the possession of his wife. Defendant having filed a schedule in his written statement showing the existence of the said jewels, plaintiff admitted that they were with his wife, but declined to allow them to be divided unless a division were also made of the jewels which were in the possession of the defendants' wives and children. He, however, before the examination of witnesses, withdrew this condition and expressed his

HINDU LAW—PARTITION—*contd.*3. PARTITION OF PORTION OF PROPERTY  
—*contd.*

willingness to give defendant credit for half their value. *Held*, that the suit was on these facts not one for partial partition. *Per* O'FARELL, J.—That where a suit is brought for division of the whole of the family properties, an omission, whether accidental or fraudulent, to specifically include in the plaint certain of the joint properties, where such properties are ascertained and a decree can be given for partition, will not convert the suit into one for partial partition. VENKATA NARASIMHA NAIDU v. BHASHTAKARU NAIDU

I. L. R. 22 Mad. 588

6. ———— *Suit for partition of portion of joint property—Cause of action.* In a suit between brothers who had been in joint possession of property of various kinds and carried on joint business until an alleged recent partition where the plaintiff sought to recover a proportion equal to his share of a sum of money said to have been taken by defendant from the joint funds. *Held*, that, unless the plaintiff could show that all the joint property had been divided excepting the sum in question or that all the property had been divided, and on an adjustment of accounts of past expenses there was a loss equal in amount to that item, he had no cause of action to sue for a moiety thereof. JEGOO LALL OOPADHYA v. MOXOMIA LALL OOPADHYA

19 W. R. 43

7. ———— *Suit for partition of a portion only of joint family property.* A suit will not be for partition of a portion only of joint family property. JOGENDRA NATH MUKERJI v. JAGBANDH MUKERJI

I. L. R. 14 Calc. 193

8. ———— *Suit for partition of portion of joint property.* The plaintiffs and the defendants being jointly entitled to and in possession of three kharabaris in a village and other immovable property, the plaintiff sued for partition of one of the kharabaris only. *Held*, that the suit would not lie. HARIDASS SANYAL v. PRAN NATH SANYAL

I. L. R. 12 Calc. 588

9. ———— *Partition of a co-tenant's share in a specific property—Right of a co-tenant to require a general partition—Rules as to partition, general and partial.* Where a co-tenant or a purchaser of the rights of a co-tenant sues for partition, the partition must be general: a suit for a partial partition of a single property will not lie. SHIVCHETTEPA v. VIRAPPA

I. L. R. 24 Bom. 128

10. ———— *Separation of one member of family, effect of.* The separation of one member of a joint Hindu family does not necessarily create a separation between the other members nor cause the general disruption of the family. RADHA CHURN DASS v. KRIPA SINDHU DASS

I. L. R. 5 Calc. 475, dissented from. UPENDRA NARAIN MITT v. GOREE NATH BEHA

I. L. R. 9 Calc. 817; 12 C. L. R. 356

HINDU LAW—PARTITION—*contd.*3 PARTITION OF PORTION OF PROPERTY  
—*contd.*

11. — Wrongful possession by one co-sharer of portion of joint estate—*Gift by father to one of several sons, co-sharers.* The wrongful possession of a portion of a joint estate, in every portion of which the sharers have equal rights, by one of them is no bar to the partition of the whole, and does not warrant the exclusive assumption of another portion by another of them. Assuming a co-sharer's right in the family estate not to have been lost, a deed of gift of a portion thereof to another co-sharer is a violation of his right not justified by the circumstance that the first co-sharer had wrongfully appropriated some of the joint property in which the others might have recovered their rights by an action at law. A co-sharer's hereditary right does not, however, entitle him to claim a partition of a portion only of the ancestral property. *KALKA PERSHAD v. BODREE SAR* 3 N. W. 267

12. — Right to partition of person in occupation of portion of ancestral dwelling house. In a suit to obtain by partition half of an ancestral dwelling house, in which defendant was living, the latter averred that the house in which plaintiff was living was likewise ancestral, and that in a partition between them the houses which they respectively occupied had fallen to their respective shares. Plaintiff had replied that his house was not ancestral, but had been purchased out of his own funds. *Held*, that it was necessary to enquire into plaintiff's title under the whole circumstances of the case, and when it appeared that he was in separate occupation of a portion of the ancestral dwelling-house whether he had a right to the partition of the one without bringing the other into hotchpot. *RANI LOCHUN PATTEK v. RAGHOOR DIAL* 15 W. R. 111

13. — Partition of joint property situate in British India without taking into account other joint property situate outside British India. A Court can grant partition of property belonging to a joint Hindu

14. — Suit for partition of property where portion is impartible. Where, in consequence of a suit for partition of the entire family property, a portion of the property is divided, but the remaining portion is declared impartible, the family remains undivided in respect to the latter portion. *Satrucharla Jagannadha Razu v. Satrucharla Samabhadra Razu*, I. L. R. 14 Mad. 240, referred to. *MALLIKARJUNA PRASADA NAIDU v. DUEGA PRASADA NAIDU*

I. L. R. 17 Mad. 362

HINDU LAW—PARTITION—*contd.*3. PARTITION OF PORTION OF PROPERTY  
—*contd.*

15. — Property left undivided at the time of partition—*Suit to recover share of the produce—Amendment of plaint—Variance between pleading and proof.* The circumstance that there has been a partition between the members of a joint Hindu family does not, in the absence of any special agreement between them, alter their rights as to the property still undivided. As to this, they continue to stand to one another in the relation of members of an undivided Hindu family. A claim to a share of the produce of the property left undivided at a partition does not lie, because such a claim is based on the right to a particular share in the property itself which has no existence in the case of an undivided family. A suit for a share of the produce of the property left undivided at a partition cannot be amended by making it a suit for partition without entirely changing its character. *GATRISHANKAR PARABHURAN v. ATHARAM RAJARAM* I. L. R. 18 Bom. 611

18. — Right to partial partition. A member of a joint Hindu family may enforce by suit his right to a partition of a portion only of the joint family property. *Venkalachella Pillay v. Chinnaiya Mudohar*, 5 Mad. 166, approved and followed. *SUBRAMANYA CHETTYAR v. PADMANABHA CHETTYAR* I. L. R. 19 Mad. 267

17. — Suit for partial partition—*Family property available for partition at the time—Property mortgaged with possession to third party not included—Maintainability of suit.*

persons who now sued as plaintiffs for partition and possession of one-half of the house. The family owned another house which had, however, for some time been mortgaged with possession to a third party and was not available for partition at the time. On the plea being raised that the suit was one for partial partition and could not be sustained—*Held*, that the suit was maintainable.

*v. Pondarong Ramchandra*, 12 Bom. 148, followed. *KRISTATTA v. NARASIMHAM*

I. L. R. 23 Mad. 808

18. — Effect of partition of portion of property—*Separate enjoyment.* Where the members of an undivided Hindu family have divided a portion of the estate and held their respective shares separately, such shares will be liable to the incidents attaching to separate estates, although the whole of the joint property has not been

**HINDU LAW—PARTITION—contd.****3. PARTITION OF PORTION OF PROPERTY**  
—contd.

divided. A partition of joint property is valid as between the members of a Hindu family, although it has not been sanctioned by the Board of Revenue, it being shown that for several years after the partition the members of the family had separately enjoyed the shares which fell to them by the partition. *HOOLAS KOONWAR v. MAN SINGH*

3 Agra 37

19. ———— *Partition of share of estate—Widow—Possession of estate for maintenance.* The proprietary right to a share in an undivided estate which includes and carries with it a

widow is not an absolute proprietor, but simply an assignee of the profits for a maintenance, she cannot claim partition of the share so assigned. *PHOOL KOWRA SINGH v. PHOOL KOWRA* . 2 Agra, Part II, 168

20. ———— *Partition by father and sons—Partition among joint owners—Divisibility of portion remaining undivided.* The doctrine that when, after a partition of a joint family estate, a portion of the estate remains undivided, the portion which remains undivided cannot afterwards be partitioned, refers to a partition made by a father amongst his sons and their co-heirs. It does not refer to the case where a partition has been made by the joint owners amongst themselves. *SHAMASOONDERY DASSEE v. KARTICK CHURN MITTRA* . . . . . Bourke O. C. 326

21. ———— *Joint Hindu family—Suit for partition—Partition of the whole joint family property not claimed.* The plaintiff, a member of a joint Hindu family, sued the defendant, another member of the same family, for partition of certain property, which had once been the property of the joint family as a whole, but which at the time of the suit had come to be the joint property of the plaintiff and the defendant only. *Held*, that it was not necessary for the plaintiff to include in the suit other property, which belonged jointly to the plaintiff, the defendant and other members of the joint family. *Purushottam v. Altharam*, I. L. R. 23 Bom 396, referred to. *LACHMI NARAIN v. JANKI DAS* (1901) . . . . . I. L. R. 23 All 216

22. ———— *Division of family property—Agreement that share of one member in income of village should be paid him by managing member—Subsequent claim for partition.* By an agreement entered into by the members of a family of whom plaintiff was one, the parties became completely divided in interest in respect of all their property, but, so far as a certain village was concerned, it was agreed that plaintiff should receive one-fourth of the net income (on account of his

**HINDU LAW—PARTITION—contd.****3. PARTITION OF PORTION OF PROPERTY**  
—contd.

fourth share in the village) from the eldest member of the family, who was to manage it. Plaintiff now sued for partition by metes and bounds of his one-fourth share in this village. *Held*, that the agreement was no bar to the suit. *SCBBARATA TAWKER v. RAJARAM TAWKER* (1901)

I. L. R. 25 Mad. 585

23. ———— *Partial partition—Lessee of shares of some lessors in entire village and of shares of other lessors in portion—Suit for*

tenants-in-common, and second defendant's share was one-half and the share of the others was one-sixth each. In 1887 the tenth defendant's one-sixth share and interest in the entire village (including the 100 kuls) was attached in execution of a decree against him. His interest in the 100 kuls

tendant of her one-half share in the exclusive of the 100 kuls, for a term of twenty-three years, and a similar lease from ninth and tenth

and second defendants (the shares of the third and

that partition could only last for the period of the lease. The suit was not one for partial partition inasmuch as plaintiff was not entitled to partition of the rest of the village, to which he was entitled to exclusive possession under his leases for twenty-three years. The only portion of the village he could demand partition of was the 100 kuls, to which he was only entitled to possession jointly with the first and second defendants. *RAVASAMI CHETTI v. ALAGIRISAMI CHETTI* (1904)

I. L. R. 27 Mad. 361

HINDU LAW—PARTITION—*contd.*

## 4. RIGHT TO PARTITION.

## (a) GENERALLY.

1. ——— Right of member of joint family to separate share. Members of a joint family residing in joint premises are entitled, on the occurrence of a dispute between them and their co-sharers, to come into Court and ask to have their proper share assigned. The fact of their not having been in possession of a particular portion of the premises is no bar to a claim for such portion. *BIMOLA v. DANGOO KANSAREE*. 10 W. R. 180

2. ——— Member of family more than four degrees removed from acquirer—*Remote relative*. Partition can effectually be demanded by a Hindu more than four degrees removed from the acquirer or original owner of the property sought to be divided, provided he is not more than four degrees removed from the last owner, however remote he may be from the original owner thereof. *Deralla's Text Anubhava Vibhaktinam*, discussed. *MORO VISHWANATH v. GANESH VITHAL*. 10 Bom. 441

3. ——— Member of family governed by law of *Aliyasantana*. Division of family property cannot be enforced by one of the members of a family governed by the law of *Aliyasantana*. *MUNDA CHETTI v. THIMAJU HENSU*. 1 Mad. 380

4. ——— Inheritance of talukhdari estates in Oude—*Sanad recognizing primogeniture, effect of, as to existing rights of inheritance—Shares held by members of family—Mesne profits on specific and definite shares*. The ordinary rule is that, if persons are entitled beneficially to shares in an estate, they may have partition. Although in a suit for the partition of joint family estate, where the head of the joint family does not account for the profits under the ordinary Hindu law, mesne profits are not recoverable, it is not so where the family has been living under a clear agreement that the members are entitled not as an ordinary Hindu family, but in specific and definite shares. If the enjoyment of those shares is in any way disturbed the right to sue for profits will arise, as well as the right to partition. A talukhdan estate which, before and after annexation, was subject to the common Hindu law of Oude, viz. the *Mitakshara*, was restored after the general confiscation of 1858 to the family, which received a sanad recognizing the shares of its members. At the same time, a grant was made to the head of the family as talukhdar of two other villages, and to him afterwards in 1861 was issued a primogeniture sanad of the above talukhdari estate. This sanad could not prevail over the family's rights of inheritance and effect same on the same talukhdari estate. *MATHURA NAIKIN v. ESU NAIKIN*. I. L. R. 4 Bom. 545

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(a) GENERALLY—*contd.*

to hold the entire estate by primogeniture :—*Held*, that this kind of manership was entirely unknown to the common Hindu law of Oude; and that apparently the Oude Estate Act, 1869, did not contemplate any such thing. At all events, there must be clear arrangements, such as were

5. ——— Right to partition a second time after bond bids mistakes in first partition—*Inclusion in first partition of property not subject to partition—Re-partition*. The parties to a partition under a bond vide mistake included in the

I. L. R. 21 Bom. 333

6. ——— Exclusive right to partition—*Joint family—Mitakshara law—Gift to daughter out of joint property—Gift out of income. Held*, that partition of the property which was asked for in case the plaintiff had no exclusive right to it was rightly refused by the Courts in India. *BACHOO v. MANKOREBAI* (1907)

I. L. R. 31 Bom. 373

L. R. 34 I. A. 107

## (b) DAUGHTER.

7. ——— Right of daughters to partition—*Mother's property*. Though daughters

*MATHURA NAIKIN v. ESU NAIKIN*

I. L. R. 4 Bom. 545

## (c) GRANDMOTHER.



HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(c) GRANDMOTHER—*contd.*

is not duly provided for, claim an assignment of a portion of the estate, yet she cannot call for partition, and her right to maintenance cannot affect a mortgage of the estate created before any portion has been assigned to her, except that, if the house she resides in is subject to the mortgage and is sold in execution of a decree upon the mortgage, the house must be sold subject to her right. *VENKATAMMAL v. ANDYAPPA CHETTI*

I. L. R. 6 Mad. 130

## (d) GRANDSON.

9. ——— Right of grandson to sue for partition—*Ancestral family property.* A grandson may, by Hindu law, irrespective of all circumstances, maintain a suit against his grandfather for compulsory division of an ancestral family property. *NAGALINGA MUDALI v. SUBRAMANYA MUDALI*

I. L. R. 1 Mad. 77

10. ——— Interest in an-

and grandfather. *Deendyal Lal v. Jugdeep Narain Singh*, I. L. R. 3 Cal. 195, *Laljee Singh v. Rajcoomar Singh*, 12 B. L. R. 373; and *Nagalinga Mudali v. Subramanyam Mudali*, 1 Mad. 77. *JOGEE KISHORE v. SHRI SAIJI*

I. L. R. 5 All. 430

11. ——— Suit for partition of ancestral estate by grantor, when both father and grandfather alive, when maintainable. A member of a joint *Mitalshara* family can bring a suit for partition of his ancestral property during the lifetime of his father and grandfather, if they allow the property to be wasted, or imperil the plaintiff's interest. *Suraj Bhanji Koer v. Sheo Pershad Singh*, I. L. R. 5 Cal. 145. *Subba Ayyar*, I. L. R. 15 Mad. 179; *Jugal Kishore v. Shri Sahay*, I. L. R. 5 All. 430, followed. *TELANG, J's* decision in *Apaji Nahas v. Ramchandra* I. L. R. 16 Bom. 23, approved. *RAMESHWAR PRASAD SINGH v. LACHMI PRASAD SINGH* (1903)

7 C. W. N. 688

## (e) ILLEGITIMATE CHILDREN.

12. ——— Illegitimate son—*Sudras.* Among Sudras an illegitimate son is entitled to maintain a suit for partition of the family property against his father's legitimate sons; and if his interest is endangered by reason of the property being left under the management of the latter, partition can be claimed during his minority. *THANOM PILLAI v. SUPPA PILLAI*

I. L. R. 12 Mad. 401

13. ——— *Sudras—Illegitimate son—Claim to partition of property of father's brother's sons—Maintainability.* An illegitimate

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(c) ILLEGITIMATE CHILDREN—*contd.*

son claimed to be entitled to a share in the property of his father's brother's sons. *Held*, that he was

3 Mad. 557; and *Parvathi v. Thirumalai*, I. L. R. 10 Mad. 334. *Shome Shankar Rajendra Varere v. Rajeswar Swami Jangam*, I. L. R. 21 All. 99, approved. *KARUPA GOUDAN v. KUMARASAMI GOUDAN* (1901)

I. L. R. 25 Mad. 429

## (f) MINOR.

14. ——— Suit by or on behalf of minor for partition—*Mithila school of law—Suit by mother and minor children for partition—Malversation.* A suit cannot be brought by or on behalf

## SENABECTY MISRAJ

I. L. R. 8 Cal. 537; 10 C. L. R. 401

15. ——— Suit by minors for partition—*In what cases there is a right of suit—Malversation.* Under the Hindu laws, a minor coparcener cannot sue for partition unless his interests are (i) likely to be advanced thereby, or (ii) protected from danger. When an adult coparcener has taken up a hostile position to the interests of

sued by their next friend for a partition of their ancestral property in the possession of their step-brother, the defendant. It appeared that soon after their father's death disputes and differences arose between plaintiffs' mother and their step-brother, which led to their separation in food and residence. The defendant managed the family property, but did not support the minors out of the rents and profits thereof. Hence the suit. *Held*, that, though no malversation was alleged or proved, the allegations in the plaint of disputes and separate residence and defendant's failure to support the plaintiffs were sufficient to justify the Court in permitting the plaintiffs to maintain the suit. *MAHADEV BALVANT v. LAKSHMAN BALVANT*

I. L. R. 19 Bom. 99

16. ——— Joint Hindu family—Right of minor member of a joint family to

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(f) MINOR—*contd.*

*sue for partition.* Held, that a minor member of a joint Hindu family may institute a suit for and obtain partition of his share in the joint family property if there exist circumstances such as in the interest of the minor render it advisable that his share should be set aside and secured for him.  
BROLA NATH C. GHASI RAM (1907)

I. L. R. 29 All. 373

## (g) PURCHASER FROM CO-PARCENER.

17. — Sale by a co-parcener of his share in specific property—*Rights of the vendor—Transfer of Property Act, s. 41.* A purchaser, from a member of an undivided Hindu family of that member's share in a specific portion of the ancestral family property cannot sue for a partition of that portion alone and obtain an allotment to himself by metes and bounds of his vendor's share in that portion of the property. *VENKATARAMA v. MEERA LABAI*

I. L. R. 13 Mad. 275

See *CHANDU v. KENNAMED*, distinguished on the ground that the parties there were governed by Mahomedan law of inheritance.

I. L. R. 14 Mad. 334

18. — Purchaser from member of undivided Hindu family of share in the joint property. Two brothers constituted an un-

share of his mortgager, and, having afterwards purchased the share of the elder brother and come to a

19. — Claim against vendor and widow of undivided brother. A person who purchases the share of a coparcener in family property is entitled to recover that share on his ven-

20. — Suit for partition by a purchaser from a co-parcener—*Decree for share*

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(g) PURCHASER FROM CO-PARCENER—*contd.*

of co-parcener in specific property—*Variance between pleading and proof.* In a suit to recover possession of property purchased by the plaintiff, if it is found that the property is not separate property of the plaintiff's vendor, but belongs to the joint

*Mad.* 275, followed *PALANI KONAN v. MASAKONAN*

I. L. R. 20 Mad. 243

21. — Alienation of share by co-parcener—*His position and rights after such alienation—Position and rights of purchaser—Subsequent birth or death of other co-parceners.* The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own

by the death of the vendor, lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition. The purchasers, like his alienor, is liable to have his share diminished upon partition by the birth of other co-parceners, if he stand by and do not insist on immediate partition. *GURLINGAPA SATWIRAPA GIDWIR v. NANDAPA CHANBASAPA SOLAPURI*

I. L. R. 21 Bom. 797

22. — Purchase by stranger from one of two daughters jointly entitled to their father's property—*Decree for partition.* A purchaser, having purchased certain property from one of two sisters jointly entitled to their deceased father's property, under the Hindu law, re-sold it, whereupon the other daughter sued for a declaration that such sales were in valid as against her, and that the property might be restored to her and her sister, or that there might be a parti-

interest taken and sold in execution of a decree against her. Also that, subject to the same condition, she may demand a partition of the property. *KANNI ANMAL v. ANNAKANNU ANMAL*

I. L. R. 23 Mad. 504

23. — Purchase from member of an undivided family—*Undivided share vendor in land forming part of the joint. Death of vendor—Subsequent suit by against survivors for partition of entire recovery of the portion*

**HINDU LAW—PARTITION—contd.****4. RIGHT TO PARTITION—contd.****(c) GRANDMOTHER—concl'd.**

is not duly provided for, claim an assignment of a portion of the estate, yet she cannot call for partition, and her right to maintenance cannot affect a mortgage of the estate created before any portion has been assigned to her, except that, if the house she resides in is subject to the mortgage and is sold in execution of a decree upon the mortgage, the house must be sold subject to her right. *VEN. KATAMMAL V. ANDYAPPA CHETTI*

I. L. R. 6 Mad. 130

**(d) GRANDSON.**

9. ——— **Right of grandson to sue for partition—Ancestral family property.** A grandson may, by Hindu law, irrespective of all circumstances, maintain a suit against his grandfather for compulsory division of an ancestral family property *NAQALINGA MUDALI v. SUBBIRAMANYA MUDALI* 1 Mad. 77

10. ——— **Interest in ancestral property.** In a joint Hindu family governed by the Mitakshara law, a grandson has by birth a

11. ——— **Suit for partition of ancestral estate by grandson, when both father and grandfather alive, when maintainable.** A member of a joint Mitakshara family can bring a suit for

*Nahas v. Ramchandra* I. L. R. 16 Bom. 29, approved. *RAMESHWAR PRASAD SINGH v. LACHMI PRASAD SINGH* (1903) 7 C. W. N. 688

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12. ——— **Illegitimate son—Sudras** Among Sudras an illegitimate son is entitled to maintain a suit for partition of the family property

13. ——— **Sudras—Illegitimate son—Claim to partition of property of father's brother's sons—Maintainability.** An illegitimate

**HINDU LAW—PARTITION—contd.****4. RIGHT TO PARTITION—contd.****(c) ILLEGITIMATE CHILDREN—concl'd.**

son claimed to be entitled to a share in the property of his father's brother's sons. *Held*, that he was not so entitled, and that the principle laid down in *Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansing*, I. L. R. 17 I. A. 128—where it

*Rayasar Swami Jangam*, I. L. R. 21 All 99, approved. *KARRUTA GOUNDAN v. KUMARASAMI GOUNDAN* (1901) I. L. R. 25 Mad. 429

**(f) MINOR.**

14. ——— **Suit by or on behalf of minor for partition—Mitakshara school of law—Suit by mother and minor children for partition—Maintainable**

I. L. R. 8 Calc. 537; 10 C. L. R. 401

15. ——— **Suit by minors for partition—In what cases there is a right of suit—Maintenance** Under the Hindu laws, a minor co-parcener cannot sue for partition unless his interests are (i) likely to be advanced thereby, or (ii) protected from danger. When an adult co-parcener has taken up a hostile position to the interests of minor co-parceners and denied their rights, or sets up his own independent title, or where the minors live separately and the adult co-parcener does not support them, in all these cases it is in the interest of the minors that their share shall be partitioned and set apart. The plaintiffs, who were minors, sued by their next friend for a partition of their ancestral property in the possession of their step-brother, the defendant. It appeared that soon after their father's death disputes and differences arose between plaintiffs' mother and their step-brother, which led to their separation in food and residence. The defendant managed the family property, but did not support the minors out of the rents and profits thereof. Hence the suit.

Court in permitting the plaintiffs to maintain the suit. *MAHADEV BALVANT v. LAKSHMAN BALVANT* I. L. R. 19 Bom. 89

16. ——— **Joint Hindu family—Right of minor member of a joint family to**

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(f) MINOR—*contd.*

*sue for partition.* Held, that a minor member of a joint Hindu family may institute a suit for and obtain partition of his share in the joint family property if there exist circumstances such as in the interest of the minor render it advisable that his share should be set aside and secured for him. *BHOLA NATH v. GHASI RAM* (1907)

I. L. R. 29 All. 373

## (g) PURCHASER FROM CO-PARCENER.

17. — Sale by a co-parcener of his share in specific property—*Rights of the vendee—Transfer of Property Act, s. 41.* A purchaser from a member of an undivided Hindu family of that member's share in a specific portion of the ancestral family property cannot sue for a partition of that portion alone and obtain an allotment to himself by metes and bounds of his vendor's share in that portion of the property. *VENKATARAMA v. MEERA LABAI*

I. L. R. 13 Mad. 275

See *CHANDU v. KUNHAMED*, distinguished on the ground that the parties there were governed by Mahomedan law of inheritance

I. L. R. 14 Mad. 324

18. — Purchaser from member of undivided Hindu family of share in the joint property. Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to P and the other half to

share of his mortgager, and, having afterwards purchased the share of the elder brother and come to a

tion of the whole property of the family. *SUBBARAZU v. VENKATABATNAM* I. L. R. 15 Mad. 234

19: — Claim against vendor and widow of undivided brother. A person who purchases the share of a coparcener in family property is entitled to recover that share on his ven-

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HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(g) PURCHASER FROM CO-PARCENER—*contd.*

of co-parcener in specific property—*Variance between pleading and proof.* In a suit to recover possession of property purchased by the plaintiff, if it is found that the property is not separate property of the plaintiff's vendor, but belongs to the joint family of which plaintiff's vendor is a member, the

*Mad. 275, followed.* *PALANI KONAN v. MASA. KONAN* I. L. R. 20 Mad. 243

21. — Alienation of share by co-parcener—*His position and rights after such alienation—Partition and rights of purchaser—Subsequent birth or death of other co-parceners.* The alienation by a Hindu co-parcener of his rights in part or the whole of the joint family property does not place the purchaser of such rights in his own position. *The purchaser becomes a member of*

by the death of the vendor, lose his right to a partition, so his position is not improved by the death of the other co-parceners before partition. The purchasers, like his alienor, is liable to have his share diminished upon partition by the birth of other co-parceners, if he stand by and do not insist on immediate partition. *GURLINGAPPA SATWIRARA OUDWAR v. NANDAPA CHANABASAPPA SOLAPURI*

I. L. R. 21 Bom. 797

22. — Purchase by stranger from one of two daughters jointly entitled to their father's property—*Decree for partition.* A purchaser, having purchased certain property from one of two sisters jointly entitled to their deceased father's property, under the Hindu law,

tion or it. *Acad.*, that, while one of two daughters cannot by any alienation alter the character of the daughters' estate so far as the right of survivorship or that of the reversioners is concerned, she may alienate her interest in the property, or have that interest taken and sold in execution of a decree against her. Also that, subject to the same condition, she may demand a partition of the property. *KANNI AMMAL v. ANNAKANNU AMMAL*

I. L. R. 23 Mad. 604

23. — Purchase from member of an undivided family—*Undivided share of vendor in land forming part of the joint estate—Death of vendor—Subsequent suit by purchaser against survivors for partition of entire estate for recovery of the portion purchased—Inalienability*

**HINDU LAW—PARTITION—contd.****4. RIGHT TO PARTITION—contd.****(g) PURCHASER FROM CO-PARCENER—contd.**

Plaintiff purchased 2 acres and 26 cents of land from V, being V's undivided moiety in two plots of land measuring 4 acres and 52 cents, which formed part of the joint property of an undivided Hindu family consisting of V and his two nephews (brother's sons). V subsequently died, leaving his two nephews him surviving. After V's decease, plaintiff instituted the present suit against the nephews, in which he claimed partition of the whole of the family property, and sought thereby to recover

*Per BHASHYAM AYYANGAR, J.*—Plaintiff was entitled to recover, by partition, a moiety of the plots

by BHASHYAM AYYANGAR, J. on the character and incidents of an alienation, made by an undivided member of a Hindu family, of his share and interest therein. *Rangasami v. Krishnayyan*, I. L. R. 14 Mad. 408, considered. *AIYYAGARI VEN. KATARAMAYYA v. AIYYAGARI RAMAYYA* (1902)

I. L. R. 25 Mad. 690

**(h) PURCHASER FROM WIDOW**

**24.** Right of purchaser to sue for partition—*Assignee of widow* A Hindu widow being competent under the Hindu law to put in a claim to enforce partition as against her co-sharers, there is nothing to prevent a purchaser of her estate at a sale in execution of a decree from enforcing a like claim. *REDOONATH PANJAB v. LUCKHUN CHUNDER DOLLAL CHOWDHRY*

18 W. R. 23

**25** *Bengal school of Hindu law—Widow's estate—Joint widows* Where a Hindu governed by the Bengal school of Hindu law dies intestate, leaving two widows, his only

not be detrimental to the future interests of the reversioners. *JANOKINATH MUKHOPADHYA v. MOTHERANATHI MUKHOPADHYA*

I. L. R. 9 Cal. 580 : 12 C. L. R. 215

**26** *Alienation by Hindu widow of share in family dwelling-house.* An assignee of a Hindu widow, though a stranger to the family, is in the same position as the Hindu widow, and is entitled to sue for partition of the joint family dwelling-house, and all that the Court

**HINDU LAW—PARTITION—contd.****4. RIGHT TO PARTITION—contd.****(h) PURCHASER FROM WIDOW—contd.**

has to see to it that the partition should be carried out in such a way as not to affect the rights of the reversioners. *BERIN BEHARI MODUCK v. LAL MOHUN CHATTOPADHYA*, I. L. R. 12 Cal. 209

**(i) Son.**

**27.** Suit by son to enforce partition against father—*Mitakshara law—Undivided Hindu family—Ancestral immovable property.* In an undivided Hindu family the son has,

**28.** *Right to property not acquired by birth* In a suit brought by a son against his father to compel a division of moveable and immovable property inherited by the latter from his paternal cousin:—*Held*, that, as re-

that the suit to enforce a division of the immovable property could not be maintained, inasmuch as

**29.** *Suit for partition by a son against his father and uncles in lifetime of his father and against his father's will.* *Held*, by the Full Bench (TELANG, J., dissenting), that under the Hindu law applicable to the Satara District (in the Presidency of Bombay), a son cannot in the lifetime of his father sue his father and uncles for a partition of the immovable family property and for possession of his share therein, the father not assenting thereto. *ARAJI NARHAR KULKARNI v. RAMCHANDRA RAO* [KULKARNI]

I. L. R. 16 Bom. 29

**16 Bom. 29**, dissented from. *SURBA AYYAR v. GANASA AYYAR* I. L. R. 18 Mad. 179

**31** *Moveable ancestral property—Ancestral business.* On the Bombay side of India a Hindu son has no right to enforce partition of ancestral moveable property in the hands of his father, or to claim a separate share in an ancestral business against his father's will, although the son alleges that his father is prejudiced

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(i) Son—*contd.*

against him and intends to deprive him of his succession to such property and business. *Semle*: That a son cannot enforce partition of immovable ancestral property under similar circumstances. **RANCHANDRA DADA NAIK v. DADA MAHADEV NAIK** 1 Bom. Ap. 70

32. ——— *Right of a son to claim partition of moveable as well as immovable property in his father's lifetime—Son's right to partition of property come to the possession of his father before the son's birth—Property acquired by litigation—Self-acquired property devised by a father to his son is taken by the son under the will and is self-acquired in his hands—Earnings of father as mill manager—Property left by testator to be held moveable or immovable according to its condition at testator's death—Kapol Dania caste, custom of, as to partition. Per APPEAL COURT.—There is no distinction between moveable and immovable property as regards the right of a son in an undivided*

property became the subject of litigation, and was not divided until 1852, long after the death of R which took place in 1808. R's share was received in 1852 by the executors of his son, N (defend-

intention on the part of the testator to convert into money such of his property as consisted of lands and houses, the general rule of law applied, viz., that the property must be held to be real or personal ac-

quired before or after the birth of a son. In order to entitle a co-parcener to hold, as property self-acquired by him, property which has been recovered by his exertions (e.g., by litigation), such property must have been recovered from usurpers holding it adversely to the family; the co-parceners must have abandoned their rights; and where such abandonment is a matter of inference, the co-parceners, to whom it has been imputed, must have been in a position to sue. A son to whom his father

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(i) Son—*contd.*

leaves the self-acquired property by will takes the property under the will, and not by inheritance, and as property received by will is held by Hindu law to be received by gift, such property is self-acquired in the hands of the son, and is not subject to partition. The first defendant was sued by his son for partition. Some of the property in the defendant's hands consisted of his earnings as manager of a mill and of the investments of such earnings. The will had been established in 1860.

management was very successful, and good dividends were declared every year from 1863. In 1870 he declined to work any longer without remuneration, and at a meeting of the shareholders he was appointed managing director and was granted a commission on all sales effected by the company. *Held*, that the commission so received by the defendant was his self-acquired property. Under the

enced them in giving him the appointment, and such influence could not be said to have been created

ancestral property in his father's lifetime and against his father's will, held not proved. **JAG. MOHANDAS MANGALDAS v. MANGALDAS NATHUBHOY** I. L. R. 10 Bom. 528

33. ——— Son, partition by—*Right of sons as against mortgagee of ancestral property.* In a

34. ——— *Right of sons to partition—Indebtedness of father—Minor sons.* Under Mitakshara law, minor sons have rights in ancestral property, for a declaration of which by partition their mother can proceed against their father and his creditors. Partition in such a case

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(i) SON—*contd.*

might be ordered against the will of the father, without actually taking the property out of his hands. *See* *...*

35. *Suit for partition of property...*

first defendant from the father of the first defendant's adoptive mother: *Held*, that plaintiff was a joint owner with first defendant in the property, and was entitled to partition of it. *Venkayamma Garu v. Venkataramanayyamma Bahadur Garu*, I. L. R. 25 Mad. 437, and *Karuppa Nachiar v. Shan-kara Narayana Chetty*, I. L. R. 26 Mad. 300, followed. *VYTHINATHA AYYAR v. YEOGIA NARAYANA AYYAR* (1901) . . . I. L. R. 27 Mad. 382

36. *Illatam son-in-law. The question...*

37. *Son born after partition—Property acquired subsequently to partition. A Hindu having two sons divided his property between them, reserving no share for himself. A third son was subsequently born...*

*CHENGAMA NAYUDU v. MUNISAMI NAYUDU* (1901) . . . I. L. R. 20 Mad. 76

38. *Son born after partition—Right of such son to partition—Share of such son—Family arrangement—Limitation. In the year 1875 one V, having at that time three sons, viz., defendants Nos. 1, 2, and 3, divided his property, allotting one-third to the first defendant and retaining the remaining two-thirds in his own possession in the interest of his other two sons (defendants Nos. 2 and 3), who were then minors. The latter continued to live with him, and he managed the property. The first defendant was the son of V's elder wife, and the second and third defendants were the sons of his younger wife. In 1880 the plaintiff was born, and in 1891 he brought this suit by his mother (the younger wife) as next friend for a partition*

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(i) SON—*contd.*

of the whole of V's property, including that which in 1875 had been allotted to the first defendant. The plaintiff claimed a fourth share. *Held*, that the plaintiff was not entitled to any part of the property which had been given to the first defendant in 1875. The family arrangement then made had been acquiesced in for more than twelve years, and could not be disturbed. The plaintiff could only...

*...*

I. L. R. 23 Bom. 638

## (ii) SON-IN-LAW OF LUNATIC.

39. *Partition of lunatic's estate—Joint property in Mitakshara family—The husband of a lunatic's daughter applied to the Court to declare his father-in-law, who was a member of a joint Mitakshara family, to be a lunatic, and appoint a manager of his property and a guardian of his person under Act XXXV of 1858. The Court found that the application was made with a view to taking consequent proceedings for partition. *Quare* Assuming the...*

## (2) WIDOW.

40. *Widow, partition by—Ground for exclusion from right—Likelihood of remarriage. There is no ground for the exclusion of a Hindu widow from a claim to partition, for, as the law now stands, she may re-marry and have issue. BIMOJA v. DANGOO KANSARZEE* . . . 19 W. R. 189

41. *...*

JOSHI v. LAKSHMIBAI . . . 1 Bom. 189

42. *Discretion of*

*iff* had daughters and grandsons, and the share she was entitled to through her husband was consider-

**HINDU LAW—PARTITION—*contd.*****4 RIGHT TO PARTITION—*contd.*****(1) WIDOW—*contd.***

able, she was held entitled to a decree for partition. **SORDANNEY DOSSEE v. JOSEPH CHUNNER DUTT**

**I. L. R. 2 Cal. 262**

**43. ————** *Settlement by co-parcener on wife—Purchaser for value.* In pursuance of an ante nuptial agreement made in consideration of marriage with the father of A, his intended wife, A N, an undivided member of a Hindu family, executed a post-nuptial settlement in favour

death his share should belong to A. On the death of A N, A sued his co-parcener to recover by partition the share of A N in the joint family property. *Held*, that A was entitled to recover. **ALAMELU v. RANGASAMI**

**I. L. R. 7 Mad. 588**

**44. ————** *Right of widows to partition, or to separate enjoyment of joint property.* A claim by one of several widows to an absolute partition of the joint estate, giving to each a share in severalty, is not maintainable. A case may be made out entitling one of several widows to the sale of separate possession of a part of the

Madras, in the exercise of their sovereign power, took possession of the estate and private property of the Raja. Subsequently, the Government made over to the widows and daughter of the Raja the landed and personal property, having previously obtained the opinion of the Hindu law officers of the Sudder Court on a question put with the view of ascertaining the Hindu law as applicable to the case. The order of Government contained the following direction: "The estate will therefore be made over to the senior widow, who will have the management and control of the property, and it will be her duty to provide in a suitable manner for the participative enjoyment of the estate in question by the other widows, her co-heirs. On the death of the last surviving widow, the daughter of the late Raja, or falling her the next heirs of the

tainable, assuming the adoption to have been valid.

**HINDU LAW—PARTITION—*contd.*****4. RIGHT TO PARTITION—*contd.*****(1) WIDOW—*contd.***

To that claim the absolute ownership of the Government in the interval from the death of the Raja until the act of State by which the transfer was made to the widows and daughters is fatal. **JYOTIRAMA BAI SAIBA v. KAMAKSHI BAI SAIBA**, **BAI SAIBA v. JYOTIRAMA BAI SAIBA**

**3 Mad. 424**

**45. ————** *Co-widows—Widows inheriting jointly—Order for separate possession and enjoyment.* Widows who take a joint interest in the inheritance of their husband have no right to enforce an absolute partition of the estate between themselves. But where from the conduct of one or more of their number, separate possession of a portion of the inheritance is the only likely means to secure for each peaceful enjoyment of an equal share of the benefits of the estate, an order for separate possession and enjoyment may be made. **JYOTIRAMA BAI SAIBA v. KAMAKSHI BAI SAIBA**, **3 Mad. 424**, referred to and approved. **GAJAPATHI NILAMANI v. GJAPATHI RADHAMANI**

**I. L. R. 1 Mad. 290; 1 C. L. R. 97**

**I. L. R. 4 I. A. 212**

**46. ————** *Co-widows—Arrangement for separate enjoyment.* Although the two widows of one and the same husband may arrange for the enjoyment of the estate in separate portions, there can be no compulsory partition converting the joint estate into an estate in severalty. The interest of one of two such co-widows cannot be sold. **KETHAPERUMAL v. VENKASAI**

**I. L. R. 2 Mad. 104**

**47. ————** *Co-heiresses—Suit to enforce partition.* Two widows, co-heiresses, in joint possession of property by the Hindu law are in the nature of co-parceners, and one of them can enforce partition against the other notwithstanding the limited character of their tenure, and although such partition is not binding on the reversioners. **PADMANANI DAST v. JAGADAMANI DAST**

**6 B. L. R. 134**

**48. ————** *Co-widows of estate left by their deceased husband.* Possession of the estate left by their deceased husband was taken by two widows of a deceased Hindu, who, being childless, had before his death adopted a son, to whom also by will he bequeathed his estate.

**I. L. R. 12 All. 51**

**I. L. R. 16 I. A. 166**

**49. ————** *Division by co-widows of their late husband's estate—Alienation by one after the division—Validity of alienation as*



HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(k) WIDOW—*contd.*

against surviving widows on deceased of alienor. A Hindu died leaving two widows, who divided his property by a formal registered partition deed, under which each took possession of her share, with

ed by her. A widow may alienate for her life any estate which comes to her by virtue of her widow-

## 50. \_\_\_\_\_ Limitation Act

On December 1891, the year 1891, the year

She claimed to have participated in the profits of the family property until 1890, but the defendants

enjoyment of the property. Mere proof of refusal on the part of the plaintiff to live with her co-widows, or of non-participation by her in the family property, did not establish ouster or exclusion by defendants, and there was no other evidence to show that she had abandoned her interest to their knowledge. *Held*, also, that proof of plaintiff's

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(k) WIDOW—*contd.*

unchastity after her husband's death did not disentitle her to claim partition of the property by metes and bounds. A widow, being a tenant-in-common, is entitled to partition as a matter of right, and the Court has no discretion in the matter. *SELLAM v. CHINNAMMAL* (1901)

I. L. R. 24 Mad. 441

## 51. \_\_\_\_\_ Partition between

effect any permanent change in the property to be divided such as might affect the interests of the reversionary heirs. *Held*, in the circumstances of the case, that the relief of separate possession is the only proper and effectual mode of securing to

6 C. W. 2. 605

52. \_\_\_\_\_ Moveable property—*Dayabhaga*—Joint property—Partition—Widow—Reversioner, rights of—Waste, prevention of—Bill quia timet—Injunction—Receiver. A Hindu widow governed by the Dayabhaga school has, in regard

junction or a bill quia timet. *Donumay v. Jagesh Chunder Dutt*, I. L. R. 2 Cal. 262; *Janol Nath Mukhopadhyaya v. Mohuramath Mookhopadhyaya*, I. L. R. 9 Cal. 330; *Cossinath Deyack v. Hurrosoondery Dossee*, *Clarke's Rules and Orders*

HINDU LAW—PARTITION—*contd.*4. RIGHT TO PARTITION—*contd.*(1) WIDOW—*contd.*

(Appx.) 91; and *Bepin Behari Moduck v. Lal Mohun Chattopadhyay*, I. L. R. 12 Cal. 209, referred to. *Prinsep v. Chatterjee*, 12 B. L. R. 4. *Upoorah Doss*, 2 Durga Na. (1904). I. L. R. 31 Cal. 24 s.c. 8 C. W. N. 111

## (2) WIFE.

53. Right of wife to demand partition—Share of, on partition. Although,

DHYA 10 C. L. R. 79

## 5. SHARES ON PARTITION.

## (a) GENERAL MODE OF DIVISION.

1. Mode of division—Survivorship until partition—Rule for partition In joint family, and different not applicable, but c. 142

2. Method of ascer.

and Fone. In 1867 two of C's sons, the two sons of E, and the son of F brought a suit to obtain their shares of the family property. For the purpose

five shares were enjoyed in common by the rest of

the amount claimed by him. The rule that as between different branches division should be *per stirpes*, and as between sons of the same father *per capita*, applies to cases in which all the co-partners desire partition at the same time, and not to cases

HINDU LAW—PARTITION—*contd.*6. SHARES ON PARTITION—*contd.*(a) GENERAL MODE OF DIVISION—*contd.*

of partial partition. Where a joint family in an advanced state of development is broken up by partition, regard must be had to the successive vested interests of each branch, and in order to secure equality of shares division *per stirpes* at each stage when a new branch intervenes is necessary. *MANJANATHA v. MARAYANA* I. L. R. 5 Mad. 382

## (b) ADOPTED SON.

3. Share of adopted son—Son born after adoption of son. The share of an adopted son where sons are afterwards born is one-fourth of the share of a son born to the adoptive father after the adoption. *AYYAVU MUTTAKAR v. NILADATCHI AMMAL* 1 Mad. 45

4. Share of an adopted son of a natural son on partition in a Mitakshara family—Intention as to joint or several ownership. On partition in a Mitakshara family, an adopted son and the adopted son of a natural son stand exactly in the same position and each takes only the share proper of an adopted son, i.e., behalf of the share which he would have taken had he been a natural son. The fact that such an adopted son, a member of a Mitakshara family, becomes upon adoption a joint owner of the family property, will not prevent the operation of the rule. *RAGHUBANUND v. SADRU CHURN DOSS* I. L. R. 4 Cal. 425; 3 C. L. R. 534

5. Sudras—Suit for partition by adopted son. Assuming that, according to the Mitakshara, the share of an adopted son on partition is limited to one-half of the share which he would have taken had he been a natural son, this rule does not apply to Sudras, amongst whom the adopted son is declared to be entitled to an equal share with a legitimate son born after the adoption. *Raghubanund Doss v. Sadhu Churn Doss*, I. L. R. 4 Cal. 425, doubted. *RAJA v. SUBBARAYA* I. L. R. 7 Mad 253

## (c) DAUGHTER.

6. Share of daughter—Expenses for marriage of unmarried daughters. Property sufficient to defray the expenses of the nuptials should be given to unmarried daughters, on a partition. *DANODUR MISSE v. SENABUTTY MISRAIN* I. L. R. 8 Cal. 537; 10 C. L. R. 401

## (d) GRANDMOTHER.

HINDU LAW—PARTITION—*contd.*5. SHARES ON PARTITION—*contd.*(d) GRANDMOTHER—*contd.*

the division is actually made; she has no pre-exist-

LEWABLE

8 W. N. 101

8. ——— A grandmother held not entitled to a share of the joint family property on partition. *RADRA KISHEN MAJ v. BACHAMAN* I. L. R. 3 All. 118

*PEDDEM MOONHEE DOSSEE v. RAYEE MOONE DOSSEE* 13 W. R. 409

Upheld on review in *RAYEE MOONE DOSSEE v. PEDDEM MOONHEE DOSSEE* 13 W. R. 66

9. ——— Self-acquired property of father on partition. Under the Mitakshara law, a grandmother on partition is entitled to a share in the joint family property. *Semble*. The rule of law to be found in the second volume of *Vyavastha Chandrika*, pp. 356-359, which lays down that, when the father makes the partition of his own choice, his mother is not entitled to a share, is intended to apply only to the self-acquired property of the father. *BADRI ROY v. BIRGOWAT NARAIN DOSEY*

I. L. R. 8 Calc. 649; 11 C. L. R. 196

10. ——— Grandchildren—Right of grandmother to share. In a suit for partition among the members of a joint Hindu family, consisting of the heirs, in different degrees, of five brothers, a decree for partition according to certain proportions was made, subject, so far as the

died in 1880, leaving a widow, D, and four infant sons. A, who was not a party to the partition suit, now sued B and D and the infant sons of C for a declaration that she as such widow and mother was entitled to a share in the partitioned properties equal to those of her granddaughter, E, and her grandsons, the infant sons of C. *Held*, that such a suit would lie, it not being a suit for partition exclusively among grandsons, and that A was entitled to an equal share with her granddaughter and grandsons in the properties which under the partition decree had been allotted to the representatives of her husband, and to a life-interest in the income of the property remaining unpartitioned. *SIRBOOSONDERY DABIA v. BRSSOONUTTY DABIA*

I. L. R. 7 Cal. 181

11. ——— Grandmother and mother, rights of, to a share—Partition of ancestral property—Sue by grandson. A, a Hindu governed by the Bengal School of Hindu Law, died leaving his widow B, C the widow of his only predeceased

HINDU LAW—PARTITION—*contd.*5. SHARES ON PARTITION—*contd.*(d) GRANDMOTHER—*contd.*

son X, D a grandson of X, E the widow of Y, a predeceased grandson, who was another son of X, and a great grandson F, son of E. X, before his death, bequeathed all his property by will to A. In a suit instituted by D for partition of the property left by A. *Held*, that the grandmother B and the mother C were both entitled to shares in the said property, the former getting  $\frac{1}{2}$ , and the latter  $\frac{1}{4}$ th. *GOOROO PERSAUD BOSE v. SEEB CHUNDER BOSE, MAC. CONS. HINDU LAW 29; PUDUM MOOLHEE DOSSEE v. RAYEMONI DOSSEE, 12 W. R. 409; 13 W. R. 16; BADRI ROY v. BHUGAUL NARAIN DOSEY, 1. L. R. 8 Calc. 649; SARALAH DOSSEE v. BHODUN MOHUN NAGHY, 1. L. R. 15 Calc. 292; JEOMOO DOSSEE v. ATARAM GHOSH, s.c. SARLAR'S PRECEDENTS 743; MAC. CONS. HINDU LAW 64; JUGOMOHAN HALDER v. SARADAMEYEE DOSSE, 1. L. R. 3 Calc. 149; TORI BHOOSUN BONNETJEE v. TARA PRASAD BONNETJEE, 1. L. R. 4 Calc. 556; KRISHA BHADINEY DOSSEE v. ASHULASH BOSU MULLICK, 1. L. R. 13 Calc. 39; CALLY CHARAN MULLICK v. JANORA DOSSEE, Ind. Jur. N. S. 224; GURUGOBIND SHAH v. ANAND LALL GHOSE, 5 B. L. R. 15, 18; PERSHAD SINGH v. NASH KOOR, 1. L. R. 10 Calc. 1017, referred to. SIBBO SOONDERY DABIA v. BRSSOONUTTY DABIA, 1. L. R. 7 Calc. 191, distinguished. *PITRKA CHANDRA CHAKRAVARTI v. SARAJINI DEBI* (1904)*

I. L. R. 31 Calc. 1095  
s.c. 8 C. W. N. 793.

## (e) MEMBER ACQUIRING FRESH PROPERTY.

13. ——— Share of member increasing joint estate—Double share. Whatever is acquired at the charge of the patrimony is subject to partition; but if the common stock is improved, an equal share is ordained. Where a co-partner, with comparatively small detriment to the joint estate, acquires any separate property by his own labour or capital, the property is nevertheless to be considered joint, although the acquirer gets a double share. *JUDONATH TEWARREE v. BISHONATH TEWARREE, SHEO DYAL TEWARREE v. JUDONATH TEWARREE, SHEO DYAL TEWARREE v. BISHONATH TEWARREE, SHEO DYAL TEWARREE v. BISHONATH TEWARREE* 8 W. R. 61

13. ——— Property acquired by exertion of particular members—Double share. Where, with small aid from paternal property

14. ——— Share of increment to estate. Where one of the members of a joint undivided family purchases for the benefit of, and with funds belonging to the family, he is entitled to such a share of the property covered by that purchase

**HINDU LAW—PARTITION—contd.****5. SHARES ON PARTITION—contd.****(e) MEMBER ACQUIRING FRESH PROPERTY—contd.**

chase as is equal to his original share in the corpus of the estate, on the principle that the increment must follow the same rule as the corpus. **KALEE SUNKER BHADOORIE v. ESHAN CHUNDER BHADOORIE**  
17 W. R. 520

**15. ———— Recovery of property by one member at his own expense and labour.** The Court declined to extend to all the remote branches of a Hindu family separate in mess and estate, and having no common interest like those of brothers, the doctrine laid down in a solitary case in which an elder brother, who recovered certain property by his own money and labour, was awarded two-thirds of the property, and the younger brother obtained only one-third. **BISHESWAR CHAKRAVARTI v. SHITUL CHUNDRA CHAKRAVARTI**  
8 W. R. 13

**(f) MOTHER.**

**16. ———— Share of mother—Ancestral property—Mitakshara law—Share of mother on partition between father and sons.** Upon a partition of ancestral property between a father and his sons during the lifetime of the father, the mother is, under the Mitakshara law, entitled to a share. **MAHABEER PENSAD v. RAMYAD SINGH**  
12 B. L. R. 90; 20 W. R. 162

**17. ———— Partition in father's lifetime—Mitakshara law.** By the Mitakshara law a son may sue during the lifetime of his father for a partition of the ancestral property. On such a partition being made, the mother is entitled to have a share allotted to her, by way of maintenance or otherwise, equal to a son's share. **LALJEET SINGH v. RAJCOOMAR SINGH**  
12 B. L. R. 373  
20 W. R. 337

**18. ———— Share of step-mother—Partition between sons.** According to the leading authorities of the Mitakshara school, both mother and step-mother are equal sharers with the sons. **DAMODUR MISSEY v. SENABUTTY MISRAIN**  
I L. R. 8 Cal. 537; 10 C. L. R. 401

**19. ———— Partition among sons—Deceased son.** On a partition among her sons, a mother is entitled to obtain a share as representative of a deceased son, as well as one in her own right. **JUGMOHAN HALDAR v. SARODAMONEY DOSSEN**  
I L. R. 3 Cal. 148

**20. ———— Half-brothers and mother—Mother's share.** Where there is a partition after the father's death between several brothers, some of whom are by one wife, some by another, and either wife survives at the time of partition, the property should be first divided between all the brothers and the widow takes an equal share with her own sons of the whole portion

**HINDU LAW—PARTITION—contd.****5. SHARES ON PARTITION—contd.****(f) MOTHER—contd.**

allotted to them. Following the decisions quoted by Sir F. Macnaughten in his "Considerations of Hindu Law," but doubting their propriety. **CALLY CHURN MULLICK v. JANAYA DASSEE**  
1 Ind. Jur. N. S. 284

**21. ———— Step-mother—Partition between brothers.** In a suit for partition between brothers and half-brothers, the mother of the first three defendants (step-mother of the plaintiff) was held to be entitled to the partition to a one-fifth share in the estate. **DAMODARDAS MANEKAL v. UTTAMRAM MANEKAL**  
I L. R. 17 Bom. 271

**22. ———— Partition by sons—Share of son.** On partition of the family property by the sons after their father's death, the mother is entitled to share equal to that of a son. If she has before the partition received property from the father either by gift or will, amounting to more than a son's share, she is entitled to nothing more on partition; if she has received less, she is entitled on partition to as much as will make what she has received equal to a son's share. **JODONATH DEY SIRCAR v. BROJONATH DEY SIRCAR**  
12 B. L. R. 365

**23. ———— Partition after death of father—Sons of different wives.** On a partition after the father's death between brothers, the sons of different wives who are alive at the time of the partition, such wives are entitled to share with their sons. **TORIT BHOOSUN BONNERJEE v. TARAPROSONNO BONNERJEE**  
I L. R. 4 Cal. 758; 4 C. L. R. 161

**24. ———— Share of widow mother on partition in ancestral and proceeds of ancestral property.** A Hindu mother on partition is entitled to a share equal to that of a son both in the ancestral property of her husband and in all property acquired with the proceeds of such ancestral property. **Sudanund Mohapattur v. Soorjoomonee Doyce**, 11 W. R. 435, disapproved from. **ISREZ PERSHAD SINGH v. NASIB KOER**  
I L. R. 10 Cal. 1017

**25. ———— Partition by sons—Widow's share—Will, construction of.** On partition of the joint family property by the sons after their father's death, the widow is entitled to get a share equal to that of each of the sons, and, if she has received any property either by gift or legacy from the father, she is entitled to so much only as with what she has already received would make her share equal to that of each of the sons. *Jagannath Das Sanyal v. Radhanath Das Sanyal*, 10

**HINDU LAW—PARTITION—contd.****3. SHARES ON PARTITION—contd.****(f) MOTHER—contd.**

shastras after his youngest son had attained majority.—*Held*, that such direction did not amount to an absolute bequest to his sons so as to excludo the widow from being entitled to a share upon a partition between the sons. **KISHORI MOHUN GHOSH v. MONI MOHUN GHOSH**

**I. L. R. 12 Calc. 185**

**26.** *Bengal school of law—Partition by sons—Succession to share given to a mother on partition.* Under the Bengal school of law, the share which a mother takes on partition among her sons is not taken from her husband's estate either by inheritance or by way of survivorship in continuation of any pre-existing interest, but is taken from her sons in lieu of, or by way of provision for, that maintenance for which they and their estates are already bound; and on her death that share goes back to her sons from whom she received it. **SOROLAR DOSSEE v. BHOORUN DOSSEE NEOGUR. UNNOPOORNAR DOSSEE v. BHOORUN MOHUN NEOGHY**

**I. L. R. 16 Calc. 292**

**27.** *Maintenance of Hindu widow where there are sons by different mothers, how chargeable.* When the Hindu law provides that a share shall be allotted to a woman on a partition, she takes it in lieu of, or by way of provision for, the maintenance for which the partitioned estate is already bound. According to Jimutavahana, referred to by Jaganatha (Cole-

another wife. So long as the estate remains joint and undivided, the maintenance of widows is a charge on the whole; but where a partition takes place, among sons of different mothers, each widow is entitled to maintenance only out of the share or shares allotted to the son or sons of whom she is the mother. **Jecomy Dossee v. Attaram Ghose (Macnaghten's Cons. H. L. p. 64)** referred to and approved **HEMANGINI DAS v. KEDARNATH KUNDU CHOWDHRY**

**I. L. R. 16 Calc. 760**

**I. L. R. 16 I. A. 116**

**28.** *Mother's right to a share in lieu of maintenance, on a partition suit having been instituted.* After the institution of a partition suit by a member of a joint Hindu family consisting of six brothers and a mother, but before the summonses were served, one of the sons (de-

and the transferee had notice of the said suit. On a question having been raised as to what share of the property the transferee was entitled to:—*Held*,

**HINDU LAW—PARTITION—contd.****5. SHARES ON PARTITION—contd.****(f) MOTHER—contd.**

that, inasmuch as the suit for partition was instituted by one of the sons, the mother had an inchoate or quasi-contingent right, which ripened into an absolute right on a partition having taken place (which happened in this case), and therefore she having been entitled to a share, the transferee could not get more than what the transferor was entitled to at the time of the transfer, i.e., one-seventh share of the property. **JOGENDRA CHUNDER GHOSH v. FULKUMARI DASSI**

**I. L. R. 27 Calc. 77**

**JOGENDRO CHUNDER GHOSH v. GANENDRA NATH SIRCAR** . . . . . **4 C. W. N. 254**

**29.** *Mother's right to a share in lieu of maintenance on a partition—Right of a purchaser from one of the sons.* A Hindu mother is entitled under the law to be maintained out of the joint family property, and if anything is done affecting that right, as for instance by the sale of any particular share by any of her sons, her right comes into existence. A purchaser from one of the sons has the same rights and takes it subject to the same liabilities as those of the person from whom he purchased. **Jogendra Chunder Ghosh v. Fulkumari Dassi, I. L. R. 27 Calc. 77, followed. AMRITA LAL MITTER v. MANICK LALL MOTLUCK** . . . . . **I. L. R. 27 Calc. 551**  
**4 C. W. N. 764**

**30.** *Partition—Evidence of partition—Cesser of commensality—Partition by sons without giving mother a share—Decree altering shares on partition—Permission to sue—Suit for both moveable and immoveable property—Civil Procedure Code (Act XIV of 1932), s. 41, Rule (a)—Cause of action, identical.* Cesser of commensality is an element which may properly be considered in determining the question whether there has been a partition. *but it* . . . . . **Khedoo** case it

the evidence in other respects supported the theory that the cesser was adopted with a view to a partition, which was eventually completed. A partition was made between four sons forming a joint family governed by Mitakshara Law, without allotting their mother a share. *Held*, that, it not being shown that she consented to relinquish her share, or acquiesced in the partition, the mother was not bound by it. **Krishnabi v. Khargowda, I. L. R. 18 Bom. 197**, referred to. In a suit by the widow of one of the sons for the one-fourth share of the partitioned property, the mother was entitled to a one-fifth share only, and that the mother was entitled to have a one-fifth share allotted to her. *Held*, further, (affirming the decision of the High

# HINDU LAW—PARTITION—*contd.* & SHARES ON PARTITION—*contd.*

## (f) MOTHER—*contd.*

Court), that s. 44, rule (a), of the Civil Procedure Code (Act XIV of 1882), was not applicable to the suit (one for property, both movable and immovable) inasmuch as the cause of action was the

8 C. W. N. 146

31. *Mitalshara, Ch. I, ss. 6, 7; Ch. II, s. 9; Ch. VI, s. 4—Partition—Father—Son—Mother's share, allotment and enjoyment of—Maintenance.* Under the Mitalshara law

I. L. R. 32 Calc. 234  
 sc. 9 C. W. N. 270

32. *Mother's share on partition—Hindu law—Dayabhaga school—Life interest—Application for execution of decree by her executor—Refusal—Appeal—Civil Procedure Code (Act XIV of 1882), ss. 132, 211.* Under the Hindu law, according to the Bengal school, when upon partition a share is given to the mother she gets it simply in lieu of, or as provision for her maintenance and not because she is a co-parcener in the estate, and the share reverts upon her death to her sons out of whose portion it was taken. *Kedar Nath Coondoo v. Hemangini Dassi*, I. L. R. 13 Calc. 336, 340; *Sorolah Dassee v. Bhobban Mohan Neogi*, I. L. R. 15 Calc. 292, and *Hemangini Dassi v. Kedar Nath Kundu*, I. L. R. 16 Calc. 758, followed. *HRIDOY KANT BHATTACHARJEE v. BHARI LAL MOOKERJEE* (1906) 11 C. W. N. 239

33. *Partition amongst sons—Mother's share reverts on death to sons.* When the Hindu law prescribes a share being allotted to a woman upon a partition after her husband's death, it is a share given to her simply in lieu of maintenance and such share reverts according to the Bengal school, upon her death to those heirs of her husband out of whose portion the share was taken. *TEJNARA SUNDARI DEBI v. DAKSHINA MOHUN ROY* (1906) 11 C. W. N. 698

## (g) PURCHASERS.

34. *Suit by the purchaser of an undivided share of family property—Time*

# HINDU LAW—PARTITION—*contd.* & SHARES ON PARTITION—*contd.*

## (g) PURCHASERS—*contd.*

when the share is ascertained. The purchaser from a member of a joint Hindu family of his share of a house which belonged to the family, sued for the partition and delivery of possession of the share purchased by him. The number of persons entitled as co-parceners to the property of the family had increased between the date of the purchase and that of the suit. It did not appear whether the house constituted the whole or only part of the

the share to be allotted to the plaintiff should be computed with reference to the state of the joint family at the date of the suit. *Held*, by the Divisional Bench, that the decree appealed against by which the plaintiff was to recover the value of the share of the house computed as above and not the share itself, was right. *RANGASAMI v. KRISHNAYAN*, I. L. R. 14 Mad. 408

As to the rights of a purchaser from a co-parcener, see *ANRITO LAL MITTER v. MANICK LALL MULLICK*, I. L. R. 27 Calc. 551  
 4 C. W. N. 764

35. *Conveyance by father of immovable property—Allotted to sons*

extent of the consideration paid—Transaction in effect a gift as to part and a sale as to remainder. In 1899 R and his brother filed a suit against their father and their two younger brothers for partition. On 18th December 1898, before the decree was passed, R conveyed a house to the present first defendant. The decree was then passed, and by it the house in question was allotted to R's share. In 1900 a suit was instituted on behalf of R's minor sons against R praying for partition of the properties, which had been allotted to R by the decree in the suit of 1898. On October 8th, 1900 R consented to be and was declared

sent suit against the present first defendant in order to determine the validity of the conveyance. Though the conveyance had been executed prior to the decree, by which the house was actually allotted to R, it was not clear whether the house had not become the separate property of R under an agreement prior to the institution of the suit of 1898. *Held*, that, in any event, every member of an undivided family has a vested interest in joint family property, which interest will be affected by transactions entered into by him in favour of purchasers for value; *Ayyagiri Venkata Ramayya v.*

HINDU LAW—PARTITION—*contd.*5. SHARES ON PARTITION—*contd.*(g) PURCHASERS—*contd.*

*Ayyagiri Ramayya, I. L. R. 25 Mad. 690.* The conveyance, therefore, could not be held to be inoperative and void by reason that the property conveyed was not vested in the vendor at the date of the conveyance. The validity and operation of the conveyance must be decided on the footing that it was a conveyance of ancestral property made by a Hindu father, the managing member of a joint Hindu family consisting of himself and his minor sons. *Held*, also, that, inasmuch

Rs. 1,000 the conveyance was, in effect, one for value to the extent of Rs. 1,000, and a conveyance by way of gift to the extent of Rs. 10,000. In these circumstances, if the property conveyed had been the sole and separate property of R, the conveyance would have been valid and operative in its entirety. But as the property conveyed was the joint property of R and his sons, effect could not be given to the conveyance, as if R had been the sole owner of the whole property, or even of a third part thereof. It is not competent to an individual member of a Hindu family to alienate by way of gift his undivided share or any portion thereof; and such an alienation, if made, is void *in toto*. This principle cannot be evaded by the undivided member professing to make an alienation for value when such value is manifestly inadequate and inequitable

value received, and *remote* that, in the conveyance, he in respect of a reasonable portion of the joint family property, for the discharge of an antecedent debt (not incurred for an illegal or immoral purpose), the conveyance, as such, will bind the sons also. Under the circumstances of the present case: *Held*, that first defendant was not entitled to

Rs. 1,000, and that was an antecedent debt of R, binding also on his minor sons, first defendant was entitled to an equitable charge on the whole of the property to the extent of that Rs. 1,000 with interest thereon from the date of the conveyance, and was liable for rent. *ROTTALA RUDRANATHAN CHETTI v. PULICAT RAMASAMI CHETTI* (1904)

I. L. R. 27 Mad. 162

## (h) WIDOW.

36. ———— Share of widow—Son of husband's half-brother—Widow of husband's father. The plaintiff, the widow and heiress of one N, brought a suit for partition of the estate of one

HINDU LAW—PARTITION—*contd.*5. SHARES ON PARTITION—*contd.*(h) WIDOW—*contd.*

*N. Cally Churn Mullick v. Janova Dossee, 1 Ind. Jur. N. S. 284*, followed. *KRISTO BHABINEY DOSSEE v. ASHUTOSH BOSH MULICK*

I. L. R. 13 Calc. 39

37. ———— Bengal school of law—Partition of one item of joint family property by outside shareholder—Widow's share on

sense that it ceases to exist as a joint estate. Hence upon a partition enforced by a stranger in respect of property which forms merely one item of the joint estate, the widow is not entitled to such share, notwithstanding such division, the main estate remains undivided. *Held*, upon the facts of this case, that the widow was not entitled to such share. *BARANI DEBI v. DEBKAMINI DEBI*

I. L. R. 20 Calc. 682

38. ———— *Hindu Law*—*Dayabhaga*—Acquisition of property through per-

was entitled only to a share of the property of the surviving brothers. *LAL CHAND SHAW v. SWARNAMOHY DAS* 13 C. W. N. 1133

39. ———— *Mitakshara law*—Joint undivided property. A Hindu widow, entitled by the *Mitakshara* law to a proportionate share with sons upon partition of the family estate, can claim such share, not only quoad the sons, but as against an auction-purchaser at the sale in the execution of a decree of the right, title, and interest of one of the sons in such estate before voluntary partition. *BILASO v. DINA NATH*

I. L. R. 3 All. 88

40. ———— Widow of deceased brother. Where there has been a general partition, but some of the property remains joint, the widow of a deceased brother will not participate in the undivided residue. *BADAMOO KOOWAR v. WUZER SINGH* 1 Ind. Jur. N. S. 144; 5 W. R. 78

41. ———— Right to an account—Suit for partition referred to arbitration, but property not wholly partitioned—Infant's right to an account of his share of the property partitioned and unpar-

HINDU LAW—PARTITION—*contd.*5. SHARES ON PARTITION—*contd.*(A) Widow—*contd.*

*tioned.* A, a member of a Hindu joint family, died leaving a widow and no issue. By his will he appointed B, C, and D, members of the joint family, his executors, and gave his widow power to adopt. In pursuance of that power, the widow adopted E. The executors instituted a suit for partition of the joint estates, and the suit was referred to the arbitration of Z. He died without having partitioned the whole of the property, and an application was then made to the Court to determine the partition. The Court granted the application, and the suit came on for trial. The infant E asked for an account to be taken of the dealings of the joint property, and of the rents and profits on behalf of the estate of his late father, from the death of his father up to the appointment of a receiver. *Held*, that in respect of the properties remaining unpartitioned the infant was entitled to an account of the dealings of the joint property and of the rents and profits from the death of his father up to the time a receiver was appointed, but as to the properties already partitioned, he was not so entitled. **SARAT CHANDER SINGH v. NITYE SUNDAR SINGH** . I. L. R. 27 Calc. 1013

## (i) Wife.

42. ——— *Mitakshara law—Share of wife—Distribution by mortgages and sales in execution* By vs. 1 and 2 of s. 7 of Ch. I of the *Mitakshara*, when a distribution of ancestral property is made during the lifetime of a father of a

to be a distribution within the meaning of those verses; and as possession was taken by the defendants during A's lifetime, it must be considered a distribution made within that period, and therefore the widow was entitled to an equal share with her two sons. **PURSHI NARAIN SINGH v. HONOOMAN SINGH**

I. L. R. 5 Calc. 845; 5 C. L. R. 578

**BULDEO SINGH v. MAHABEER SINGH**

1 Agra 155

43. ——— *Mitakshara law—Ancestral property.* Under the *Mitakshara law*, where partition of ancestral property takes place between a father and a son, the wife of the father is entitled to a share. *Mahabeer Pershad v. Ramyad Singh*, 12 B. L. R. 10; *Lajpat Singh v. Ramyad Singh*, 12 B. L. R. 373; *Jodoonath Dey Sircar v. Broj Nath Dey Sircar*, 12 B. L. R. 385; and *Purshid Norain Singh v. Honooman Sahay*, I. L. R. 5 Calc. 845, followed. **SUMRUN THAKUR v. CHUNDERMUN MISSE** . I. L. R. 8 Calc. 17

9 C. L. R. 415

**SUNDAR BAHU v. MONORUR LALL UPADHYA**

10 C. L. R. 78

HINDU LAW—PARTITION—*contd.*

## 6. RIGHT TO ACCOUNT ON PARTITION.

1. ——— *Right to account of past transactions—Share in outstanding debts—Interest.* A plaintiff entitled on partition to half the property in the hands of his brother is bound to

impute fraud. Members of an undivided Hindu family making partition are entitled as a rule, not

the money were in the hands of the defendant. As a member of an undivided Hindu family is not bound to effect a partition by paying a certain sum of money to his co-partners, the Court in a partition suit ought not to award interest on money decreed to be paid by the defendant to the plaintiff. **LAESHMAN DADA NAIK v. RAMACHANDRA DADA NAIK** . **RAMACHANDRA NAIK v. LAESHMAN DADA NAIK** . I. L. R. 1 Bom. 561.

s.c. on appeal to Privy Council.

I. L. R. 5 Bom. 48.

2. ——— *Account in partition suit* *Held*, that, in the case of joint enjoyment by the members of the whole family, or enjoyment by different members, of different portions of the family property, the Court will not, except

*Dada Naik*, I. L. R. 1 Bom. 561. I. L. R. 5 Bom. 48, followed. **KONERKAY v. GURRAY**

I. L. R. 5 Bom. 589

3. ——— *Account of mesne profits—Infant ejected and excluded from enjoyment of family property.* The rule which limits the right of members of a Hindu family to partition to a

property. In such a case the manager is bound to account to the infant for mesne profits from the date of his exclusion. **KRISHNA v. SUBBANNA**

I. L. R. 7 Mad. 564

4. ——— *Liability of manager to account on occasion of partition—Right of members who were minors of time of management to an account from manager—Manager also guardian of minors—Nature of account to be rendered by a manager on partition—Family idol and property appertaining thereto—Right of mother to a share*





HINDU LAW—PARTITION—*contd.*7. EFFECT OF PARTITION—*contd.*

but only for his portion of the debt. *DURGA-  
PERSHAD v. KESHOFRSAD SINGH*  
I. L. R. 8 Cal. 556; 11 G. L. R. 210  
L. R. 9 I. A. 27

3. ———— Effect of partition on liability of a divided son whose debt was incurred by the father before partition—*Decree against father and execution proceedings against son's property in father's lifetime.* In 1830 a

the son's house had in execution thereon. Now, that property taken by a son in partition cannot be seized in execution in respect of an unsecured personal debt of his father, even though the debt has been incurred before the partition, provided that the partition is not shown to have been made with a view to defraud or delay creditors. *KRISHNANASANI KONAN v. RAMASAMI AYYAR*  
I. L. R. 22 Mad. 510

4. ———— Contract by managing member of joint family, consisting of a father and two sons—Subsequent partition, by which one son became divided—Liability of divided son (to extent of family property taken at the division) for loss arising under the contract. Whilst a father and two sons were carrying on business as an undivided trading Hindu family, the father, as managing member, entered into a contract by which he undertook to pay to plaintiff any shortfalls that might take place in respect of consignments of indigo. Subsequently to this contract, one of the sons became divided from the family. Short

5. ———— Mortgage of an undivided share—Joint Hindu family—Effect on such mortgage of a subsequent partition. A mortgage of an undivided share which, under a partition,

HINDU LAW—PARTITION—*contd.*7. EFFECT OF PARTITION—*contd.*

6. ———— Transactions amounting to partition or separation—*Reunion—Agreement to reunite—Minor—Presumption when one co-partner separates himself—Agreement to remain united—Mitakshara Law.* According to the text of *Yrihaspati (Mitakshara, Ch. II, s. 9)*, a reunion in estates, properly so called, can only take place between persons who were parties to the original partition. *Semble*—An agreement to reunite cannot be made on behalf of a person during his minority. There is no presumption, when one co-partner separates from the others, that the latter remain united. Where it is necessary, in order to ascertain the share of the outgoing co-partner, to fix the shares which the others are, or would be, entitled, to, the separation of one may be said to be the virtual separation of all. And an agreement amongst the remaining co-partners to remain

proved; and, upon the circumstances of, and evidence in, the suit, it was held by the Judicial Committee that the appellant had not sufficiently established the state of jointness between himself and his uncle, which was necessary to make his claim successful; and that, even had it been established, transactions in 1889 settled with the appellant's knowledge and consent amounted to a divi-

L. R. 30 I. A. 130

7. ———— Suit by minor on deed of partition—Joint family—Partition—Partition deed giving certain advantages to minor member of family—Right of person so benefited to sue on deed—*Specific Relief Act (I of 1877) s. 23 (c).* By a deed of partition executed by the adult members of a joint Hindu

to two mortgages, the other members of the family would be responsible for the payment of the mortgage debts and would indemnify the recipient of the mortgaged property in case of proceedings being taken against such property for satisfaction of the mortgage debts. *Held*, on suit by the minor (after attaining majority) to compel reimbursement by the other members of the family, that the partition deed was enforceable in favour

HINDU LAW—PARTITION—*contd.*7. EFFECT OF PARTITION—*contd.*

*Held*, also, on a construction of the partition deed, that the plaintiff was also entitled to sue having regard to the terms of s. 23 (c) of the Specific Relief Act, 1877. *AWARU SARJU PRASAD SINGH v. SITA RAM SINGH* (1906) . I. L. R. 29 All. 37

8. ——— Effect of partition of family property between two branches of the family without specification of individual shares of each branch. *Branches of the*

any desire to separate. *Held*, that the presumption was that the share of the nephews still continued to be joint property so far as they were concerned. *Balkrishna Das v. Ram Narain Sahu*, I. L. R. 30 Cal. 733, distinguished. *DURGA DEVI v. BALAKRUND* (1906) . I. L. R. 29 All. 93

9. ——— Right of representation — *Divided son as nearest sapinda does not exclude divided grandson or great-grandson* Partition does not annul the filial relation nor the right of succession incidental to such relation. The

sion of remoter by nearer sapindas, excludes the divided grandson in the succession to divided property of the ancestor. *Ramappa Naicken v. Sithamahal*, I. L. R. 2 Mad 184, referred to. *Mathu- vaduganatha Tevar v. Periasami*, I. L. R. 16 Mad 15, referred to. *MARUDAYI v. DORAISAMI KANABIAN* (1907) . I. L. R. 30 Mad. 348

## 8 AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION.

1. ——— Condition against partition — *Effect of prohibition* Where a neempuro, executed by the father of a joint Hindu family many years before his death, declared that his four sons were not to divide the property; but that any single member of the family, desiring to make any particular arrangement, would be bound by the wishes of the others, and it happened eventually that one of the sons predeceased his father without issue, and another leaving two sons, who were not bound by the prohibition:—*Held*, that, as these grandsons were parties having interest in the property, conditions which do not and cannot affect them ought not to be held to restrain the other co-shares.

HINDU LAW—PARTITION—*contd.*8. AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION—*contd.*

*Quere*: Is such a provision in the deed as that which prohibits partition valid, or is it contrary to Hindu law, *ultra vires*, and null and void? *JEEFUN KRISTO GOSSAMEE v. ROMANATH GOSSAMEE* 23 W. R. 297

2. ——— Agreement not to partition—*Perpetuity—Invalid agreement*. An agreement between co-parceners never to divide certain property is invalid by the Hindu law as tending to create a perpetuity. *RAMINGA KHANAPURI v. VIROPARSHI KHANAPURI* . I. L. R. 7 Bom. 533

3. ——— Binding covenant. The members of a Hindu family, jointly and severally interested in a certain house and premises, covenanted for themselves, their heirs, and executors, that the said house and premises should never be partitioned, except by the unanimous consent of the contracting parties. *Held* by the lower Court, and confirmed on appeal, that whether valid or not as regards parties representatives by purchase, the covenant is binding upon those who are personally parties to the deed. *RAHMDUN GHOSH v. ANUND CHUNDER GHOSH* 2 Hyde 93

4. ——— Purchaser of share of member of joint family—*Alienation*. The members of a joint Hindu family entered into an agreement not to partition their estate, which was to "continue in one joint undivided occupation as

*E. PRANKRISTO DUTT*

3 B. L. R. O. C. 14; 11 W. R. O. C. 19

5. ——— Dedication to idol—*Mortgage*. *R. D.*, a Hindu, died possessed of

joint family dwelling-house, through which, by which, after reciting that they had kept certain property joint, and that they had been performing the family ceremonies, etc., and that it was their intention that they should be performed in the same manner at the family dwelling-house, and after setting apart certain real property for the expenses thereof, it was agreed that "we will, during our lifetime, jointly perform the said acts after that manner and according to practice: on the death of one of us, the survivor and the executor or representatives of the deceased person will act after that manner and according to practice for a period of twenty years from the date of the

HINDU LAW—PARTITION—*contd.*5. AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION—*contd.*

death of him who shall die last; our executors or representatives will jointly perform, out of the proceeds of the aforesaid real property, the puja and so forth at our dwelling-house in Simla, in Calcutta and entertain strangers at the garden which once appertained to R S B. The said real property and our dwelling-house and the baitakhana in station Sulkea, etc., neither we nor our heirs or any of them will have the power to make a partition thereof during the said prescribed period.

printed the defendants A D, C G, and S G, executors, and thereby he devised all his property, subject to certain legacies, to C G and S G. By his will he charged his executors not to fail to carry out the agreement. The ceremonies continued to be performed as directed in the deed by the plaintiff and the defendants M D, N G, C G, and S G. By deed dated 14th July 1863, N D, C G, and S G, mortgaged for valuable consideration, to the defendant A B M certain property, including an undivided share of the said dwelling-house. A B M afterwards instituted a suit on the mortgage against N D, C G, and S G, and by the decree in that suit it was, on 14th April 1870, ordered that the defendants should be absolutely foreclosed of all equity of redemption in the said family dwelling-house and other premises comprised in the mortgage. Subsequent proceedings, taken by A B M against the defendants N D, C G, and S G, resulted in A B M obtaining a writ of possession against them, which he endeavoured, but unsuccessfully, to have executed.

declaring the will of P D and the agreement of 26th November 1849 to be fully proved and established and binding on A D and his heirs and the representatives of P D. It was found on the evidence in the present suit that the agreement of 26th November 1849 was not fraudulent; that when

HINDU LAW—PARTITION—*contd.*8. AGREEMENTS NOT TO PARTITION AND RESTRAINT ON PARTITION—*contd.*

that the family dwelling-house was not absolutely dedicated by the deed of 26th November 1849 to the worship of the deities and performance of the ceremonies mentioned therein, and therefore was not inalienable. But the prohibition in the deed of 26th November 1849 against partition of the family dwelling-house for twenty years after the death of the survivor of P D and A D implied also that there should be no alienation of it for twenty years. Until the end of the twenty years A B M was not entitled to possession in any shape ANATH NATH DEY v. MACKINTOSH S B, L R, 60

G. — Agreement restrain-  
ing partition—Right of purchase of share—Trust for  
idol. By an agreement entered into between five brothers, who formed a joint Hindu family, it was provided that none of the parties, "nor their representatives, nor any person, should be able to divide the real and personal property belonging to the family into shares; that while the male descendants of any of the brothers lived, the sons of the daughter of the deceased persons should not

joint property, and that, if any brother or son of a brother separated himself from the family, he should only get Rs 20,000 as his share." The agreement further provided for the maintenance of widows and infant children, and that the sum of

settled. The deed contained provisions as to the disposition of the profits arising from the lands and houses, viz., to provide accommodation for the families of the managers and to invest the surplus in the purchase of lands in the name of the idol. A son of one of the brothers sold his share in the family property. In a suit by the purchaser for partition and an account of the property—*Held*, that the general scheme of the arrangement between the brothers was such as could only be binding upon the actual parties to it, not upon a purchaser from one of the parties and *a fortiori* not, upon a purchaser from the heir of one of the



# HINDU LAW—PRESUMPTION OF DEATH—contd.

an absent person of whom nothing has been heard can be presumed to be dead. SARODASUNDARI DEBI v. GORIND MANI DEBI

2 B L. R. A. C. 157 note

In the matter of the petition of SHUNO MOYEE DOSSEE . . . . . 8 W. R. 421

4. ——— Absence for twelve years—Omission to perform ceremonies for death. Where the husband disappears for the prescribed number of years, the mere omission of ceremonies being performed by his wife will not prevent the presumption of death from arising. CHANSEY v. JESONDEE . . . . . 2 Agra 226

5. ——— Suit on bond against representatives of obligor—Lapse of time to create presumption. In a suit upon a bond, the plaintiff having sued the defendants, not on the ground of their personal responsibility, but as the legal representatives of the obligor, who was supposed to be dead;—Held, that the suit was not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there was proof of special circumstances which warrant the inference of his death within a shorter period. KARUPAN CHETTI v. VERITAL . . . . . 4 Mad. 1

6. ——— Evidence Act, s. 108—Suit for administration. The reversioners next after the testator of S. deceased sued to avoid an

assumed under the provisions of s. 108, Act I of 1872, for the purposes of the suit, although, in a suit for the purpose of administering the estate, the Court might have to apply the Hindu law of succession prescribed when a person is missing and not dead. PARMESHAH RAI v. BISHESHAH SINGH

I. L. R. 1 All 53

7. ——— Inheritance—Missing person—Claim after seven years—Co-owners—Absent co-owner—Claim to his share of property a question of evidence, not of succession. D, G, and B were co-owners of certain khoti villages. B disappeared and was unheard of for more than seven years. In his absence, D received his (B's) share of the rents and profits. G claimed to be entitled to a moiety of B's share thereon, and brought this suit against D. Held, that G was entitled to such moiety. B, having been absent and unheard of for more than seven years, might be presumed to be dead under s. 108 of the Evidence Act (I of 1872); and G, as one of his two survivors, was entitled to a moiety of his property. Where the right of a party claiming to succeed to the property of another is based on the allegation that the latter has not been heard of for more than seven years, the question to be decided is one of evidence and not a part of the substantive law of inheritance. Parmesha R. v. Bishesha Singh,

# HINDU LAW—PRESUMPTION OF DEATH—contd.

I. L. R. 1 All 53, concurred in. DHONDU BHUKARI v. GANESH BHUKARI . . . . . I. L. R. 11 Bom. 433

8. ——— Presumption of date of death—Evidence Act, ss. 107, 108. Upon the death of a sonless Hindu, his separate estate devolved upon his two widows, the first of whom had a daughter, who had two sons, G and S O, having a son D. After the death of the first widow, the second came into sole possession of the property and so continued till her death in 1892. At that time S was still living, but G had not been heard of by any of his relatives or friends since 1869 or 1870. In 1881, a purchaser from S claimed possession of the whole estate, and was resisted by D on the ground that the estate had, on the death of the second widow, devolved on his father and S jointly, and S was not competent to alienate it. Held, that the question whether the defendant's father was living at the time of the second widow's death in 1882 was a question of evidence governed by ss. 107 and 108 of the Evidence Act, that under the circumstances the defendant's father must be held to have died prior to the time referred to; that consequently, according to the Hindu law, the right of succession to his grandfather's estate did not rest in him jointly with the plaintiff's vendor, so as to enable the defendant to claim through him; that the plaintiff's vendor was therefore competent to alienate the entire estate, and the claim must be allowed. Motbar Ali v. Budh Singh, I. L. R. 7 All, 297; Jannajay Marumdar v. Keshab Lal Ghose, 2 B L. R. A. C. 134; Gura Dass Nag v. Malial Nag, 6 B L. R. Ap. 16; and Parmesha R. v. Bishesha Singh, I. L. R. 1 All 53, referred to. DHARUP NATH v. GORIND SARAN, GORIND SARAN v. DHARUP NATH . . . . . I. L. R. 8 All. 614

9. ——— Validity of adoption depending on whether natural son alive or dead—Onus of proof—Deed or will conferring estate on a person described as adopted son—Person not heard of for seven years. Death is to be presumed after a certain interval (seven years); but there is no presumption as to the time of death. If, therefore, any one has to establish the precise period during these seven years at which a person died, he must do so by evidence, and can neither rely, on the one hand, upon the presumption of death, nor, on the other, upon the continuance of life. There is no presumption of law that because a person was alive in 1877, therefore he was alive in 1878. One S died in September 1878, leaving a widow, B. The year before his death his only son (Bala), a child of eight years old, had left his home and was never heard of again. A few days before his death, S adopted the plaintiff (his nephew) and executed a deed of adoption, which stated that he had no hope that his son Bala was alive, and that he had therefore adopted the plaintiff. Tho

## HINDU LAW—PRESUMPTION OF DEATH—*concl'd*

as *S's* adopted son, brought this suit to recover some of *S's* property, which was in the hands of the defendants, who claimed it as *S's* heirs. They (*inter alia*) impeached the plaintiff's adoption. Held, that, in order to recover the property as the adopted son of *S*, it lay on the plaintiff to prove a valid adoption. It was a condition precedent to prove that at the death of the adoption *S* was without a son. It was therefore for the plaintiff to prove that Bala was then dead. There was at that time no presumption that Bala was dead, and, there being no evidence on the point, it was impossible to say when he died, or consequently that the adoption was valid. Held, however, that plaintiff was entitled to succeed as donee under the deed of adoption. It was clearly *S's* intention to give the estate to the plaintiff as being his adopted son. But if the adoption was invalid, the gift had no effect. The onus here was on the defendants. It was for them to show that Bala was at that date alive and the adoption therefore invalid. That burden they had not discharged, and the plaintiff therefore was entitled to a decree. *RANGO BALAJI v. MUDIYERPA*

I. L. R. 23 Bom. 296

## HINDU LAW—RECOVERED PROPERTY.

Decree for possession. The Hindu law on the subject of "recovered" property

Intentions of the co-heir. *HOSSESSUR CHUCKER-BUTTY v. SEETUL CHUNDER CHUCKERBUTTY*  
9 W. R. 69

## HINDU LAW—RESTITUTION OF CONJUGAL RIGHTS.

See HINDU LAW—MARRIAGE

Suit for restitution of conjugal rights—Plaintiff's suit not barred by his being out of caste. Held, that to bar a suit brought by a Hindu for restitution of conjugal rights, the defendant must set up some offence of a matrimonial nature such as would support a decree for judicial separation. It is not a defence that the plaintiff is out of caste, nor ought a decree to be made conditional on the plaintiff being restored to caste. *PANJI v. SHEO NARAIN*, I. L. R. 8 All. 74, and *BINDA v. KANNARA*, I. L. R. 13 All. 126, referred to *SAHADUR v. RAJWANTA* (1905). I. L. R. 27 All. 98

## HINDU LAW—REVERSIONERS.

I. POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST

## HINDU LAW—REVERSIONERS—*con-*

### 2. POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS—

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ARTS. 120 AND 125  
I. L. R. 26 Mad. 488

ART. 141.

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY.

I. L. R. 28 I. A. 1

### 1. POWER OF REVERSIONERS TO ALIENATE REVERSIONARY INTEREST.

1. ——— Expectancy—Sale or mortgage of reversionary right in ancestral property—Onus of proof in contracts by reversioners as to their expectant rights—Transfer of Property Act (IV of 1932), s. 6, cl. (a) The Hindu law which prevails in the N-W. Provinces recognizes no power in a reversioner to sell or mortgage his interest in expectancy, even although he may be the heir-apparent. It is necessary, when money-lenders in this country seek to enforce against the property of a Hindu family a contract of mortgage made by a reversioner, who, although







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ed in his favour. *ANAND SINGH v. MURDUN SINGH* . . . . . 2 N. W. 31

**13.** ———— *Right to bring a suit for declaratory decree.* A suit for a declaratory decree must be brought by the nearest reversioner; but there is no objection to a suit by a more distant reversioner when the prior right of the nearer reversioner or reversioners have been waived. *BHAKATI APAJI v. JAGANNATH VITHAL* . . . . . 10 Bom. 351

**14.** ———— *Suit by reversioner with consent of reversioner having right to sue.* A suit by a reversioner to set aside an alienation is cognizable if the title of the reversioner has been injured by a distinct act of alienation, and if the widow relinquishes . . . . . to the suit . . . . . *BUTTY v. I* . . . . .

**15.** ———— *Suit to set aside adoption—Right to sue.* The mere possibility of . . . . .

to sue, or precluding himself by act or word from suing, or of his concurring in, or colluding with, the alleged adoption, by the next reversioner. In the latter case, the plaintiff must state why the presumptive heir does not sue, and the Court will, in the exercise of its discretion, decide whether the plaintiff is competent to sue. *GYANENDRO NATH ROY v. LOBOSGOMUNJURI DABI* . . . . . 11 C. L. R. 198

**16.** ———— *Alienation by widow—Suit for declaratory decree.* Where a Hindu widow in possession as such of her deceased husband's property alienates it, only the person presumptively entitled to possess the property on her death may sue for a declaration of his right as against such alienation, unless such person has precluded himself from so suing by collusion and connivance, when the person entitled next to him may so sue. *RAGHU NATH v. THAKURI* . . . . . I. L. R. 4 All. 16

**17.** ———— *Hindu widow—Alienation—Suit by reversioner to set aside alienation—Nearest reversioner—Collusion.* The only . . . . .

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colluded with the widow, in which case only can the more remote reversioners maintain such a suit. *ANAND KORR v. COURT OF WARDS, I. L. R. 8 I. A. 14; I. L. R. 6 Cal. 761, and Raghunath v. Thakuri, I. L. R. 4 All. 16*, referred to *Ramphal Rai v. Tulu Kour, I. L. R. 6 All. 116*, and *Madan Mohan v. Purn Mal, I. L. R. 6 All. 288*, distinguished. *PHULA v. KANTA PRASAD* . . . . . I. L. R. 9 All. 441

**18.** ———— *Suit by reversioner when nearest reversioner cannot sue.* When the immediate reversioner is in possession of a part of the property, and not in a position to institute proceedings to set aside alienations, the next reversioner is entitled to sue to protect his own future rights. *BALGOBIY RAY v. HIRUSHANEE* . . . . . 2 W. R. 255

**19.** ———— *Persons not the next reversioners—Right to sue.* Where it appeared there were other persons nearer than plaintiffs, and . . . . .

**EEN TEKKUNJEE v. PURSOTUM LALLJEE****3 Agra 236**

**20.** ———— *Suit to set aside adoption—Right of suit.* Although a suit, to contest an adoption made by a Hindu widow of a son to . . . . .

her life is competent to bring such a suit. The right to sue must be limited. As a general rule the suit must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed in the estate if the widow were to die at the time of the suit. But it may be brought by a more distant heir, if those nearer in the line of succession are in collusion with the widow, or have precluded themselves from interfering. The rule laid down in *Bhikaji Apaji v. Jagannath Vithal*, 10 Bom. A. C. 351, approved. Reference made . . . . .

from suing, or had colluded with the widow, or had concurred in the act alleged to be wrongful, the next presumable heir would be, in respect of his interest competent to sue. In such a case upon a plaintiff stating the circumstances under which the more distant heir claimed to sue, a Court would exercise a judicial discretion in determining whether he was or was not competent in that respect to sue, and whether it was requisite or not that any nearer

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heir should be made a party to the suit. In a suit to have an adoption set aside, the plaintiff

deceased, under whose authority the adoption was alleged to have been made by the widow, the defendant. The Judicial Committee, without deciding that, as an adopted son, this minor had the same rights as a naturally-born son, and without deciding that he would have been entitled, in default of nearer relations, to succeed to the estate of inheritance, after the death of the widow, pointed out that he could only have succeeded as a distant bandhu, and that he had not a vested, but at most a contingent interest. And *held*, that, there being in fact heirs nearer in the line of succession than this minor, the grounds of his competence to sue in respect of his interest, assuming that interest to exist, should have been made out in the manner above indicated. **ANUND KUNWAR v. COURT OF WARDS** . . . **I. L. R. 6 Calc. 764**  
**8 C. L. R. 381; I. L. R. 8 I. A. 14**

**21. ——— Collusion between widow and transferee** *Held*, that where the widow and plaintiff, the transferee, were engaged in a scheme for evading the restrictions put by the Hindu law upon the widow's right of alienation, and were making use of the forms of a suit in furtherance of the fraud, it was quite competent for the lower Appellate Court to determine and satisfy itself (some of the persons really interested being minors, and the transaction being open to suspicion as prejudicial to their reversionary rights) of the true nature of the transaction at the instance of the remote reversioner, even had the nearer reversioner been present and consented to the decree being passed in plaintiff's favour. **DOWAR RAI v. BOONDA** . . . **Agra F. B. 57; Ed. 1874, 43**

**22. ——— Collusion between widow and next heir—Right of remoter reversioner to sue.** Where a daughter was colluding with the widow in making a transfer of divided property: *Held*, that plaintiffs, the next reversioners after the daughter, were competent to maintain the suit to have the transfer declared null and void. **JWALA NATH v. KULLU** . . . **3 Agra 55; Agra F. B. Ed. 1874, 138**

**23. ——— Alienation by Hindu widow—Right to sue—Daughters.** The reversioners of the estate of a deceased Hindu sued his widow to set aside an alienation of the estate made by her, as deceased.

*Held*, that in the absence of any proof of collusion or connivance between the widow and her daughters, the plaintiffs, in the presence of the letter, were not

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competent to maintain the suit. **Anund Koer v. Court of Wards, I. L. R. 8 I. A. 14**, referred to. **MADARI v. MALIKY** . . . **I. L. R. 6 All. 428**

**24. ——— Next presumptive reversioner—Intervening woman's estate.** The plaintiff's grandson (daughter's son) of a deceased Hindu sued to have the estate of his grandfather

set aside, not being the next reversioner, was not competent to maintain the suit. The fact that his mother's estate, should it ever come into her possession, would be only a limited estate, would not affect the plaintiff's subsisting position in respect of his right to sue. **Madari v. Maliky, I. L. R. 6 All. 428**, followed. **ISHWAR NABAIN v. JANKI** . . . **I. L. R. 15 All. 132**

**25. ——— Suit in lifetime of daughter of last male owner—Suit by reversioner to establish invalidity of a sale by a widow—Daughter of last male holder not joined.** Under the Hindu law obtaining in the Madras Presidency, a reversioner is entitled to sue to establish the invalidity of a sale by the widow of the last male holder, notwithstanding the fact that he left a daughter, who was alive at the date of suit, but was not joined as a party. **RAOHUPATI v. THIRUMALAI** . . . **I. L. R. 15 Mad. 422**

**26. ——— Alienation—Fraud.** S was entitled, under the Mitakshara law

relying on **Dawar v. Boonda, Agra F. B. 57 Ed. 1874, 43**, that the suit was maintainable, notwithstanding that G was not the next reversioner. **GAURI DAT v. GUR SAHAI** . . . **I. L. R. 2 All. 41**

**27. ——— Partition between widow and mother, both claiming life-interest—Alienation by mother—Declaratory decree.** Upon the death of a Hindu, a dispute as to his separate

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property absolutely, but they disputed as to who should have a life interest in it, and this was the subject of the arbitration and of the award. Subsequently the mother executed a deed of gift of part of the property which came to her in favour of her nephews. The daughter and the daughter's sons of the deceased, as reversioners, sued the donees to set aside the gift, asserting that the donor had no power to make it, having under the Hindu law a life-interest only in the property. *Held*, that, inasmuch as the donor was in any circumstances entitled to maintenance, and the decision came to upon the arbitration was to put her in possession of half the property, but only on the footing of a woman's interest for life, the defendants could not set up any title by adverse possession on her part to defeat the claim of the reversioners. *Held*, also, that the plaintiffs were competent to maintain the suit as reversioners to the widow and were entitled to a decree for a declaration that the gift should not affect any of their rights as reversioners after the widow's death. *Gopi Chand v. Surjan Kuar* . . . . . I L R. 8 All. 646

28. ———— *Alienation by Hindu widow—Acquiescence—Right to sue—Daughter.* A reversioner of the estate of a deceased Hindu sued for cancellation of a sale-deed executed by the widow, on the ground that it was executed

reversioner in instituting a suit to set aside an illegal sale made by a childless Hindu widow cannot be understood to amount to acquiescence in the sale. The acquiescence which would entitle a more remote reversioner to maintain the suit must be such as would amount to an equitable estoppel, precluding the first reversioner from contesting the validity of the sale made by the widow. *Duleep Singh v. Sree Kishoon Panday*, 4 N. W. 83, followed. Also per *MAHMOOD, J.*, that the existence of female heirs, whose right of succession cannot surpass a "widow's estate," does not affect the status of the nearest presumptive reversionary heir to the full ownership of the estate, and that such presumptive heir can maintain a suit for declaratory relief such

*S. D. A.* (1859), 1623, and *Bol Gobind Rao v. Hiruraneet*, 2 W. R. 255, followed. *Bhogvande Deobey v. Myna Bate*, 11 Moo. I A. 487; *Gajapathi Nilamani Patta Maha Devi Garu v. Gajapathi Rhadamani Patta Maha Devi Garu*, L. R.

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4 I. A. 212; and *Ram Lal v. Bansee Dhur*, S. D. A. N. W. P. (1866), 67, referred to, *Anund Koer v. Court of Wards*, L. R. 8 I. A. 11, distinguished. Per *OLDFIELD, J.*, that the nearest reversioner being the widow's daughter who herself could only take a limited interest in the property and who had herself taken no steps to set aside the sale,

29. ———— *Right of daughter to sue.* *Held*, that a daughter was competent to sue during the lifetime of her mother, the encumbrancer, the daughter being the immediate reversioner to the property, and her reversionary right being seriously threatened. *GOLAB KOONWER v. SHIB SATHI* . . . . . 2 Agr 54

30. ———— *Son's power to sue in lifetime of mother.* The daughter's son during the lifetime of his mother is not such a reversioner as is competent to challenge the act of his maternal grandmother. *RADHA KISHEN v. BUKHTAWAR LALL* . . . . . 1 Agr 1

31. ———— *Suit to set aside alienation of ancestral property—Right of remote reversioner to sue.* In a suit by a reversioner to set aside an alienation of ancestral property, where plaintiff questioned the acts of alienation effected jointly by his father and his aunt, it was held that he was entitled to maintain the suit even though his father, and not he, was the immediate reversioner. *RETGOO RAJ PANDY v. LALLJEE PANDY* . . . . . 24 W. R. 399

32. ———— *Right of succession—Nephews.* The right of succession accrues to nephews (sisters' sons) whether born before or after the death of their maternal uncle, not on the death of the maternal uncle, but on the death of his widow, and the nephews can sue to question the validity of alienations made by the widow without legal necessity. *GORIND MOONEE DOSSEE v. SHAM LALL BYSACK. KALEE COONAP CHOWDHRY v. RAMRASS SARA* . . . . . W. R. 1864, 153

33. ———— *Alienation by uncle—Right of nephew.* *Held*, that a nephew is not competent by Hindu law to object to any alienation of ancestral property directly or indirectly made by his uncle. *GUNGA DEEN RAWUT v. MNDHOO SURUN* . . . . . 3 Agr 4

34. ———— *Right of nephew*

property, maintain a suit for proprietary possession

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against the daughters-in-law of a deceased Hindu, who have no other right in the property than a right to maintenance. *LADOOIAH v SANVALEY*

3 Agra 191

35. ———— *Suit by step-son or step-grandson—Suit in lifetime of widow A*

JENDRA SANO

I. W. R. 115

36. ———— *Alienation by widow—Right of reversioner to sue.* A sale by a widow of property derived from her husband, who is divided in interest from his own family, is valid for her life. Such a sale will not be set aside at the instance of a divided brother of the husband. *BHAGAVATAMMA v PAMPANA GAUD* 2 Mad. 393

37. ———— *Power of reversioner to assign his interest—Right of assignee—Waste.* A reversionary contingent interest subject to the estate of a Hindu, who is a reversioner, is not assignable.

Marsh. 622

38. ———— *Assignee of reversioner—Suit by assignee—Widow's estate.* During the existence of a Hindu widow's interest in an estate, inasmuch as she has in her the whole estate of inheritance, the assignee of a reversionary heir to her husband has no interest therein as such assignee, which will enable him to bring a suit to have a mortgage and decree effecting the estate set aside. This is so even though the assignee is the next heir to the property after the assignor. *RAICHARAN PAL v PYARI MANI DAS*

3 B. L. R. O. C. 70

RAM BUNSEE KOONWAR v. MOHESUR KOONWAR  
1 W. R. 336

39. ———— *Administration suit by reversioners—Practice—Conduct of proceedings.* Under Hindu law, a person entitled to an estate in reversion expectant on the death of a Hindu widow is entitled to bring a suit for administration. *Clower v. Hillard*, L. R. 4 Ch. D. 413, distinguished. If a dedication by a testator, of property to which a reversionary heir would be entitled is not valid, and the executors propose to carry out the dedication, such an act would entitle the reversionary heir to seek the assistance of the Court and have the property properly administered. *Hem Chunder Sanyal v. Sarnanoy*, I. L. R. 22 Cal. 354, referred to. Where a person entitled to an estate in reversion brings a suit against the executors of the estate for administra-

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tion, and subsequently thereto an administration suit is brought by one executor against his co-executors and a consent decree obtained without

inquiries already had under the first decree will be adopted in the second decree, so far as it can be applied and the reversioner, who brought the first suit, will be entitled to the conduct of the proceedings. *Zambaco v. Cassavetti*, L. R. 11 Eq. 439; *Mellor v. Swire*, L. R. 21 Ch. D. 647, followed. *ROJONMOYEE DASSEE v. TROYLUKHO MOHINI DASSEE* (1901)

I. L. R. 29 Cal. 280  
s.c. 6 C. W. N. 287

40. ———— *Reversioner, suit by, to set aside adoption—Reversioner in such suit represents all interested in the reversion, but does not in suits questioning alienations—Alienation by limited owner gives rise to only one cause of action.* Although in suits relating to alienations by a qualified owner, the presumptive reversioner cannot, on the current of authority, be held to represent remote reversioners, yet in suits to set aside an adoption, the presumptive reversioner ought on principle to be held to represent the remote reversioner, provided the matter is decided after a fair trial; and this principle will apply equally when a remote reversioner is allowed to sue under special circumstances to set aside an adoption. An unauthorised alienation by a qualified owner constitutes a cause of action for a declaratory

not be available for the heir when the donor actually opens. The reversioner actually suing does not only sue for himself but also on behalf of all the rest.

Ward, L. R.

*Kishore v. Sreenath Row*, 9 W. R. 400, 401, referred to. Suits involving questions as to adoptions stand on quite different grounds from those impeaching the validity of alienations. The grave and important nature of disputes relating to adoptions makes it desirable that the adjudication should be made by the Court.

is far as reversioner or remote reversioner brings such a suit, the Court ought to require him to disclose the names of other persons interested in the reversion and direct

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TIONS—contd.****(a) WHO MAY SUE—contd.**

notices to be served on them, to enable them to be made parties should they so desire. *Ayyadurai Pillai v. Solai Ammal*, I. L. R. 21 Mad. 405, approved. *Adilakshmi v. Venkataramayya*, 13 Mad. L. J. 359, not followed. *Chiruvolu Pennanna v. Chiruvolu Pennazu* (1905)

I. L. R. 29 Mad. 390

**(b) WHEN THEY MAY SUE AND HOW.**

**41. ——— Cause of action, accrual of—**  
*Suit for possession—Effect on reversioner of adoption by widow* The right of a reversionary heir to succession, on the death of a widow in possession, is a contingent one. It is only on the death of the widow, when his rights as reversioner are converted into a right to immediate possession, that he is required to sue for possession of the estate. The mere fact of the adoption of another party does not prejudice his rights. Those rights are invaded only when the adopted son, on the death of the widow, takes possession of the property as adopted son. *Jagadambonath Nanjappa v. Rajendronath Holdar* . . . 7 W. R. 357

**42. ——— Suit for possession of share of estate** Where the plaintiff was entitled to a share of the estate of the defendant, a widow, in case she should die not having exercised her right to sue for her share, a suit for her share . . .

*H. L.*, dissented from *RAMAN AMMAL v. SUBHAM ANNAYI alias SUBRAMANIAM ANNAYI*

2 Mad. 399

**43. ——— Suit to set aside alienation of estate by widow.** Where the transfer sought to be set aside was made by the widow in favour of her daughter, who was lawful heir to the property:—*Held*, that the plaintiff, a reversioner, had no present ground of action, as his reversionary right was not prejudiced thereby. *UDHAR SINGH v. RANEE KOONWAR* . . . 1 Agra 234

**44. ——— Suit to set aside alienation of property in possession of widow.** Where property to the immediate possession of which a Hindu widow is entitled is conveyed away by parties having no right to it, the cause of action for a suit to recover possession is afforded thereby to the widow, and not to the reversionary heirs. *JOY MOORUTH KOOR v. BALDEO SINGH* . . . 21 W. R. 444

**45. ——— Suit for share of estate or to set aside alienation.** A Hindu reversioner, entitled, after the death of a tenant for life, to a share in the inheritance, cannot lay claim to any definite share, nor can he sue to set aside a

**HINDU LAW—REVERSIONERS—contd.****2. POWER OF REVERSIONERS TO RES-  
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TIONS—contd.****(b) WHEN THEY MAY SUE AND HOW—contd.**

transaction affecting the inheritance, so far only as it would affect his probable share. *KESHAVA SANKSHAGA v. LAKSHMINARAYANA*

I. L. R. 6 Mad. 192

**46. ——— Suit for compensation money paid to lessee of widow for right of working quarries on land leased to him—Quarries worked for purposes of State Railway—Waste—Right of widow to work quarries.** Land inherited by a widow from her husband was leased by her. The authorities of a State Railway worked quarries on part of it and Government paid Rs.5,000 as compensation to the lessee. The reversionary heirs sued to establish their right to the money. *Held*, that the money paid by Government, whether regarded as the price of stones bought or compensation for wrong done, should be regarded as part of the produce of the estate, and should not be treated as part of the estate itself or as proceeds of the conversion of part of it into money. The right of a widow to work quarries on land inherited from her husband conferred *SRISHA REDDI v. CHENGALANNA* I. L. R. 23 Mad. 128

**3 RIGHT TO POSSESSION.**

**1. ——— Suit for immediate possession—Waste on account of alienation by widow** In cases where the sale by a Hindu widow has been set aside on the ground that no legal necessity has been proved, before a decree for immediate possession can be given to the plaintiff, it must be clearly proved that the property has deteriorated owing to the sale or has been wasted by the purchaser. *CHITTURDHAREE SINGH v. HIRDOONAREE* . . . 1 May 107

**2. ——— Right of reversioners on alienation being set aside—Act of widow involving forfeiture of estate** Although an alienation of property by a widow for other than allowable purposes may be declared void, yet the reversioners are not entitled to immediate possession, unless the widow has committed some act involving forfeiture of the property. *KISHINEE v. KHEALKE RAY* . . . 2 N. W. 424

*BANISOODHUREE DOSSEE v. BANU SOODHUREE DOSSEE* . . . 10 W. R. 133

in which case, however, a review was granted. *See s. c.* . . . 10 W. R. 301

*RUGHOOBAR DIAL SINGH v. BHEKAREE SINGH* . . . 22 W. R. 472

**3. ——— Suit for possession on account of waste—Alienation by widow not involving forfeiture** Plaintiff, who was the reversioner of her father's estate, sued, during the lifetime of her mother, who held a life-estate as widow of her

HINDU LAW—REVERSIONERS—*contd.*3. RIGHT TO POSSESSION—*contd.*

husband, for possession of such estate, on the ground that her mother had, without reason, alienated the whole estate, with a few slight exceptions, absolutely to certain persons, who had again re-sold portions thereof. The defendants pleaded that the suit would not lie in the lifetime of the plaintiff's mother. It was found that the alienations were not fraudulent. *Held*, that the plaintiff was not entitled to have possession of the property delivered to her, inasmuch as the alienation did not amount to a total destruction of the benefit derivable from the right of succession, and could not therefore be called waste, but that she was entitled only to a declaration that the alienation made by the widow and the subsequent alienations by her alienees should not affect or prejudice the plaintiff or reversioner's interests beyond the lifetime of the widow. *Mondry Mondry Shaha v. Anundmoyi*, 8 C. L. R. 49

4. ———— *Alienation by widow—Fraud, proof of*. A Hindu widow being in possession of certain lakhs lands in which she had a life-interest, the zamindar brought a suit against a minor reversioner and others to resume the land, obtained an *ex parte* decree, and, whether under colour thereof or not, afterwards obtained possession. The widow, who was then dispossessed, brought a separate suit to recover the property, in which the reversioner, who had meantime come of age, was joined as a co-plaintiff. Owing to a petition presented by the widow, this suit was treated as having come to an end. *Held*, that, in the circumstances, and the consequent jeopardy to the title of the reversioners, the reversioner above referred to was competent, without showing fraud on the part of the widow, to bring a suit to have the land reduced to his possession, and to prevent the zamindar from acquiring title by adverse possession. *Chundar Koomar Gandooly v. Raj Kishen Basant*, 14 W. R. 323

5. ———— *Collusion of widow with parties in adverse possession*. Suit by a Hindu daughter, for herself and as guardian of her minor son, to recover possession of her deceased father's separate estate. The legal representatives of the estate were, first the deceased's widow, and after her, the plaintiff and her son. The widow not only failed to occupy and manage the estate, but, in collusion with the other defendants claiming under a hostile title, abandoned her rights, alleging that her husband was not separate, but a member of a joint family, and left the separate estate from becoming extinguished by the operation of the law of limitation, it was necessary to remove the adverse occupants and to place the estate in the possession of some person to be appointed to represent it; and as the widow (the legal representative) never was in possession and did not ask for it, but repudiated all claim to it, it was held that no one had a better right to the

HINDU LAW—REVERSIONERS—*contd.*1.3. RIGHT TO POSSESSION—*contd.*

possession than the plaintiff, and possession was accordingly decreed to her as manager during the widow's lifetime. *GUNESH DUTT v. LALI MITTER KOORE*, 17 W. R. 11

*See RADHA MONTY DUTT v. RAM DAS DEY*  
[ 3 B. L. R. A. C. 362; 24 W. R. 66 note

*SHAMA SOONDREE CHOWDHRAIN v. JUMUNA CHOWDHRAIN*, 24 W. R. 68

6. ———— *Right to manage property as trustee—Alienation by widow without necessity—Waste*. When a widow is proved to have made alienations without legal necessity, the reversioner may be appointed to act as her trustee. *DINKISHEN SHATRAH v. GINGADHIE MOOKJEE*, 3 May 1883

7. ———— *Agreement to divide reversion—Agreement to divide reversion when it should fall in, creates no vested right, but only right to claim specific performance*. Three brothers, S, R and K and their father made an arrangement which amounted to a division of the family properties. The father and R and K continued, however, to live together. The father died first and then R, leaving him surviving A, his widow, and B, his daughter. A and B did not claim R's share, but were content with maintenance. There was, however, no surrender by A of her rights. S and K entered into an agreement between themselves to the effect that K should enjoy R's share and maintain A and B, S being given a small piece of land at once, and that after A's death S was to take half of R's share. B died unmarried in A's lifetime and S predeceased A who died in 1891. In a suit brought in 1901 by the son of S to recover one-half share of R's property: *Held* (WALLIS, J., dissenting), that K and S were expectant reversionary heirs and the agreement between them was in effect to divide the reversion when it should fall in. The right of K as such presumptive reversionary heir was incapable of transfer on the principle embodied in s. 6 of the Transfer of Property Act, and the agreement did not operate to vest any property in S as from the date of agreement and the suit was not therefore maintainable. *Per BODDAM, J.*—The agreement gave only a right to claim specific performance thereof when the reversion should fall in, which right became barred as it was not enforced within the statutory period after the death of the widow. *Per WALLIS, J.* The widow not having claimed her husband's share and having contented herself with maintenance, S and K were not in the position of expectant heirs, although the widow by asserting her right might have reduced them to that position. Under the circumstances, the agreement was something more than a mere contract on the part of K to convey to S a half share on the widow's death. The effect of the agreement was to give S a vested interest in a half share in the lands to take effect in possession.

HINDU LAW—REVERSIONERS—*contd.*3. RIGHT TO POSSESSION—*contd.*

sion on the widow's death and the suit was therefore maintainable. *PINDITOLU SOORAPARAJU v. PINDITOLU VEERABHADRU* (1907)

I. L. R. 30 Mad. 480

## 4. RELINQUISHMENT BY WIDOW TO REVERSIONERS.

1. ———— Effect of relinquishment by female—*Title of reversioner on relinquishment.* The succession of females according to Hindu law is not regular succession and is not based upon the ordinary theory of spiritual benefit. Therefore, if they relinquish their rights in favour of the reversioner, the case is again brought back to the normal state of succession, the effect being to vest in him a complete title. *GRAND PERSHAD KUR v. SHUBHPOONATH BURNAN* . . . 22 W. R. 393

2. ———— Effect of relinquishment by widow—*Consent of reversioners—Relinquishment to second reversioners.* According to Hindu law, a widow in possession can relinquish, and, by relinquishing, anticipate for the reversioners their period of succession. A relinquishment in favour of second reversioners is also valid if made with the consent of the first reversioners. *PROTAP CHANDER ROY CROWDHRY v. JOY MONEE DAFFY CROWDHRY* . . . 1 W. R. 98

3. ———— Surrender of life-estate—*Title of reversioners.* The surrender of her estate by a Hindu widow, or mother to persons who at that time are unquestionably the heirs by Hindu law of the person from whom she has inherited, vests in those persons the inheritance to

DOSS ROY v. MODHU SOONDARI BURNONIA

I. L. R. 5 Calc. 732; 5 O. L. R. 551

4. ———— Surrender of possession by widow in consideration of maintenance—*Arrangement by reversioners to pay widow maintenance for her life instead of possession of property.* Where persons who are presumptively the next in succession to a widow come into an arrangement by which she surrenders possession to them and receives a maintenance from them, such arrangement must be held to be binding as a family arrangement, and would not be altered by one or other of the reversioners dying during the lifetime of the widow. *LALLA KENDEE LALL v. LALLA KALEE PERSHAD* . . . 22 W. R. 307

5. ———— Acceleration of succession by Hindu widow—*Surrender of life-estate by*

HINDU LAW—REVERSIONERS—*contd.*4. RELINQUISHMENT BY WIDOW TO REVERSIONERS—*contd.*

an *ikarnama* in favour of her daughter's son, then apparently the heir who would ultimately succeed, but adding that she would retain possession for her own life. *Held*, that this could not operate to exclude the daughter, nor after her the son of another (deceased) daughter, not born at the date of its execution. *BEHARI LAL v. MADHO LAL ANIR GAYAWAL* . . . I. L. R. 19 Calc. 238  
I. L. R. 19 I. A. 30

## 5. ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS.

1. ———— Arrangement by next reversioner allowing her to keep possession—*Loss of rights by widow on re-marriage—Act XV of 1856, s. 2.* Where a widow having lost her rights in her husband's estate on account of re-marriage under the provisions of s. 2, Act XV of 1856, was allowed to retain possession by the next reversioner:—*Held*, that such arrangement by the next reversioner was only binding upon him, and not on the heirs of such reversioners, who, on the death of the former, were entitled to sue for possession of the property by dispossessing the widow. *KAISHO v. JUNNA* . . . 1 Agra 140

2. ———— Relinquishment by Hindu widow of her life-interest to reversioner—*Gift by reversioner to widow of moiety of estate—Declaratory decree, suit for—Suit by reversioner in lifetime of widow—Right of suit—Specific Relief Act (I of 1877), s. 42.* *M* died, possessed of certain immovable properties, and leaving two widows, one of whom died shortly after him, leaving a daughter's son *R*. The other widow, *S*, came to an arrangement with *R* under which, on 9th December 1889, two deeds were executed, by the first of which *S* relinquished to *R* her life-interest in the properties she inherited as widow of *M*, and by the other *R* conveyed to *S* an absolute right in half the properties so relinquished, retaining the other half himself. *R* died on 27th November 1890, and his widow *P* came into possession of the half share of the properties belonging to him. In a suit by the plaintiff, as the next reversionary heir of *M* for a declaration that the deeds were invalid, and did not affect his reversionary right:—*Held*, that the suit was maintainable in the lifetime of the widow. *Iri Dui Koer v. Hanabhatti Koeran*, I. L. R. 10 Calc., 324; L. R. 10 I. A. 150, referred to. *Parthi Pal Kunwar v. Guman Kunwar*, I. L. R. 17 Calc. 933; L. R. 17 I. A. 107; *Bhujendro Bhusan Chatterjee v. Triguna Nath Mookerjee*, I. L. R. 8 Calc. 761, and *Kallama Natchar v. Doravarga Tater*, 15 B. L. R. 83; 23 W. R. 314; L. R. 2 I. A. 169, distinguished. *Held*, also, following the case of *Nobokishore Sarma Roy v. Harinath Sarma Roy*, I. L. R. 10 Calc. 1102, that the society of the properties which was given by *S* to *R*, was absolutely alienated in his favour, and the plaintiff



**HINDU LAW—REVERSIONERS—contd.****5. ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS—contd.**

was not entitled to question the validity of the alienation, so far as that portion of the properties was concerned. *Held*, further, that, though the effect of the decision in *Nobokishore Sarma Roy v. Harinath Sarma Roy* is to make the widow and the presumptive reversioners competent to deal with the estate absolutely for certain purposes.

constant on alienation. *Behari Lal v. Martho Lal Ahir Gayawal*, I. L. R. 19 Calc. 236, referred to. The plaintiff was therefore entitled to a declaration that the deeds were inoperative in affecting his reversionary interest, so far as regarded the moiety in possession of S. HEN CHUNDLER SANYAL v. SARANYOYI DEBI

I. L. R. 22 Calc. 354

3. ———— **Hindu widow, alienation by**  
—Release by reversioners, effect of—Suit for possession after death of the widow—Estoppel. When a reversioner whose title accrues on the death of a Hindu widow is found to have relinquished for consideration his interest in favour of the widow by a deed during her lifetime, he is not entitled to maintain a suit for possession after the death of the widow against a person who had purchased the property from the widow several years before the relinquishment by the reversioner. *KALI KISHORE PAL v. ABDUL KARIM* 2 C. W. N. 132

4. ———— **Contract made in settlement of disputes as to estate—Condition restraining power of leasing property—Transfer of Property Act (IV of 1882), ss. 10 and 15** In an ikramnama executed by a Hindu widow on the one side and her husband's cousins on the other, in settlement of disputes regarding her husband's estate, one of the conditions was that if either of lease joint and deliver.

parties, "and if the document be not signed and consented to by both the parties, it shall be null and void." In a suit brought on the basis of the ikramnama to set aside a lease granted by the widow:—*Held*, that there is nothing in any statute law which renders such a provision inoperative; neither ss. 10 and 15 of the Transfer of Property Act (IV of 1882) nor any principle underlying

I. L. R. 25 Calc. 689  
2 C. W. N. 463

**6. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT.**

1. ———— **Effect of conveyances by widow and reversioners—Title of alienee.**

**HINDU LAW—REVERSIONERS—contd.****6. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT—contd.**

A Hindu widow in possession and the apparent next taker, by joining in one conveyance, can make a complete title. *KISHEN GEER v. BUSEOET ROY*

14 W. R. 379

*TRILUCHUN CHUCKERBUTTY v. UMESH CHUNDER LAHIRI* 7 C. L. R. 571

2. ———— **Alienation for legal necessity, binding effect of, on other reversioners—Consent of next reversioner.** Under the Hindu law current in Bengal, a transfer or conveyance by the widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner, will conclude another person, not a party thereto, who is the actual reversioner, upon the death of the widow, from asserting his title to the property. *NOBOKISHORE SARMA ROY v. HARI NATH SARMA ROY* I. L. R. 10 Calc. 1102

3. ———— **Power of remoter reversioner to question alienation** Observations on the power of a remoter reversioner to question alienations by a Hindu widow in which the next reversioner has concurred. *SIA DAST v. OUB SAHAI* I. L. R. 3 All. 383

4. ———— **Ratification by reversioner of conveyance by widow—Receipt of rent by reversioner from alienee of widow—Subsequent suit to set aside alienation** Where a tenure granted by a widow is recognized, after her death, by the reversionary heir, who receives rent from the holder of the tenure, such receipt amounts to a

5. ———— **Gift by Hindu widow of her own interest and that of consenting reversioner.** A Hindu widow in possession can, with

*Moa. I. A. 292, Kaer Goolab Singh v. Rao*

6. ———— **Alienation by Hindu widow of a portion of her estate with consent of some of the reversioners—Suit by other reversioners to set aside alienation** The principle enunciated by the Full Bench in the case of *Nobokishore Sarma Roy v. Hari Nath Sarma Roy*, I. L. R. 10 Calc. 1102, is not applicable to a case where some only of the reversioners have consented to an alienation by the widow, and where therefore only a portion of the widow's estate has been alien-

**HINDU LAW—REVERSIONERS—*contd.*****G. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT—*contd.***

ated. **PADMA SHYAM SIRCAR v. JOY RAM SENAPATI** . . . . . **I. L. R. 17 Calc. 896**

**SRINIVAS CHITRAMONI BHATTACHARJEE v. BROJO MOHUN BHATTACHARJEE** . . . . .  
**I. L. R. 17 Calc. 900 ntdo**

**7. ——— Fraudulent consent given by nearest reversioners—Sut by a subsequent nearest reversioner to set aside alienations.** In a suit brought by the nearest reversioner of a Hindu widow who had alienated portions of her husband's estate with the consent of the nearest reversioner alive at the date of the alienation (since deceased), it was found that the alienations were colourable transactions fraudulently got up for the purpose of defeating the plaintiff's claim;—*Held*, that the consent of the nearest reversioner, who must have been aware of the fraud, was of no avail to validate the transactions impeached, and that they were therefore invalid as against the plaintiff **KOLANDAYA SHOLAGAN v. VEDAMUTHU SHOLAGAN** **I. L. R. 10 Mad. 337**

**8. ——— Sale by a Hindu widow—Whether the reversioner consented that she should sell the whole inheritance or only her life estate.** The sale by a Hindu widow of a share in village lands of which share her husband had been proprietor, having taking place without justifying necessity, could extend no further than to transfer her interest as a widow, for life, unless the consent of

deed containing words to the effect that the vendee had become (as the English translation on the record expressed it) "absolute" owner of the share sold. This heir, however, received no consideration to induce him to relinquish the reversionary title; and, on the death of the widow, his descendant claimed the inheritance against the vendee's son, then in possession. *Held*, that it had not been made so clear that the conveyance transferred the whole estate of inheritance as to cause it to follow that the reversionary heir, when shown to have consented to the transfer by the widow, must be taken to have assented to the transfer of the whole estate. Judgment transfer to the vendee's son.

**I. L. R. 18 All. 148**  
**I. L. R. 23 I. A. 1**

**9. ——— Transfer by Hindu widow of part of her estate—Consent of reversioners.** A Hindu widow with the consent of A, the then nearest reversioner, sold part of the property inherited by her from her husband. A predeceased

**HINDU LAW—REVERSIONERS—*contd.*****G. CONVEYANCE BY WIDOW WITH REVERSIONERS' CONSENT—*contd.***

the widow, and on her death B, C, and D were the nearest reversioners, and they now sued to recover the property. It appeared that the sale was not justified by circumstances of legal necessity and that D had been born after the sale had taken place. *Held*, that the sale was not binding on the plaintiffs or any of them. **MARGAMUTHU NADAN v. SRINIVASA PILLAI** . . . . . **I. L. R. 21 Mad. 128**

**10. ——— Alienation by widow and reversioner—Sale in execution of decrees for their debts.** A Hindu widow and her reversioner

by her and the reversioner for the time being cannot have the effect of a sale by her and that reversioner. **MOHITA CHUNDER ROY CHOWDHURI v. GOURLI NATH DEY CHOWDHURI** . . . . . **2 C. W. N. 162**

**7 REMOTE REVERSIONERS.**

**1. ——— Declaratory suit—Right of suit—Remote Reversioner—Declaratory decree—Nearest Reversioner, interests of—Specific Relief Act (I of 1877), s. 42.** A declaratory suit by a remote reversioner, who would take an absolute interest is maintainable in the presence of the immediate reversionary heir, who is only the holder of a life estate, under s. 42 of the Specific Relief Act (I of 1877). **Ishwar Narain v. Janki**, **I. L. R. 15 All. 132**, dissented from. Where the nearest reversioner precludes himself or herself from maintaining a declaratory action by omitting to sue within the statutory period and thus practically concurs in an alleged improper alienation, the remote reversioner is entitled to maintain the suit. **Govinda Pillai v. Thyammal**, **11 Mad. L. J. 209**, followed. **ABINASH CHANDRA MAZUMDAR v. HARINATH SHANHA** (1905) . . . . . **I. L. R. 32 Calc. 62**  
**s.c. 9 C. W. N. 25**

**2. ——— Sister's son—Remote reversionary heirs—Priority of heritable right—Pedigrees—Evidence Act (I of 1872), s. 8 I sub-s. 5.** The immoveable property of a deceased Hindu was claimed by the plaintiffs in right of their father S S as the nearest reversionary heirs to the deceased on the death of his widow in 1896. The Subordinate Judge found in favour of the plaintiffs' pedigrees that S S and the deceased were descended from a common ancestor seven degrees removed and that S S was the preferential heir. The Judicial Commissioner dismissed the suit finding that the appellants had made no attempt to support the finding of the Court below and that they were not entitled under the pedigree filed by the defendants. *Held*, that the decree of the first Court must be affirmed, the evidence being sufficient to maintain it and there having been misapprehension by the Court of Appeal

**HINDU LAW—REVERSIONERS—*concl'd.*****7. REMOTE REVERSIONERS—*concl'd.***

sible in evidence so far as they consisted of declarations shown to have been made or adopted

**8. DECREE AGAINST WIDOW, EFFECT OF**

*Hindu widow—Effect of decree against widow in possession—Reversioners.* A reversioner succeeding to an estate after the death of the widow of the former owner will be bound by a decree obtained against the widow, provided that there has been a fair trial of the suit in which such decree was passed. *Katama Natchiar v. The Rajah of Shwagunga*, 3 Moo I. A. 543, and *Hari Nath Chatterjee v. Mohur Mohun Goswami*, I. L. R. 21 Cal. 8, followed. *MADAN MOHAN LAL v. ANBARYAR KHAN* (1905) I. L. R. 28 All. 241

**HINDU LAW—SEPARATE PROPERTY.**

*Acquisitions out of salary, prima facie separate property—Succession Certificate Act (VII of 1889), s. 19—Discretion of Court in granting certificate.* Money connected with insurance, the premia for which are paid out of the salary of a deceased Hindu, is *prima facie* his separate property. *Mahadeva Pandia v. Rama Narayana Pandia*, 13 Mad L J 75, followed. Where an application for a succession certificate under Act VII of 1889 by the widow of the deceased in respect of such money is opposed by his brother on the sole ground that the deceased was educated at the family expense, the certificate ought to issue in favour of the widow. *RAJASIMA v. RAMAKRISHNAYYA* (1905)

I. L. R. 29 Mad. 121

**HINDU LAW—STRIDHAN.**

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| 1. DESCRIPTION AND DEVOLUTION OF STRIDHAN . . . . . | 5334 |
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I. L. R. 4 Bom. 318  
I. L. R. 6 Bom. 470, 473

**HINDU LAW—STRIDHAN—*cont'd.***

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.  
I. L. R. 28 Mad. 509

**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN.**

1. ——— Definition of "stridhan"—*Different classes of stridhan—Woman married in Asura form.* The etymological import of the word "stridhan," and the different views with which it is regarded in the Eastern and Western schools of Hindu law, pointed out. The Mitakshara recognizes only one class of stridhan, and includes in that class all property acquired by a woman by inheritance. According to the last-mentioned authority, a woman's stridhan, if she has been married by the Asura form, upon her death childless, goes to her mother, her father, and their kindred,—i.e., to the sapindas of her father in the first instance,—and, failing them, to her mother's next of kin; but if a woman has been married according to one of the approved forms, her stridhan descends, upon her death childless, to her husband and his sapindas. Over stridhan acquired by inheritance (so far as it consists of immoveable property) a woman's power of alienation is limited. The Vyavahara Mayukha also considers property acquired by a woman by inheritance to be stridhan, but classes stridhan under two heads—stridhan in a narrower sense, embracing particular species, for which a peculiar mode of devolution is prescribed, and stridhan generally (including stridhan acquired by inheritance), which descends in the same line as if the woman had been a male,—i.e., to her sons and the rest,—and this notwithstanding her having left daughters. Authorities bearing upon the subject of stridhan considered and commented upon. *VIJARANGAM v. LAKSHUMAN*  
8 Bom. O. C. 244

2. ——— Property given to a woman by a stranger—*Mayukha—Inheritance—Devolution of such property—Daughter's daughter not entitled to it—Son's widow preferred as gauraya sapinda.* By the law of inheritance laid down in the

3. ——— Property of daughter bequeathed to her by father before her marriage. The property of a daughter bequeathed to her by her father before her marriage falls within the category of stridhan. *JUDONATH SINGAR v. BISSANT COOMAR ROY CHOWDHRY*  
11 B. L. R. 286; 16 W. R. 105; 19 W. R. 284

4. ——— Gift by son to mother for maintenance. A gift of money by a son to his

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

mother for her maintenance comes within the definition of stridhan in the Hindu law. *DOORNA KOOWAR v. TEJOO KOOWAR* . 5 W. R. Mis. 53

5. ——— Property purchased or acquired by mother—*Property inherited by daughter from mother—Interest of Hindu daughter in mother's property.* A, a Hindu widow, died in

also possessed of a share of a house and some Government paper, which had been left to her by the will of her mother. The provisions of the will in question being obscure, the parties interested under it had referred their difficulties to arbitration, and by the award the arbitrators allotted to A the share of the house of which she had died possessed "to be held by her in severalty as a Hindu daughter in a manner

the award gave her only the interest of a Hindu daughter, in the house, and that, as what a daughter inherits from her mother does not become her stridhan, the plaintiffs had no claim to the share of the house. *FRANKISSEN LARA v. NOYANMONEY DASSEE* . I. L. R. 5 Calc. 223

6. ——— Stridhan inherited by daughter from mother—*Preferential heirs on death of daughter.* Stridhan inherited by a daughter from her mother passes on the daughter's death to the person who would be the next heir to the mother's stridhan. Where B inherited stridhan

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

8. ——— Shares in villages held by

higher to make a valid gift of it. *THAKUR v. GANGA PRASAD* . I. L. R. 10 All. 187  
L. R. 15 I. A. 29

9. ——— Property acquired by woman by inheritance. According to Hindu law, property acquired by a woman by inheritance is not to be classed as stridhan. *SEVAMALATHAM v. VALAYANDI MUDALI* . 3 Mad. 312

10. ——— Property acquired by a Hindu widow by adverse possession. A property acquired by a Hindu widow by adverse possession is her stridhan. *MOHUN CHANDRAN SANYAL v. KASHI KANT SANYAL* . 2 C. W. N. 181

11. ——— Properties acquired after her husband's death—*Reversioner—Burden of proof.*—Where after the death of a Hindu widow the plaintiff claimed, as the reversionary heir of her husband, certain properties some of which were inherited from her husband and some acquired by her after her husband's death: *Held*, that there is no presumption of law that property acquired by a Hindu widow after her husband's death forms part of her husband's estate. The question from what source the purchase-money came is one of fact, and it is for the plaintiff to start his case with proof sufficient to shift the onus, proof at least of facts from which an inference can be drawn. *DAKHINA KALI DESAI v. JAGADISWAR BHUTACHARYEE* . 2 C. W. N. 197

12. ——— Husband's estate inherited by widow—*Benares law—Power of disposition of widow.* *Held* that, according to the law of the Benares school, no part of her husband's estate, whether moveable or immovable, to which a Hindu widow succeeds by inheritance, forms part of her stridhan or peculiar property; and the text of *Katyayana* must be taken to determine, first, that her power of disposition over both is limited to certain purposes, and, secondly, that on her death both pass to the next heir of her husband. *BRUWANDAZ v. DOORAY v. MYNA BAZZ* . 9 W. R. P. C. 23; 11 Moo. I. A. 487

13. ——— Immovable property inherited by mother from son. According to the *Mitakshara* and the *Vivada Chintamani*, all property that a woman inherits does not thereby become stridhan, so as after her death to descend to her heirs. Immovable property which, in default

**HINDU LAW—REVERSIONERS—concl'd.****7. REMOTE REVERSIONERS—concl'd.**

sible in evidence so far as they consisted of declarations shewn to have been made or adopted *ante litem motam* by deceased members of the family touching the family reputation or tradition on the subject of its descent. To render a statement

**8. DECREE AGAINST WIDOW, EFFECT OF.**

*Hindu widow—Effect of decree against widow in possession—Reversioners.* A reversioner succeeding to an estate after the death of the widow of the former owner will be bound by a decree obtained against the widow, provided that there has been a fair trial of the suit in which such decree was passed. *Kalama Nachiar v. The Rajah of Shivagunga*, 9 Moo I. A. 543, and *Hari Nath Chatterjee v. Mother Mohun Goswami*, I. L. R. 21 Cal. 8, followed. *MADAN MOHAN LAL v. AKBARYAR KHAN* (1905) I. L. R. 28 All 241

**HINDU LAW—SEPARATE PROPERTY.**

*Acquisitions out of salary, prima facie separate property—Succession Certificate Act (VII of 1889), s. 19—Discretion of Court in granting certificate.* Money connected with insurance, the premia for which are paid out of the salary of a deceased Hindu, is *prima facie* his separate property. *Mahadeva Pandia v. Rama Narayana Pandia*, 13 Mad L. J. 75, followed. Where an application for a succession certificate under Act VII of 1889 by the widow of the deceased in respect of such money is opposed by his brother on the sole ground that the deceased was educated at the family expense, the certificate ought to issue in favour of the widow. *RAJANDIA v. RAMAKRISHNAYYA* (1905)

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**HINDU LAW—STRIDHAN.**

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*See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.*  
I. L. R. 26 Mad. 509

**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN.**

**1. ——— Definition of "stridhan"—**  
*Different classes of stridhan—Woman married in Asura form.* The etymological import of the word "stridhan," and the different views with which it is regarded in the Eastern and Western schools of Hindu law, pointed out. The Mitakshara recognizes only one class of stridhan, and includes in that class all property acquired by a woman by inheritance. According to the last-mentioned authority, a woman's stridhan, if she has been married by the Asura form, upon her death childless, goes to her mother, her father, and their kindred,—i.e., to the sapindas of her father in the first instance,—and, failing them, to her mother's next of kin; but if a woman has been married according to one of the approved forms, her stridhan descends, upon her death childless, to her husband and his sapindas. Over stridhan acquired by inheritance (so far as it consists of immoveable property) a woman's power of alienation is limited.

ing her having left daughters. Authorities bearing upon the subject of stridhan considered and commented upon. *VINJARANGAM v. LAKSHMAN*  
8 Bom. O. C. 244

**2. ——— Property given to a woman by a stranger—Mayukha—Inheritance—Devolution of such property—Daughter's daughter not entitled to it—Son's widow preferred as gotraja sapinda.** By the law of inheritance laid down in the Mayukha, a house given to a married woman by a stranger to the family and her own earnings devolve on her death as if she had been a male. The daughter-in-law of the deceased owner succeeds therefore, in preference to the daughters of a deceased daughter. *BAI NARAYAN v. BHAGWANTRAI*  
I. L. R. 12 Bom. 505

**3. ——— Property of daughter bequeathed to her by father before her mar-**

**4. ——— Gift by son to mother for maintenance.** A gift of money by a son to his

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

mother for her maintenance comes within the definition of stridhan in the Hindu law. *Doonda Koo-war v Tejoo Koonwar* . 5 W. R. Mia. 53

5. ——— Property purchased or acquired by mother—Property inherited by daughter from mother—Interest of Hindu daughter in mother's property. A, a Hindu widow, died intestate, leaving her surviving sons of her husband's elder brothers, a sister, and the husband and children of a deceased sister. At the time of her death A

also possessed of a share of a house and some Government paper, which had been left to her by the will of her mother. The provisions of the will in question being obscure, the parties interested under it had referred their difficulties to arbitration, and by the award the arbitrators allotted to A the share of the house of which she had died possessed "to be held

6. ——— Stridhan inherited by daughter from mother—*Preferential heirs*, on death of decedent. *See, Durga Prasad and others v Durga Prasad*

of B. HURI DOYAL SINGH SARMAHA v GRISH CHUNDER MUKERJEE I. L. R. 17 Calc. 911

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11. ——— Properties acquired after her husband's death—*Reversioner*—*Burden of proof*.—Where after the death of a Hindu widow the plaintiff claimed, as the reversionary heir of her husband, certain properties some of which were inherited from her husband and some acquired by her after her husband's death: *Held*, that there is no presumption of law that property acquired by a Hindu widow after her husband's death forms part of her husband's estate. The question from what source the purchase-money came is one of fact, and it is for the plaintiff to start his case with proof sufficient to shift the onus, proof at least of facts from which an inference can be drawn. *Dakhina Kali Devi v Jagadishwar Bhattacharjee* . 2 C. W. N. 197

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as to the absence of attempt to support it. *Held*, also, with regard to the plaintiffs' pedigrees that although they were not family records, handed down from generation to generation and added to from time to time, they were nevertheless admissible in evidence so far as they consisted of declarations shown to have been made or adopted *ante litem motam* by deceased members of the family touching the family reputation or tradition on the subject of its descent. To render a statement

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**HINDU LAW—STRIDHAN.**

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See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.  
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inheritance (so far as it consists of immovable property) a woman's power of alienation is limited. The Vyavahara Mayukha also considers property acquired by a woman by inheritance to be stridhan, but classes stridhan under two heads—stridhan in a narrower sense, embracing particular species, for which a peculiar mode of devolution is prescribed, and stridhan generally (including stridhan acquired by inheritance) which devolves in the

commented upon. *VINJARANAM v. LAKSHUMAN*  
8 Bom. O. C. 244

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3. ——— Property of daughter bequeathed to her by father before her marriage. The property of a daughter bequeathed to her by her father before her marriage falls within the category of stridhan. *JUDONATH SIRCAR v. BISSUN COOMAR ROY CHOWDHURY*  
11 B. L. R. 266; 10 W. R. 105; 19 W. R. 264

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HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

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by her in sovereignty as a Hindu daughter in a manner prescribed by the Hindu law as prevalent in Bengal," and allotted the Government paper to her, "to be taken and enjoyed by her absolutely." In a suit by

## 6. ——— Stridhan inherited by daughter from mother—Preferential heirs on death of testator

from A, her mother, it was held to pass on the death of B to the sons of A in preference to the children of B. *HURI DOYAL SINGH SARMAHA v. GRISH CHUNDER MUKERJEE*. I. L. R. 17 Cal. 911

daughter to as heirs to ex—*Mayukha* law the Mitakshara (which, and not the Mayukha, is the paramount authority in the Ratnagiri District), the daughter, as to property inherited from her mother, takes an absolute estate which classifies her as stridhan and descends to her own heirs, i.e., to her daughters to the exclusion of her sons. *JANKIBAI v. SUNDRA*. I. L. R. 14 Bom. 612

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

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HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

14. ———— **Property inherited by sister from brother**—*Law in Bombay Presidency.* A sister on this side of India, taking as heir to her brother, takes his property as stridhan with an absolute power of disposition over it; and such property upon her death passes in the first instance to her daughters. The sons of such sister have not a vested interest in it as co-parceners with their mother. Property acquired by a married woman by inheritance with the exception of property inherited by a widow from her husband classes as stridhan, and descends accordingly. *BHASKAR TRIMBAK ACHARYA v. MAHADEE RANJEE*. 8 Bom. O. C. 1

15. ———— **Immoveable property inherited by a married woman from her father.** According to the Hindu law of inheritance, as received in the Bombay Presidency, immoveable property inherited by a married woman from her father, whether or not it be strictly entitled to the name of stridhan, descends on her death to her own heirs, and not to her father's ascendants according to what is called the "melancholy succession." An inheritance descending on a married woman from her father must be classed as stridhan and descends accordingly. *NAVALRAM ATMARAM v. NANNKISHOR SHIV NARAYAN*. 1 Bom. 209

16. ———— **Gifts by husband to wife from motives of affection—Ornaments for ordinary wear.** Gifts of affection given by a husband to his wife after marriage are stridhan, and it is not necessary to the preservation of their character as stridhan that they should be constantly worn. If given unreservedly, they become the wife's stridhan. If ornaments appear to be ornaments which a wife would ordinarily wear in her station of life, and not those which would be purchased for use only on extraordinary occasions, such as marriages and the like, the presumption is that they are for the ordinary use of the wife and given to her without reservation. They would therefore be regarded as gifts of affection and would constitute stridhan, and would not be liable to attachment and sale for the satisfaction of the husband's debts. *RADHA v. BISHESHUR DASS*. 6 N. W. 279

17. ———— **Ornaments given to wife**

to her after marriage or by her husband or kindred pass, according to the Mayukha, to the son and daughter in equal shares. *ASHABAI v. TYER HAJI RAHMUTTILLA*. I. L. R. 9 Bom. 115

18. ———— **Gift by father to daughter—Mesne profits—Inheritance.** A Hindu, by a deed, dated in 1810, gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons; the daughter was put in possession, was dispossessed in 1838,

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the property. In 1865 the purchaser brought a suit and recovered possession from the defendants. His representatives now sued for mesne profits of the property from 1860 to 1865. *Held*, that the plaintiffs were not entitled to mesne profits which had accrued due, but were uncollected, in the lifetime of the daughter; that such mesne profits would go to her heirs, who would alone be entitled to them. *GURU PRASAD ROY v. NAFAR DAS ROY*. 3 B. L. R. A. C. 121: 11 W. R. 497

19. ———— **Grant to wife and her heirs male—Devise by widow to sons—Rights of daughter.** A Hindu granted certain land to his wife C and her sons and grandsons for ever. C devised the land to her son by will. *Held*, that the land became the stridhanam of C, that the devise was inoperative under Hindu law, and that the land descended to C's daughter. *BEHJANGA RAU v. RAMAYANNA*. I. L. R. 7 Mad. 837

20. ———— **Right of daughter to succeed—In a suit for land it appeared that it had been given to one S deceased, after her marriage, by her father. The donee died leaving her brother, defendant No. 1, her son (since deceased), the husband of defendant No. 2, and the plaintiff, her daughter. Defendant No. 1 was in joint possession on behalf of defendant No. 2. Held, that the plaintiff was entitled to the land.** *MUTHAFTUDAYAN v. AMMANT ANNAL*. I. L. R. 21 Mad. 58

21. ———— **Enfranchisement of service inam.** Land which formed the emolument of the office of moniegar was enfranchised in favour of a Hindu woman, who died leaving her surviving defendant No. 2 (her husband) the plaintiff (her unmarried daughter), and two sons and two married daughters who were not parties to this suit. The plaintiff sued to recover the land to which she claimed to be entitled under the Hindu law of inheritance. *Held*, that the property belonged to the deceased as her stridhanam descendible

I. L. R. 21 Mad. 100

See *DHARANIPRAGADA DURGOANNA v. KARANBARI VIRRAZU*. I. L. R. 21 Mad. 47

22. ———— **Enfranchisement in favour of widow—Right of widow.** Lands which had been held by a deceased as moniegar service inam were enfranchised after his death and sold by his

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life-estate of the gran estate.

I. L. R. 23 Mad. 47

See SITAPATI v. NARASIMHAN

I. L. R. 23 Mad. 48 note

23. ——— Widow's savings from the income of the husband's estate. A widow's savings from the income of her limited estate are not her stridhan; and if she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. *ISMET DUTT KOER v. HANSBUTTI KOERHAIN*

I. L. R. 10 Cal. 324. 13 C. L. R. 418

I. L. R. 10 I. A. 150

24. ——— Arrears of maintenance due to widow. Arrears of maintenance due to a Hindu widow at her death do not necessarily revert to the estate from which they were to be derived, on the ground that they were not separated from the corpus of that estate during her life. *COURT OF WARDS v. MONSSEER ROY*

18 W. R. 78

25. ——— Immoveable property acquired from deceased uterine brother. Power of alienation—Husband's heirs. Immoveable property acquired by a childless Hindu widow from her deceased uterine brother is her stridhan and stridhan with which the heirs to her husband have nothing to do. Over such property her control is absolute and unimpeachable, and the relations of her husband have no such reversionary status in respect of it as will entitle them to sue to set aside an alienation of it by her. *MUNIA v. PURAN*

I. L. R. 5 All. 310

26. ——— Purchase of immoveable estate with money received from husband. Proceeds of jewellery. A widow who received presents of moveable property from her husband from time to time during their married life, after his death purchased immoveable estate, partly out of

VENKATA SRIYIA RAO

I. L. R. 2 Mad. 333; 8 C. L. R. 304

Affirming on appeal decision of High Court in *s. c.*

I. L. R. 1 Mad. 281

27. ——— Widowed daughter with dumb son—Bengal school of law—Daughter's

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

28. ——— Right of step-son to inherit. Inheritance to stridhanora. A Hindu widow, having no other heirs, is entitled to inherit the stridhan of her deceased husband.

deceased had been celebrated in the Brahma form. Held, that the plaintiff was entitled to succeed. *BRAMMAIA v. PAPANNA*

I. L. R. 13 Mad. 138

29. ——— Moveable property inherited by a widow from her husband. Devolution of such property on the widow's death. Moveable property inherited by a Hindu widow, if not disposed of by her, passes on her death to the next heirs of her husband, whether such property be regarded as her stridhan or not. *HARILAL HARJIVANDAS v. PRANVALADAS PARBHIDAS*

I. L. R. 18 Bom. 229

See BAI JAMINA v. BHAISSANKAR

I. L. R. 16 Bom. 233

and GODHADHAR BHAT v. CHANDRABHAGABAI

I. L. R. 17 Bom. 890

30. ——— Devolution of stridhan belonging to a childless widow—Grandson. Co-widow—Husband's nephew—Sapindas. A childless Hindu widow died, possessed of stridhan

31. ——— Husband's nieces—Stridhanam—Bandhu. A Hindu widow, married according to the Bengal school of law, died without issue.

sister's daughter, and the second defendant, who was the adopted son of her maternal uncle, and the third defendant, who was the widow of her brother. The defendants having taken possession of her stridhanam property on her death, the plaintiffs now sued as heirs under the Hindu law for possession. Held, that the plaintiffs were entitled to succeed. *VENKATASUBRAMANIAM CHETTI v. THAYARAMMAH*

I. L. R. 21 Mad. 283

32. ——— Succession—Mitakshara law. The husband's sister's sons are preferential heirs to the husband's paternal great-grandfather's great-grandsons in the succession to stridhan property.

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MOHUN PERSHAD NARAIN SINGH v. KISHEN KISHORE NARAIN SINGH . I. L. R. 21 Cal. 344

33. ——— Sister-in-law—*Succession to stridhan property.* A childless Hindu widow, who had been predeceased by her parents, died leaving stridhanam property. Her brother's widow claimed to be entitled to inherit that property, and sued to enforce her claim. *Held*, that, whether the marriages of the deceased and her mother respectively had taken place in a superior or an inferior form, the plaintiff was not entitled to inherit the stridhanam property in question. *THAYANMAL v. ANNA-MALAI MUDALI* . I. L. R. 10 Mad. 35

34. ——— [Estate of married daughter in stridhanam property mother. Under the Hindu law in force in Southern India, a married daughter, who succeeds to her mother's immovable stridhanam property, takes a life-interest only, and after death it passes to her mother's heir. *VEN-KATARAMAKRISHNA RAU v. BRUJANGA RAU* . I. L. R. 19 Mad. 107

35. ——— Devolution of stridhan property—*Hindu law, Marriage—Presumption as to form of marriage.* Under the Hindu law of Benares school, in the absence of any evidence to the contrary, a marriage must be presumed to have taken place in one of the approved forms; therefore, the heir of a woman to her stridhan property is the nearest kinsman of her husband, and not of her father. *Thakoor Deyhee v. Rai Baluk Ram*, 11 Moo. I. A. 139; *Gajabai v. Shahajirao Malaje Raje Bhoile*, I. L. R. 17 Bom. 114, and *Grithari Lal v. Government of Bengal*, I B. L. R. P. C. 41; 10 W. R. P. C. 31, referred to. The *Virmirovlaya* cannot be referred to where the *Mitakshara* is clear. *JAGANNATH PRASAD GUPTA v. RUNJIT SINGH* . I. L. R. 25 Cal. 354

39. ——— Woman's estate apart from stridhan—*Devolution of, according to Mayukha—Property inherited by a woman from a male owner—Property not of the class called "stridhan proper"—Reversion on her death to heir of last male owner not to be extended to stridhan.* In

doctrine that property which has been inherited by a woman should revert on her death to the heirs

HINDU LAW—STRIDHAN—*contd.*I. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

sense, the "sons and the rest" take precedence over the "daughter and the rest." Failing both sons and daughters, the heirs to "stridhan proper" and "stridhan improper" are identical, save that as between male and female offspring the latter have a preferential right as regards "stridhan proper," while the former have a similar right as to "stridhan improper." The author of the *Mayukha*, like the author of the *Mitakshara*, does not regard the enumeration of specific kinds of stridhan in the old Smriti texts as exhaustive. He includes under the name all that by law becomes the property of the woman, only (unlike the author of the *Mitakshara*) he distinguishes the specific kinds enumerated in the texts from those which are not so enumerated for purposes of inheritance. In doing this it seems quite reasonable to lay down that, as regards that class of property which is emphatically

husband or any other relation, either on the husband's or the father's side, but is her own original acquisition. Such property is the woman's property; it is not the husband's property. Why,

applicable to such property at all? *MANILAL RUKWADAT v. BAI REWA* . I. L. R. 17 Bom. 755

Testamentary by a grand-

of D, and (iii) the property of D. Under the settlement, two-thirds of the property were given to the present plaintiff, and the rest was divided between A on the one hand and D and E on the other. E was the daughter of D. Subsequently D and E acquired A's share under a deed of gift, dated 5th Jun. 1863. D died in 1883. E had died previously, leaving the present defendant (her husband) and a daughter F, who died an infant without issue in 1891. The plaintiff now sued to recover the property which passed to the line of B. *Held*, (i) that the settlement of 1860 on its true

**HINDU LAW—STRIDHAN—contd.****1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—contd.**

construction gave to D and E a life-interest only in the event of their having no descendants, but an estate of inheritance otherwise, and that that disposition was valid, and accordingly that in the event which happened they took a heritable estate; (ii) that under the settlement of 1860 and the deed of gift of 1862, D and E took as joint tenants with benefit of survivorship, and not as tenants-in-common, and accordingly that D became sole full owner of the property on the death of E, whose husband thus acquired no title as her heir; (iii) that F inherited the property, but only for a limited estate, and that the plaintiff was entitled to succeed as heir to D, the last full owner.

*VIJASANGAPPA SHETTY v. RUDRAIA SHETTY*

I. L. R. 10 Mad. 110

38. ——— Husband's younger brother of the half-blood—*Brother's son of the deceased female owner—Spiritual benefit* The principle of spiritual benefit does not exclusively determine the devolution of property.

As the son of the deceased female owner, the son of a preferential half-blood of her

husband. *TOOLSEE DASS SEAL v. LUCKYMOONEY DASSEE* 4 C. W. N. 743

39. ——— Property inherited from a female—*Descent of stridhan*. Amongst property which becomes stridhan according to the law of the Mitakshara is property inherited from a female. It is not the case that where such stridhan has once descended according to the law of succession which

*Moo. I. A. 139; Bhugwandeen Dooley v. Myra Bae, 11 Moo. I. A. 457; Chotay Lall v. Chunno Lall, I. L. R. 4 Cal. 744 L. R. 6 I. A. 15, Phukar Singh v. Ranjit Singh, I. L. R. 1 All. 661, and Mutu Vaduganadha Tevar v. Dora Singha Tevar, I. L. R. 3 Mad. 290, referred to DEBI SAHAI v. SURE SHANKER LAL I. L. R. 22 All. 353*

40. ——— Immoveable property inherited by paternal grandmother from grandson—*Mitakshara law*. Immoveable property inherited by the paternal grandmother from the grandson does not rank as stridhan and on her death devolve as such on her heirs, but devolves on her death on the heirs of the grandson. *PHUKAR SINGH v. RANJIT SINGH I. L. R. 1 All. 681*

41. ——— Property given to a woman after marriage by her husband's father's sister's son—*Inheritance*. With respect to property given to a woman after her marriage by her

**HINDU LAW—STRIDHAN—contd.****1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—contd.**

42. ——— Stridhan of childless Hindu widow—*Succession to stridhan*. *Semble*: The stridhan of a childless Hindu widow, according to the law of the Western schools, goes to the collateral heirs of her husband, in preference to her own next of kin. *THAKOOR DEYHEE v. BALUK RAM*

2 Ind. Jur. N. S. 108; 10 W. R. P. C. 3  
11 Moo. I. A. 135

43. ——— Succession to stridhan. Upon the death of a childless Hindu

widow, mutation of names was effected in the Hindu revenue records. A suit was instituted against S and his son by C, on the allegation that he and J, who were collateral relatives of the widow's husband, were entitled, under the Hindu law, to succeed in moieties to the properties left by her as her stridhan, and claiming recovery of possession of half her property. In defence, the adoption was pleaded, and another plea was that the widow had

upheld, that, upon the facts found, the plaintiff was the heir of the deceased widow, and as such entitled to succeed to her stridhan under the Hindu law. *Thakoor Deyhee v. Baluk Ram, 11 Moo. I. A. 135, followed, Munna v. Puran, I. L. R. 6 All. 210, distinguished. CHAMPAT v. SURESH*

I. L. R. 8 All. 393

44. ——— Property inherited by female—*Succession to such property*. An estate

45. ——— Property inherited by female from male—*Law applicable in Carnatic*. The Mitakshara rule that property inherited by a female from a male is taken by her for only a restricted estate, and devolves on her death in the line, if any exists, of such male is applicable in the Carnatic. *Chotaylall v. Chunnoo Lall, L. R. 6 I. A. 15, referred to MUTU VADUGANADHA TEVAR v. DORA SINGHA TEVAR*

I. L. R. 3 Mad. 290

I. L. R. 8 I. A. 99

46. ——— Property inherited by daughter from father—*Succession to such property*. According to the law of the Mitakshara, a daughter's estate inherited from her father is, like that of a widow inherited from her husband, a

**HINDU LAW—STRIDHAN—contd.****1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—contd.**

limited and restricted estate, and does not, on her death, pass as stridhan to her heirs, but reverts to the heirs of her father *CHOTAY LALL v. CHUNNOO LALL* 14 B. L. R. 235 22 W. R. 496

**s. c. ON APPEAL TO PRIVY COUNCIL**

I. L. R. 4 Calc. 744

L. R. 8 I. A. 15: 3 C. L. R. 465

See, also, *DEO PERSHAD v. LUDOO ROY*

14 B. L. R. 245 note: 20 W. R. 102

47. ——— *Devolution of property.* D, the daughter of one L, died childless in 1866 possessed of certain immoveable property which she had inherited from her father L. L's sister N had one son A by her first husband P. P had a second wife B, whose son K was the father of the defendants. After P's death, his widow N married again and had a son who was the father of the plaintiff. The plaintiff in this suit claimed to recover the property of D from the defendants who had taken possession. He contended that the property having devolved on A through a female must continue to descend in that line, and that he was entitled. The defendants claimed as heirs of A. Held, that on D's death A was the nearest bandhu relation both of D and her father L, and consequently became full owner of the property. On A's death the defendants, as sons of his half-brother K, became his heirs and were entitled to the property *DALPAT NAROTAM v. BHAGWAN KRUSHAL* I. L. R. 9 Bom. 301

**48. ——— Devolution of stridhan—**

*Daughters, betrothed and unbetrothed—Devolution of stridhan after first devolution.* A betrothed daughter is not entitled at her mother's death to share in her stridhan, but the unbetrothed daughters alone inherit with the sons. When stridhan has once devolved as such upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law. *SRINATH GANGOPADHYAY v. SARDHAMANGALA DEBI* 2 B. L. R. A. C. 144: 10 W. R. 488

**49. ——— Property of**

*daughter bequeathed to her by father before marriage—Inheritance—Mother.* According to the Hindu law as current in Bengal, the mother succeeds to the property of her daughter bequeathed to her by her father before her marriage in preference to her husband. Such property falls within the category of stridhan. *JUDONATH SIRCAR v. BUSSANT COOMAR ROY CHOWDHURY*

11 B. L. R. 286: 16 W. R. 105

19 W. R. 264

**50. ——— Impartible zamindari—**

*Succession of woman to impartible zamindari.* If a woman succeeds to an impartible zamindari, the estate which devolves on her demise upon her son does not thereby become self-acquired property

**HINDU LAW—STRIDHAN—contd.****1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—contd.**

in the hands of the latter. *MUTTAYAN CHETTI v. SANOILY VIRA PANDIA CHINNA PAMBIAIR* I. L. R. 3 Mad. 370

51. ——— *Mithila law—Succession.* The stridhan property of a widow, governed by the Mithila law and married in one of the approved forms of marriage, goes to her husband's brother's son in preference to her sister's son. *BACHHA JHA v. JEOMON JHA* I. L. R. 12 Calc. 348

52. ——— *Stridhan of co-wife—Right of adopted son to succeed to stridhan of co-wife of his adoptive mother.* A son adopted by one wife may succeed to a co-wife's stridhan. *TENCOWREE CHATTERJEE v. DINONATH BANERJEE* 3 W. R. 49

53. ——— *Sowdaick stridhan—Heirs of wife.* Sowdaick stridhan created by the husband descends not to his heirs, but to the heirs of the wife. *KASHEE CHUNDER ROY CHOWDHURY v. GORN KISHORE GOHAI* 10 W. R. 139

54. ——— *Property inherited by a female from a female—Mitakshara—Benares school of Law.* Under the Hindu Law of the Benares school, property which a woman has

bad Bank I. L. R. 20 All. 410. In this case sons were held entitled to succeed to such property in preference to her daughter. *SHEO SHANKAR LAL v. DEBI SAHAI* (1903) I. L. R. 25 All. 468 s.c. I. L. R. 30 I. A. 202: 7 C. W. N. 831

55. ——— *Mitakshara—Property inherited by a female from a female—Benares School of Law—Property taken as heir of a talukdar under the Oudh Estates Act (I of 1869)—Act I of 1869, ss. 2 and 11—Power of alienation over property so inherited.* Under the Hindu law of the Benares School, there is no distinction, as to the nature of the estate taken, between property inherited by a woman from a male, and property inherited by her from a female. In both cases she takes it, not absolutely as her stridhan, but for a qualified estate alienable only under the conditions applicable to such an estate, and with reverter after her death to the heirs of her predecessor in title: see *Sheo Shankar Lal v. Debi Sahai*, I. L. R. 25 All. 468. A woman succeeded to property as heir of her mother, a talukdar, under the Oudh Estates Act (I of 1869). Held, that, notwithstanding the terms of a 2, which defines an "heir" as "a person who inherits property otherwise than as an heir,"

**HINDU LAW—STRIDHAN—contd.****1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—contd.**

principles laid down by them in other cases, being unwilling, notwithstanding the strong language of Act I of 1869, to put a construction on it which

of it made by her was declared to be inoperative on her death, against the property in the hands of the heir to whom it had reverted. *SHEO PARTAS BHABER SINGH v. ALLAHAD BANK* (1903)

I. L. R. 25 All. 478  
s.c. L. R. 30 I. A. 208  
7 C. W. N. 840

56. ——— Step sister's son—*Dayaloga, Ch IV, ss. 3, 29, 31, 33, 35-39—Stridhan, successor to—husband's elder brother.* Under the Dayabhaga law a step-sister's son is entitled to succeed to a woman's stridhan in preference to her husband's elder brother. *DASHARATHI KUNDU v. BIRIN BEHARI KUNDU* (1905)

I. L. R. 32 Calc. 261  
s.c. 8 C. W. N. 119

57. ——— Partition—*Mitakshara—Joint Hindu family—Share of mother on partition.* According to the Mitakshara law, the share which the mother in a joint Hindu family obtains on partition, after the death of the father, of the joint

*Lall v. Chunno Lall, L. R. 6 I. A. 15, Mutin Vaduganadha Tevar v. Dora Singha Tevar, I. L. R. 3 Mad. 290, Mohabber Pershad v. Ramyad Singh, 20 W. R. 192, Laljet Singh v. Raj Coomar Singh, 20 W. R. 336, Sheodyal Tewaree v. Judoo Nath Tewaree, 9 W. R. 61, Hemangini Dass v. Kedar Nath Kundu Chowdhry, I. L. R. 16 Calc. 755; Beni Pershad v. Puran Chand, I. L. R. 23 Calc. 263; and Ganpat Rao v. Ram Chandar, I. L. R. 11 All. 296, referred to. CHIDDU v. NAUBAT* (1901)

I. L. R. 24 All. 67

58. ——— Daughter and daughter's daughters—*Savings or property purchased out of savings by widow out of money awarded to her by decree as maintenance—Stridhanam K.* a Hindu widow, purchased property with money received by her under a decree awarding maintenance payable to her out of the revenues of a zamindari. She never had any right to or possession of her husband's estate, which was always in the hands of other persons, who were entitled thereto. K died leaving a daughter M her surviving, who subsequently also died leaving three daughters. The three daughters of M

**HINDU LAW—STRIDHAN—contd.****1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—contd.**

sold the property to plaintiffs, who brought this suit for a declaration that they were entitled to certain shares in the property and for delivery of the same. For the defence it was contended that the property in question was not the stridhanam of K, that K had taken only a limited and qualified interest therein, and that on K's death it devolved on her husband's lineal male descendants, and that, in consequence, the sale to plaintiffs conferred on them no title to the property: *Held*, that the property was K's stridhanam, and, consequently, M was, on her death, heir to it. There is no necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner. That which becomes vested in her in her own right and which she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate, in every sense of the term, and devolves as such. As, in the present state of the law, the income is completely dissociated from the corpus, there is no presumption that savings or purchases with savings effected by a widow are incrementa to the corpus of the husband's estate and pass together with it. *Alkana v. Venkaya, I. L. R. 25 Mad. 351, approved, sudamani Dass v. The Administrator General of Bengal, L. R. 20 I. A. 12, followed; Isri Dal Koer v. Mussumat Hanbulli Koerain, L. R. 10 I. A. 150, distinguished; Soorlah Dossee v. Bhoobun Mahan Neoghy, I. L. R. 15 Calc. 292, Beni Pershad v. Purnachand, I. L. R. 23 Calc. 262; Chiddu v. Naubat, I. L. R. 24 All. 67; and Sheo Shankar Lal v. Debi Sahan, I. L. R. 25 All. 463, commented on. Held*, also, that as a daughter's daughter is entitled to take (in preference to a daughter's son), the stridhanam of the grandmother, K's stridhanam passed, on the death of her daughter M, to M's daughters, who took only a limited and qualified estate. *SUBRAMANIAN CHETTI v. ARUNACHELLAM CHETTI* (1935)

I. L. R. 28 Mad. 1

59. ——— Co-widow—*Mitakshara—Moyukha—Succession to stridhan property of childless Hindu widow—Co-widow preferred to husband's brother and brother's son—"Sopindo," meaning of—Construction of tests, rule of—Island of Bombay, succession in.* Under the Mitakshara as also under the Mayukha as read with the Mitakshara, a co-widow is entitled to succeed to the stridhan property of a widow dying without issue in preference to her husband's brother or brother's son. According to the Mitakshara definition of *sopinda*, husband and

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

Churn's construction of the text approved. *Lal-lubhai Babubhai v. Mankuturbai*, 1. L. R. 2 Bom. 388; *Gajabai v. Shrimant Shahajirao Maloji Roje Bhosle*, 1. L. R. 17 Bom. 114, 118; *Bachha Jha v. Jugman Jha*, 1. L. R. 12 Calc. 348; *Krishnabai Marland v. Sripati Pandu*, 8 B. L. R. 12, referred to. Questions of the Hindu law of inheritance to property in the Island of Bombay are to be determined in accordance with the Mitakshara, subject to the doctrine to be found in the Mayukha where the latter differs from it. But as a general principle, the Mitakshara and the Mayukha should be so construed as to harmonize with one another wherever and so far as that is reasonably possible. *Gajabai v. Shrimant Shahajirao Maloji Raja Rhode*, 1. L. R. 17 Bom. 114, 118, referred to. *RAI KESSEFRAI v. HUNSRAT MORARJI* (1906) 1. L. R. 30 Bom. 431  
10 C. W. N. 803  
a.c. 1. L. R. 33 I. A. 176

60. ———— *Mitakshara*—*Co-widows*—Deceased co-widow—Stridhan property of the deceased—Surviving co-widow entitled to succeed—Nearest surviving Sapinda of the husband. According to the Mitakshara a surviving co-widow is entitled to succeed to the stridhan property of her deceased co-widow as the nearest surviving Sapinda of the husband. *KRISHNAT v. SRIPATI* (1905)  
1. L. R. 30 Bom. 333

61. ———— *Sister*—*Mitakshara*—*Stridhan*—*nam*, devolution of—*Sister* takes precedence over sister's son—*Nature of right* Under the Mitakshara Law, where a woman not married in any of the approved forms dies intestate, her stridhanam property, in the absence of nearer heirs, passes to the sister in preference to the sister's son. The Mitakshara is the paramount authority in this Presidency and in the absence of a consensus of opinion among the commentators, and where there is no evidence of usage to the contrary, the general doctrine of Mitakshara Law must prevail over the Smriti Chandrika. A woman taking stridhanam property of a deceased female by inheritance will take only a limited interest in such property. *Muthappudayan v. Ammani Ammal*, 1. L. R. 21 Mad. 58, 62, referred to. *Sclemma v. Latchmana Reddi*, 1. L. R. 21 Mad. 100, 103, 104, referred to. *RAJU GRANANY v. AMMANI AMMAL* (1906)  
1. L. R. 29 Mad. 358

62. ———— *Full brothers of husband*—*Stridhan*—*Succession*—Full brothers of the husband are entitled to succeed in preference to his half-brothers—*Mitakshara*. A Hindu widow died without issue leaving her surviving one whole brother and three half-brothers of her deceased husband: Held, that under the Mitakshara by which the parties were governed, for the purpose of succession to the non-technical stridhan of a widow, who has died without issue, the whole brother of her deceased husband is to be preferred to his half-brother. *PARMATTA v. SHRIDATTA* (1906)  
1. L. R. 30 Bom. 607

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*contd.*

63. ———— *Succession*—*Stridhan*—Full brothers of the husband are entitled to succeed in preference to his half-brothers—*Mitakshara*—*Hindu Law*. A Hindu widow died without issue leaving her surviving one whole brother and three half-brothers of her deceased husband: Held, that under the Mitakshara by which the parties were governed, for the purpose of succession to the non-technical stridhan of a widow, who has died without issue, the whole brother of her deceased husband is to be preferred to his half-brother. *PARMATTA v. SHRIDATTA* (1906)  
1. L. R. 30 Bom. 607

64. ———— *Mother of childless woman*—*Stridhan*—*Property of daughter received from father after marriage*—*Maurasi mularari lease*, rent nominal—*Anwadhyaya*—*Devolution of stridhan belonging to a childless woman*. When a maurasi and mularari lease of a property was granted by a father to his daughter after her marriage, reserving merely the right to receive a nominal sum annually: Held, that under the Dayabhaga the interest in the property transferred to the daughter under the lease was her stridhan falling within the class Anwadhyaya, and that on her dying childless her mother was entitled to inherit it in preference to her husband. *Junon Nath Sirkar, v. Bussant Coomar Ray Chowdhry*, 19 W. R. 264; 11 B. L. R. 256; *Hurry Mahun Shaha v. Shenatun Shaha*, 1. L. R. 1 Calc. 275; and *Gopal Chandra Paul v. Ram Chandra Pramanji*, 1. L. R. 28 Calc. 311, referred to. *RAM GOPAL BRUTTACHARJEE v. NARAYAN CHANDRA BANDOPADHYAYA* (1905) 1. L. R. 33 Calc. 315  
a.c. 10 C. W. N. 510

65. ———— *Property inherited by daughter from her father*—*Stridhan*—*Succession*—*Devolution*. Under the Mitakshara law, as interpreted in this Presidency, the daughter takes

66. ———— *Pitridatta Ayautuka Stridhan*, succession to—*Son or married daughter, preferential heir*—*Dayabhaga*—*"Kanya"*, meaning of. Under the Dayabhaga School of Hindu Law, son is the preferential heir to a married daughter to pitridatta ayautuka stridhan, property of the mother. The word "kanya" in Dayabhaga, Chap. IV, s. II, para. 16, means an unmarried daughter. *Ram Gopal Bhutacharjee v. Namin Chandra Bandyopadhyaya*, 1. L. R. 33 Calc. 315; 10 C. W. N. 510; 3 C. L. J. 15, followed. *PROSARNO KUWAR BOSE v. SARAT SHOSHI GHOSH* (1903)  
1. L. R. 30 Calc. 86  
12 C. W. N. 924

67. ———— *Property inherited by maiden daughter, nature of interest taken in*—*Stridhan*—*Daughter takes only limited estate*.

HINDU LAW—STRIDHAN—*contd.*1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—*concl'd.*

Inherited property is not *stridhanam* and the case of a maiden daughter succeeding to the *stridhanam* property of her mother is no exception to this general rule. The maiden daughter so succeeding takes only a limited estate. The inclusion by Vignaneswara of inherited property in the definition of *stridhanam* is not in accordance with other authorities and ought not to be accepted as law. *Virasangappa Shetti v. Rudrappa Shetti*, I. L. R. 19 Mad. 110, followed. *Venatarama Krishna Rao v. Bhujanga Rao*, I. L. R. 19 Mad. 107, not followed. *Narasayya v. Venkayya*, 2 Mad. L. J. 149, not followed. JANAKISSETTY SOOAYUDU v. MIRIYALA HANUMAYYA (1909)

I. L. R. 32 Mad. 521

## 2. GIFT OF STRIDHAN.

1. ——— Nature of gift of *stridhan*—Maintenance, provision for. A gift of *stridhan* is not equivalent to a provision for maintenance. *JOTYARA v. RAMBHARI SIBBAR*

I. L. R. 10 Calc. 638

## 3. EFFECT OF UNCHASTITY.

1. ——— Unchastity as incapacitating woman from holding *stridhan*—Inheritance and keeping possession of *stridhan*. Per

keeping possession by right of inheritance of *stridhan*. *GANGA JATI v. GHASITA*

I. L. R. 1 All. 48

2. ——— Inheritance. Unchastity does not debar a Hindu woman from inheriting the *stridhan* property of her female relatives. *Ganga Jati v. Ghasita*, I. L. R. 1 All. 48, followed. *Ram Nath Tolapattro v. Durga Sundari Devi*, I. L. R. 4 Cal.

L. R.

ANDERSON

521;

s.c. 7 C. W. N. 121

## 4. POWER TO DISPOSE OF STRIDHAN.

1. ——— Power of married woman to dispose of *stridhan*—Immovable property bought with *stridhan*. Under the Hindu law, a married woman is at liberty to make any disposition

HINDU LAW—STRIDHAN—*concl'd.*4. POWER TO DISPOSE OF STRIDHAN—*concl'd.*

2. ——— *Mitakshara*—Joint Hindu family—Partition—Share of mother on partition. The share which is taken by the mother in a Joint Hindu family upon partition of the family property being her *stridhan*, she is capable of alienating it at her pleasure. *PAL RAI v. SURAJ DAI* (1901) . . . I. L. R. 24 All. 82

3. ——— *Saudayik*—Bequest by will—Power of disposal subject to husband's consent—*Gurav service*—Fruit. *Saudayik* *stridhan* is that which is obtained by a married woman or by a virgin in the house of her husband or of her father, from her brother or parents. Except in the kind known as *Saudayik*, a woman's power of disposal over her *stridhan* is during coverture subject to her husband's consent, and without such consent she cannot bequeath it by will when she is survived by her husband, who is not shown ever to have consented to the will. *BHAU v. RAHUNATH* (1906) . . . I. L. R. 30 Bom. 229

## 5 PARTITION.

*Stridhan*—*Share*—*Expectancy*. In a suit against his are entitled property a sum sufficient to defray the expenses for their prospective thread, betrothal and marriage ceremonies, such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share equal to that

## HINDU LAW—SUCCESSION.

Col.

|                              |      |
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| 1. GENERAL RULES . . .       | 5352 |
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## See HINDU LAW—

CUSTOM—INHERITANCE—SUCCESSION;

MITAKSHARA;

DAYABHAGA.

## 1. GENERAL RULES.

1. ——— *Bandhus*—Succession. Father's sister's daughter's son entitled in preference to father's grandfather's sister's son. It is a cardinal principle.





**HINDU LAW—SUCCESSION—contd.****2. IMPARTIBLE PROPERTY—contd.**

that the effect of the compromise was that a vested

according to the rule of primogeniture and not to his widow. *Rani Meena Kuar v. Rani Hulas Kuar*, *L. R. 11 A. 157*; *Govind Krishna Narain v. Abdul Qayyum*, *I. L. R. 25 All. 545*; *Bachcho Kuar v. Dharam Das*, *I. L. R. 28 All. 347*, and *Ram Shankar Lal v. Ganesh Prasad*, *I. L. R. 29 All. 451*, referred to *Abdul Wahid Khan v. Nuran Bibi*, *I. L. R. 11 Cal. 597*, distinguished. *HARPAL SINGH v. LEXHRAJ KUNWAR* (1908) *I. L. R. 30 All. 408*

**3. DISQUALIFICATIONS**

**1. — Lunacy—Succession—Joint Hindu family.**—A member of a joint Hindu family, who has acquired by his birth an interest in the joint family property, is not divested of that interest by subsequently becoming insane. *Deo Kishen v. Budh Prakash*, *I. L. R. 5 All. 509*, followed. *TIBBETI SAHAI v. MUHAMMAD UMAR* (1905) *I. L. R. 28 All. 247*

**2. — Murder—Unchastity—Mother,** partly to murder of her son cannot succeed as heir to such son—Unchastity of mother no bar to her succeeding as heir to her son—Degradation does not involve loss of proprietary rights. A mother, who has been a party to the murder of her son, cannot succeed by inheritance to the property of such son. Under the Mitakshara law, female heirs other than the widow are not precluded from inheriting by reason of unchastity *Kopyodu v. Lakshmi*, *I. L. R. 5 Mad. 149*, followed. Degradation, without exclusion from caste, does not involve loss of proprietary rights; neither has aggravated unchastity that effect. *Per WALLIS, J.*—The unchastity of the widow is expressly laid down as a ground of exclusion in numerous texts, but there is no such authority in favour of excluding other females. Degradation does not affect proprietary rights of the degraded person since the passing of Act XXI of 1850 *Per SANKARAN-NAIR, J.*—The mother's claim to succession rests on consanguinity and not on religious merit, and incapacity to inherit due to inability to perform sacrifices cannot therefore be presumed. Text of Hindu law considered. *VEDANMAL v. VEDANAYAGA MUDALIAR* (1907) *I. L. R. 31 Mad. 100*

**4 MITAKSHARA**

**1. — Right of females to inherit—Succession—Mitakshara.**—In the case of Hindus governed by the Mitakshara law, no females, except those expressly named in the Mitakshara as heirs, can inherit. A grand-daughter,

**HINDU LAW—SUCCESSION—contd.****4. MITAKSHARA—contd.**

therefore, cannot succeed to the estate of her grandfather. *Gauri Sahai v. Rukko*, *I. L. R. 3 All. 45*; *Jagat Narain v. Sheo Das*, *I. L. R. 5 Weekly Notes Roy v. Seela 75*, followed. *MANJUNATH v. GANESH*, *I. L. R. 2 All. 338*, *Nollanna v. Ponnal*, *I. L. R. 14 Mad. 147*, and *Ramappa Udayan v. Arumagath Udayan*, *I. L. R. 17 Mad. 182*, dissented from. *JAGAN NATH v. CHAMPA* (1905) *I. L. R. 28 All. 307*

**2. — Mitakshara—Succession—Right of females to inherit.** Under the Hindu law of the Benares School females not expressly named in the Mitakshara as heirs do not inherit. The son's daughter, not being so named, is therefore not an heir to her grandfather. *Gour Sahai v. Rukko*, *I. L. R. 3 All. 45*; *Jagat Noroin v. Sheo Das*, *I. L. R. 5 All. 311*; *Romonond v. Surgioni*, *I. L. R. 16 All. 221*, and *Koomud Chunder Roy v. Seetakanta Roy*, *W. R. Sp. number F. B. Rulings, 75*, followed. *Girdhari Lal Roy v. The Bengal Government*, *12 Moo. I. A. 415*; *Lakshmanammal v. Tiruvengado*, *I. L. R. 5 Mad. 241*; *Norosisimma v. Mangammal*, *I. L. R. 13 Mad. 10*, and *Anonda Bibee v. Nounat Lal*, *I. L. R. 9 Cal. 315*, referred to. *Bansidhar v. Ganeshi*, *I. L. R. 22 All. 833*; *Nollanna v. Ponnal*, *I. L. R. 14 Mad. 149*, and *Ramappa Udayan v. Arumagath Udayan*, *I. L. R. 17 Mad. 182*, dissented from. *NANHI v. GAURI SHANKAR* (1906) *I. L. R. 28 All. 187*

**3. — Stridhan—Mitakshara—Succession—Held,** that the stridhan of a Hindu woman governed by the Mitakshara law would, on her death without issue, go to the sons of her husband's ester in preference to the sons of her own sister *GANESH LAL v. AJYDHIA PRASAD* (1906) *I. L. R. 28 All. 345*

**5 MISCELLANEOUS CASES.**

**1. — Palayam or Pollen—Succession to. Impartibility—Grant of sanad under Reg. XXV of 1803—Effect of—Lineal primogeniture, when estate held in co-parcenary—Maintenance, amount of—Prize Council, practice of, to interfere with amount settled in India.** The question whether an estate is subject to the ordinary Hindu Law of succession or descends according to the rule

*Palayam.* It has retained its impartible character

HINDU LAW—SUCCESSION—*contd.*5. MISCELLANEOUS CASES—*contd.*

co-parcener nearest in blood, but on the nearest co-parcener of the senior line. *Naragants v. Venkata-*

10 C. W. N. 95

2. ——— *Grihast Goshains—Succession—Custom—Adoption of chela by widow of deceased Goshain.* The plaintiff set up a custom as prevalent amongst the Grihast Goshains of Hardwar and other places adjacent in the United Provinces whereby the widow of a deceased Goshain was entitled, with the concurrence of the elders of the sect to adopt a chela and successor to her deceased husband. *Held*, on the evidence, that such custom was not established. *Ramalakshmi Ammal v. Sivamantla Perumal Sethurayar*, 14 Moo I. A. 570; *Khuggender Narain Chondry v. Sharuggir Oghoremath*, 1. L. R. 4 Cal. 543, and *Gorind Doss v. Ramsahoy Jemadar*, 1 Fulton 217, referred to. *Semble*, that the sect of Grihast Goshains living mostly in these provinces at Hardwar, Dehra Dun and other adjacent places are subject generally to the ordinary rules of Hindu law. *Collector of Dacca v. Jagat Chunder Goswami*, 1. L. R. 28 Cal. 603, referred to. *CHHANJU GIR v. DIWAN* (1906)

I. L. R. 29 All 109

3. ——— *Kutchi Memons—Succession—Sons administering the property of deceased father.* Among the Kutchi Memons, who are governed by Hindu law, the sons as heirs are entitled to the estate of their deceased father, subject to the payment of his debts. They are, therefore, entitled to take possession of their father's property, to administer it, and to pay debts without being liable to account to the Court otherwise than as heirs. *Iccasolkharaju v. Pappiah*, 1. L. R. 26 Mad. 792, followed. *Haji Saboo v. Aliy Mahomed* (1904)

I. L. R. 30 Bom. 270

4. ——— *Woman's estate—Succession—Form of marriage, proof of—Brahma and Asura marriages, essentials of.* A married woman of the Kavarai caste (sudra) having died issueless, the question arose between the husband and the parents of the deceased as to who was entitled to succeed to her property. The evidence showed that at the marriage of the deceased woman, the *Vivaha homam* and the *saythapathi* were not performed and it was argued for

HINDU LAW—SUCCESSION—*concltd.*5. MISCELLANEOUS CASES—*concltd.*

the parents, that in the absence of these ceremonies the marriage was not in the Brahma, but the Asura form and that the parents and not the husband were entitled to succeed to the property. The evidence also showed in that community it was not customary to perform these ceremonies. It was also proved that the jewels given to the bride were given as presents to her and not as bride-price and that the father when giving his daughter decked with jewels, pronounced the sloka, appropriate to the Brahma and Daiva forms of marriage: *Held*, that according to Hindu Law, it must be presumed in the absence of evidence to the contrary that a marriage was in the Brahma form. Such a presumption cannot be made when it is shown that a certain community have till recently been following the Asura form of marriage. Though in this case the Court will not presume that the marriage was in the Asura form. The Asura form of marriage is not approved even for the Sudra classes. The distinctive mark of the Asura form is the payment of money for the bride, as the absence of such payment is of the approved forms. The offerings and ceremonies necessary to constitute

or without others, a criterion of the intention to enter into the contract of marriage, but it cannot be relied upon to prove that the marriage was in any particular form. The customary payments

## HINDU LAW—USURY.

1. ——— *Rate of Interest—Act XXVIII of 1855.* Act XXVIII of 1855 did not repeal the

does not affect or supersede the rules of 1800 Hindu law as to interest. *HAKIMA MANJI v. MEMAN AYAB*  
Haji . . . . . 7 Bom. O. C. 19

3. ——— *Amount of interest recoverable—Interest exceeding principal.* By the Hindu law, interest exceeding in amount the principal sum cannot be recovered at one time. Act XXVIII of 1855 has not, by repealing a. 12 of Regulation V of 1827 or otherwise, altered this rule of the Hindu law. *KHUSHALCHAND LALCHAND v. ISRAHIM LAKH.*  
*RASHI KRISHNABHAI v. VITHABA BIN MALHARJI*  
3 Bom. A. C. 23

**HINDU LAW—USURY—contd.**

See *KADARI DIN RANU v. ATMARAMBHAT*  
3 Bom. A. C. 11

4. ——— Interest exceeding principal  
—*Usury laws—Act XXVIII of 1855—Contract Act (IX of 1872), s. 10.* According to Hindu law, arrears of interest more than sufficient to double the debt are not recoverable, and the law upon this point was not affected by the Act (XXVIII of 1855) for the repeal of the usury laws, nor by a 10 of the Contract Act. *Semble*: The rule of Hindu law in question has not properly anything to do with the legality or illegality of any contract, but is rather a rule of limitation. *RAMCONDRY AUDICARRY v. JONUB LALL DUTT*  
I. L. R. 5 Calc. 887; C. L. R. 204

5. ——— Interest exceeding principal—*Mad. Reg. XXXIV of 1802, Regulation XXXIV of 1802*—*Regulation XXXIV of 1802*

6. ——— Interest exceeding principal—*Mad. Reg. XXXIV of 1802.* Where part payments were made on a bond, and credited in

7. ——— Interest exceeding principal By Hindu law the amount recoverable at any one time for interest or arrears of interest on money lent cannot exceed the principal, but if the

Sudder Court to the contrary overruled. *DHONDU JAGANNATH v. NARAYAN RAM CHANDIA*

1 Bom. 47

8. ——— Damdupat, rule of—Interest exceeding principal—The Hindu law rule of damdupat does not operate when the defendant is other than a Hindu. *NANCHAND HANSRAJ v. BAFUSAHES RUSTAMBHAI*  
I. L. R. 3 Bom. 131

9. ——— Interest—Rule of damdupat when applicable—*Mortgage—Hindu creditor claiming interest from a debtor not a Hindu—*

**HINDU LAW—USURY—contd.**

It is contended that the defendant being a Hindu was bound by the rule of damdupat, and could not claim as interest more than the amount of the principal. *Held*, that the rule of damdupat did not apply; and that the plaintiff was liable to the defendant for the whole amount. The rule of damdupat only applies when the debtor is a Hindu. *DAWOOD DUVESH v. VELLUBHDAS PURSHOTAM* I. L. R. 18 Bom. 227

10. ——— Damdupat—Bond purporting to be executed in adjustment of past debt—Principal for the purposes of damdupat. In the case of a bond purporting to be executed in adjustment of a past debt, the principal for the purpose of the rule of damdupat is the amount of such bond, and not the balance of the unpaid principal actually advanced on an earlier bond. *Per JENKINS, C.J.*—Neither the texts, the commentaries, usages or the cases forbid the conversion by subsequent agreement of interest into capital, nor is there any such prohibition involved in the rule of damdupat as it has been formulated. *SUKALAL v. BAFU SAKHARAM*  
I. L. R. 24 Bom. 305

11. ——— Interest—Rule of damdupat—Balance of principal actually due at date of suit—Part payments of principal. The rule of damdupat limits the arrears of interest recoverable at any one time by the amount of principal remaining due at that time. *DAODUSA SHEYAKDAS v. RANCHANDRA*  
I. L. R. 20 Bom. 611

12. ——— Interest exceeding principal—*Usury—Contract* The rule of Hindu

*DHRY* I. L. R. 1 Calc. 92; 24 W. R. 106  
*PRAN KRISHNA TAWARY v. JADU NATH TRIVEDY*  
2 C. W. N. 803

13. ——— Interest exceeding principal—*Suits between Hindus in mortgage—Act XXVIII of 1855, s. 2* In suits between Hindus in the mortgage, interest exceeding the principal may be awarded. *HET NARAIN SINGH v. RAM DEIN SINGH*  
I. L. R. 9 Calc. 871; 12 C. L. R. 590

HINDU LAW—USURY—*contd.*

way of interest to the amount of the principal, does not apply to an amount recoverable in execution of the decree of a Civil Court. **BALKRISHNA BHALCHANDRA v. GOPAL RAGHUNATH**

I. L. R. 1 Bom. 73

See **RAMACHANDRA v. BHIMRAO**

I. L. R. 1 Bom. 577

16. *Interest in grain—Damdapat. Held, that the rule of*

I. L. R. 1 Bom. 701

17. *Mortgage with possession—Mortgagee to take rent in part payment of interest—Remaining interest to be paid by mortgagor every year. The damdupat rule applies in all cases as between Hindu debtors and creditors both in respect of simple as also of mortgage debts. (2) It does not, however, apply where the mortgagee has been placed in possession, and is accountable for profits received by him as against the interest due. (3) But where these profits are by the terms of the bond received for only a portion of the interest on the mortgage debt, the general rule of damdupat will govern such mortgage accounts. **SYNDARABAI v. JAYAVANT BHIMRAJ NADGOWDA***

I. L. R. 24 Bom. 114

18. *Interest—Rule of damdupat—Mortgage. The rule of damdupat applies to mortgages where no account of the rents and profits has to be taken. **BALKRISHNA BHIMRAJ HARI GOVIND***

I. L. R. 15 Bom. 84

19. *Interest exceeding principal—Mortgage transactions. The rule of Hindu law which declares that interest exceeding in amount the principal sum cannot be recovered at any one time is not applicable to mortgage transactions. **NARAYAN PUN BHARAJ v. GANGARAJ BHIMRAJ KISHNARAJ***

5 Bom. A. C. 157

20. *Interest exceeding principal. The rule of Hindu law that interest beyond the amount of the principal sum cannot be recovered at any one time applies as well to mortgage transactions as to other loans. But where the mortgagee enters into possession of the mortgaged property, and in taking the accounts between the mortgagor and mortgagee credit is given to the latter for the rents and profits received by him as against the principal and interest due, the above rule cannot equitably be applied. **NATHURAM PANACHAND v. MULCHAND HIRACHAND***

5 Bom. A. C. 108

21. *Interest—Rule of damdupat—Mortgage. A mortgagee is entitled to have interest added to the principal at the rate stipulated in the mortgage-deed, and to appropriate the rents and profits received by him in or towards satisfaction of such interest, but after such appropriation, if the amount of interest due on the mortgage exceeds the amount of principal then,*

HINDU LAW—USURY—*contd.*

according to the rule of damdupat, the mortgagee's claim must be limited to double the principal amount. **NATHURAM PANACHAND v. MULCHAND HIRACHAND**, 5 Bom. A. C. 108, explained. **GOVIND DHARMDHAR MAHARAJDEY v. KESHAVRAJ GOVIND KULGATKAR**

I. L. R. 15 Bom. 625

22. *Rule of damdupat—Applicability of the rule—Mortgage, the terms of which make an account current necessary. The operation of the rule of damdupat is excluded in all mortgages, the terms of which necessitate the existence of an account current between mortgagor and mortgagee, whatever the state of the account may be. **Ganesh Dharmidhar v. Keshavaraj Govind**, I. L. R. 15 Bom. 625, overruled. **GOPAL RAMCHANDRA v. GANGARAJ ANAND SHET***

I. L. R. 20 Bom. 721

23. *Damdapat—Mortgage—Liability to account—Decree on mortgage—Further interest from date of suit to decree ordered by the Court—Discretion of Court—Civil Procedure Code (Act XIV of 1882), s. 209. Where under the terms of a mortgage there is a liability to account, the rule of damdupat does not apply. The law as laid down in **Gopal v. Gangaraj** (I. L. R. 20 Bom. 721) is not limited only to cases in which at date of suit an account between the mortgagor and mortgagee is actually kept. In a suit brought by a mortgagee against his mortgagor (both parties being Hindus) the decree ordered the defendant to pay interest from the date of suit to decree upon the total found due after applying the rule of damdupat at the date of suit. It was objected that this order of further interest violated the rule of damdupat. *Held*, that the discretionary power as to awarding interest conferred on the Courts by s. 209 of the Civil Procedure Code (Act XIV of 1882) may be exercised without reference to the law of damdupat. **DHONDOSHET v. RAVJI***

I. L. R. 22 Bom. 88

24. *Interest exceeding principal—Mortgage transaction. *Held*, in a case of deposit for redemption of a mortgage, that the principal and an equal sum for interest was sufficient and that no more interest could accrue during the year of grace, as the law prohibited interest in excess of the principal. **SHEDART v. DHARAT THAKOR***

2 Agre Pt. II, 184

25. *Interest exceeding principal—Rule of damdupat—Mortgage transactions. According to the Hindu law of damdupat, interest exceeding the principal sum lent cannot be recovered at any one time. Cases bearing upon the subject of damdupat, and how far and when that law is applicable to loans upon mortgage, reviewed and considered. **NARAYAN v. SATTAR***

9 Bom. 63

26. *Interest exceeding principal—Damdapat, rule of—Mortgage transactions—Suit for foreclosure. In a suit for foreclosure of an equitable mortgage: *Held*, that the plaintiff could not recover interest to an amount exceeding the principal sum lent; the rule of*

HINDU LAW—USURY—*contd.*

damdupat being applicable in a case of a mortgage by a Hindu where no account of rents and profits is to be taken. *GANPAT PANDURANG v. ADARJI DADARHAI* . . . I. L. R. 3 Bom. 312

27. *Interest exceeding principal—Rule of damdupat—Limitation.* In a suit by the assignees of the equity of redemption for possession on payment of the mortgage money; *Held*, the question of the period for which interest was to be allowed was therefore to be determined by Act XV of 1877, the Act in force at

HINDU LAW—USURY—*contd.*

been allowed in the account, the application of such rule has the effect of preventing the allowance of any further interest, not only for the period of six months allowed for redemption, but also subsequently without limitation of time. *RAM KANYE AUDICARY v. CALLY CHURN DEY* . . . I. L. R. 21 Calc. 640

30. *Interest—Mortgage, Decree on—Damdupat, rule of—Report of Registrar, Confirmation of.* Where the mortgagee obtained the usual mortgage decree, and on the

of . . .

*Khan v. Anund Lal Dass*, I. L. R. 23 Calc. 903, followed. *LALL BEHARY DUTT v. THACOMONEY DASSEE* . . . I. L. R. 23 Calc. 889

*KANAYE LALL KHAN v. ANUND LALL DASS* . . . I. L. R. 23 Calc. 903 note

*BOGOBAN CHUNDER ROY CROWDHY v. PRAN COOMAREE DASSEE* . . . I. L. R. 23 Calc. 906 note

31. *Rule of damdupat—Mortgage by Mahomedan to Hindu—Assignment of mortgaged land by mortgagor to Hindu assignee—Subsequent suit by mortgagee against assignee—Interest.* A, a Mahomedan, having in 1869 mortgaged certain land for Rs 1 to B, a Hindu,

at due on more than subsequently principal and Rs 209 for interest. A did not appear. C con-

of . . .

of . . .

of . . .

amount. The rule of damdupat did not apply in this case to the original mortgagor, who was a Mahomedan. He charged the land with a debt which included principal and interest, and he and his land were liable for both. He could not by any assignment prejudice his creditor or reduce the amount due to him, nor could he by assigning his

28. *Interest recoverable at any one time, amount of—Damdupat, rule of—Act XXVIII of 1835—High Court, Ordinary Original Civil Jurisdiction.* The rule of Hindu law,

Ordinary Original Civil Jurisdiction. Act XXVIII of 1835. . . of interest nothing in that of damdupat *Hirachand, 5 BIN CHUNDER BANARJEE v. ROMESH CHUNDER GHOSE* . . . I. L. R. 14 Calc. 781

29. *Interest—Rule of damdupat—Account directed by decree in mortgage suit between Hindus—Interest for periods before, during, and after, the six months allowed by decree for redemption.* Where a mortgage decree, in a suit between Hindus, directed an account to be taken of what was due to the plaintiff for principal and interest, the latter to be computed at the contract rate for six months, provided for redemption on payment of the amount due within the six months, and directed in case of default of payment that interest due be added to the principal sum, interest thereafter to be computed on the aggregate amount at 6 per cent.:—*Held*, that in taking the account the rule of damdupat was rightly applied to the interest accruing on the mortgage debt both previous to and during the six months

**HINDU LAW—UGURY—*concl.***

land to a Hindu free it from any charge that existed on it at the date of the assignment.  
**HARILAL GIRDHARLAL v. NAGARJEYRAM**

**I. L. R. 21 Bom. 38**

**32.** *Rule of damdupat—Mortgage—Original mortgagor a Hindu—Assignment of mortgage to Mahomedan purchaser—Sue by Mahomedan purchaser for redemption—Rule of damdupat how far applicable.* A Hindu mortgaged his property in 1843 to a Mahomedan for R150, with interest at 12 per cent per annum. On the 5th April 1880, the Hindu mortgagor's interest was sold to the plaintiff, who was a Mahomedan. In March 1893, the plaintiff sued for redemption, both parties to the suit being Mahomedan. *Held*, that as long as the mortgagor was a Hindu (i.e., until 1880) the rule of damdupat applied, and that as soon as the interest doubled the principal, further interest stopped. The sum of R300 was therefore the full amount of debt for which the land could be charged and hable in the hands of a Hindu debtor. But on the 5th April 1880 the plaintiff (a Mahomedan) became the debtor. The rule of damdupat

terest at R12 per annum from the date of his purchase (5th April 1880) until payment. **ALI SAHEB v. SHARJI**

**I. L. R. 21 Bom. 85**

**33.** *"Damdupat" rule—Inapplicability to case governed by Transfer of Property Act (IV of 1882).* The "damdupat" rule is inapplicable to cases of mortgage governed by the Transfer of Property Act. **Ram Kanye v. Cally Churn**, **I. L. R. 21 Calc. 841**, referred to **MADHWA SIDHANTA ONAKINI NIDHI v. VENKATARAMANJULU NAIDU** (1903)

**I. L. R. 26 Mad. 662**

**34.** *Interest—Damdupat—Interest accrued due not affected by the rule of damdupat.* Plaintiff advanced R714 to the defendant. The whole of this sum was repaid by the defendant. The plaintiff then sued to recover R33-9-2, being the amount of interest over the amount from the date of the loan to the date of its repayment. The defendant raised the plea of damdupat, alleging that no sum was due as principal at the date of suit, so none could be recovered by way of interest. *Held*, that the claim should be allowed; since the rule of damdupat had no application to a right that has already accrued. The rule of damdupat does not divest rights that

**HINDU LAW—WIDOW.**

**I. INTEREST IN ESTATE OF HUSBAND— Col.**

- (a) BY INHERITANCE . . . 5367  
 (b) BY DEED, GIFT, OR WILL . . . 5372

**HINDU LAW—WIDOW—*contd.***

**2. POWER OF WIDOW— Col.**

- (a) POWER TO COMPROMISE . . . 5378  
 (b) POWER OF DISPOSITION OR ALIENATION . . . 5378  
 (c) POWER OF ADOPTION . . . 5401

**3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY . . . 5401**

**4. DISQUALIFICATIONS—**

- (a) RE-MARRIAGE . . . 5417  
 (b) UNCHASTITY . . . 5419  
 (c) MISCELLANEOUS . . . 5423

*See ACT XXI OF 1850, s. 1.*

**I. L. R. 26 All. 233**

*See HINDU LAW—*

**ADOPTION—**

**REQUISITES FOR ADOPTION—**

**AUTHORITY ;**  
**I. L. R. 30 Calc. 965**  
**I. L. R. 26 Mad. 627, 661**

**WHO MAY OR MAY NOT ADOPT ;**  
**I. L. R. 26 Bom. 526**  
**I. L. R. 27 Bom. 492**

**EFFECT OF ADOPTION ;**  
**5 C. W. N. 20**

**ALIENATION—ALIENATION BY WIDOW.**  
**I. L. R. 29 All. 331**

*See HINDU LAW—CONTRACT—HUSBAND AND WIFE . I. L. R. 6 Bom. 470*

*See HINDU LAW—CONTRACT—NECESSARIES.*

**DEBTS . I. L. R. 126 Bom. 206**

*See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT , 3 W. R. 160*

**3 Bom. A. C. 75**

**I. L. R. 2 Calc. 365**

**I. L. R. 9 Calc. 768**

**I. L. R. 20 Mad. 421**

*See HINDU LAW—FAMILY DWELLING-HOUSE.*

**INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW ;**

**MAINTENANCE—RIGHT TO MAINTENANCE—**

**SONS' WIDOW ;**

**WIDOW ;**

**PARTITION—RIGHT TO PARTITION—WIDOW ;**

**REVERSIONERS ;**

**STRIDHAN ;**

**VESTED AND CONTINGENT INTERESTS.**  
**I. L. R. 29 Calc. 699**

**HINDU LAW—WIDOW—contd.**

See HINDU WIDOW.

See LAND ACQUISITION ACT, ss. 31 AND 32.  
I. L. R. 24 ALL 189

See LETTERS OF ADMINISTRATION.

8 Bom. O. C. 140

I. L. R. 2 Calc. 431

I. L. R. 4 Calc. 87

6. C. W. N. 345

See LIMITATION—QUESTION OF LIMITATION . . . I. L. R. 29 Calc. 664

See LIMITATION ACT, 1877, ARTS. 125, 140, 141.

See ONUS OF PROOF—HINDU LAW—ALIENATION.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.

I. L. R. 11 Calc. 492

I. L. R. 21 Calc. 697

See WILL . . . I. L. R. 30 Bom. 477

WILL—CONSTRUCTION OF WILLS—

ADOPTION I. L. R. 28 Calc. 499

— gift to widow—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS . . . I. L. R. 29 Calc. 699

— power of widow; power of disposition or alienation—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION.

I. L. R. 29 Calc. 499

**1. INTEREST IN ESTATE OF HUSBAND.**

(a) BY INHERITANCE

1. ——— Right of widow in husband's property.—Registration of name. A widow under the Hindu law is entitled to succeed to her husband's property, and to have her name registered as proprietor. DEEPA DEBIA v. GOSINDO DEB  
18 W. R. 42

2. ——— Estate taken by widow.—Life-estate. A widow is entitled by law to a life-estate in her husband's property. GIRDHAREE SINGH v. KOOLAHUL SINGH  
6 W. R. P. C. 1: 2 Moo. I. A. 344

3. ——— Immoveable property.—Nature of right. A Hindu widow has an absolute right to the fullest beneficial interest in her husband's property inherited by her for her life.

**HINDU LAW—WIDOW—contd.****1. INTEREST IN ESTATE OF HUSBAND—contd.**

(a) BY INHERITANCE—contd.

VADHANI VENKATA SUBHAYA v. JOYSA NARASIN. CAFFA . . . 3 Mad. 118

4. ——— Possession of, and partition between, co-widows of estate left by their deceased husband. Possession of the estate left by their deceased husband was taken by two widows of a deceased Hindu, who, being childless, had before his death adopted a son, to whom also, by will, he bequeathed his estate. The adopted son died soon after the testator. Held, that the widows had a possessory title or interest in the estate, notwithstanding that a preferable title might exist in others through the deceased legatee; also that the estate, being jointly held by them, was partible, and either widow might maintain a suit for partition. SUNDAR v. PARBATHI . . . I. L. R. 12 ALL 61  
I. R. 19 I. A. 188

5. ——— Childless widow.—Mitakshara law—Qualified interest. A child-

6. ——— Widow succeeding in default of male issue—Qualified interest. A widow, who succeeds to the estate of her husband in default of male issue, whether she takes by inheritance or by survivorship, does not take a mere life-estate. The whole estate is for the time vested in her, though in some respects for only a qualified interest. She holds an estate of inheritance to herself and the heirs of her husband; and upon the termination of that estate, the property descends to

7. ——— Childless Jain widow—Separate property of husband. A childless Jain widow acquires an absolute right in her husband's separate property. HARNABH PERSHAD v. MANDIL DASS . . . I. L. R. 27 Calc. 679

8. ——— Right to divided property. According to the Hindu law, a widow cannot claim an undivided property. REWAN PERSHAD v. RADHA BIBEE  
7 W. R. P. C. 35: 4 Moo. I. A. 137

9. ——— Right of widow as to vested property of husband under a will. The doctrine of the Hindu law that a widow succeeding as heir to her husband cannot recover property of which he was not possessed does not apply when the husband has a vested interest under a will or deed, the actual enjoyment being postponed. HURROO-SOONDERY DEBIA CHOWDERANEE v. RAJESUREE DEBIA . . . 2 W. R. 321



HINDU LAW—WIDOW—*contd.*1. INTEREST IN ESTATE OF HUSBAND  
—*contd.*(a) BY INHERITANCE—*contd.*

10. ————— *Interest of Hindu widow in husband's property, power of disposal of, as against reversioners.* The widow of one of the brothers of a divided Hindu family, governed by the Mitakshara law, does not acquire an absolute interest in her husband's separate estate; but only such

11. ————— *Suit by reversionary heir—Hindu widow—Burden of proving ownership of the husband through whom title is made.* It is incumbent on a plaintiff suing as the reversionary heir of a Hindu proprietor, who has died leaving a widow, to show that the property claimed in the suit and found in her possession has vested in the husband. There is no presumption of law arising where the late husband possessed considerable property, that property found to be in the possession of the widow after his death must have been included in that which belonged to him unless she shows that she obtained the property from another source. *RAN BIJAI BAHADUR SINGH v. INDARPAL SINGH* . . . I. L. R. 26 Calc. 571  
I. L. R. 26 I. A. 226  
4 C. W. N. 1

*See DAKHINA KALI DEBI v. JAGADISHWAR BHUTTACHARJEE* . . . 2 C. W. N. 107

12. ————— *Trustee—Daughter's estate.* The title of a Hindu widow to her husband's property, though a restrictive one, is not in the nature of a trust. *Quere* Whether by the Hindu law current in Bengal the interest of a daughter in the estate of her deceased father is of the same nature as that of a widow. *HARRYDOSS DUTT v. UPPOORNAH DOSSEE* . . . 6 Moo. I. A. 433

13. ————— *Power of husband to cut down by deed wife's absolute estate to a life interest.* Where a Hindu wife is entitled to an absolute estate in certain property, her husband cannot cut down her interest to a life-interest by any deed which he may make. *MOHINI CHUNDER ROY v. DURGA MONEE* . . . 23 W. R. 184

14. ————— *Liability of heir for debts left by widow.* By Hindu law a widow is allowed, during her lifetime, to make the fullest use of the usufruct of her husband's estate; but whatever part of it she leaves behind at her death becomes the property of the next heir, and is not liable for her personal debts, unless such debts have been contracted under legal necessity and for the benefit of the estate. *CHUNDABALLEE DEBIA v. BRODIE* . . . 8 W. R. 584

HINDU LAW—WIDOW—*contd.*1. INTEREST IN ESTATE OF HUSBAND—*contd.*(a) BY INHERITANCE—*contd.*

15. ————— *Widow's estate in moveables inherited from her husband—Liability of such property for her debts after her death.* Under the Hindu law in force in the Presidency of Bombay, a widow inheriting from her husband, or a

therefore her personal property liable in their hands for her debts. *BAI JAMINA v. BHAISHANKAR*  
I. L. R. 16 Bom. 233

*See HARILAL HARIVANDAS v. PRANVALAYDAS PARBHUDAS* . . . I. L. R. 16 Bom. 229

16. ————— *Savings or accumulations by widow.* One M died in 1872, leaving him surviving his widow F, and a grandson G, and a daughter-in-law. The widow (F) on her husband's death became entitled to a widow's estate in his immoveable property, and accordingly entered into possession and management thereof. Under certain

her estate,  
Rs. 1,787-10-3  
death, K  
s grandson  
and the reversioner expectant on the determination  
of F's widow's estate, and on her death had  
succeeded to all the immoveable property as  
the right heir of her husband M. The question

as his heir.  
recover it as I  
to show it to  
to give it to  
RIVETT-CARN  
BOMBAY) v. J

17. ————— *Accumulations.* The right of a Hindu widow to the income and accumulations of her husband's estate arising subsequently to his death is not affected by the fact that she is not the owner of the property; but after the death of the husband, the property is to be accumulated for the benefit of the widow or her heirs. *See R. v. BROUGHTON* . . . I. L. R. 14 Calc. 801

18. ————— *Acquisitions by widow—Liability of property purchased by her for her debts*

**HINDU LAW—WIDOW—contd.****1. INTEREST IN ESTATE OF HUSBAND—contd.****(a) BY INHERITANCE—contd.**

—*Liability of heir to pay widow's debts—Power to borrow money on security of estate.* The property acquired by a Hindu widow by purchase, with moneys borrowed on her own credit, is liable to be sold in satisfaction of her debts. Where a Hindu widow has acquired property purchased by moneys borrowed on the credit of her husband's estate, it is equitable that the heir of the husband, who takes in succession to her, should not be permitted to take such acquired property freed from the liability of satisfying a debt contracted by the widow to enable her to make the acquisition, and if the heir claims to take the acquisition, he is bound to satisfy the debt. A Hindu widow may encumber her husband's estate for her own maintenance; consequently, it seems that, if she can derive no income from the estate sufficient for her maintenance, there being no funds for cultivation, she would be at liberty to borrow money, on the security of the estate, for the purposes of cultivation and provision for herself. *OODEY SINGH v PHOOL CHUND* 5 N. W. 197

**19. — Money advanced by widow**—*Presumption as to its being husband's property.* Where Hindu widows acquire property by advancing money during an interval when they are out of possession of their deceased husband's estate, the money so advanced cannot be presumed to be a part of the proceeds of that estate. *GOBIND CHUNDER MOJOOIDAN v DULMEER KHAN* 23 W. R. 125

**20. — Funeral expenses of widow**—*Liability of husband's estate for such expenses.* Under the Hindu law, the estate of the husband is liable for the funeral expenses of the widow; her stridhan cannot be charged with such expenses. *Sadasiv v Dhakubai*, 1 L. R. 5 Bom 450, referred to. *BATANCHAND v JAVHERCHAND* 1 L. R. 22 Bom. 818

**21. — Rents of immovable property**—*Execution of decree for money—Application for receiver of rents of immovable property of deceased Hindu in the hands of his widow*—It is a Court's duty to see that the widow's estate is not exhausted by the payment of the husband's debts.

widow's estate, such rents not being assets of the deceased, but the personal movable property of the widow, and this even if the decree-holder had not, as in fact he had, agreed for consideration not to execute his decree against the moveable property of the widow. *KANNO DAI v LACY*

1 L. R. 19 All. 235

**22. — Migration by widow of a subject of French India to British India**—*Acquisition of domicile in British India—Character*

**HINDU LAW—WIDOW—contd.****1. INTEREST IN ESTATE OF HUSBAND—contd.****(a) BY INHERITANCE—contd.**

the property inherited by her from her husband will be held by her according to the customary law of French India. *MAILATHI ANNI v SUBBARAYA MUDALIAR* (1901) 1 L. R. 24 Mad. 850

**23. — Compromise—Widow—Effect of compromise entered into by a Hindu female with limited estate.** Held, that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of a deceased husband or father is not binding on the reversioners, even though it has been followed by a decree of Court; the reversioners can only be bound by decree made after a full contest in a bona fide litigation. *Gobind Krishna Narain v. Khunni Lal*, 1 L. R. 29 All. 487, followed. *MAHADEVI v. BALDEO* (1908) 1 L. R. 30 All. 75

**24. — Mukaddam's estate—Widow in possession of husband's estate as inferior proprietor—Effect of enlargement of estate of inferior proprietor by action of Government.** An under-proprietor, whose status was described by the term "mukaddam" died, and his estate devolved upon his son. His estate was not enlarged by the Government's action.

possessed, was still a Hindu widow's estate merely; the action of Government had not the effect of making her a zemindar with a title independent of that which she derived from her husband. *Keech v. Sandford*, 2 W. & T., 7th Ed. 693, referred to by *STANLEY, G. J.* *KASHI PRASAD v. LINDA KUNWAR* (1908) 1 L. R. 30 All. 490

**25. — Right of residence—Attach-**

right and cannot be transferred. Such right cannot be attached in execution under s. 266 of the Code of Civil Procedure. *SALAKSHI v. LAKSHMAYEE* (1908) 1 L. R. 31 Mad. 600

**(b) BY DEED, GIFT, OR WILL**

**26. — Devise by will—Widow's estate—Married woman.** The rule of Hindu law by which widows take only a qualified estate in their husband's property has no application to a devise

**HINDU LAW—WIDOW—contd.****1. INTEREST IN ESTATE OF HUSBAND—contd.****(b) BY DEED, GIFT, OR WILL—contd.**

under a will to married women. **CHUNDER MONEY DASSEE v. HURRY DASS MITTER** 5 C. L. R. 557

27. ———— *Construction of will—Estate taken by widow—Alienation by just-*

my death my perform with expenses for the marriage, maintenance, and support, according to the family usage of my three daughters. She shall have 4 annas of talukhs A and B, in the possession of my step mother, for her necessary expenses and the performance of charity. According to the above conditions, my step-mother shall take possession of these two properties and my wife of all the remaining real and personal estate." *Held*, that the widow took only a life-estate. *Held*, further, that the daughters were entitled to a declaration that a sale by the widow to the defendants of the properties given by the will was for her life only, the defendants being unable to show any justifying necessity which would entitle her to sell the entire estate. **KULIAN-BETTI KOER v. TULAPAL SINGH** 11 C. L. R. 204

28. ———— *Joint tenancy—*

heirs," with a direction that they should maintain themselves out of the income, and pay one D R1,000 a year for managing it. N died intestate in 1880 to

estate in half the property, and that (subject to her right, as a Hindu widow, to a widow's estate in a half share) the entire property vested absolutely in N. On N's death, the property (subject as aforesaid) vested in the plaintiff L, as his widow and heir, for a widow's estate, and she became entitled to joint possession with the defendant H. A widow taking under her husband's will takes only a widow's estate in the property bequeathed to her, unless the will contains express words giving her a larger estate. **HIRABAI v. LAKSHMIBAI** I. L. R. 11 Bom. 573

Affirming on appeal the decision in **LAKSHMIBAI v. HIRABAI** I. L. R. 11 Bom. 69

29. ———— *Deed of arrangement giving property to widow "for her sole use and*

**HINDU LAW—WIDOW—contd.****1. INTEREST IN ESTATE OF HUSBAND—contd.****(b) BY DEED, GIFT, OR WILL—contd.**

benefit"—*Interest in property of husband.* A deed of arrangement and release in the English form, between members of a Hindu family in respect of certain joint estate, claimed by a childless Hindu widow of one of the co-heirs in her character of heiress and legal personal representative of her deceased husband, declared that she was entitled to the sum therein expressed as the share of her deceased husband "for her sole absolute use and benefit." *Held* (reversing the decree of the Supreme Court at Calcutta), that these words were not to receive the same interpretation as a Court of equity in England would put up on them, as creating a separate estate in the widow; but that the deed must be construed with reference to the situation of the parties and the rights of the widow by the Hindu law, and that, as the deed recited that she claimed and received the money as her husband's share in the joint estate in her character as his heiress and legal personal representative, such words must be construed to mean that it was to be held by her in severalty from the joint estate, and as a

Committee directed that interest at the usual rate allowed by the Supreme Court should be allowed from the death of the widow. **RABUTTY DASSEE v. SIBCHUNDER MULLICK** 6 Moo. I. A. 1

30. ———— *Gift of moveable and immoveable property—Power of alienation.*

**PREMCHAND DUTT**

I. L. R. 5 Calc. 684; 5 C. L. R. 581

31. ———— *Gift of immoveable property by husband—Life-interest—Heritable interest—*

suit. On appeal, plaintiff contended that the heir of the donee, and that, under the deed of

HINDU LAW—WIDOW—*contd.*1. INTEREST IN ESTATE OF HUSBAND—*contd.*(b) BY DEED, GIFT, OR WILL—*contd.*

gift, she had no power to alienate. *Held*, that from the wording of the deed of gift, it appeared that the husband intended to give and did give to his wife an heritable estate in, and power of alienation over, the property the subject of the gift, and therefore the sale by the wife was valid. *Koonjebhari Dhur v. Prem Chand Dutt*, 1. L. R. 5 Cal. 681, referred to. KANHIA R. MAHIN LAL

I. L. R. 10 ALL. 495

32. ——— Deed of adoption by widow to deceased husband—*Interest and powers of adoptive mother*. The widow of a separated Hindu made an adoption to her deceased husband under a power to adopt conferred upon her by her husband's will. The deed by which the adoption, the validity of which was not disputed, was evidenced, contained amongst others, the following conditions: "that during my" (i.e., the adoptive mother's) "lifetime, I shall be the owner and manager of the estate, and that after my death the adopted son should have the same rights and privileges as would have been enjoyed by the natural son of I C M born of me." *Held*, that these words conferred upon the widow an interest and an authority not less than she would have had as the widow of a separated *saless* Hindu to whom no adoption had been made, so far as her position as manager was concerned. *KALI DAS v. BIJAI SHANKAR*. I. L. R. 13 ALL. 391

33. ——— Deed of gift to widow, Construction of—*Life estate*. In this case the decision of the High Court, reported in 7 B. L. R. 23, was reversed by the Privy Council, who held that the effect of the instruments was to give the widow an estate for life with power to use the proceeds as she chose, and consequently that the proceeds, or property purchased by her out of the proceeds, would belong on her decease to her heirs. *BHAGUBTI DEVI v. BHOLANATH THAKOOR*

I. L. R. 1 Cal. 104; 24 W. R. 968  
L. R. 2 I.A. 1356

34. ——— Gift containing power of adoption—*Interest in moveable and immovable*

*Thaloor*, L. R. 2 I. A. 256, followed. *BETIN BHARI BUNDOPADHYA v. BROJO NATH MOOKROPADHYA*. I. L. R. 8 Cal. 357

35. ——— Bill of sale, construction

HINDU LAW—WIDOW—*contd.*1. INTEREST IN ESTATE OF HUSBAND—*contd.*(b) BY DEED, GIFT, OR WILL—*contd.*

heirress of G, joined with D, in bringing a suit for partition against K and the other members of the joint family. The decree in the suit, which was made by consent of all parties, declared R and D entitled to two equal twelfth parts of the joint estate, and K to one-twelfth share, and referred it to certain persons as arbitrators, and not as commissioners only, to make the award. The arbitrators allotted certain land to R and D as their two-twelfths of the joint immovable property, "to be held by them in severalty absolutely;" to K they allotted other land as his one-twelfth share and in pursuance of an arrangement come to between K and R, and D, they directed K to sell and convey his one-twelfth share to R and D on some sum from the sum at which it

acquiescence with the award, he added: "Becoming from this day invested with my rights, you have become proprietors of the right of gift and sale. I have no further connection with the said land. Paying the taxes, revenue, etc., to Government, and causing mutation of names, you will continue, with your sons and grandsons in succession to enjoy possession in perfect peace." In a suit brought by K against the executor of R, to recover a moiety of the property awarded to her and D and of the property conveyed to them by the bill of sale, upon an allegation that R took this property only as mother and heirress of G, and that upon her death it devolved upon him as G's next of kin—*Held*, reversing the decision of MACPHERSON, J., that R took an absolute estate, and not merely a life-interest, both in the property awarded to her and in the property conveyed by the bill of sale. *BOLYN CHAND DUTT v. KHETTERPAL BYACK*

11 B. L. R. 549

## 2. POWER OF WIDOW.

## (c) POWER TO COMPROMISE.

1. ——— Nature of power to compromise—*Assertion of rights—Right of appeal*. A Hindu widow, as representative of the entire estate in litigation, has the same control with respect to compromise as she has with respect to the assertion of rights and with respect to appeal against an adverse decision. *TARINI CHARAN GANGULI v. WARSOW* 3 B. L. R. A. C. 437; 12 W. R. 413

in a part of it, cannot but be regarded as an alienation, and is not binding against the reversioners. *INDRO KOOZA v. ANANDL BUEKUR* 14 W. R. 148

HINDU LAW—WIDOW—*cont'd.*2. POWER OF WIDOW—*cont'd.*(a) POWER TO COMPROMISE—*cont'd.*

3. ———— *Compromise of suit—Disclaimer of interest.* In a suit for the recovery of a share of joint property the plaintiff's maternal aunts, childless Hindu widows, who were entitled to a prior life-interest to which the plaintiff's reversion was subject, filed a petition disclaiming their interest and assenting to the suit. *Held*, that the Judge might make a decree founded upon the disclaimer of the widows. *RUJONEEKANT MITTER v. PREMCHAND BOSE* . . . . . *Marsh*, 241: 1 *Hay* 513

*SHAMA SOONDUREZ v. SHURUT CHUNDER DUTT*  
8 *W. R.* 500

4. ———— *Effect of compromise—Power to bind reversioners.* Hindu widows have no power by a compromise between themselves to affect the rights of the successor to the estate on their death. *DHARAM CHAND LAL v. BHAWANI MISRAIN* . . . . . *I. L. R.* 25 *Calc.* 89  
1 *C. W. N.* 697

5. ———— *Compromise made by widow, effect of—Claim under alleged adoption—Minor daughters.* In a suit in which a claim was made, in virtue of an alleged adoption, to the estate of a deceased Hindu, the widow made a compromise, which was not in writing, with the claimant wherein the adoption was admitted, but alleged to have been on condition that the widow should enjoy the entire property for her life without power of alienation, and that, after her death, her minor daughters should take the self-acquired property, and that the claimant should succeed to the ancestral estate. *Held*, that the daughters could not under any circumstances be bound by the compromise. *Judgment of the High Court reversed on the facts.* *IMRIT KONWUR v. ROOP NARAIN SINGH*  
6 *C. L. R.* 78

6. ———— *Ikrarnamah—Alienation—Reversioner—Limitation.* C, the brother of A and B, died in 1835, and an order for mutation and registration of names having been obtained by A and the heirs of B on the 28th March 1835, K the widow of C, instituted a suit to have the order cancelled and to have her possession confirmed, and on the 4th September 1837 obtained a decree, which, however, was reversed on appeal on the 24th July 1839, the Appellate Court declaring that K was

possession for her life without power to make *zari-peshgi* leases or mortgages, and that on her

HINDU LAW—WIDOW—*cont'd.*2. POWER OF WIDOW—*cont'd.*(a) POWER TO COMPROMISE—*cont'd.*

death such *monzahs* should pass to the heirs of A and B. On the *ikrarnamah* being filed, the Court struck off the appeal and made an order on the 14th September 1841, to the effect that the *ikrarnamah* should "in no way affect the rights of the minors," the heirs of A and B. *Held*, that the *ikrarnamah* and order of the 14th September 1841 could not be regarded as affecting the rights of the reversioners of C's estate on the expiration of the widow's life-interest. *Held*, also, that the suit by K and the succeeding compromise was tantamount to an alienation by her, and that there was consequently no adverse possession during her life, and that the period of limitation in a suit by the reversioners must be calculated from her death. *SHEO NARAIN SINGH v. KURGO KORY.*  
*SHEO NARAIN SINGH v. BISHEN PRASAD SINGH*  
10 *C. L. R.* 337

widow is a party, cannot bind the reversioners to her husband on her death. A plea that such a settlement was binding on the reversioner was disallowed when the party who benefited by the transaction

## (b) POWER OF DISPOSITION OR ALIENATION.

8. ———— *Power of alienation—Alienation for religious or charitable purposes—Necessity—Right of Crown taking property to set aside alienation—Onus probandi.* Under the Hindu law, a widow, though she takes as heir, takes a special

as it has not been lawfully disposed of by her,

is on those who claim under an alienation from a Hindu widow to show that the transaction was within her limited powers. *COLLECTOR OF MASULIPATAN v. CAVALY VENCATA NARAYANAI*  
2 *W. R. P. C.* 61: 6 *Moq. I. A.* 529

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

B. ———— *Power to dispose of property by will—Right to dispose of.* *E.A. Hindu*

ginal Court that ancestral property after partition can be disposed of by will, in the same way as self-acquired property, disapproved of, as opposed to the authorities and general spirit of Hindu Law. *LAKEHIMBAI v. GANPAT MORORA GUNPAT MORORA v. LAKSHMIBAI* . . . 5 Bom. O. C. 128

10. ———— *Widow of Hindu having undivided property—Self-acquired property—Payment of debts.* The widow of an undivided Hindu has no right to sell his property for payment of his debts, even though it be self-acquired. *NANASIVAYA CHETTI v. SIVAGANI* . . . 1 Mad. 374

11. ———— *Alienations by a widow of her husband's estate in order to pay his time-barred debts—Widow's status as distinguished from that of a manager—Liability of alienation—Rights of reversioners.* According to the Hindu law, a widow is competent to alienate her husband's estate for the purpose of paying his debts, even though they may be barred by the law of limitation. Her alienations for such a purpose are legal and binding on the reversionary heirs. A widow stands in a different position from that of a manager of a joint family. The latter can act only with the consent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her. She can therefore do what the body of co-parceners can do subject always to the condition that she act fairly to the expectant heirs. The rights of these heirs impose, on persons dealing with a widow, the obligation of special circumspection, failing which they may find their securities against the estate to be of no avail after the widow's death. *CHIMNAJI GOVIND GODSOLE v. DINKAR DHONDEY GODSOLE* . . . 1 L. R. 11 Bom. 320

12. ———— *Gift—Interse to collateral heir of husband.* A childless widow *rani* has no power to alienate her deceased husband's property as against his collateral heir by a *waseetanamah* or deed of gift. *KEERUT SINGH v. KOOLA-HUL SINGH* . . . 5 W. R. P. C. 131  
2 Moo. I. A. 331

13. ———— *Power to dispose of immovable property by will—"Inherited."* A widow has no power to dispose by will of immovable property inherited by her from her husband. The word "inherited" used in the *Mitakshara*, in regard to a woman's stridhan, does not include immovable property so as to make it her *peculium*, but refers only to personal property over which alone

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

she has absolute dominion. *GOBURNATH NATH v. ONOOR ROY* . . . 3 W. R. 105

*RAM SHEWUK ROY v. SHEO GOBIND SAHOO* . . . 8 W. R. 519

14. ———— *Right to dispose of land, portion of stridhan.* Held, that a widow cannot, under Hindu law, dispose of immovable property given to her by her husband which has become a portion of her stridhan. *GONPAT SINGH v. GUNGA PERSHAD* . . . 2 Agra 230

15. ———— *Right to alienate stridhan, except land.* A Hindu wife or widow may alienate her stridhan, whether it be moveable or immovable, with the exception, perhaps, of lands given to her by her husband. *DOR D. KULANMAL v. KUPPU PILLAI* . . . 1 Mad. 85

18. ———— *Power to alienate land being her stridhanam.* Land received by a woman from her husband as stridhanam cannot be alienated even after the husband's death to the prejudice of the daughters as next heirs without their consent. *GANGADARAIYA v. PARAMESWARANMA* . . . 5 Mad. 111

17. ———— *Power to dispose of property by will.* A woman cannot execute a will regarding any property she inherits from her husband or father. She may dispose of her stridhan by gift, will, or sale, unless it is immovable property given her by her husband. *TEENCOOWARE CHAT. TEJEE v. DINONATH BANERJEE* . . . 3 W. R. 49

18. ———— *Stridhan—Power of disposition by will.* Where a Hindu lady has received presents of moveable property from her

*VENKATA RAMA RAO v. VENKATA SUBBIA RAO* . . . 1 L. R. 1 Mad. 281

In the same case in the Privy Council it was held as follows, affirming the decision of the High Court. The testamentary power of a Hindu female over her stridhanam being commensurate with her power of disposition over it in her lifetime, and both being absolute, no distinction can be taken as regards a widow's power of disposition by will over immovables in the purchase of which she has invested money given to her by her husband. Such estate is subject to the disposition which the general law gives her the power to make of her stridhanam. *VENKATA RAMA RAO v. VENKATA SUBBIA RAO* . . . 1 L. R. 2 Mad. 333  
8 C. L. R. 304

19. ———— *Right of alienation of moveable and immovable property.* A

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

Hindu widow's right to alienate moveable property inherited from her husband, without the consent of his heirs, is absolute. With respect to immovable property inherited from her husband, a Hindu widow is little more than a tenant for life and trustee for the heirs of her husband, and she is restricted from alienating it by her sole independent act, unless for necessary subsistence, or for purposes beneficial to the deceased. **BECHAR BHAGAVAN v. BAI LAKSHMI** . . . . . **1 Bom. 56**

**20.** . . . . . *Power to dispose of property—Immovable and moveable property.* By the law of the Western schools, as well as by

**KOOR DEYHEE v. RAI BALUK RAM**  
**2 Ind. Jur. N. S. 108; 10 W. R. P. C. 3**  
**11 Moo I. A. 139**

**KOTARBASAFA v. CHANVEROVA** . . . **10 Bom. 403**

**21.** . . . . . *Right of alienation of immovable property.* Held, that a Hindu widow, having a life-interest only in immovable property inherited from her husband, has an independent power of sale over the same to the extent of such life interest and no further. **MATARAM BHAI RAM v. MOTIRAM GOVINDRAM**  
**2 Bom. 331; 2nd Ed. 313**

**22.** . . . . . *Non ancestral and ancestral property—Agarwala Banias of Saraogi sect of Jains.* Amongst Agarwala Banias of the Saraogi sect of the Jain religion, a widow has full power of alienation in respect of the non-ancestral property of her deceased husband, but she has no such power in respect of the property which is ancestral. **SHIMBHU NATH v. GAYAN CHAND**  
**I. L. R. 18 All. 379**

**23.** . . . . . *Power of, to dispose of personality inherited by her from her husband.* Held, that, under the Hindu law as understood in the Benares school, a widow has an absolute right to dispose of the personality inherited by her from her husband; that under the Hindu law Government promissory notes ought to be treated as personal property; that jewels, shawls, etc., are of the nature of stridhan; and that in Hindu law books the word "corrody" is used solely with reference to land, and that Government promissory notes cannot be included in the said term "corrody." **DOORGA DAYEE v. POORUN DAYEE**  
**1 Ind. Jur. N. S. 128; 5 W. R. 141**

**24.** . . . . . *Widow's property in moveables left to her by the will of her husband.* In Western India a widow takes absolutely all moveable property bequeathed to her by her husband, and may dispose of such property by will. **DAMODAR MADHOUJI v. PURMANANDAS JEJWANDAS**  
**I. L. R. 7 Bom. 165**

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

**25.** . . . . . *Moveable property inherited from husband—Devolution of such property.* Under the Mitakshara law, a widow has no power to bequeath moveable property inherited by her from her husband. In the Presidency of Bombay, moveable property inherited by a widow from her husband devolves on her death to her husband's heirs. If the decision in the case of **Damodar v. Purmanandas, I. L. R. 7 Bom. 155**, is to be regarded as necessarily giving to the heir of a widow on her death such moveable property inherited from her husband as remains undisposed of by her, it must be treated as of no authority. **GADADHAR BHAT v. CHANDRABHAGABAI**  
**I. L. R. 17 Bom. 690**

**See HARILAL HARIVANDAS v. PRANVALAVAS PARBHUDAS** . . . . . **I. L. R. 18 Bom. 229**  
**and BAI JAMINA v. BHAI SHANKAR**  
**I. L. R. 18 Bom. 233**

**26.** . . . . . *Widow's power to dispose of moveables bequeathed to her by her husband—Mayukha law.* Held, that a widow in Gujarat, under the law of Mayukha, had power to bequeath moveable property taken by her under the will of her husband which gave her express power of free disposition. **Gadadhar Bhat v. Chandrabhagabai, I. L. R. 17 Bom. 690**, distinguished. **PER RANADE, J.**—There is a three-fold distinction between the moveable and immovable property, between title by bequest and a title by inheritance, and a distinction between the Mayukha and Mitakshara, which must be borne in mind before the rights of a widow in Gujarat, claiming under a will which gave her express powers of free disposition over the residue of moveable property, are negatived solely on the authority of the Full Bench. *If the widow in this case*

reversioner as her husband's heir. **MOTILAL LALUBHAI v. RATILAL MAHIPUTHAM**  
**I. L. R. 21 Bom. 170**

**27.** . . . . . *Widow's estate—Moveable property.* The restriction placed by the Hindu law on a widow's power of alienation of her husband's estate extends to moveable as well as immovable property. **NARASIMHA v. VENKATADRRI**  
**I. L. R. 8 Mad. 290**

**28.** . . . . . *Right of childless widow to alienate moveable property—Mithibai law.* A childless widow in this law a child-

she has also an absolute power to dispose of the profits of the estate during her lifetime. **BIRAJUN KOER v. LUCHMI NARAIN MAHATA**  
**I. L. R. 10 Calc. 392.**

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

**29. ———— Immoveable property—Will—Bequest—Gift.** An absolute bequest by a Hindu of his separate immoveable property to his widow confers on her as full dominion and power of alienation over that property as if the bequest had been made to a stranger. **SETHI MULCHAND BARDHARSHA v. BAI MANCHA** . I. L. R. 7 Bom. 481

**30. ———— Power to dispose of property by will.** Where a widow of a Hindu

**GUPITI REDDI v. CHINNAMMA** I. L. R. 7 Mad. 93

**31. ———— Grant of money in lieu of maintenance—Power of disposal.** Where a sum of money was given to a widow, without

**CHETTI v. MARAKATHAMMAL** I. L. R. 1 Mad. 166

**32. ———— Gift—Interest with husband in joint property.** Where a Hindu

**33. ———— Restriction on alienation—Proof of legal necessity.** The restric-

defendants (the sons of the mortgagee) contended that the plaintiff could not redeem because the sale by S was invalid. They also claimed compensation for loss of the rents and profits of a portion of the mortgaged property redeemed from B by the original owner. The Subordinate Judge allowed the plaintiff's claim. In appeal, the District Judge confirmed his decree, being of opinion that the sale was valid as against the defendants, because there were no collateral heirs. On appeal to the High Court:—*Held*, following the decision of the Privy Council in *Collector of Masulipatam v. Caroly Venkata Narrainapah*, 2 W. R. P. C. 61: 3 Moo.

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

**I. A 529**, that the plaintiffs, who were bound to make out their title, could not succeed on the strength of an alienation by a Hindu widow, unless they proved that the alienation was made for purposes which the Hindu law recognized as necessary. **DIONDO RAMCHANDRA v. BALKRISHNA GOVIND NAGVEKAR** . I. L. R. 8 Bom. 190

**34. ———— Adoption made on promise of settlement—Specific widow in ac Immoveable**

Talabda Koli caste of Hindus, by an express promise to settle his property upon the boy, induced the parents of the defendant to give him their son in adoption, but died without having executed such settlement:—*Held*, that the equity to compel the heir and legal representative of the adoptive father specifically to perform his contract survived; and the property in the hands of his widow was bound by that contract. Therefore, when the widow of the adoptive father, nearly thirty years after his

which she had waived. The nature of a Hindu widow's estate in immoveable property considered. **BHALA NATHANA v. PARBHU HARI**

I. L. R. 2 Bom. 67

**35. ———— Right of widow to dispose by will.** By Hindu law the widow of a collateral does not take an absolute estate in the property of her husband's gotraja-sapinda, which she can dispose of by will after her death. **BHARMAOAVDA v. RUDRAPOAVDA**

I. L. R. 4 Bom. 191

**36. ———— Bengal school of Hindu law—Widow's estate—Joint widows—Partition—Purchaser from Hindu widow—Where a Hindu governed by the Bengal school of Hindu law**

as against the other widow. **JANAKI NATH MUKHOPADHYA v. MOTHURANATH MUKHOPADHYA**

I. L. R. 9 Calc. 580: 12 C. L. R. 215

**37. ———— Widow with certificate under Act XXVII of 1860—Ground for setting aside sale—Fraud.** The sale by a widow (who has obtained a certificate under Act XXVII of 1860 to collect the debts due to her husband's estate) of a money-decree belonging to her husband's estate cannot be set aside except on the ground of fraud, either as not being the heir and



HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

selling what she had no power to transfer, or as making a paper transfer to avoid the effect of execution. *BHAGWAN DOSS v. LUCHMEY NARAIN*

2 W. R. 118, 19

38. \_\_\_\_\_ *Sale by widow with consent of heirs* An adopted son is not actually precluded from questioning acts done by his

3 W. R. 14

39. \_\_\_\_\_ *Gift by Hindu widow of her own interest and that of consenting reversioner.* A Hindu widow in possession can, with the consent of a reversioner, make a valid gift, which will operate, so far as the interest of the widow and that of the consenting reversioner are concerned. *Rany Srimutty Dibeah v. Rany Koond Luta*, 4 Moo. I. A. 292; *Koer Goolab Singh v. Rao Rurun Singh*, 14 Moo. I. A. 176; *Sia Dasi v. Gur Sahai*, I. L. R. 3 All. 362, and *Raj Bullabh Sen v. Gomeah Chunder Roos*, I. L. R. 5 Cal. 44, referred to. *Ramphal Rai v. Tula Kuari*, I. L. R. 6 All. 116, distinguished. *RAMADHIN v. MATHURA SINGH* . . . . . I. L. R. 10 All. 407

40. \_\_\_\_\_ *Gift with consent of reversioner—Subsequently-born reversioners.* The widow of a separated Hindu, being in possession as such widow of property left by her husband, executed a deed of gift of such property in favour of her daughter's son, her daughter being also a party to the deed. Subsequently to the execution of this deed of gift, the executant's daughter gave birth to another son. *Held*, that the deed in question could not affect more than the life-interests of the executant and her daughter, and could not operate to prevent the succession (as to a moiety of the property) opening up in favour of the subsequently-born son on the death of the survivor of the two ladies. *Ramphal Rai v. Tula Kuari*, I. L. R. 6 All. 116, referred to. *DULI SINGH v. SUNDAR SINGH* . . . . . I. L. R. 14 All. 377

41. \_\_\_\_\_ *Power to defeat rights of reversioners* A Hindu widow is not at liberty to defeat the rights of reversioners by alienating or wasting moveable property inherited from her husband. *BUCHI RAMAYYA v. JAGAPATHI* . . . . . I. L. R. 8 Mad. 304

42. \_\_\_\_\_ *Forfeiture of property—Reversioner, right of, to possession.* A Hindu widow does not forfeit her interest in her deceased husband's separate estate merely by divesting herself of such interest. Such an act does not entitle the person claiming to be the next reversioner to sue for possession of the estate, or for a

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

declaration of his right as such reversioner to succeed to the estate after the widow's death. *PRAG DAS v. HARI KISHEN* . . . . . I. L. R. 1 All. 503

43. \_\_\_\_\_ *Appointment of reversioner as manager—Lease by Hindu widow before he took over charge.*—Where a reversioner had obtained a decree for waste against a Hindu widow and was appointed manager of the estate, but did not take over charge of it for six years;—*Held*, that a pottah granted by the widow in the meantime was a valid lease. *RAJE CHURN PAUL v. SAROOP CHUNDER MYTTEE* . . . . . 9 W. R. 596

44. \_\_\_\_\_ *Right of purchaser at sale in execution of decree.* A purchaser in execution of the rights of a Hindu widow is entitled to question the validity of leases made by her. *RAJESHEN SIRCAR v. CROWDHEY JAREDOORIL HUG* . . . . . W. R. 1864, 351

45. \_\_\_\_\_ *Mortgage by one of two co-widows invalid without the consent of the other—Their joint interest and title by survivorship—Construction of mortgage-deeds* One of two co-widows mortgaged, without the consent of the

following necessity for a sole widow, or co-widows

*PUSAPATI ALAKAJESWARI* . . . . . I. L. R. 18 Mad. 1  
I. L. R. 19 I. A. 184

46. \_\_\_\_\_ *Division by co-widows of their late husband's estate—Alienation by one after the division—Validity of alienation as against surviving widow on decree of alienor.* A Hindu died, leaving two widows who divided his property by a formal registered partition deed, under which each took possession of her share, with

widows from so far releasing her right of survivorship as to preclude her from recovering from an

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*

(b) POWER OF DISPOSITION OR ALIENATION—*contd.*  
 absence, after the other co-widow's death, property

preclude her from recovering during her life property which she has alienated, to the full extent of such alienation, provided that it does not extend beyond her life-interest. *RAMAKKAL v. RAMASAMI NAICKAN* I. L. R. 22 Mnd. 522

47. ———— *Right of widow to sell property inherited from her husband*—Sut by reversioner to set aside sale by widow. B having during his lifetime mortgaged certain property, the income of which was sufficient only to pay interest on a portion of the mortgage-debt, his widow, after his death, sold it before the mortgage-debt fell due. The reversioners sued to set aside the sale. *Held*, that, although there might have been no absolute necessity for the widow to sell the property to provide herself with maintenance, still, as there was no other family property, the property in question must necessarily have been sold at the expiration of the time fixed by the mortgage, and the sale by the widow ought to be supported. A widow, like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heirs. *VENKAT SHRIDHAR v. VISHNU BABAJI RERI* I. L. R. 18 Bom 534

48. ———— *Alienation by widow without legal necessity*. The property in dispute (consisting of 12 thikans or plots of land) was originally held by A and B as tenants-in-common, and they divided the income according to their respective shares. After A's death, his widow adopted C on condition that she was to remain in absolute possession and enjoyment for her life, and that C was to succeed to the property after her death.

were made without any legal necessity. The defendant also purchased B's share in the thikans in dispute. The plaintiff purchased C's rights, and on the widow's death, sued to set aside her alienations and to obtain joint possession with the defendant of all the thikans. The defendant pleaded (*inter alia*) that the widow's alienations were valid and binding on the plaintiff, and that the plaintiff's remedy was a partition suit. *Held*, that A's widow, not having higher powers than those of an ordinary Hindu widow who succeeds as heir to her sonless husband, could only make valid alienations for purposes warranted by the law. As no legal necessity was shown in respect of the alienations in question, which were made long after disputes had commenced between her and her adopted son, they were not binding on him or on his abnee, the plaintiff. *AKTALI v. DATTALI*

I. L. R. 19 Bom 38

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*

(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

49. ———— *Mortgage taken from Hindu widow—Unpaid interest claimed on her deceased husband's mortgages—Will, construction of*. A pardanashin widow executed a mortgage of part of the family estate to secure payment of the balance of interest alleged to be due on three previous mortgages, which had been executed by her husband in his lifetime. Justifying necessity for her to encumber was not shown, nor enquiry by the mortgagee as to her authority. Even if the transaction had been properly explained to her, as a Hindu widow who would have exceeded her powers. By his will her husband had declared that his widow should have full powers, but that, during the life of his minor son, she should not have power to transfer without legal necessity; and that she should have power to mortgage to pay revenue and other debts. *Held*, that the will conferred on her no greater power of alienating the family estate than she had under the Hindu law; and that, under the circumstances, the mortgage executed by her was invalid. Notes promising to pay interest, additional to that contracted for in the mortgages, had been signed by the husband, which it was held could not affect the right to redeem, being unregistered. *TIRA RAM v. DEPUTY COMMISSIONER OF BARA BANKI* I. L. R. 28 Oals. 707

I. L. R. 26 I. A. 87  
 3 C. W. N., 573

50. ———— *Assignment by widow—Decree for mesne profits of her late husband's land in her favour—Execution proceedings by assignee—Objections by reversioners—Validity of assignment*. The widow of a deceased Hindu, having been kept out of possession of land forming portion of her late husband's estate, obtained a decree for possession thereof and for mesne profits. She assigned the decree for mesne profits and subsequently died. Upon the assignee attempting to execute the decree in respect of mesne profits, the reversionary heirs contended that he had no right

I. L. R. 22 Mnd. 500

51. ———— *Adopted son's right to impeach alienation unnecessarily made by his adoptive mother before his adoption—Widow, alienation by—Alienee from widow bound to inquire of legal necessity for alienation—Evidence—Onus of proving necessity for alienation by the widow*. The plaintiff claimed, as the adopted son of one K, to recover possession of his adoptive father's property, which had been mortgaged by his (K's) widow, R (defendant No. 1), to the third defendant B prior to the plaintiff's adoption by her. The property had come into R's possession num.

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

bered with a mortgage effected by her husband, and in order to redeem that mortgage, she mortgaged the property again to one T. She subsequently paid off T's debt, amounting to Rs. 629, and in 1876 she mortgaged the property for Rs. 999 to B, who was put into possession. In 1881 she adopted the plaintiff, and in 1882 the plaintiff brought this suit to recover the property. He contended that B had no power to alienate or mortgage the ancestral immovable property of her deceased husband, and

*alid*) that the plaintiff could not impeach transactions effected by his adoptive mother prior to his adoption. *Held*, that the plaintiff, as the adoptive son of A, had a right to impeach the unauthorized transactions of his adoptive mother B, who possessed only a widow's restricted power of alienation. The plaintiff was adopted by B to her husband, who was the last owner of the ancestral property. The plaintiff at once succeeded to that property upon his adoption, and as heir of his adoptive father was entitled to object to any alienation made by B on the principle that the restrictions upon a Hindu widow's power of alienation are inseparable from her estate, and their existence does not depend on that of heirs capable of taking on her death. *Held*, also, that the plaintiff was entitled to redeem the property on payment of such amount only as was raised by B for the purpose of meeting expenses necessarily incurred by her. *Held*, further, that the onus of proving the necessity for alienation lay upon B. The Court found that there was no evidence that any sum beyond Rs. 629, the amount of T's mortgage, was really required by B, and accordingly directed that the mortgage account should be taken between the plaintiff and B on the footing that the principal of the mortgage debt was Rs. 629 only, instead of Rs. 999. **LAKSHMAN BHAS KHOORKE v. RADHA BAI**. I. L. R. 11 Bom. 608

52. *Leave granted by Hindu widow while in possession of widow's estate.* A widow in possession of her widow's estate in a zamindari made a grant of a *patti* tenure under it to a *lessee* at a rent. In this suit, brought by the reversionary heir, on her death, with the object of having the grant set aside as invalid as against him, the *patti* lease was not proved to have been made with authority or from necessity justifying the alienation by the widow. *Held*, that the *patti* was, on the death of the widow, only voidable, and not of itself void; so that the plaintiff, the next inheritor of the zamindari, might then elect to treat it as valid. **MONIR SIKHAN SIKHAN v. ROOKE**. I. L. R. 25 Cal. 1

I. R. 24 L. A. 164  
I. C. W. N. 433

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

53. *Working quarries by Hindu widow on property inherited from husband.* The right of a widow to work quarries on land inherited from her husband considered. **SCHEA REDDI v. CHENGALADIA**

I. L. R. 22 Mad. 128

54. *Gift to Po-Brahmin—Alienation by widow for religious purposes.* When a Po-Brahmin receives a salary for the performance of his duties, a gift to him by the widow of the person whose exequial rites he has been appointed to perform, to reward him for having performed any of those exequial rites, is not a gift binding on the reversioners. **MAHADEVI v. MEELAXANI**. I. L. R. 20 Mad. 289

55. *Grant by widow of jungleburi tenure—Power to bind reversioners.* The question whether a jungleburi tenure granted by a Hindu widow is binding on reversioners depends on the circumstances of the land. *Quere*: Whether such a tenure granted in respect of a *char* where no legal necessity on behalf of the widow is shown could, under any circumstances, be binding on the reversioners. **DROBONYI GITTA v. DATT**

I. L. R. 14 Cal. 332

56. *Accumulations by Hindu widow—Accumulations, period up to which they may be dealt with—Legacy to Hindu widow.* The right of a Hindu widow to the income and accumulations of her husband's estate arising subsequently to his death is absolute, and is not affected by the fact that she may receive them in a lump sum; but whether she receives them as they fall due or after they have accumulated in the hands of others, her right is the same. The question to be sought for in determining her right to deal with such income and accumulations of income is one of intention. If she has invested her savings in such a manner as to show an intention to augment her husband's estate, she cannot afterwards deal with such investments, except for reasons which would justify her dealing with the original estate; but if she has evinced no such intention, she can, at any time during her life, deal with the profits. Where she invests her income making a distinction between the investments and the original estate, she can at any time thereafter deal with such investments, save in the case of the purchase of other property as a permanent investment. But should she invest her savings in property held by her without making any distinction between the original estate and the after-purchases, the *prima facie* presumption is that it has been her intention to keep the estate one and entire, and that the after-purchases are an increment to the original estate. **CHAND CHITRADEI ROY v. BROUGHTON**. I. L. R. 14 Cal. 861

57. *Accumulations—Period up to which accumulation may be dealt with—Intention to accumulate.* Under the will of

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

*N C M.*, the testator left his estate to his brother.

ditions failed, and on the expiration of the term of eight years, the estate vested in the brother. The will made no provision for disposal of the rents and profits of the estate during the period the succession thereto was in abeyance. Disputes having arisen between the widow of the testator and his brother as to the right to such rents and profits, the brother eventually agreed to pay, and did pay, over to the widow a large sum by way of settlement of these disputes, for which sum the widow executed a release. The widow invested the sum so received in Government securities, and twenty years afterwards created with this fund a trust in favour of one *Q C*.

The death of the testator left funds as which the widow had no right to deal. *Held*, that, as the accumulations were handed over to the widow by the person entitled to the reversion after the estate had vested in him, and a release had been entered into between them, no presumption arose that the fund in question had been accumulated by the widow for the benefit of other heirs of the testator, and that, there being no such presumption,

received by her for the benefit of any person but herself, or that she ever intended to give up the power of disposing, expending, or dealing with it in any way. *SOWDAMINI DASSI v. BROODHON*

*I L R 16 Cal 574*

58

*Alienation, power of, over immovable property—Request by husband—Will, construction of—Grant of absolute power, express or implied—Restrictions imposed upon power of alienation—Indian Succession Act (X of 1865), s 8.* Though a mere gift of immovable property by a Hindu husband to his wife does not carry with it the power of alienation, yet, where any such property is given by the husband to the wife with express power of alienation, or when this power is implied by the grant, she would acquire an absolute power of disposal over the property; and, when the gift is made by a will, the legatee is entitled, under the provisions of a 82 of the Indian Succession Act, to the whole interest of the testator, unless it appears from the

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

imposed by the terms of the will, so far as the power of alienation is concerned. Upon a construction of the will in this case, which provided as follows:—"If neither of them (the wives) have any children, then both my wives will enjoy and appropriate at their will the entire property, moveable and immovable, in equal shares, in full

power of alienation was intended to be conferred on the widows. *Lalit Mohan Singh v. Chukun Lal Roy, 1 C W. N. 337, La's Ramjivan v. Dalkoor, I L R 14 Cal. 406; and Rajnarain Bhaduri v. Kallayani Devi, 3 C. W. N. 337, referred to SARODA SUNDARI DASSI v. KRISTO JIBAN PAL (1900) 5 C. W. N. 300*

59. A lease granted by a Hindu widow, in possession of her widow's estate, does not necessarily become void on her death, but is only voidable by the next inheritor of the estate. *SADAI NAIK v. SERAI NAIK (1901)*

*I L R. 28 Cal 532*  
*s c 5 C. W. N. 279*

80. Property inherited by widow from her husband—Acquisitions with the income thereof—No indication of intention by widow to make the acquired property part of the husband's estate for the benefit of his heirs—Presumption that widow intended to retain control. A Hindu widow inherited certain property from her husband; and with the income thereof acquired land on a

reversionary heirs to her late husband then sued her assignees for the property. There was no evidence that the widow had ever indicated any intention to make the property part of her husband's estate for the benefit of his heirs. *Held*, that there was no presumption that the widow intended to part with her power of disposition for the benefit of her reversionary heirs. The acquirer of property presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal. Inasmuch as the widow's absolute power of disposition over the income derived from the widow's estate is now fully recognized, she will be presumed, in the absence of an indication of her

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

inherited from her husband. She is the sole and separate owner of the two sets of properties, so long as she enjoys them, and is absolutely entitled to the income from both. The title of the assignees of the widow was upheld. *Ieri Dut Koer v. Hansbutti Kocrain*, I. L. R. 10 Calc. 334, 337; and *Saodamin Dasi v. The Administrator-General of Bengal*, L. R. 30 I. A. 12, referred to. **AKKANNA v. VENKAYYA** (1901). I L R 25 Mad 351

**61.** *Enfranchisement of land in favour of widow as personal mam land—Lease by widow—Sale of the land by her reversioners—Validity of lease—Title of purchaser.* Certain land had been enfranchised in favour of a Hindu

recover possession of it from the lessees, on the ground that their lease was not valid as against the reversioners, nor as against plaintiff, as their vendee. *Held*, that the plaintiff had shown no title. **SUBBA NAIDU v. NAGAYYA** (1901). I L R 25 Mad. 424

**62.** *Widow's estate—Alienation by widow—Subsequent adoption—Right of adopted son to claim property alienated—Limitation—Act XV of 1877, Sch II, Art 144.* Where a Hindu widow alienates part of the immovable property belonging to her husband's estate, and then adopts a son, the son cannot sue to recover possession of the property until the termination of her

alienation is severed from the inheritance only

tions by **BILASHYAM AYYANGAR, J.**, on the effect of an alienation by a Hindu widow. **SREERAMULU v. KRISTAMMA** (1902). I L R 26 Mad. 143

**63.** *Alienation by one of two co-owners—Effect on the co-tenants and on the inter widows.* half of

where the transaction is for the benefit of the estate, an alienation by her will bind her own interest in the property during her life-time. **VADALI MANIDIGADU v. KOTIPALLI RAMAYYA** (1902).

I L R 26 Mad 334

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

**64.** *Lease—Limitation—Hindu widow, lease granted by—Suit by reversioners for khas possession—Limitation Act (XV of 1877), Sch. II, Arts. 91, 118, 125, 141.* A lease granted by a Hindu widow is on her death, only voidable, and not of itself void. *Modhu Sudan Singh v. Rooke*, I. L. R. 25 Calc. 1, followed. *Sadai Naik v. Serai Naik*, I. L. R. 28 Calc. 532, referred to. On the death of a Hindu widow, a suit by a reversioner to recover possession of immovable property, by setting aside a lease executed by her, is governed by Art. 91, and not by Art. 141, of Sch. II to the Limitation Act (XV of 1877). *Jagadamba Chaudhrani v.*

*Hanmant Chouda Doshananda* I L R 24 Bom. 260; *Ja* 15  
Calc. 58 *hur*  
*Perahad* 29;  
and *Chu.* C.  
W. N. 8  
*Ram Sewak Chowdhry*, I. L. R. 24 Cal. 77,  
distinguished. **BIJOY GOPAL MUKERJI v. NIT-  
RATAN MUKERJI** (1903)  
I L R 30 Calc. 890; s. c. 7 C. W. N. 884

**65.** *Mitakshara—Property given or devised to wife by husband—Held that under the*

I. L. R. 21 Calc. 534, referred to. **SURAJMANI v. RABI NATH** (1903). I L R. 25 All. 351

**66.** *Public policy, contenance opposed to—Prayer for general relief—Hindu Law—Hindu widow, alienation by—Legal necessity—Family debts—Marriage expenses—Costs*

ations of property made by three Hindu widows in favour of the defendants was instituted by the plaintiffs A, B and C. The plaint stated that B and C were the reversioners to the widows and that they had conveyed their rights to A. It was prayed that possession of the property might be given to A, and there was a general prayer "for

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

such further or other relief as the nature of the case may require." The lower Court dismissed the claim of A, but relying upon the prayer for general relief made a decree in favour of B and C. *Held*, that the plaintiffs B and C were entitled to no relief in the suit. *Held*, further, that a prayer for general relief is limited by the facts alleged and by the prayer for express relief. *Cargill v. Bower*, L R. 10 Ch. D. 502; *Hiralal Mullick v. Matilal Mullick*, 5 B. L. R. 682, and *Jugal Kishore Lal Singh Deo v. Kartic Chunder Chhotopadhyaya*, 1 L. R. 21 Cal. 116, followed. Amongst cases of legal necessity authorizing a Hindu widow to alienate properties

followed. *DEBI DAYAL SAHOO v. BHAN PERTAB SINGH* (1904) L. R. 31 Cal. 433  
S. C. 6 C. W. N. 408

67. ———— Hindu widow—

widows. On been effected not, and the Court decreed

who both survived the plaintiff's grand-mother: *Held*, that the suit was not barred by limitation. *Corind Singh v. Baldeo*, 1 L. R. 25 All. 330, and *Jhamman Kunwar v. Tilok*, 1 L. R. 25 All. 435, followed. *RAM DEI KUNWAR v. ABU JAFAR* (1905) 1 L. R. 27 All. 494

68. ———— Widow—Power of alienation—Power to grant permanent lease—Benefit of the estate. A Hindu widow, as regards the management of the estate, has not less power than the manager of an infant's estate, and the reversioners are not entitled to set aside a permanent lease granted by her, which is found to be for the benefit of the estate and by which they are found to have been benefited. *Hunooman Persaud Panday v. Mussummat Babooe Munraj Koonverree*, 6 Moo. I. A. 843, and *Rameswar Pershad v. Ran*

HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*contd.*(b) POWER OF DISPOSITION OR ALIENATION—*contd.*

*Bahadur Singh*, 1 L. R. 6 Cal. 843, applied. *DAYAMANT DEBI v. SEINIBASH KUNDU* (1906) 1 L. R. 33 Cal. 842

69. ———— Hindu widow—

entitled to succeed on the death of the widow.

All 116, referred to. *RAJ KISHORE v. DURGA CHARAN LAL* (1906) 1 L. R. 29 All. 71

70. ———— *Mitakshara*—*Mayukha*—*Succession*—*Co-widow's interest in the property of their deceased husband*—*Right of assigning her share*—*Partition*—*Alienation of her share*—*Valid during her lifetime*—*Survivorship*. It is the right of each of the co-widows to enjoy her deceased husband's property by partition *inter se*, both under the *Mitakshara* and the *Mayukha*. She can, therefore, assign her share to anyone she chooses; and if she has already obtained her share by partition, she can alienate that share. But in either case the assignment or alienation cannot take effect or have validity beyond her lifetime. It is good as long as she lives, and, on her death, her interest in the property ceases and the share goes to the surviving co-widow or co-widows as the case may be. *HARI v. VITAI* (1907) 1 L. R. 31 Bom. 560

71. ———— *Reversioner*—*Suit*—*Limitation Act (XV) of 1877*, Sch. II, Art. 91, 141—*Immovable property*—*Lease by Hindu*

her husband, of which she was in possession for a widow's estate as his heir, and of which she had granted a lease for a term extending beyond her own life, is governed by the 12 years' period of limitation provided by Art. 141 of Sch. II of the Limitation Act, and not by the three years' period prescribed by Art. 91. A Hindu widow is the owner of her husband's property subject to certain

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

restrictions on alienation, and subject to its devolving upon her husband's heirs upon her death. Her alienation is not absolutely void, but it is *primâ facie* voidable at the election of the reversionary heir, who may affirm it or treat it as a nullity without the intervention of any Court, there being nothing to set aside or cancel as a condition precedent to his right of action. The institution of a suit for possession shows his election to treat the alienation as a nullity; and in such a suit it is therefore unnecessary for him to ask for a declaration that it is inoperative. *BIJOY GOPAL MUKERJI v KRISHNA MAHESHI DEBI* (1907)

I. L. R. 34 Cal. 329; L. R. 34 I. A. 87

**72.** ——— *Widow—Alienation—Suit by reversioner to set aside the alienation—Limitation—Limitation Act (XV of 1877), Sec II, Art. 91 The plaintiff sued in 1904, as reversioner, to recover possession of property from the defendant to whom it had been given by way of gift in 1894 by the widow of a preceding owner. It was found by both the lower Courts that the alienation was not justified by any necessity recognised by Hindu law. The defendant pleaded that the suit was barred by limitation. *Held*, that it was not open to the defendant to rely on Art. 91 of the Limitation Act (XV of 1877) as a bar to the suit. *Harihar Ojha v. Dasarathi Misra*, I. L. R. 33 Cal. 257, followed. *RAKSHNABAI v KESHAU RAGHUNATH* (1906) I. L. R. 31 Bom. 1*

**73.** ——— *Service inam—Alienation by widow* A Hindu widow cannot alienate beyond her own life-time service inam enfranchised in her name under Madras Act IV of 1866. *PINGALA LAKSHMIATHI v BOMMIREDDI-TALLI CHALAMAYYA* (1907) I. L. R. 30 Mad. 434

**74.** ——— *Widow—Power of widow in possession of husband's estates—Alienation of estate made by widow with concurrence of reversioners—Consent at time of alienation—Subsequent ratification—Quantum of consent necessary—Custom excluding daughters from succession, evidence of* A Hindu widow in possession of her husband's estate as his heir has power, apart from legal necessity, to alienate the estate, with the concurrence of the reversionary heirs, so as to bind the persons, who are the next reversioners, when the succession opens out on her death; and this principle has been admitted by all the High Courts in India. *Nobokishore Sarma Roy v. Hori Nath Sarma Roy*, I. L. R. 10 Cal. 1102; *Marudamuthu Nadan v. Srinivasa Pillai*, I. L. R. 21 Mad. 128; *Vinayak Vilhal Bhang v. Govind Venkatesh Kulkarni*, I. L. R. 25 Bom. 129, and *Ramphal Roy v. Tula Kuari*, I. L. R. 6 All. 116, referred to. The restriction sought to be placed by the Allahabad High Court on the widow's power to surrender in favour, or alienate with the consent, or presumptive reversioners so as to defeat the title of the

**HINDU LAW—WIDOW—contd.****2. POWER OF WIDOW—contd.****(b) POWER OF DISPOSITION OR ALIENATION—contd.**

actual reversioner at the time of the widow's death is at variance with this principle, and not in accordance with the practice in other parts of India, in which the Mitakshara law prevails. *Ramphal Rai v. Tula Kuari*, I. L. R. 6 All. 116, dissented from so far as it supports such restriction. Ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, although there may be cases in which special circumstances may render the strict enforcement of this rule impossible. It is immaterial whether the concurrence of the reversioners is given at the time the alienation is made or whether the transaction is subsequently ratified. The maxim "*Omnis ratihabito retrotrahitur et mandato priori æquiparatur*," referred to. A custom among the Bhale Sultan tribe of Chhatris in Oudh excluding daughters from succession was held to have been established on the evidence. *BAJRANGI SINGH v. MANOKARNIKA BAKSH SINGH* (1908) I. L. R. 30 All. 1 s. c. 12 C. W. N. 74; L. R. 35 I. A. 1

**75.** ——— *Moveables inherited from husband—Gift invalid—Mitakshara.* A Hindu widow is not competent under the Mitakshara to make a gift of moveables inherited by her from her husband, who died childless and intestate. *PANDHARINATH v. GOVIND* (1907)

I. L. R. 32 Bom. 59

**76.** ——— *Widow—Mort-*

*gag* *in forma pauperis*—*to let* XIV of 1882, s. 110. A mortgage of part of her late husband's estate was executed by a Hindu widow in defiance of the rights of her husband's adopted son, and in fact in collusion with the mortgagee and in order to deprive the adopted son of his adoptive father's estate. Shortly before this mortgage was executed by the widow the adopted son had applied for leave to sue *in forma pauperis* for the recovery of his adoptive father's estate. *Held*, on a suit by the mortgagees to enforce their mortgage against the adopted son, then in possession, that the suit must fail, both because the fact of the estate having to some slight extent benefited by the money borrowed was not sufficient under the law to entitle him to sue *in forma pauperis*. *Faiyaz Hussain Khan v. Amir Partab Singh* v. All. 339, referred to. *AMBIKA PARTAB SINGH v. DWARKA PRASAD* (1907) I. L. R. 30 All. 95

**77.** ——— *Conveyance by a widow to reversioner of whole life estate, validity of—Conveyance not invalid by reason of contemporaneous agreement between the widow and reversioner.* Where

**HINDU LAW—WIDOW—*contd.*****2. POWER OF WIDOW—*contd.*****(b) POWER OF DISPOSITION OR ALIENATION—*contd.***

a widow conveys the whole of her limited estate to the next reversioner in consideration of an undertaking by such reversioner that he would reconvey a portion of such property to a person named by the widow, the conveyance is valid and is not vitiated by such agreement. The title of such

her life estate to the next reversioner is analogous to the case of a widow divesting herself of her estate by adoption; and as an adoption cannot be questioned on the ground of improper motive in the widow, so the validity of the surrender cannot be affected by her motives or by any conditions that may be imposed by her. **CHALLA SUBBIAH SASTRI v. PALURY PATTABHIRAMAYYA** (1908)

**I. L. R. 31 Mad 446**

**78.** **Widow—Permanent alienation by widow of her husband's property—Necessity—Meaning of the estate**  
Under Hindu law, an alienation of the whole or part of the husband's property is not valid unless it is for the necessity of the estate. Some notion of pressure from without and not merely a desire to better or to develop the estate, for this last implies vast powers of management, which in practice would not easily be distinguishable from an authorization to embark upon speculative ventures. A Hindu widow can alienate immoveable property inherited by her from her husband in order to preserve the estate; but she is not entitled to alienate it merely in order to improve it. **GANAP v. SUBBI** (1908)

**I. L. R. 32 Bom. 577**

**79.** **Reversioner—Consent given bond fide and for valuable consideration by the nearest reversioner to an alienation by a widow binds actual reversioner claiming through him.** Where the widow and the nearest reversioners execute a document, by which such reversioners, bond fide, and, in consideration of the widow conveying to them a portion of the property inherited by her from her husband, give up all their right to the remaining properties, and consent to the widow dealing with such properties as she chooses, the actual reversioners after the widow's death, who claim through such nearest reversioners, are bound by such consent and are estopped from questioning

**HINDU LAW—WIDOW—*contd.*****2. POWER OF WIDOW—*contd.*****(b) POWER OF DISPOSITION OR ALIENATION—*contd.***

alienations made by the widow subsequent to such agreement. **Bajrang Singh v. Monokarmika Baiksh Singh**, 12 C. W. N. 74, followed. **Per Sir ARNOLD WHITE, C.J., and SANKARAN-NAIR, J.** A surrender by a widow in favour of the next rever-

reversioners cannot by a general release of their reversionary right prospectively enable the widow to give an absolute title to property inherited from her husband. **Per WALLIS, J.**—The document in the present case is a conveyance by way of release

as a means of enlarging her own estate or effecting alienations to strangers, as it will be an abuse of the limited power vested in her. The reversioner's right to validate alienations is not derived from the power to surrender. The former is analogous to the power of a tenant to consent to an alien-

ation, of the next reversioners. **Per SANKARAN-NAIR, J.**—The document in this case must be construed as extinguishing the whole life estate of the widow. It amounts to a surrender of the whole to the reversioners and a reconveyance of part to the widow. A widow may alienate for necessary or for religious or charitable purposes, and in such cases, where reversioners consent, the consent is only evidence of necessity or fairness of the transaction, and it is not the consent, but the existence of facts evidenced by such consent, that validates the transaction. In cases not justifiable

surrender will be valid, i.e., where it extinguishes the life estate. The assent of sapindas necessary

justified by Hindu law. Such consent, however, must have reference to the particular alienations sought to be impeached. **RANGAPPA NAIK v. KAMPTI NAIK** (1907) **I. L. R. 31 Mad. 368**



HINDU LAW—WIDOW—*contd.*2. POWER OF WIDOW—*concl.*

## (c) POWER OF ADOPTION.

80. ———— *Widow succeeding as a gotraja sapinda in a joint Hindu family to an estate not her husband's—Powers of adoption.* A and S were two joint Hindu brothers. S died in 1876 leaving a widow P and two daughters him surviving. After S's death, P continued to live with A, who died in 1877. P succeeded him as there was no issue or nearer heir to A. P adopted defendant 1 as a son. The plaintiffs, some of whom were reversioners entitled to succeed to A as his heirs after the termination of P's life estate, sued to recover possession of the property, alleging that P was not authorised to make the adoption she did, and it was, therefore, bad. *Held*, that the adoption by P was invalid. A Hindu widow who succeeds to an estate not her husband's, but as a gotraja sapinda of the last male holder under the rule established by *Lulloobhoy v. Cassim* (L. R. 7 I. A. 212) and in consequence of the absence of nearer heirs, cannot make a valid adoption. *Amava v. Mahadgauda*, I. L. R. 22 Bom 416, and *Payapa v. Appanna*, I. L. R. 3 Bom 327, doubted. *Ramkrishna v. Shamrao*, I. L. R. 25 Bom 526, followed. *Datto Govind v. Pandurang Vinayak* (1908) I. L. R. 32 Bom 408

## 3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

1. ———— *Effect of decree against Hindu widow—How far binding on inheritance.*

bound by a decree fairly and properly obtained against the widow. A decree in a suit for a zamindari by a Hindu widow binds those claiming the zamindari in succession to her, unless it can be impeached on some special ground. *KATTAMA NACHEAR v. RAJA OF SHIVAOUNGA*

2 W. R. P. C. 31  
9 Moo I. A. 530

*BADAMOO KOOR v. WUZEEER SINGH*

1 Ind. Jur. N S 144; 5 W. R. 78

*GOPAL CHUNDER MAHA J. GOUR MOONEE DOSSEE*  
6 W. R. 52

*See PERTAB NARAIN SINON v. TRILOKINATH SINGH*

I. L. R. 11 Calc. 166; I. L. R. 11 I. A. 197

2 ———— *Decree against widow in representative capacity—Execution of decree—Debts incurred by husband.* After the death of a member of a Hindu family, his widows were sued in their representative capacity, and decrees were obtained in respect of debts incurred by him in his lifetime on his own account. *Held*, that the decrees

HINDU LAW—WIDOW—*contd.*3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*contd.*

could only be executed against that property which passed from the deceased to his widows in their own right, and not against other portions of the joint family property. *SADABUT PERSHAD SAHOO v. LOTF ALI KHAN. PHOOLBAS KOOR v. LALL JAGGESSUR SAH. BIKRAMJEET LALL v. PHOOLBAS KOOR. RANDHYAN KOOR v. PHOOLBAS KOOR* . . . . . 14 W. R. 40

3. ———— Under a decree in a suit on a bond against the widow of the deceased obligor, property to which her son, of whom she was guardian, was entitled as heir, was sold. In the advertisement of the sale the property was described as that of the widow, and the interest to be sold was described as that of the debtor. *Held*, that the purchaser at the sale acquired the property of the deceased debtor in the estate, and had a good title against the heir. *ISHAN CHUNDER MITTER v. BUKSH ALI SOUDAGUR* . . . Marsh. 814

*SC BUKSH ALI SOWDAGUR v. ESSAN CHUNDER MITTER* . . . . . W. R. F. B. 118

*NUZEERUN v. AMERGOODEEN* . . . 24 W. R. 3.  
*HULKORY LALL v. SHEO CHURN LALL*  
24 W. R. 109.

*See ABDUL KUREEM v. JAUN ALI*  
18 W. R. 58

4. ———— *Decree against widow for*

under a decree against her, and A was the purchaser at the sale. Afterwards and during the lifetime of the widow the lands in question were sold for arrears of revenue due by A to Government in respect of other lands, and B was the purchaser at the sale. After the death of the widow, the reversioner sued B for recovery of possession of the

*KISTO MOYEE DOSSEE v. PROSUNO NARAIN CHOWDERY* . . . . . 6 W. R. 304

*RAM SHEWUK ROY v. SHEO GOBIND SAHOO*  
8 W. R. 619

5. ———— *Decree against widow personally and as guardian of son—Debts of husband and wife jointly, liability of estate for*

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSON ALLY—*contd.*

sell as much of the estate as is necessary to raise the full amount of the debt. *GOLUCK CHUNDER PAUL v. MAHOMED ROHIM*. 9 W. R. 310

6. — Decree for refund of deposit by mortgagee to prevent sale for arrears of revenue—*Estate in possession of Hindu widow—Effect of decree by mortgagee against widow.* A mortgaged estate, which was about to be sold for arrears of Government revenue, was saved from sale by the mortgagee depositing a sum sufficient to pay the revenue due. The mortgagee then sued the person in possession of the talukh, a Hindu lady, widow of the original mortgagor, seeking, under s. 9 of Act I of 1845, to obtain from her personally repayment of the money paid to save the estate from sale; not making the reversioners parties, and not praying that the talukh might be sold to pay the amount due. A decree was given in that suit to the mortgagee, on the execution of which decree the reversioners intervened. *Held*, by the Privy Council, that the mortgagee had no

as defendant represent and protect the estate as well in respect of her own as of the reversionary interest. *NAOENDRA CHUNDER GHOSE v. SREENUTTY DOSSEE*

8 W. R. P. C. 17: 11 Moo. I. A. 241

7. — Decree in suit for arrears of rent—*Decree against widow in representative capacity—Purchaser, rights of.* A sued, under Act X of 1859, the widow of Z, as widow of Z and guardian of Z's son, for arrears of rent due by Z. He

natural father Z. Certain estates of the deceased were then, in 1867, put up for sale under Act XI of 1859, in execution of A's decree for rent, and A

regular suit. D, the holder of a prior decree for rent against Z, having failed to obtain execution against the same property, then sued A and Z's son for a declaration that he was entitled to sell the property on the ground that it had come to Z's son as Z's heir, and that only the interest of the widow (who had no interest) had been purchased by A. *Held* (reversing the decision of the High Court), that A was entitled to the property. The case of

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSON ALLY—*contd.*

*Ishan Chunder Mitter v. Bulsh Ali Soudagur, Marsh.* 114, approved of. COURT OF WARDS & COOMAR RAMAPUT SIKOR

10 B. L. R. 294: 17 W. R. 459

14 Moo. I. A. 605

8. — Personal decree against widow—*Rent accruing after husband's death.* In execution of a decree in a suit under the provisions of Regulation VIII of 1831 against a Hindu widow for arrears of rent of a certain talukh, the interest of the widow in another talukh was sold in 1852 under Act IV of 1846; and in execution of another decree on a bond given by the widow for arrears of rent, a third talukh was sold in 1865. Both decrees were for arrears of rent which had

against the purchasers at the execution-sales to recover possession of the talukhs—*Held*, that the plaintiff was entitled to recover. The decrees for arrears of rent were a personal debt of the widow, and not a debt against the estate of the deceased husband. Such decrees can be enforced by the

onus was on the defendants to prove that such charge was created by legal necessity, which they had failed to do. *MONIMA CHUNDER ROY CHOWDHURY v. RAM KISHORE ACHARJEE CHOWDHURY*

15 B. L. R. 142: 23 W. R. 174

See *BRAJA LAL SEN v. JIBAN KRISHNA ROY*  
I. L. R. 26 Cal. 265

9. — Widow in possession of husband's property—*Personal debt—Right of purchaser.* Arrears of rent due to a zamindar by a Hindu widow in possession of her husband's property are not a personal debt of the widow, and on a sale of the property taking place in execution of a decree against the widow for such arrears, in a suit under Act X of 1859, the purchaser acquires the property absolutely, and not merely the rights of the widow. *TELUCK CHUNDER CHUCKERBUTTY v. MEDHON MOHUN JOOGEE*

15 B. L. R. 143 note: 12 W. R. 504

*ANUND MOYEE DASSEE v. MOHENDRO NARAIN DASS* 15 W. R. 284

*CHOWDHURY ZUKOORUL HUSSAIN v. GOORNO CHURN ROY* 15 W. R. 329

*RAJARAM BANERJEE v. SONATUN ROY*  
23 W. R. 404

10. — Personal decree against person having life interest—*Execution of decree.* A decree for arrears of rent was obtained

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*contd.*

by *H* against *B*, a daughter in possession for a life estate of property inherited from her father *R*. On the death of *B*, this property was taken by her two sons as heirs of her father *R*. The decree was for arrears which had accrued during the lifetime of *B*, and the sons had been substituted for *B* as judgment-debtors. On an application for execution of the decree:—*Held*, on the principle laid down in *Baigun Doobey v. Brij Bhokun Lal Awasthi*, *L. R. 3 I. A. 275*; *I. L. R. 1 Calc 133*, that the debt was a personal debt, payment of which could be enforced only against the property left by *B*. The decree, therefore, could not be executed against the property, inherited by the sons from *R*. *Hurry Mohun Rai v. Gonesh Chunder Doss*, *I. L. R. 10 Calc 823*, distinguished. *KRISTO GOPIND MAJUMDAR v. HEM CHUNDER CHOWDERY*, *KRISHNA GOPAL MAJUMDAR v. HEM CHUNDER CHOWDERY*, *I. L. R. 16 Calc. 511*

11. ——— Decree executed against widow of mortgagor—"Razinama decrees"—*Right of purchaser* Razinama arrangements, not made decrees of Court, but irregularly acted upon as if they had been so made, do not substantiate advances alleged to have been made by creditors; but, assuming such "razinama decrees" to substantiate creditor's claims, proceedings in execution against the widow of the mortgagor alone as his representative cannot be effectual to pass to the purchaser of the equity of redemption at a sale in the course of such proceedings any right or interest in the property mortgaged. *PERIYASAMI alias KOTTAI TEVAR v. SALUCKAI TEVAR alias OYYA TEVAR*, *8 Mad. 157*

*See, however, the same case on appeal to Privy Council. SIVAONANA TEVAR v. PERIYASAMI*

*I. L. R. 1 Mad 312*  
*L. R. 5 I. A. 61*

*RAMASAMI CHETTI v. SALUCKAI TEVAR alias OYYA TEVAR*, *8 Mad. 186*

12. ——— Execution of decree against widow as representing estate—*Sale in execution of decree*—Widow's interest under deed of adoption—*Right of purchaser* against adopted son. The plaintiff sued to follow into the hands of the

the sale, had left his widow a permission to adopt a son, and thereupon in 1856 she had adopted the plaintiff. His contention was that the sale was of the widow's interest merely, the permission to adopt having given to her, in the event of an adoption, a life-interest in the property, and that, upon her death in 1865, his interest accrued. *Held*, that, as the proceeds of the execution-sale were not applied to satisfy only a liability incurred after the

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

*COOMAR CHUNDERNATH ROY*, *20 W. R. 30*

13. ——— Execution of decree against widow for arrears of maintenance—*Sale of right, title, and interest of widow*—Maintenance of widow—*Charge on estate of husband*. A Hindu died, leaving two sons, *S* and *M*, who became separate in estate. *S* died, leaving a son, *K*, who became a lunatic. *M* died, leaving a widow, *N*, and two sons, *B* and *C*; and on his death, his sons *B* and *C* took possession of their father's estate, and entered "to pay her hypothecation payment, session of

the property. After the death of *C*, his widows, *R* and *D*, and afterwards *D* alone, took possession of the estate. *N* sued *D* for arrears of maintenance

then sued the purchaser to recover possession of the property as the representative of his father under the decree of 1845, but was defeated on the ground set up by the defendants, the purchasers, that his father was no longer heir to *C* by reason of supervenient insanity when the succession opened out to him on the death of *N*. The plaintiff then brought this suit to establish his own title to the property as heir of *C*. It was contended by the defendants, among other things, that by the sale in execution in 1866, under the decree obtained by

the execution-sale took only the widow's interest, and not the absolute estate, and therefore the plaintiff was entitled to recover. *BAUGUN DOOBEY v. BRIJ BHOKUN LAL AWASTHI*, *24 W. R. 306*  
*I. L. R. 1 Calc 133*; *24 W. R. 306*  
*L. R. 2 I. A. 275*

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

See BRAJA LAL SEN v. JIBAN KRISHNA ROY  
I. L. R. 28 Calc. 285

14. Debt incurred by Hindu widow for legal necessity—*Decree for such debt against a person subsequently found not to be her legal representative*—Sale of property under such decree, effect of. A Hindu widow obtained medicine and medical aid on credit, and on her death her creditors sued the son she had purported to adopt and obtained a decree to the effect that the debt is to be satisfied first from the widow's assets and the remainder from the assets of the adopted son. The property in dispute was sold in execution of the decree, but the adoption was subsequently found to be invalid. *Held*, that the execution-sale in such a case could pass only the widow's right, title, and interest, and not the inheritance. *Baijun Doobey v. Brij Bhokun Lal Awasthi*, I. L. R. 1 Calc. 133, and *Jugal Kishore v. Jotendro Mohun Tagore*, I. L. R. 10 Calc. 985, distinguished. RAKSHIT SEN v. RAN CHANDRA MOOKERJEE. 4 C. W. N. 415

15. Decree in form personal against widow—Sale in execution of decree—Right of purchaser. Where an estate is sold in execution of a decree which in form is a personal decree against a widow, and the sale certificate purports to pass only the right, title, and interest of such widow, the purchasers at such sale cannot, in a suit by the reversionary heirs of the husband for

*Bhokun Lal Awasthi*, I. L. R. 2 I. A. 275; I. L. R. 1 Calc. 133; 24 W. R. 306, cited. RADHA MOHUN MENDUL v. SHOSHI BHOOSUN BISWAS

3 C. L. R. 530

16. Sale in execution of mort-

v. PATANI PADIACHI. I. L. R. 4 Mad. 401

17. Sale of right, title, and interest of widow. A money-decree, having been passed against R, a Hindu, was executed against his widow, whose right, title, and interest in certain property as representative of her deceased

HINDU LAW—WIDOW—*contd.*3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

on the property of *Raj v. Coomarr Ramput Singh*, 14 Moo. I. A. 605, and *Ishan Chunder Mitter v. Bulsh Ali Soudagar*, *Mara's* 614, followed. *VEDIANATHAYAN v. Mr. NAKSHI ANIMAL*. I. L. R. 5 Mad. 5

18. Sale of right,

whole inheritance of the property in suit. *Baijun Doobey v. Brij Bhokun Lal Awasthi*, I. L. R. 2 I. A. 275, followed. *JOTENDRO MOHUN TAGORE v. JUGUL KISHORE*. I. L. R. 7 Calc. 357; 9 C. L. R. 57

*Hill*, as agreed to the Privy Council.

does or does not pass, depends on the nature of the suit in which the execution of the decree takes place. If the suit is a personal claim against the widow, then merely the widow's limited estate is sold. If, on the other hand, the suit is against the widow in respect of the family estate, or upon a cause not merely personal against her, then the

I. L. R. 1 Calc. 133, revisited to and applied. *JUGUL KISHORE v. JOTENDRO MOHUN TAGORE*

I. L. R. 10. Calc. 985; I. L. R. 11 I. A. 66

*JKRISHNOON SOOKUL v. SHUNKER SHOOKUL*

3 Agra 186

19. Decree against widow on bond—Sale of right, title, and interest of widow in execution of decree—Purchaser of right, title, and interest, rights of. In 1851 A executed a bond in favour of B by way of security for a loan, and, in a suit against A (the widow of A B), B obtained a decree on the bond on the 24th of December 1859, in execution of which a share in a jalkar, which had belonged to A B, was put up for sale and purchased by K. At the time of sale the property

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY—*contd.*

by *H* against *B*, a daughter in possession for a life estate of property inherited from her father *R*. On the death of *B*, this property was taken by her two sons as heirs of her father *R*. The decree was for arrears which had accrued during the lifetime of *B*, and the sons had been substituted for *B* as judgment-debtors. On an application for execution of the decree:—*Held*, on the principle laid down in *Baijun Doobey v. Brij Bhokun Lal Awusti*, *L R 2 I A. 275*; *I. L R 1 Calc 133*, that the debt was a personal debt, payment of which could be enforced only against the property left by *B*. The decree, therefore, could not be executed against the property, inherited by the sons from *R*. *Hurry Mohun Rai v. Gonesh Chunder Das*, *I L R 10 Calc. 833*, distinguished. {KRISTO GOMIN MAJUMDAR v. HEM CHUNDER CHOWDHRY KRISHNA GOPAL MAJUMDAR v. HEM CHUNDER CHOWDHRY  
*I. L R. 16 Calc. 511*

11. ——— Decree executed against widow of mortgagor—"Razinama decrees"—*Right of purchaser* Razinama arrangements, not

by creditors; by sub-  
lings in execution against the widow of the mortgagor alone as his representative cannot be effectual to pass to the purchaser of the equity of redemption at a sale in the course of such proceedings any right or interest in the property mortgaged. *PAREKASANI alias KOTTAI TEVAR v. SALUCKAI TEVAR alias OYYA TEVAR*, 8 *Mad. 157*

*See, however, the same case on appeal to Privy Council* *SIVAGNANA TEVAR v. PERIASAMI*

*I. L R 1 Mad 312*  
*I. L R 5 I A. 61*

*RAMASAMI CHETTI v. SALUCKAI TEVAR alias OYYA TEVAR*, 8 *Mad. 168*

12. ——— Execution of decree against widow as representing estate—*Sale in execution of decree*—*Widow's interest under deed of adoption*—*Right of purchaser against adopted son*. The plaintiff sued to follow into the hands of the defendant certain property to which the latter had by transfers acquired the title of the purchaser at an auction-sale held in June 1843. The ground of his claim was that the late owner, who died before the sale, had left his widow a permission to adopt a son, and thereupon in 1856 she had adopted the plaintiff. His contention was that the sale was of the widow's interest merely, the permission to adopt having given to her, in the event of an adoption, a life-interest in the property, and that, upon her death in 1865, his interest accrued. *Held*, that, as the proceeds of the execution-sale were not applied to satisfy only a liability incurred after the

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

COOMAR CHUNDERNATH ROY, 20 *W. R. 30*

13. ——— Execution of decree against widow for arrears of maintenance—*Sale of right, title, and interest of widow*—*Maintenance of widow*—*Charge on estate of husband*. A Hindu died, leaving two sons, *S* and *M*, who became separate in estate. *S* died, leaving a son, *K*, who became a lunatic. *M* died, leaving a widow, *N*, and two sons, *B* and *C*; and on his death, his sons *B* and *C* took possession of their father's estate, and entered into an agreement with their mother, *N*, to pay her *R*200 per annum for maintenance, and hypothecated some villages as security for due payment. *B* died and *C* remained in exclusive possession of the property. After the death of *C*, his widows, *H*

of *K*, then obtained a certificate under Act XXVII of 1860 as representative of *N*. He was appointed

then sued the purchaser to recover possession of the property as the representative of his father under the decree of 1843, but was defeated on the ground set up by the defendants, the purchasers, that his father was no longer heir to *C* by reason of supervenient insanity when the succession opened out to him on the death of *N*. The plaintiff then brought this suit to establish his own title to the property as heir of *C*. It was contended by the defendants, among other things, that by the sale in execution in 1866, under the decree obtained by *N* against *D*, the absolute proprietary title passed, and not the life-interest of the widow only. *Held*, and not the life-interest of the widow only. *Held*, for which the sale

the execution-sale took only the widow's interest, and not the absolute estate, and therefore the plaintiff was entitled to recover. *Baijun Doobey v. Brij Bhokun Lal Awusti*  
*I. L R. 1 Calc 133*; 24 *W. R. 308*  
*I. L R. 2 I A. 275*

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSON. ALLY—*contd.*

*See* BRAJA LAL SEN v. JIRAN KRISHNA ROY  
I. L. R. 26 Cal. 285

14. Debt incurred by Hindu widow for legal necessity—*Decree for such debt against a person subsequently found not to be her legal representative—Sale of property under such decree—**Adopted* A Hindu widow adopted a son.

decree, but the adoption was subsequently found to be invalid. *Held*, that the execution-sale in such a case could pass only the widow's right, title, and interest, and not the inheritance. *Baijun Doobay*  
Calc. 133,  
Agre, I. L.  
Senan v.  
7. N. 415

15. Decree in form personal against widow—*Sale in execution of decree—*

MUNDUL v. SHOSHNI BROOSUN BISWAS  
3 C. L. R. 530

16. Sale in execution of mortgage decree against widow—*Right of purchaser—Son's widow* A Hindu having mortgaged family property died, leaving a widow and a son.

v. PALANI PADIRAM I. L. R. 4 Mad. 401

17. Sale of right, title, and interest of widow. A money-decree, having been passed against R, a Hindu, was executed against his widow, whose right, title, and interest in certain property as representative of her deceased

HINDU LAW—WIDOW—*contd.*3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSON. ALLY—*contd.*

husband was sold by the Court. *Held*, that on the is not property say v. and lagar, Marsh. 614, followed. VYDIANATHAYAN v. MINAKSHI AMMAL I. L. R. 5 Mad. 5

18. Sale of right, title and interest of Hindu widow—*Estate taken by purchaser.* The test to be applied in order to deter-

*Held*, on appeal to the Privy Council, affirming

she represents an absolute interest therein. The question whether, on the sale of the right, title, and

place, widow, sold widow cause not merely personal against her, then the

I. L. R. 1 Cal. 133, referred to and applied. JUDUL KISHORE v. JOTENDRO MOHUN TAGORE I. L. R. 10. Cal. 985; I. L. R. 11 I. A. 68

JYKISHOON SOOKUL v. SHUKUR SHOOKUL  
3 Agra 168

19. Decree against widow on bond—*Sale of right, title, and interest of widow in execution of decree—Purchaser of right, title, and interest, rights of.* In 1851 A R executed a bond in favour of K by way of security for a loan, and,

**HINDU LAW—WIDOW—contd.****3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—contd**

sold was in the possession of *A*, on behalf of the two sons of herself and *A R*, who were minors. On the death of the two minor sons, unmarried and without issue, *A* took possession of the property as their heir. In the decree of the 24th of December 1859 *A* was described as widow of *A R* and mother of the two minor sons. Neither the sale-proclamation nor certificate of sale was produced, but a purwannah from the Munsif to the Nazir was put in evidence, which referred to the sale-proclamation, and in which the parties were described merely as "decree-holder," and "judgment-debtor;" this purwannah also contained a schedule of the pro-

property purchased by *K* at the sale in execution of his decree:—*Held*, that *K* did not by his purchase acquire the interest of the minor sons in the property sold, and that the plaintiffs were therefore not entitled to succeed. *ALURMOONEE DABEE v. BANER MADHAB CHUCKERBUTTY*

I. L. R. 4 Calo. 677. 3 C. L. R. 473

**20. — Execution of decree against representatives of widow—Civil Procedure Code, 1877, s. 231.** A Hindu widow instituted a suit to recover possession of certain property belonging to her deceased husband, and that suit was dismissed with costs. The widow having died before execution for the costs was taken out, the decree-holder, sought to take out execution against the next heirs of the late widow's deceased husband. *Held*, that the fact that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment-debt in the effort to recover a portion of her husband's estate to which in its entirety the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representative" of the late widow's husband, under s. 234 of Act X of 1877. *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharye Chowdhry*, 15 B. L. R. 142, distinguished. In a decree against a Hindu widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband. *RAMKISHORE CHUCKERBUTTY v. KALLYKANTO CHUCKERBUTTY*

I. L. R. 6 Calo. 479. 8 C. L. R. 1

**21. — Hindu widow in possession of husband's estate—Sale of the land in execution of a personal decree obtained against the widow—Suit by the nephew and reversioner of the deceased husband to recover the land from the purchaser.** A Hindu widow sued to recover certain land which belonged to her late husband from his brother. The suit was compromised by means of a *razinama*, one of the terms of which was that the

**HINDU LAW—WIDOW—contd.****3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—contd.**

widow should remain in possession of and enjoy the property, but should not alienate it without the brother's permission. Subsequently a personal decree was obtained against the widow, and the land, being sold in execution was purchased by the defendant in the present suit, in which the first plaintiff was the nephew and reversioner of the deceased husband. *Held*, that the suit against the widow being on a personal claim, only her limited interest in the property was sold in execution, and that consequently the plaintiff was entitled to the property. *Jugal Kishore v. Jotendro Mohun Tagore*, I. L. R. 10 Calo. 985, distinguished, and the principle in *Barjun Doobey v. Brij Bhootun Lal Awasthi*, I. L. R. 1 Calo. 133; L. R. 2 I. A. 275, applied. *NARANA MAITY v. VASTEVA KARANTA*  
I. L. R. 17 Mad. 208

**22. — Mesne profits payable under a decree against a Hindu widow and other defendants—Subsequent suit for contribution against the widow by one of the defendants from whom the whole amount of mesne profits had been realized—Sale in execution of decree—Rights of the auction-purchaser.** *M*, widow of *N*, a Hindu, and *K* (brother of *N*) jointly brought a suit against *C*, her sons and others, for recovery of possession of certain property which had devolved upon *N* and *K* by inheritance, obtained a decree, and were put into possession. *G*, one of the sons of *C*, subsequently brought a suit against *M* and the legal representatives of *K*, then deceased, and also against *J* (to whom *K* had sold a portion of the property after the decree), and obtained a decree with mesne profits for his share of the same property. *G* then sold the decree to *R*, who executed it for mesne profits against *J* alone, and realized the entire decretal amount from him. *J* thereupon brought two suits for contribution against *M* and the legal representatives of *K*, on account of the mesne profits payable by them, according to their respective shares, and obtained decrees. In execution of one of these decrees passed against *M*,  
the estate

qualified interest of the widow. *Jugal Kishore v. Jotendro Mohun Tagore*, I. L. R. 10 Calo. 985, referred to. *BARODA KANTA CHATTAPADHYA v. JATINDRA NARAIN ROY*. I. L. R. 22 Calo. 974

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

23. ——— Decree against widow how for binding on minor son—*Parties—Representation—Sale of equity of redemption—Mortgage—Redemption.* A widow does not represent the estate so as to bind the son when the existence of the minor son is, from whatever cause,

equity of redemption at an auction-sale, in execution of a decree obtained against the plaintiff's mother alone as representative of her deceased husband—*Held*, that the plaintiff was entitled to redeem. The plaintiff having been ignored, the inheritance had not been substantially represented

24. ——— Decree against widow as heir of husband—*Effect of, against reversioners—Res judicata—Compromise by widow.* A suit

After K's death, M, a daughter of R, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently, S, M's son, who had been born after K's compromise, brought a suit against M and the representatives of H and P to recover possession of the estate, on the allegation that, the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by K and the withdrawal of the former suit by M were in fraud of his succession and did not affect his rights. The Court of first instance found that

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

regarded as on a higher footing than an alienation which the widow in possession of her husband's divided estate might have made, and which the plaintiff distinctly alleged had not been fairly obtained. *Anund Koer v. Court of Wards, I. L. R. 6 Calc. 764; Nand Kumar v. Radha Kaur, I. L. R. 1 All. 252; and Kalama Natchiar's Case, 9 Moo I. A. 512, referred to.* Also that M's withdrawal of her suit was not a bar to the suit of the plaintiff. *SANT KUMAR v. DEO SARAN*  
I L R. 8 All. 365

*See SACHIT v. BUDHUA KUR*  
I L R. 8 All. 429

25. ——— Decree against widow—*Liability of reversioners for acts of widow—Costs of suit for possession.* A Hindu, governed by the

sion. By a summary order made in execution of the decree the widow was put in possession of the

by the claimant against them, when their sons were substituted in their stead as defendants. It appeared that the widow, the daughters, and the daughters' sons had all been in possession of the disputed lands as a portion of the family estate. *Held*, that the reversioners, the daughters' sons, were liable as the legal representatives of the daughters, and as such were liable for all costs incurred in the suit brought by the claimant for possession of the disputed lands. *CHUNDER COOMER ROY v. GONESH CHUNDER DAS*

I. L. R. 13 Calc. 283

26. ——— Sale in execution of mortgage decree against widow—*Principle of ascertaining what was purchased—Absent parties—Pleadings—Nature of suit—Hindu widow, when*

the property in execution of a decree, purporting to be a decree on an equitable mortgage, passed in a suit against the mother alone. The mother died subsequently, and the property devolved on the plaintiffs. The question in the suit was whether the sale affected the entire interest or only the limited and qualified interest of the Hindu mother. *Held*, by the Appellate Court (affirming the decision



HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

of the Court below), that for the purposes of ascertaining what estate was intended to be affected by the decree, the Court might look at the pleadings to ascertain the nature of the suit and what was the relief actually claimed. If there be ambiguity upon the face of the decree as to what was

heritance may be bound by a decree in a suit to which the reversioners are not parties. In as-

heirs" in the advertisement and the safe notification are merely descriptive, and indicate that it was only the qualified interest of the mother that was being sold. *Per JENKINS, J.* (in the Court below)—It is a rule of general application that the Court will not adjudicate so as to bind absent parties, though the Courts have under certain circumstances permitted the expectant reversioners to be represented by a Hindu widow entitled to

cerned to resist the particular claim as those who are not parties, and that it is but reasonable to

derive their title, there is such identity of interest as will justify the widow being treated as the "substantial representative." But where the widow is the person who has created the charge,

she sufficiently  
endra Chunder  
see, 11 Moo.  
ry Choudhry v.  
B. L. R. 142,  
PADMA MITTER  
3 C. W. N. 637

27. Decree in compromise made by widow after adoption of son in suit on mortgage executed before adoption A, executrix to the estate of her husband,

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

After the adoption, a suit was brought on the mortgage bond against A, and a decree was passed in terms of a compromise for payment by instalments, the mortgaged property remaining hypothecated as before. Default was made in payment of the instalments, and the decree-holder applied for execution of the decree, and B was substituted for A in the proceedings in execution. An objection was raised that the compromise decree was only a personal decree against A, and execution could not proceed against B. Held, that it was not a mere personal decree against A, but was binding on the estate inherited by B from his adoptive father. *Ishan Chunder Mitter v. Dulah Ali Soudagar, Marsh. 613, General Manager of Ry. Darbhanga v. Rampat Singh, 14 Moo. I. A. 605, 10 B. L. R. 231, Bageswar Lall Sahoo v. Luchmeswar Singh, L. R. 6 I. A. 233; 5 C. L. R. 477, and Hari Saran Maitra v. Bhudaneswar Deb, 1. L. R. 15 Calc. 10; L. R. 15 I. A. 195, referred to. NOPENDRA NATH PAHARI v. BHUPENDRA NARAIN ROY, I. L. R. 23 Calc. 374.*

28. Decree against widow for husband's debt—Liability of family property—Execution—sale—Minor sons bound though not parties to suit—Suit by sons to redeem mortgage. One G died leaving him surviving a widow and two minor sons. The widow mortgaged some lands and a house to pay off a debt due by her husband. Subsequently a money decree was passed against her for another debt due by her husband, and the greater part of the mortgaged property was sold in execution and the equity of redemption thereof

and praying for redemption. The lower Courts

look to the substance of the transaction—question was whether the debt for which the property was sold was a joint family debt, and whether it was the equity of redemption in the entirety of the mortgaged property that was offered for sale, bargained for, and intended to be bought. It was obvious that, if the sons had been parties to the suit in which the decree had been passed, they

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HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

debt, which was the foundation of the decree, was of such a nature that no liability arising from it could attach to the family property, or, if they failed in that, they might show that the entirety of the family property was, in fact, not sold. *DEVI v. SAMBHU*. I. L. R. 24 Bom. 135

29. — Purchase at sale in execution of decree of widow's interest—*Private sale by widow—Cause of action in reversioner.* A purchaser at an execution-sale of the widow's life-interest is in no better position than a purchaser of the same interest from the widow herself; *Al-*

possession, and the cause of action arises at the death of the widow. *MOHNA CHUNDER ROY CROWDHURI v. GOUBI NATH DEY CROWDHURI*

2 C. W. N. 162

30. — Sale of widow's estate—*Right, title or interest of widow, when passes and when complete estate passes, by sale in execution of decree.* The question whether upon an execution sale, the mere right, title or interest of a Hindu widow or the complete title to the estate passes, depends upon the nature of the right, title and interest sold and upon the terms of the decree in execution of which the sale is held. *Held*, upon

31. — Personal decree by one partner against another for dissolution and for a definite sum of money—*Death of judgment-debtor—Right of decree-holder to execute—Joinder of undivided brother of deceased—Legality—Hindu Law.* Petitioner had obtained a decree against his three partners dissolving the partnership and ordering the first defendant to pay him a definite sum of money. Before the decree was executed first defendant died, and petitioner now sought to execute it, under s. 234 of the Code of Civil Procedure, against the widow and undivided brother of first defendant, who had been joined as defendants as the legal representatives of the deceased. The first defendant had not been sued in a representative capacity as managing member of his family, nor was it shown that the business was a family business. *Held*, that inasmuch as the decree was purely in personam against the first defendant,

HINDU LAW—WIDOW—*contd.*3. DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

to sale joint family property, which had come to him by survivorship, whether it was ordinary family property or property acquired for the family

from the record. Execution should be granted, under s. 234, against the widow, as the legal representative of the deceased first defendant. If the deceased had left any separate property it could be attached, even in the hands of the fifth defendant just as it might be attached, if it were found in the hands of any stranger. *VEERAPPA CHETTIAR v. RAMASWAMI Aiyar* (1904)

I. L. R. 27 Mad. 108

32. — Reversioner bound by decree obtained against widow without fraud or collusion, though without contest—*Alienation by one of several widows not invalid ipso facto.* A decree on a claim binding on the inheritance though obtained without contest against the widow in possession is binding on the reversionary heir in the absence of fraud or collusion. The widow as representing the estate is not bound to raise any defence when she is satisfied that the debt is really due. An alienation by one of two co-widows is not *ipso facto* invalid, with reference to the interest of the other co-widow, or of persons interested in the reversion. *SUBBANIMAL v. AVUDAIYANAL* (1906) I. L. R. 30 Mad 3

33. — Money advanced on personal security of widow—*Decrees against widow binding only on her widow's estate—Res judicata—Civil Procedure Code (Act XIV of 1852).* Where money is lent to a Hindu widow on her personal security, a decree for such a debt and a sale of property late of the widow's husband in execution of such decree binds only the widow's estate, notwithstanding that the original debt may have been incurred for legal necessity. *Dhruaj Singh v. Manga Ram, Ali Weekly Notes* (1897) 67, followed. *K* and *S* (two brothers) executed a usufructuary mortgage of their respective shares in certain property. The share of *S* was then purchased in execution of a simple money decree by *D*. The share of *K* was after his death brought in sale in execution of a simple money decree against *K*'s widow and purchased by *G*. *G* transferred his rights to *R*, who was *D*'s brother. *D* sued for redemption of half the mortgaged property naming as defendants the mortgagee, the heirs of *S* and *R*. Pending this suit *R* died and *D* amended his plaint, claiming redemption of the whole. The heirs of *S* did not defend this suit, which was decided *ex parte* against them, and the suit was compromised by *D*'s widow. The heirs of *S* then claiming as next reversioners to *K* at the death of his widow, brought

HINDU LAW—WIDOW—*contd.*3 DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE, OR PERSONALLY—*contd.*

the present suit, seeking to redeem half of the mortgaged property. *Held*, that the suit was not barred by s. 13 of the Code of Civil Procedure, inasmuch as the plaintiffs, though they might have done so, were not bound in the former suit to raise the defence that *D* was not entitled to redeem more than half of the mortgaged property. *KALLU v FAIYAZ ALI KHAN* (1908) **I. L. R. 30 ALL 394**

34. ——— Suit on simple bond executed by widow for legal necessity—*Widow's estate—Sale—Decree, personal—Sale does not affect reversioner.* A Hindu widow was sued on a simple bond executed by her (for legal necessity, and property left by her husband was sold in execution of the decree obtained in the suit. *Held*, that the bond did not bind any immovable property and the interest of the reversioners was not affected by the sale. *GIRISALA PASSI v. SRINATH CHANDRA SINGH* (1908)

12 C. W. N. 769

## 4. DISQUALIFICATIONS.

## (a) RE-MARRIAGE.

1. ——— Effect of re-marriage—*Act XV of 1856, ss. 2, 3, 5—Inheritance.* A Hindu died leaving a widow and minor son and daughter. The widow re-married after her husband's estate had vested in her son. The son subsequently died, and his step-brother took possession of the property. The widow then brought a suit against the step-brother for possession. *Held*, that the suit was  
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s.c. in Lower Court. *OKHOORAH SOOT v BREDEA BARINEE* . . . 10 W. R. 34

2. ——— Marayer caste—

3. ——— *Lingants—Custom in Wynad—Widow marriage.* Among the Lingant Goundans in the Wynad, a widow, who contracts what is known as an odaveli marriage, ceases to inherit her deceased husband's estate. *KODUTHI v MADU* . . . **I. L. R. 7 Mad. 321**

4. ——— Maintenance, power to sell husband's estate for. Where a Hindu

I. L. R. 12 Cal. 52

HINDU LAW—WIDOW—*contd.*4. DISQUALIFICATIONS—*contd.*(a) RE-MARRIAGE—*contd.*

5. ——— *Act XV of 1856, s. 2—Suit by reversioner to establish his title to property sold in execution of decree obtained against widow as representing husband's estate.* In a suit brought by the plaintiff as the nearest heir of *O T*, who died intestate in 1873, to set aside a sale of immovable property belonging to the estate of *O T* which had been sold in execution of a decree obtained by the defendant *J* against *B V*, the widow of *O T*, who had married again and whose husband was the brother of the purchaser at the execution-sale, the Court found on the evidence that the suit against *B V*, was collusive, and that the sale in execution was in fraud of the plaintiff's right. He was therefore entitled to a decree declaring that he was not bound by the sale of the 3rd November 1875, in the suit brought by *J* against *B V* as representative of her deceased husband, *O T*. *Held*, that whether the plaintiff was entitled to immediate possession of the property in the suit depended on the question whether *B V*'s life-estate was defeasible on her re-marriage. She belonged to a caste in which re-marriage was permitted. The following issue was accordingly sent to the lower Court for trial: "Whether, by the usage of the country, the rights and interests of *B V* party mine died."

I. L. R. 11 Bom. 119

6. ——— *Act XV of 1856, s. 2—Re-marriage of widow, who could have re-*

the Act was passed. It was intended to enable widows to re-marry, who could not previously have done so, and s. 2 applies to such persons only. *Held*, therefore, that a widow belonging to the sweeper caste, in which there is not, and in 1856 was not, any obstacle by law or custom against the re-marriage for widows, did not by marrying again forfeit her interest in the property left by her first husband; and that the reversioners could not prevent the sale of such interest in execution of a decree for enforcement of hypothecation. *HAR SARAN DAS v. NANDI* . . . **I. L. R. 11 All. 330**

7. ——— *Hindu Widows' Re-marriage Act (XV of 1856), ss. 2, 3, and 4—*

a Hindu widow belonging to a caste in which re-marriage has been always allowed, who has inherited property from her son, forfeits by re-marriage her interest in such property in favour of the next heir of the son. *VIRRU v GOVINDA*

I. L. R. 22 Bom. 321

HINDU LAW—WIDOW—*contd.*4. DISQUALIFICATIONS—*contd.*(a) RE-MARRIAGE—*contd.*

8. ———— *Rights of widow in deceased husband's property.*—Widow whose marriage is valid independently of Act XI of 1856. Held, that a Hindu widow belonging to the Kurmi caste, in which the re-marriage of widows was permitted by custom of the caste, independently of Act XV of 1856, was not, by reason of her marriage, deprived of her right to remain in possession of her deceased husband's estate during her life. *Parvati v. Bhikar* 4 Bom. A. C. 25

*Weekly Notes* (1899) 73, followed. *RANJIT v. PADMA RANI* I. L. R. 20 All. 478

9. ———— *Inheritance—Succession to a son of first marriage, notwithstanding re-marriage—Hindu Widows' Re-marriage Act (XI of 1856), ss. 2, 3.* The widow of a Hindu married a second time. Subsequently to her re-

I. L. R. 26 Bom. 388

## (b) UNCHASTITY.

10. ———— *Application of Hindu texts as to females debarred from inheriting—Widow—Mother.* The texts which pronounce that Hindu females are debarred from inheriting are confined in their application to the widow as such. *KOSIYADU v. LAKSHMI* I. L. R. 5 Mad 149

11. ———— *Effect of unchastity—Un-*

2 L. W. 301

12. ———— *Forfeiture of inheritance—Act XXI of 1850.* D, a Parsi Hindu, residing at Nasik, died leaving two widows, B and P. B, who was the first wife, though not incontinent, had been turned out of his house by her husband some time after he married P. In a suit

HINDU LAW—WIDOW—*contd.*4. DISQUALIFICATIONS—*contd.*(b) UNCHASTITY—*contd.*

tinence were accompanied by degradation; but that by Act XXI of 1850 deprivation of caste can no longer be recognized as working a forfeiture of any right or property, or affecting any right of inheritance. *PARVATI v. BHIKAR* 4 Bom. A. C. 25

13. ———— *Divesting of property—Forfeiture of inheritance.* Unchastity to a Hindu widow does not divest her of property which has become vested in her after the death of her husband. *ABHIRAM DOS v. SURENDR DASS* 3 B. L. R. A. C. 421; 12 W. R. 338

14. ———— *Divesting of property—Forfeiture of inheritance—Act XXI of 1850.* A Hindu widow, whom the property of her husband has once vested, does not forfeit by her unchastity her right to such property. *Semble:* Unchastity, followed by degradation or expulsion from caste, would not be sufficient to deprive a widow of an estate which she has taken by inheritance. *MATANGINI DEBI v. JAYKALI DEBI* 5 B. L. R. 468; 14 W. R. O. C. 23

15. ———— *Widow's estate, forfeiture of—Unchastity during widowhood—Divesting of property.* *Held* (KEPP, GLOVER, and MITTER, JJ., dissenting, under the Hindu law as administered in the Bengal school, a widow, who has once inherited the estate of her husband, is not liable to forfeit that estate by reason of her subsequent unchastity. *Per* KEPP, GLOVER, and MITTER, JJ., *contra* KEAY KOLITANY v. MONIRAM KOLITA 13 B. L. R. F. B. 1; 18 W. R. 387

*Held* in the same case on appeal to the Privy Council,—It has not been established that the estate of a widow forms an exception to the general rule that the estate of a Hindu once vested by succession or inheritance is not divested by any act or incapacity which before succession would have formed a ground for exclusion from inheritance. The general rule is stated in the *Vivimirodaya*, Ch. VIII, "On exclusion from inheritance," paras. 3, 4, and 5. This work, like the *Mitakshara*, may be referred to in Bengal in cases in regard to which the *Dayabhaga* is silent. A widow, who not having been degraded or deprived of caste, had inherited the estate of her deceased husband, held not liable to forfeit that estate by reason of subsequent acts of unchastity. *Quære:* As to the effect of her being degraded or deprived of caste for unchastity. *MONIRAM KOLITA v. KEAY KOLITANY*

I. L. R. 5 Cal. 778; 6 C. L. R. 322  
I. L. R. 7 L. A. 116

widow sued as her heir for possession of certain property. The defence was that the widow had

HINDU LAW—WIDOW—*contd.*4. DISQUALIFICATIONS—*contd.*(b) UNCHASTITY—*contd.*

deserted her husband in his lifetime and lived a life of unchastity, and that the plaintiff's right of inheritance was in consequence destroyed. *Held*, that, assuming the widow to have been guilty of unchastity and to have been actually degraded for it, plaintiff's right to inherit her property in the absence of nearer heirs could not be affected by such degradation. *Held*, also, that, though Act XXI of 1870 does not affect the forfeiture of

amount to an interference with the autonomy of caste; nor does it interfere with the forfeiture of such a right, *as, e.g.*, to participate with other members of a caste in the benefits of a religious institution appropriated to the members of the caste, or to participate jointly with fellow-castemen in the benefit of a caste institution; nor can it

further, that, though under the Hindu law a loss of caste by expulsion for specified reasons causes forfeiture of rights, it has never broken the relationship of the person expelled to those who remain within the caste, degradation having merely the effect of rendering the tie of kindred but dormant; and, *e.g.*, the degradation of either spouse does not dissolve the tie of marriage. It is impossible to construct out of the *Smritis* and commentaries a consistent doctrine of "civil death" or "fiction of death." Prostitution does not sever the legal relation, and therefore the degradation of a woman in consequence of her unchastity does not in law entail a cessation of the tie of kindred between her and the members of her natural family or between her and the members of her husband's family. Nor does a wife's adultery, unattended by degra-

17. ———— *Widow's estate, forfeiture of—Unchastity during widowhood. Held*, under the Mitakshara law, that a widow, who has once inherited the estate of her husband, is not liable to forfeit that estate by reason of her subsequent unchastity. The ruling of the majority of the Full Bench of the Calcutta High Court in *Kery Kshitany v. Monerom Khatia*, 13 B. L. R. 1, followed. *NEHALO v. KISHEN LAL*

I. L. R. 2 ALL 150

8. ———— *Widow's estate, forfeiture of—Unchastity during widowhood. It is*

HINDU LAW—WIDOW—*contd.*4. DISQUALIFICATIONS—*contd.*(b) UNCHASTITY—*contd.*

sufficient for the protection of a Hindu widow's right to her husband's estate from forfeiture by reason of unchastity that such right has vested in her before her misconduct. It is not necessary for such protection that she should have acquired possession of the estate before her misconduct. *BHAWANI v. MANTAB KHAR*, I. L. R. 2 ALL 171

18. ———— *Proof of incontinence—Suspicion. Infidelity in wife, or incontinence in a widow, in order to constitute a disqualification to inherit, must be positively proved, or at any rate there must be a reasonably well grounded suspicion of it having taken place. But quare as to anything less than positive proof being sufficient. RAMIA v. BHAGI* . . . 1 Bom. 86

19. ———— *In the goods of DADOO MANIA*

1 Ind. Jur. O. S. 59

20. ———— *Adoption, right to make. A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. SAYAVALL DURU v. SADDAMINI DASI* . . . 5 B. L. R. 362

21. ———— *Adoption by mother-in-law—Subsequent adoption by daughter-in-law—Unchastity of widow after vesting of estate, effect of, on power of adoption—Sui to set aside adoption. One G died, leaving him surviving his*

22. ———— *Liability of decree for maintenance to be set aside or suspended. A decree obtained by a Hindu widow declaring her husband liable to be set aside or*

23. ———— *Maintenance—Incontinence—Forfeiture of rights—Starving maintenance. It is*



**HINDU LAW—WILL—contd.****construction of wills—**

See **HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION ON ALIENATION** . 5 C. W. N. 300

See **SUCCESSION ACT, s. 96.**

I. L. R. 24 Mad. 299

**nuncupative will—**

See **PROBATE—OF WHAT DOCUMENTS GRANTED** . I. L. R. 25 All. 313

**1. POWER OF DISPOSITION.****(a) GENERALLY.**

1. — **Power to make will—Origin and extent of power.** *Per NORMAN, J.*—The power of a Hindu to make a will is not of modern introduction, nor is it of local origin. Will-were known to, and in use amongst, Hindus not in the presidency towns only, but from one end of the peninsula to the other. The right to make a will is part of the Hindu law itself. The extent and nature of the disposition which a Hindu testator is capable of making is not a question of public expediency or of custom or usage, but must be regulated by rules to be found in, or directly deduced from, Hindu law. **GANENDRA MOHAN TAGORE v. UPENDRA MOHAN TAGORE** . 4 B. L. R. O. C. 103

2. — **Nature and extent of power.** The testamentary power of disposition by Hindus has been established in Bengal by the decision of Courts of justice. The nature and extent of such power cannot be governed by any analogy to the law of England,—the English system being one of the most artificial character, founded in a great degree on feudal rules, regulated by Acts of Parliament and adjusted by a long course of judicial determination to the wants of a state of society differing as far as possible from that which prevails among Hindus in India. **BUROOEN MOYEE DEBIA v. RAN KISHORE ACHARYA** . 3 W. R. P. C. 15; 10 Moo. I. A. 279

3. — **Power of disposition of Hindus.** By the Hindu law as administered in the North-West Provinces, a Hindu has power to make a testamentary disposition in the nature of a will. A disputed will made by a Hindu, disposing of self-acquired estate among his family established. **NANA NARAIN RAO v. HIRZEE PUNJI BHAD** . 9 Moo. I. A. 98

4. — **Power over estate during life.** Any Hindu within these Provinces, whether governed by the Bengal mode of succession or otherwise, possesses a power to bequeath an estate by will co-extensive with his power over the estate in his lifetime. **PITRU KODWAR alias MEHAR BIRSE v. JOY KISHEN DOSS** . 6 W. R. 101

5. — **Zamindars of Calcutt—Power of disposition by a will.** The Zamindar of Calcutt, although a member of a Kori-

**HINDU LAW—WILL—contd.****1. POWER OF DISPOSITION—contd.****(a) GENERALLY—contd.**

Lagom, is entitled to dispose of his separate property by a will. **SRIDEVI v. KRISHNAN** . I. L. R. 21 Mad. 105

6. — **Holder of an impartible estate.** The holder of an impartible estate may alienate it by will to the same extent that he may alienate it by gift *inter vivos*. **COURT OF WARDS v. VENKATA SURYA MAHIPATI RAMAKRISHNA RAO** . I. L. R. 20 Mad. 167

7. — **Mitakshara law.** Under the Mitakshara law, a father can dispose of his self-acquired property, moveable and immoveable, at his own will, and he can by will make an unequal distribution of the same amongst his heirs. **BAWA MESSER v. BISHAY PRADASH NARAIN SINGH** . 10 W. R. 287

8. — **Power to dispose of self-acquired immoveable property after adopting a son.** An adopted son does not stand in a better position, with regard to the self-acquired immoveable property of his adoptive father, than a natural-born son would occupy; and there is nothing in the Hindu law in this presidency to prevent a father from disposing by will of his self-acquired immoveable property, and so defeating the rights by inheritance of his adopted son. **PRESNORAM SUARNA SUEWY v. VEDNEY KARNATA SUEWY** . 6 Bom. O. C. 198

9. — **Power of disposition by will over ancestral property in Bombay.** A testator cannot in the town of Bombay dispose of ancestral property, even if it consist of moveables to the prejudice of the rights of an existing grandson. **CHATTERJEE MAJUM v. DAKRAMI NAHANI** . I. L. R. 9 Bom. 433

10. — **Power to dispose of separate and self-acquired property—Nephew's right to object to alienation.** A Hindu without male descendant

may dispose of self-acquired property as he pleases. The law prescribes to alienation by gift *inter vivos*. **ADVOODHA GIR v. KASHEE GIR** . 4 N. W. 31

11. — **Bequest to widow with power.** A Hindu widow has power to dispose of her self-acquired property, and she may bequeath it to her widow. As a husband is not incompetent to give such an interest in property to his wife, it cannot be contended that he is incompetent to bequeath it. **JEWERY PUNJI v. SOVA** . I. N. W. Ed. 1873, 66

112. — **Unequal division of ancestral property—Illegality of will.** *Hdl.* that a

**HINDU LAW—WILL—*contd.*****1. POWER OF DISPOSITION—*contd.*****(a) GENERALLY—*contd.***

will made by a Hindu dividing unequally ancestral property between his sons, and assigning a share to his wife with the power of disposing of it, was illegal under Hindu law. **HULBO SINGH v. MAHABIR SINGH** 1 Agra 155

**13. ——— Disposition of ancestral and self-acquired property—*Validity of will.*** A Hindu may make an alienation of his property to take effect after his death. The Hindu law in Madras admits of the testamentary disposition of property, whether ancestral or self-acquired. The testamentary power of a Hindu in Madras is co-extensive with his independent right of alienation *inter vivos*. **VALLINATHAN PILLAI v. PACHU** 1 Mad. 326

**14. ——— Arbitrary disposition of self-acquired property—*Validity of will.*** A will by which a testator gave to his brother four-fifths of his self-acquired property and only one-fifth to his son, *held* not to be invalid as being beyond his power of disposition. **NARAYANASAMI CHETTI v. ARUNACHALA CHETTI** 1 Mad. 457 note

**15. ——— Power of disposition over ancestral property—*Hindu without male issue.*** A will by a Hindu without male issue, kinsman, or

incompetent to exercise a testamentary power; secondly, that at the time of the execution of the will the testator was not of sufficient mental capacity to make a testamentary disposition; and, thirdly, that the testator being a Hindu had no

will the the as a

strong presumption, arising from religious considerations, in favour of a delegation by the deceased to his widow of authority to adopt a son for him, yet that the evidence entirely failed to prove that fact; secondly, that the evidence established his mental capacity at the time of executing the will; and, thirdly, that by the Hindu law prevailing at Madras a Hindu in possession without issue male, kinsman, or coparcener, had power to make a will disposing of ancestral as well as acquired estate. **NAGALUTCHMEE UMMAI v. GOROO NADARAJA CHETTI** 6 Moo. I. A. 309

**16. ——— Extent of power of disposition—*Bequest to idol—Right of widow to maintenance.*** Although the Courts in India recognize the

**HINDU LAW—WILL—*contd.*****1. POWER OF DISPOSITION—*contd.*****(a) GENERALLY—*contd.***

maintain the family, further directed that, whatever might be the surplus after deducting the whole of the expenditure, the same should be added to the corpus, and in the event of a disagreement between the sons and family, the testator, directed that, after the expenses attending the estate, the idol, and the maintenance of the members of the

ing for the performance of the ceremonies and festivals of the idol, and the provisions in the will for maintenance; secondly, that the fact of the division of the income arising out of the testator's estate among the members of the family after the testator's death did not constitute a division of the family. One of the sons of the testator died, leaving three sons, one of whom also died without issue, leaving a widow. *Held*, further, that the

her right as a Hindu widow, when the property should be divided. **SONATUN BYSACK v. JUGGUTSOONDREE DOSSER** 8 Moo. I. A. 66

**17. ——— Bequest for religious purposes—*Legacy by an undivided father of a Hindu family.*** A Hindu made his will, whereby he bequeathed Rs 600 to supply a silver image for a pagoda, and died leaving the defendant, his undivided adopted son, him surviving. He was not shown to have been possessed of any separate property. In a suit by the trustee of the pagoda to recover the above amount—*Held*, that the legacy was not binding on the defendant. **RATHNAN v. SIVASUBRAMANIAM** I. L. R. 16 Mad. 353

**18. ——— Power to dispose by will—*Paternal grandmother inheriting property from***



HINDU LAW—WILL—*contd.*1. POWER OF DISPOSITION—*contd.*(a) GENERALLY—*contd.*

maiden grand-daughter, takes an absolute interest in such property, and on her death the property

19. — Will omitting to provide for widow—*Validity of will. Semble.* The will of a Hindu would not be invalidated merely by its omitting to provide for his widow. *VALLINAYAGAM PILLAI v. PACHCHAI*. 1 Mad. 326

20. — *tena will that* confer a greater amount of spiritual benefit upon the testator, nor on the ground of its making no provision for the maintenance of the widow of the testator's deceased brother. *ROOKMONEE DEBIA v. KRISHNO CHURN MISSE*. 20 W. R. 147

21. — Devise to prejudice of wife—*Zamindar without issue.* By the Hindu law a zamindar having no issue is capable of alienating by deed or will a portion of his estate which in default of lineal male issue a will on intestacy would vest in his wife, without her consent. *MULRAJ LACHMIA v. CHALAKANT VENKATA RAMA JAGANADHA ROW*. 2 Moo I. A. 54

22. — Right to deprive by will a widow of her share on partition—*Widow's share on partition.* Under the Hindu law in Bengal, a person has the right to dispose of his property by will so as to deprive his widow of her share on partition. *Bhubunmoyee Dabee Choudhrani v. Ram-lisore Achurj Choudhry*, S. D. A. Rep (1860) 485, followed. *DEBENDRA COOMAR ROY CHOWDHRY v. BROJENDRO COOMAR ROY CHOWDHRY. PROSUNNOMOYI DAS v. BROJENDRO COOMAR ROY CHOWDHRY*. 1 L. R. 17 Calc 886

23. — Will against interest of widow and reversioner—*Inofficious will.* The will of a childless Hindu giving power to adopt a son, though opposed to the interests of the widow and the next heir in reversion, is not inofficious. *SARODA SOONDERY DOSSE v. TINGOWRY NUNDY*. 1 Hyde 223

24. — Effect on will of subsequent adoption—*Validity of will.* Where a separated Hindu made a will and subsequently adopted a son, the boy adopted and his father being aware of the provisions of the will, in which an adequate provision was made for the adopted son, it was held that the subsequent adoption did not invalidate the will. *VINAYAK NARAYAN JOO v. GOVINDRAY CHINTAMAN JOO*. 6 Bom. A. C. 224

HINDU LAW—WILL—*contd.*1. POWER OF DISPOSITION—*contd.*(a) GENERALLY—*contd.*

25. — Devise away from remote kineman—*Separate property.* The title of a remote kineman, though heir of a Hindu testator, who died without leaving issue, or any near relative surviving him, and with whom that remote kinsman had not been united in food, worship, or estate, cannot prevail against the title of a devisee of that testator, whether such property was by the testator self-acquired or held in severalty, either by virtue of a partition, or of the non-existence, or, if any did ever exist, the extinction of co-parceners. *NAROT-TAM JAGSIVAN v. NARSANDAS HURKISANDAS*. 3 Bom. A. C. 6

co-parceners being able, according to the decisions of the Court, by act *inter vivos* to make an alienation of his undivided share binding on the others, it followed that the father might dispose by will of his one-third share. *Held*, that, under the Mitakshara law as received in Bombay, the father could not dispose of his one-third share by will. The doctrine of the alienability, by a co-parcener, of his undivided share, without the consent of his co-sharers, should not be extended, in the above manner, beyond the decided cases. The Bombay Court had ruled that a co-parcener could not, without his co-sharer's consent, either give or devise his

MOMENT OF HIS DEATH. *WILLIAMSON v. WILSON* 10 Q. B. 277

[I. L. R. 5 Bom 49  
L. R. 7 I. A. 181

Affirming the decision of the High Court in s. c.  
1 L. R. 1 Bom. 581

27. — Power of co-parcener to dispose of ancestral property. In a suit by an adopted son to set aside a will made by his father disposing of immoveable ancestral property:—*Held*, that the will was of no effect as a valid devise of property. At the moment of death the right of survivorship was in conflict with the right by devise, and the right by survivorship, being the prior title, took precedence to the exclusion of that by devise. *VITLA BUTTEN v. YAKENAMMA*. 8 Mad. 6

HINDU LAW—WILL—*contd.*1. POWER OF DISPOSITION—*contd.*(a) GENERALLY—*contd.*

See GOOROOVA BATTEN v. NANNANAYAKKAR  
BATTEN . . . . . 8 Mad. 13 note

28. ———— *Devise against interest of unborn son—Right of unborn son to ancestral property.* According to the Hindu law which obtains in the Madras Presidency, the right of a son in the womb to ancestral property cannot be defeated by a will or gift. *Quare* Whether this rule would govern the case of an alienation for value. *MIRAKSHI v. VIEAPPA* . . . . . I. L. R. 8 Mad. 89

## (b) DISINHERISON.

29. ———— *Power to disinherit sons—Gift absolute to widow—Absence of express declaration.* . . . . .

power of alienating the property, and not merely as trustee and manager for the infant sons. It is not necessary that there should be an express declaration of the testator's desire or intention to disinherit his sons if there is an actual gift to some other persons expressed in clear and unequivocal words. *PROSVNO COOMAR GHOSE v. TARECKNATH SINGAR* . . . . . 10 B. L. R. 267

s.c. *TARECKNATH SINGAR v. PROSVNO COOMAR GHOSE* . . . . . 19 W. R. 49

But see *ROOPAL KHEITRY v. MORIMA CHURN ROY* . . . . . 10 B. L. R. 271 note

30. ———— *Nuncupative will—Disinherison of an undivided son.* Under Hindu law, a father has power by a nuncupative will to dispose of self-acquired immovable property as he pleases and to the complete disinheriting of an undivided son. *SUBBAYYA v. SUBAYYA* . . . . . I. L. R. 10 Mad. 251

31. ———— *Power to disinherit heir—Reddi caste.* A father-in-law, although of Reddi caste, cannot disinherit his heir in favour of his son-in-law. *TATUMANA REDDI v. PERUMAL REDDI* . . . . . I Mad. 51

32. ———— *Provision for disinherison on change of religion.* A will that pro-

*ANUND COOMAR GANOOPLY v. RAJMAL CHUNDER ROY* . . . . . 8 W. R. 278

33. ———— *Intention to disinherit how shown—Exclusion from residuary estate.*

HINDU LAW—WILL—*contl.*1. POWER OF DISPOSITION—*contd.*(b) DISINHERISON—*contd.*

In the exercise of the testamentary powers amongst Hindus, the intention to disinherit must be clear and unambiguous. Mere bequests of special portions of the testator's estate to the heir, without language of disinherison, do not exclude him from the undisposed of residue. *LALLUBHAI BAPUBHAI v. MANKUWARDHAI* . . . . . I. L. R. 2 Bom. 388

31. ———— *Power to disinherit one son in favour of another—Gift or bequest to one son to exclusion of others.* A Hindu governed by the Mitakshara law, who has two sons undivided from him, cannot, whether his act be regarded as a gift or a partition, bequeath the whole, or almost the whole, of the ancestral moveable property to one son to the exclusion of the other. *Ramchandra Dada Naik v. Dada Mahadev Naik*, 1 Bom. Ap. 76, distinguished and explained. *RAJESHWAR DADA NAIK v. RAMCHANDRA DADA NAIK*, *RAMCHANDRA DADA NAIK v. RAJESHWAR DADA NAIK* . . . . . I. L. R. 1 Bom. 591

s.c. on appeal to the Privy Council, affirming the decision of the High Court . . . . .

I. L. R. 5 Bom. 48

35. ———— *Law of Western India.* In estates in which the ordinary Hindu law of inheritance administered in Western India applies, it is not competent to a father to dispose of his ancestral property to one son to the prejudice of the others. *BRUNAGRAV BIN DALALATRAY GHORPADE v. MALOJIRAV BIN DALALATRAY GHORPADE* . . . . . 5 Bom. A. C. 161

See the case of *GANENDRA MOHAN TAGORE v. UPENDRA MOHAN TAGORE* 4 B. L. R. O. C. 103

in which it was held that the son cannot be disinherited by words expressing he is not to take any benefit under the will. He would take by right of inheritance whatever is not validly disposed of. The Privy Council, without deciding whether a son could be deprived of maintenance, considered an adequate provision had been made for him. *JOTINDRA MOHAN TAGORE v. GANENDRA MOHAN TAGORE* . . . . . 9 B. L. R. 377; 18 W. R. 359  
I. L. R. I. A. Sup. Vol. 47

Mere bequest of special portions of the testator's estate to the heir without language of disinherison does not exclude him from the undisposed-of residue. *TOOLSEY DAS LUDHA v. PREMSI TRIGUNDAS* . . . . . I. L. R. 13 Bom. 61

## 2 NUNCUPATIVE WILLS.

1. ———— *Validity of nuncupative will—Hindu Wills Act (XXI of 1870).* A nuncupative will, or a verbal bequest, of his separate property, made by a separated Hindu, beyond the limits of the ordinary original jurisdiction of the High Court of Bombay, and not relating to any immovable property to which the Hindu Will

HINDU LAW—WILL—*contd.*2. NUNCUPATIVE WILLS—*contd.*

Act (XXI of 1870) applies, is valid. *BRADYAN DALLADH v. KALA SHANKAR*

I. L. R. 1 Bom. 641

2. ——— Power to make nuncupative will—*Movable and immovable property.* A Hindu may make a nuncupative will of property whether immovable or movable. *SRINIVASAMMAL (CRINIVASAMMAL) v. VEJAYAMMAL*. 3 Mad 37

3. ——— Disinheritance of son—*Power of disposition by nuncupative will—Self-acquired property.* *Quare* Whether, under Hindu law, a father has power by a nuncupative will to dispose of self-acquired immovable property to the complete disinherison of a son. *SUBBAYYA v. CHELLAMMA*

I. L. R. 9 Mad 477

4. ——— Disinheritance of an undivided son Under Hindu law, a father has power by a nuncupative will to dispose of self-acquired immovable property as he pleases and to the complete disinherison of an undivided son. *SUBBAYYA v. SUBBAYYA*

I. L. R. 10 Mad 251

5. ——— Construction of a *varas-patra*. In 1847 A, a Hindu widow, executed in favour of B a *varas-patra* (a deed of heirship) in the following terms. "My husband has died. We have no issue, and you are a son of my husband's cousin. Taking this into consideration, my husband expressed his wish, when he was on the point of death, that all the houses and shops situate in Poona, except the house at Benares, should be given to you, and that you should be made owner of all money-dealings connected with Poona. I therefore, in obeying his command, pass this deed of heirship to you, and make you owner of all the property mentioned above like our son. You then fore enjoy the property in your name joyfully." *Held*, that the *varas-patra* was evidence of a nuncupative will by A's husband in favour of B. Such a will by a Hindu would be quite effectual, except in cases governed by the Hindu Wills Act (XXI of 1870). *HARI CHINTAMAN DISESHIT v. MORO LAKSHMAN*

I. L. R. 11 Bom. 89

6. ——— Proof of nuncupative will—

*Finding as to factum of will.* It was observed that a person who rests his title on so uncertain a foundation as the spoken words of a man since deceased is bound to allege, as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place. The finding below as to the factum of the will in this case was, however, upheld. *BEERLEHAB SAHEE v. RAJENDRA PRTAB SAHEE*

9 W. R. P. C. 15

13 Moo. I. A. 1

7. ——— Written words assented to, but not signed by, testator. A testamentary paper drawn up in the lifetime of the testator, when, though very ill, he was in the full possession of his senses, and duly attested by the subscribing witnesses, who depose that it was drawn according to the instructions of the testator, and

HINDU LAW—WILL—*contd.*2. NUNCUPATIVE WILLS—*concl.*

3 W. R. 138

8. ——— Will, revocation of, by parol—*Intention to destroy will not carried out.*

——— *Revocation, although the instrument is not in fact destroyed.* *PENTAB NARAIN SINGH v. SUBHAG KOOBN*

I. L. R. 3 Calc. 926; 1 C. L. R. 119

I. R. 4 I. A. 238

## 3. TESTAMENTARY INSTRUMENTS.

1. ——— Documents amounting to will—*Validity of will.* S, a Hindu, having a wife and one daughter, executed in his last illness a document attested by two witnesses as follows: "S, the proprietor of, etc. Up to this date I have no son of the body. Under these circumstances, the mahals of the whole of my estate, real and personal, are my wife, B C, and my daughter, W C. Therefore I, considering this for the purpose of

confirm it as my own act. Later, etc. some days before the death of S, B, the person named as mooktear, presented a petition to S to the Collector reciting the want of heirs male, and which then continued thus: "Under these circumstances, my wife, B C, and my daughter, W C, are my heirs. Be that as it may, after my death all my property, paying revenue to Government or rent-free, will devolve upon my aforesaid wife and daughter;

2. ——— Deed of permission to adopt—*Absence of words of devise and intention to dispose of estate.* A registered deed of permission to adopt, which contained no words of devise, was held not to be of a testamentary character, there appearing no intention on the part of the maker that the document should contain any disposition

**HINDU LAW—WILL—*contd.*****3. TESTAMENTARY INSTRUMENTS—*contd.***

of his estate, except so far as such disposition might result from the adoption of a son under it. **BRUDDUN MOYE DEBIA v. RAM KISHORE ACHARJEE**  
3 W. R. P. C. 15; 10 Moo. I. A. 270

3. — Will of a Hindu in favour of his wife made on his taking a son in adoption. *See* **LAKSHMI v. SUBRAMANYA**

maintenance. In a suit by the widow of the executant against the adoptive son for possession of the land:—*Held*, that the instrument was a will.  
**LAKSHMI v. SUBRAMANYA**

I. L. R. 12 Mad. 480

**4. ATTESTATION AND PROOF OF WILLS**

1. — Unattested will—*Effect of probate.* Before the Hindu Wills Act, the will of a Hindu in writing signed by him, but not attested by witnesses, admitted to probate, and held to operate to pass not only moveable but also immovable property. **MANCHABJI PESTANJI v. NARAYAN LAKSHMANJI**. . . . . 1 Bom. 77

2. — Signature—*Rules of documentary evidence.* A will by a Hindu is not invalid because the text of it was not written by the testator himself, and because his signature is not attested. The rules of Hindu law relating to documentary evidence are not to be applied strictly in the case of wills. **RADHABAI BIN RAMJI v. GANESH TATYA GHOLAP**. . . . . I. L. R. 3 Bom. 7

3. — Signature—*Formalities of making will.* The will of a Hindu in the *molussil* before the Hindu Wills Act need not have been signed by the testator, or made with any particular formality; all that was requisite was that it be a complete instrument, and express the deliberate intentions of the testator. **VINAYAK NARAYAN JOO v. GOVINDRAJ CHINTAMAN JOO**  
8 Bom. A. C. 224

4. — Proof of will—*Inofficious will.* A, a Hindu, died, leaving two grandsons, B and C, to whom his estate descended. They were joint in food, worship and estate. The property

**HINDU LAW—WILL—*contd.*****4. ATTESTATION AND PROOF OF WILLS—*contd.***

adequate to the proof of an ordinary will, but the

state of the evidence in the case to suppose a preference of the law of Bengal likely to be operative on the mind of the testator; and therefore there was no foundation for treating the will as inofficious. Second, it was not necessary to decide whether the rule of inheritance was according to the Dayabhaga or the Mitakshara. Third, the evidence was adequate to the proof of an ordinary will, and there was no internal improbability of the will sufficient to discredit it. **SURENDRA NATH ROY v. HIRANANI BARMANI**  
1 B. L. R. P. C. 28; 10 W. R. 35  
12 Moo. I. A. 81

5. — Proof of execution of will—*Handwriting.* By will dated in 1847 a testator directed his property to be held in a

proved. Where a will was executed by the testator signing with the Bengali letter "M" and it was

forged. **RAJENDRA NATH HALDAR v. JAGENDRA NATH HALDAR**. . . . . 7 B. L. R. 216  
15 W. R. P. C. 41; 14 Moo. I. A. 67

**5. CONSTRUCTION OF WILLS.****(a) GENERAL RULES.**

1. — Ascertaining meaning of testator in particular phrase. To ascertain the meaning intended to be applied to a particular phrase, it is necessary, first, to consider the words of the will and next the surrounding circumstances,

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

which may affect the testator's meaning. *Soorjee-money Dossee v. Deobundoo Mullick*, 6 Moo I. A. 526, referred to. *BRUGGOSUTTY PROSONNO SEY v. GOOROO PROSONNO SEY*

I. L. R. 25 Calc. 112

2. — Statute of superstitious uses—*Inapplicability of English law to Indian wills.* The English law as to superstitious uses does not apply in the Courts in India. *ADVOCATE-GENERAL v. VISWANATH ATTHAKAM*

7 Bom. Ap. 9

*JUDAH v. JUDAH* . . . 5 B. L. R. 433

3. — Necessity of words of inheritance—*Interest in freehold estate* No words of inheritance are requisite to continue to his heirs a Hindu's interest in a freehold estate. *AYUND-MONEY DOSSEE v. DOE*

4 W. R. P. C. 51

8 Moo. I. A. 43

4. — Person in existence at death of testator—*Person competent to take under a will.* The doctrine laid down by the Privy Council in the *Tayore Case*, 9 B. L. R. 377, that only a person, either in fact or in contemplation of

I. L. R. 6 Bom. 36

5. — Devise to persons who would be heirs—*Nature of interest taken by them* *Quare* Whether when a Hindu devises to his sons property which, in the absence of such devise, they would take as his heirs, the sons shall be considered to take as devisees or as heirs

*VALOO CHETTY v. SOORJAN CHETTY*

I. L. R. 2 Mad. 252

6. — Rule of English law as to undisposed-of residue—*Executor—Disheirson.* The rule of English common law, that the undisposed-of residue of personal estate vests in the executor beneficially does not apply to the will of a Hindu testator in India. *LALLUBHAI BAPUBHAI v. MANKUARBHAI*

I. L. R. 2 Bom. 388

7. — Misdescription of legatee—The holder of an impartible estate may alienate it by will to the same extent that he may alienate it by gift *inter vivos*. A testator made a bequest to "A B, my avurasa son," knowing that A B was not his avurasa son. *Held*, that the misdescription was immaterial, and that A B took the bequest. *COURT OF WARDS v. VENKATA SURYA MAHIPATI RAMAKRISHNA RAO*

I. L. R. 20 Mad. 167

8. — Intention of testator—*Mitakshara*—*Will, construction of*—*Voidability of restrictions and qualifications imposed*—*Bequest—Trust—Right of Suit—Limitation—Doubtful right—Compromise.* When from the terms of a will taken

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

as a whole, the intention of the testator, to bequeath an estate of inheritance is manifest, the mere fact of some of the restrictions and qualifications imposed by the will being void does not affect the validity of the estate conveyed by it. *Rai Kishori Das v. Debenra Nath Sircar*, I. L. R. 15 Calc. 109. L. R. 15 I. A. 37; *Lalit Mohan Singh Roy v. Chulhun Lal Roy*, I. L. R. 24 Calc. 334. L. R. 24 I. A. 76; and *Rai Bishenchand v. Asmida Korr*, I. L. R. 6 All. 550. L. R. 11 I. A. 164, followed. *Shookmay Chandra Das v. Monohari Dass*, I. L. R. 11 Calc. 684. L. R. 12 I. A. 103, distinguished. A Hindu governed by the Mitakshara law is competent to maintain a suit for partition of an ancestral property even when his father and grandfather are both alive, if they allow the property to be wasted and the plaintiff's interest imperilled. *Suraj Bunsai Koor v. Sheo Persad Singh*, I. L. R. 5 Calc. 148. L. R. 6 I. A. 88; *Jogul Kishore v. Shib Sahai*, I. L. R. 5 All. 439; and *Subba Ayyar v. Ganasa Ayyar*, I. L. R. 13 Mad. 179, followed. *Apaji Narhar Kulkarni v. Ram Chandra Rajji Kulkarni*, I. L. R. 16 Bom. 29, dissonated from. When a deed of relinquishment operating to extinguish the plaintiff's right to a property is not void *ab initio*, if it is not set

*Nath Bose*, I. L. R. 20 Cal. 200, affirmed

I. L. R. 31 Cal. 241

9. — Partition between father and sons—*Stipulation that father and junior wife should "hold and enjoy" the father's share—Effect—Construction of gifts to wives under Hindu law* The general rule of Hindu law with regard to the construction of gifts by Hindus in favour of their wives is that the wife should not be deemed to

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

should acquire an estate in the properties. The fact that she may not have been a co-parcener was immaterial. It was competent for the co-parceners, who were entitled to participate in the partition, to agree that the share of one of the co-parceners should be held jointly or in common with a party, who otherwise would not have been entitled to participate in the partition. *Jogeswar Narain Deo v. Ram Chundra Dutta*, I. L. R. 23 Calc. 670, followed. *Seshayya v. Narasimma*, I. L. R. 22 Mad. 337, distinguished. *Held*, also, that the junior wife took as a tenant in common with her husband, and that after the death of the latter, she was entitled to a moiety of the property. *MUTHU MEENAKSHI AIMAL v. CHEYDHA SEKHARA AYYAR* (1904) I. L. R. 27 Mad. 498

10. *Will, construction of.—Effect of gift without words of severance to persons forming an undivided Hindu family.—Gift in equal shares.—Tenant in common.—Share of will pass to his representatives.—Grandsons being sons' sons include a grandson by adoption.—Analogy between an adopted son and an appointee under a power.* C died in 1831 leaving him surviving three sons, Y the plaintiff, J the first defendant and P. P died in 1896, leaving a son B, who died in the same year. The second defendant was the son of the first defendant M, the third defendant was the adopted son of the plaintiff Y, and the fourth defendant was the widow of B. The second and third defendants and B were alive at the time of C's death in 1831. The third defendant was adopted by the plaintiff in 1897. C by his last will and testament, dated 12th May 1831, disposed of three houses (referred to as Nos. I, II and III). The disposition in regard to No. I was in these terms, "therefore my three sons shall use and enjoy this house [from son to grandson and so on in succession without power to give as gift or sell the same]"—subject to a payment of a small rent in respect thereof for charity. As regards Nos. II and III the will provided that out of a

executors to my three sons in equal shares. "my executors shall divide and give away these properties to my own grandsons being my sons' son after the death of my three sons in equal shares."

to give as gift plaintiff brought—*Held*, per Sir ARNOLD WHITE, C.J., that under the will of C house No. I vested absolutely

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

subsists till the death of the last survivor, when this limited estate comes to an end and the provision for the division of the corpus will be carried out. On a proper construction of the will such limited estate of each son passed on his death to his representatives and not to the survivors. The interest

interest under the will as grandson of C. Per SUBRAHMANYA AYYAR, J.—As regards item No. I the words from 'son to grandson' were words of purchase importing a grant of absolute property under the Hindu Law and the sons took an absolute

had used the expressions 'in equal shares' and 'according to their respective shares' to indicate a tenancy in common, the devise of item No. I without such qualifying words was clear evidence of an intention, that the sons should take as a Hindu co-parcenary with rights of survivorship.

in equal shares and not limited to each son for his life, the share of each on his death went to his representatives. The fourth defendant therefore took the share of her husband as his heir. The will 'my own grandsons being my sons' sons' include a grandson by adoption and that therefore the third defendant took an equal share with the other two grandsons. The right of the adopted

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

## 11. ——— Principles of construction

—Will of a Hindu—*Persona designata*—Adoption a condition precedent to taking—Wife, bequest to—Hindu law, provisions of, and Hindu notions to be kept in mind—Election—Estoppel as against person in possession. *Held*, on the construction of a will, under which a person claimed properties left by the testator as a *persona designata* to whom he alleged they were specifically bequeathed, that he testator assumed as a basis of his deposition that there was to be an adoption of that person as his son, and that that was the essential condition

to the legatee specifically, then the bequest will take effect even though the condition be not fulfilled. The bequest to the testator's wife was held in this case to confer on her a life-interest only. *Mahomed Shamsul v. Shevakram*, L. R. 2 I. A. 7, applied. A person, who elected to take a legacy under the will, was estopped from setting up a title contrary to its provisions. But when the

ession the  
t succeed  
ODH LAL

S. C. W. N. 309

## 12. ——— Unregistered memorandum

of an oral gift—Subsequent disposal by will—Presumption of advancement—Indian Trusts Act (II of 1882), s. 82—Transfer of Property Act (IV of 1882), s. 123—Hindu Law. A Hindu widow brought a suit against the executor of her husband's will for a declaration that she was the sole owner of a house, which was purchased in her name by

I. L. R. 29 Bom. 306

## 13. ——— Gift over—Defeasance—

Construction of will—Vesting of corpus in abeyance—Executors and trustees, position of—Adoption—

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

Adoption of sons in succession. Where under the terms of a will the corpus of the estate was not to vest, until the happening of a certain event, it would in the meantime vest in the heir, and on the death of the heir (intestate) it would devolve on his heir. Executors and trustees of Hindu wills executed before the 1st September 1870 are merely managers and no estate vested in them. *Sarat Chandra Banerjee v. Bhupendra Nath Basu*, L. R. 25 Calc. 103, followed. A clause of defeasance in order to be operative must contain express words of necessary implication of a gift over to a definite person. The implication of a gift over to a second adopted son, who may never be adopted, cannot prevent the widow of the first adopted son from inheriting the share taken by the latter. Where a Hindu gave authority to his widow to adopt sons to him in succession, her power to adopt a second son would terminate on the first adopted son dying leaving a widow in whom the estate became vested. *Bhobunmoyee Debia v. Ram-*

A. 11, 11, 52 Calcutta

14. ——— Title acquired under will of deceased wife—Property devised subject to mortgages—Compromise of claims of reversioners

claimed by the reversionary heirs to Munni Lal's estate, but this claim was settled by a compromise by which Ram Shankar Lal gave certain land to the claimants in consideration of their entirely withdrawing their claim to the rest of the property. *Held*, that the compromise did not convey to Ram Shankar Lal the title of the reversioners; but that he took under the will of his wife and could not therefore raise any defence to a suit for sale brought by the mortgagees which Jasoda Kunwar or

I. L. A.  
Jaggyum,  
v. Das-  
RAM

SHANKAR LAL v. GANESH PRASAD (1907)  
I. L. R. 29 All. 451

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(a) GENERAL RULES—*contd.*

his death which in certain circumstances may be revoked, is a will. Instruments not drawn

RAM MANI DASI v. RAM GOPAL SHAHA (1908)  
12 C. W. N. 942

16. ——— Widow's right to share on partition—*Direction as to management of property—Gifts—Express gift, or no words of gift—Partition* An express gift by will of property by a testator to his sons will defeat the right of a widow to a share on partition. *Debendra Coomar Roy Choudhry v. Brojendra Coomar Roy Choudhry*, I. L. R. 17 Calc. 386, referred to. Where, however, a will contains no words of gift to the sons, but merely operates to postpone a partition of the property to a particular date with directions as to management in the meantime, the property vests in the widow as executrix for that purpose, and

share, which a widow takes as heiress of her son, is not *stridhan* property. *Jodoonath Dey Sircar v. Brojonath Dey Sircar*, 12 B. L. R. 385, referred to.  
POORENDRA NATH SEN v. HEMANGINI DASI (1903)  
I. L. R. 36 Calc. 75  
12 C. W. N. 1002

## (b) ESTATES ABSOLUTE OR LIMITED.

should divide the estate, amongst his sons in accordance with the *shastras* after his youngest son had attained majority:—*Held*, that such direction did

18. ——— Words "share and share alike"—*Life-estate of widow in immovable pro-*

HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

erty. V and M, Hindus residing in Bombay, made a deed of partition in 1823 of the whole of the family property, moveable and immovable,

lately; "and the remaining clear third share to my grandsons, K, V, G, and N, the sons of my late son M, deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike." These residuary bequests, it was provided, were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life; but the estate was divided by the award of arbitrators in 1855, after making a provision for the widow, in substantial accordance with the directions of the will. V and L immediately thereafter took possession of their respective third shares of the moveable and immovable estate, but the third share allotted to the four sons of M, who were all still infants, remained unapportioned until 1856, when, on a suit being filed, the greater part of the moveable property was apportioned. The immovable property allotted to them remained unapportioned, and was managed, first, by the widow of M till her death in 1855; then by his eldest son K, till his death, without male issue, in 1859; then by the next eldest son V till his death, without issue, in 1864; and after.

suit brought by L, the widow of K, against K's

English law, but that each of the four sons of M took a separate share in the third of the testator's residuary estate; the share of each son going on

never was a union of estate, a co-parcenary, from the commencement; and consequently there was no re-union in the sense of the Hindu law, not-



5. CONSTRUCTION OF WILLS—*contd.*

(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

withstanding joint enjoyment and common residence; but only postponement for a time, and for purposes of convenience, of an apportionment of the estate, which was accordingly (among other things) decreed. *LAKSHMINARAYAN v. GANPAT MORABA* 4 Bom. O. C. 150

*Held*, on appeal, that the language of the testator showed an intention that this grandsons should take the estate as me must ances.

of as self-acquired property was disapproved of as being opposed to the authorities and general spirit of Hindu law. *GANPAT MORABA v. LAKSHMINARAYAN* 5 Bom. C. 128

19. ———— “Maharani Sahiba,” meaning of, as applied to wife or wives—*Unde Estate Act (I of 1869), ss 8, 13, and 22—Unregistered will of talukdar—Decree for maintenance to widow under the will on which her suit was*

*Held*, that to determine whether the will referred, in such bequest and power, only to the elder or to both of the testator's wives, extrinsic evidence of his intention was not admissible; but that the true construction was that which would indicate a reasonable and probable intention consistent with his views, as evidenced by his conduct, and his will generally. *Abbott v. Middleton*, 7 H. L. C. 339, referred to and followed. His views appeared to favour single heirship, and the whole state of things, as well as the language of the will, pointed to the owner of the estate being one;—*Held*, that accordingly the words “Maharani Sahiba” were not here used as a collective term for both widows, but signified only the elder, although, when qualified, as they were in another part of the will, they might include both. *Held*, also, that, as if there had been no will, the senior widow would have succeeded to an estate dependent on the determination of the life-estate to the senior, but subject to be defeated by an

the non-talukhdari estate of the testator. *Held*, also, that this had been rightly decreed to her as she had sued upon the will, although her direct claim in her plaint was not for this, but to share

5. CONSTRUCTION OF WILLS—*contd.*

(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

the estate equally with the senior widow, a claim which was dismissed. *INDAR KUNWAR v. JAIPAL KUNWAR* I. L. R. 15 Cal. 725 I. R. 15 I. A. 127

20. ———— Life estate—Requests of property to an unmarried grand-daughter of testator, and after her death to her children, if any, is a gift of life interest in such property. The will of a Hindu contained the following devise in favour of the testator's grand-daughter K, who was unmarried at the date of the testator's death: “When K may marry, there is to be given to her out of my immovable property one house which has been purchased from Shah Virji, Narsi's widow Lilabai.

That (house) is to be given to Choru K as kanyadan. The rent, which it may yield, K may enjoy after (she) my grand-daughter shall have married. And after K's decease (the ownership of) the said house shall duly be enjoyed by K's children. If by the will of God K should die without (leaving) descendants, then my ‘Trustees’ are duly to take back the said house into their possession.” *Held*, that, under the above clause, K was entitled only to life estate in the house. *KARSANDAS NATHA v. LADKAVAHU* I. L. R. 12 Bom. 185

21. ———— Absolute estate—Request to sons with gifts over—*Succession Act (X of 1865), ss 32 and 111—Absolute estate given* This appeal related to three clauses in the will of a Hindu, who bequeathed his property to his two sons, one of whom had a son. The other son was childless, his only issue having died before the will was made. There were gifts over on the death of either son. The Courts below, construing the first of the three clauses, decided that each of the two sons took a life-interest in the property comprised in that clause, as tenants-in-common; and that the ulterior interest, not having been validly disposed of, fell into the residuary estate. On this appeal, with reference to s. 82 of “the Indian Succession Act, 1865,” made to apply to wills made by any Hindu in the town of Bombay, by s. 2 of the Hindu Wills Act, 1870, some doubt was expressed by the Judicial Committee whether in the clause it suffi-

that point. In the next clause to be construed there were words which had been held by the appellate High Court to give to each of the two sons of the testator only a life-estate in a half share of the residuary estate. Whether those words, which followed a gift to the testator's two sons of the whole residue in equal shares, were so clear that only this restricted interest was intended to be given to them, was considered, in like manner, to be open to doubt in regard to the rule of construc-

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

tion imposed by s. 82. But this was also not required to be determined, as this clause, the 13th in the will, was not applicable under the circumstances. It was now determined that the third and last of the disputed clauses, No. 18 in the will clearly gave the residuary estate to the testator's two sons in equal shares, each an absolute estate, except in the case of the subsequent birth of a son or daughter. The two clauses, 13 and 18, were not, in the Committee's opinion, intended to be read together and reconciled, nor were they mutually explanatory. They were each intended to provide for different circumstances. *Held*, that the two sons of the testator must be declared to have each taken an absolute interest in the half share of the residuary estate. *DADMODARDAS TAPIRAS v. DAYABHAI TAPIRAS* . . . I. L. R. 22 Bom. 833

2 C. W. N. 417

## 22.

## Absolute estate—

*Estate vested in trustees.* One D died leaving two sons, O and V. His will contained the following clauses; "5. As to the immoveable property which I have, the particulars thereof are as follows: There is on vadi (part) situated on the Girgaum Back Road. In it there are small and large bungalows, chawls, stables, sepoys' and mahs' sheds, making in all thirteen buildings. Thereof one

bungalows, chawls, stables, and the large bungalow in which I live shall be let for rent. And out of the rent that may be realized therefrom, the expenses of repairs, Government taxes and the servants' wages being paid, the surplus shall be paid to my son G. Out of such surplus this my son G shall pay the expenses of my house, of the maintenance of the said two sons, and of my said sister-in-law, i.e., all such expenses as I carry on, and also Rs 15 per month for the worship of (the deity) Thakorji of my house. In this manner moneys are to be paid as long as there may be son's heirs in my family. And when there may be no son (i.e.) male as heir in my family, the whole property shall be all used on religious and charitable account, as stated in the below-written clause 8. My two sons and my sister-in-law, making three persons, shall reside in the bungalow No 23. And if one of them, i.e., my two sons, V, shall disagree with the others, he shall go out of the said vadi at the Girgaum Back Road and reside elsewhere; and as to his (V's) expenses out of the money which my son G may receive from

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

held that, under the will, G was entitled to the property absolutely. *Held*, by the Appeal Court, that the proper construction of the will was that G was not entitled to an absolute estate, but was entitled to be paid by the trustees the income for his life, to be assigned by him as mentioned in the will. The circumstance that the estate was vested in trustees and that the income was given as maintenance forbade the estate given to G and V or either of them being construed as an absolute estate. Moreover, as such an estate would admit females in the course of succession, this construction would not give effect to the intention of the testator, but would be to make a new will for him. *VILLERDAS DAMODHAR v. THUCKER GORDHANDAS DAMODHAR* . . . I. L. R. 14 Bom. 380

## 23.

## Principles of construction of operative words in wills—

*Effect of context upon technical or deadly disposing words used—Gift over—Male line, succession in—Malik—Putra putra di krame.* Case of the construction of a will and codicil, dated in 1865 and 1868 respectively, in which it was held, that one L took a life-estate only, and that a gift over on failure of male issue of L at any remote time was bad. The word *malik* is consistent with a life-estate, and may well be applied to a person who owns an estate for life as well as to the absolute owner. Ordinarily, without other expressions indicating in what sense the word is used, it implies absolute ownership. The words *putra putradi krame* have always been understood as words of general inheritance, and, in the absence of a contrary intention being shown, would convey an absolute estate. But in construing both the word *malik* and the words *putra putradi krame* the expressions in the whole will must be taken together without anyone being insisted upon to the exclusion of others. *Held*, in this case, notwithstanding the words *malik* and *putra putradi krame*, that there being expressions excluding the succession of females and confining the succession to male heirs, and the gift over referring to the failure of male issue at any remote time, and not to the event of L's death without leaving male issue,

Roy

I. L. R. 20 Calc. 808

is that technical words, or words of known legal import, must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not use the

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

technical terms in their proper sense. *Doe d. Gallini v. Gallini*, 5 B. & Ad. 621, referred to and followed. In a Hindu will an heritable and alienable estate is to be understood by the use of the words "shall become mahik" unless the context indicates a different intention. The words *putra poutradi krams* have acquired a technical force, and are used as meaning an estate of inheritance. That a testator may have imperfectly understood the words which he has used, or the effects of conferring an hereditary estate, would not justify the giving an interpretation to his words other than following that he

and becoming mahik of all my estate and properties shall enjoy, with son, grandson and so on in succession (*putra poutradi krams*) the proceeds of my estate." Provisions followed for the maintenance of this nephew's widow and of this daughter, should he die, and a gift over that, "in the absence of the said nephew's son, grandson, great-grandson, and so on, then of the sons born of my sisters . . . the eldest, with son, grandson and so on in succession, shall" receive the ownership. On a claim by the nearest gotraja-sapindas of

the context, so as to establish any contrary meaning by making it clear that the words were not used in their proper sense, that there was no intention expressed to give a succession of life-estates to the nephew and his male issue only—a disposition which would not have accorded with Hindu law, but that an alienable and heritable estate was devised to him. Specified property was given by the will in trust for the income to be expended for

been merely void, without any effect upon the disposition of that estate. Made, however, as to property given for religious and charitable purposes, it was valid by Hindu law. No decision as to the effect of the gift over the secular heritable estate was required, inasmuch as the contingency upon which it was limited to go over had not occurred, and might not occur. *LALIT MOHUN SINGH ROY v. CHUKKUN LAL ROY, BEPIN MOHUN SINGH ROY v. CHUKKUN LAL ROY, PRANABADA ROY v. CHUKKUN LAL ROY*

I. L. R. 24 Calc. 634  
I. L. R. 24 I. A. 78  
1 C. W. N. 387

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

24. Use of words "*putra poutradi krame*"—*Condition subsequent.* In a will, the words "*putra poutradi krame*," recognized as apt for conveying an estate of inheritance, do not limit the succession to male descendants and will include female heirs of a female, where by law the estate would descend to such heirs. The will of a Hindu, who died, leaving only a widow, a daughter's daughter, and a brother, directed as follows: "7. take place before my daughter's daughter arrives at majority and bears a son, then the whole of the estate shall remain in charge of the Court of Wards until she arrives at majority and bears a son."

purposes. In an administration-suit brought by the Secretary of State in Council against the testator's brother, wife, and grand-daughter, for the carrying out of the trusts of this will:—*Held*, that cl. 7, if it stood alone, would confer an absolute

widow's death in the event of the grand-daughter

SECRETARY OF STATE FOR INDIA IN COUNCIL  
I. L. R. 7 Calc. 304: 10 C. L. R. 349  
I. L. R. 8 I. A. 48

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

25. ———— "Malik," meaning of, as

husband's family." The will made a further pro-

523, the provision of survivorship applied only to the case of a daughter dying during the lifetime of the testator, and did not take effect in the present case, the daughter whose share was in question having died several years after the testator's death. (iii) As to the direction against alienation, s 123 of the Indian Succession Act provides for a case like this, and the daughters receive their shares as if there was no such direction. (iv) The will was not open to the construction that there was a life-estate only conferred by it on the daughters. *LALA RAMJEWAN LAL v. DAL KOER*

I. L. R. 24 Calc. 406

28. ———— "Malik"—Power to widow to adopt a son—Absolute estate. N had two wives,

contained the following passage. "Whatever I

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

adopt, but took possession of the property and remained in possession till she died in 1875; and after her death the testator's children held the properties in equal shares, with the exception of a

absolute estate under the will, and that she as her heir was entitled to the whole estate. *Held*, that the use of the word "malik" as applied to the widow did not necessarily mean that she should take an absolute estate, and that the directions in the will to adopt, and that the adopted son should become malik, rather indicated an intention on the part of the testator that the widow should only take a limited estate, and that the word "malik" as applied to the widow could not therefore be interpreted as giving her a larger interest. *PUNCHOOMNY DOSSEE v. TROYLUCKO MOHNEY DOSSEE*

I. L. R. 10 Calc. 342

27. ———— Disposition to widow as "malikatwa"—*Dayabhaga law*. K, a Hindu,

widow B, and that after her death they were entitled to K's properties. The defendant, who claimed to be B's nearest of kin, contended that the words of the will gave B an absolute estate in K's properties, and that he was entitled to the whole estate. *Held*, that the intention of the testator was to give his widow B an absolute heritable and alienable estate in his properties. *RAJNARAIN BHADOURY v. ASHUTOSH CHUCKERBUTTY*

I. L. R. 27 Calc. 44

and on appeal (affirming the above decision). *RAJNARAIN BHADURI v. KATYAYANI DABEE*

I. L. R. 27 Calc. 849

4 C. W. N. 337

28. ———— Testamentary bequest contained in *wazib-ul-arz*—*Devise by a Hindu in favour of a female*—*Presumption as to intention of*

nam— O, wife of my son A H, shall be regarded as

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

owner after my death." In the *wajib-ul-arz* of a third village the following entry was recorded— "After my death *G*, the adopted son, and *S*, the wife of *S R*, shall have a right to the property." Subsequently to the death of *M R*, the nature of

circumstances, and having regard to the sentiments prevalent amongst Hindus on the subject of the devolution of immoveable property upon females, the devise of the villages *D* and *A* must be taken to convey an estate for life only and not the absolute ownership in the villages. *Soorjemoney Dossee v. Denobundhoo Mullick*, 6 Moo. I. A. 526, and *Mahomed Shumsool Huda v. Sheeukram*, L. R. 2 I. A. 7; 14 B. L. R. 226, referred to *Hira Bai v. Lakshmi Bai*, I. L. R. 11 Bom. 573, and *Koonj Behari Dhur v. Prem Chand Dutt*, I. L. R. 5 Calc. 684, considered *MATHEURA DAS v. BIKHAN MAL*, I. L. R. 19 ALL 16

29. — Request to widow— "Take possession of and enjoy as owner"—*Life-estate—Qualified power of control of Hindu widow*. Where a Hindu by his will directed that after his death his wife was to "take possession of and enjoy my property," and in another passage declared that "just as I am the owner so she is to be the owner," but there were no words of inheritance used, nor did he directly give his wife any power of disposition over the property. *Held*, that she took only a life-interest in the property. The Courts have always leaned against such a construction of the will of a Hindu testator as would give to the widow unqualified control over his property. *HARILAL PRANLAL v. BAI REWA*, I. L. R. 21 Bom. 376

30. — Devise to widow—*Widow's estate—Stridhan*. One *D*, a separated sonless Hindu, made a will in favour of his wife, of which the material clause was as follows:—"After my death the said Musammat . . . is to be the person in possession and ownership in place of me, the executant, of all the bequeathed property aforesaid by right of this will." *D* died, leaving a widow and a daughter who was married to one *J*. The widow obtained possession of the property comprised in the will on the death of *D*. The daughter died in the lifetime of the widow, who thereupon made a will leaving the property which had come to her from *D* to *J*. On the death of the widow

property in question to his widow as her *stridhan*, to descend to her heirs. *Koonjbehari Dhur v. Prem-*

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

*chand Dutt*, I. L. R. 5 Calc. 684, dissented from. *Mahomed Shumsool Huda v. Sheeukram*, L. R. 2 I. A. 7; 14 B. L. R. 226, and *Hira Bai v. Lakshmi Bai*, I. L. R. 11 Bom. 573, distinguished *JANKI v. BEARON*, I. L. R. 19 ALL 133

31. — Disposition in favour of a widow and an adopted son—*Nature and extent of widow's interest thereunder*. By his will a Hindu testator, after providing for various bequests, dealt with the residue of his estate as follows: "My daughter-in-law and grand-daughters shall receive half of my whole estate, and my wife and my adopted son shall receive the other half." On the question as to what was the nature and extent of the interest to which the testator's widow was entitled thereunder:—*Held*, that, having regard to the rule of construction which has been repeatedly applied to gifts by Hindus in favour of their wives, the intention of the testator was not that his wife should take an absolute estate. The supposition is that a Hindu donor intends to act in accordance with the ordinary notions and wishes of Hindus regarding the devolution and enjoyment of property among the members of his family. Though it was competent for the testator to provide for his wife in such a way that she should have absolute control over the property given her, that is not the provision which the Hindu law makes for a widow. The language of the will was not inconsistent with an intention on the part of the testator that the son, with his adoptive mother,

widow was not intended to take any other estate than she would have taken if there had been an intestacy. *SESHAYYA v. NARASANNA*, I. L. R. 22 Mad. 357

32. — Request to widows—*Devise of immoveable property—Life-interest—Succession Act (X of 1865), s. 82—Hindu Wills Act (XXI of 1870), s. 3—Gift over*. A Hindu testator gave a

between my two wives, or if there being any disagreement between either or both of them and the executors aforesaid, she or they live in my family according to the rules of Hindu a good monthly homise. " Cl 9

**HINDU LAW—WILL—contd.****5. CONSTRUCTION OF WILLS—contd.****(b) ESTATES ABSOLUTE OR LIMITED—contd.**

provided that no person of the family of the fathers of his two wives should be able to exercise any control over the money and property left by the testator. Cl. 5 provided for the education of the testator's sister's son. The gift over was to the effect that anyone acting contrary to the terms of the will should be deprived of his interest which should, in due course, devolve on the other heirs. It was found on the evidence that forfeiture under cl. 4 of the will had been incurred by the defendant B, the younger widow of the testator, by reason of her having broken the condition relating to residence. *Held*, that s. 82 of the Indian Succession Act (X of 1865), which enacts that "where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a part of the interest

was intended to be given to him, shall, as aforesaid, enjoy the income for their lives, and those who have issue shall enjoy the whole

construed as giving to the widows as joint tenants a life-interest in a twelve-anna share of the estate with the right of survivorship. The clause in the will as to residence was valid and binding. *Held*, further, that the plaintiff, the son of testator's sister, who was in existence at the date of the testator's death, and who was the next reversionary heir after his widows, was entitled to take under the gift over, and not the heirs to the stridhan of P, the elder widow of the testator. **BRONIA TARIKIN DEBYA v. PEARY LALL SANYAL**

I. L. R. 24 Cal. 646  
1 C. W. N. 576

**33. ———— Bequest to daughters—Life-estate.** A Hindu testator died leaving three daughters. By his will he gave certain property to each of his three daughters and then

land to other tenants and have it cultivated, and R shall pay the assessment and, subject to the directions of his mother, shall enjoy the land and shall not in any way alienate the property." R predeceased S. *Held*, that the testator's daughter took a life-estate with remainder to her son, and that on her death the property passed to the heirs of the son. **SIVA RAU v. VITLA BHATTA**

I. L. R. 21 Mad. 425

**34. ———— Gift to daughter—Absolute estate—Daughters' estate.** A Hindu by will bequeathed to his daughters his separate property to be enjoyed by them "as they pleased." *Held*, that the daughters took an absolute estate. **KAMARAZU v. VENKATARATNAM**

I. L. R. 20 Mad. 293

**35. ———— Bequest to daughters—Absolute gift on condition—Meaning of the words**

**HINDU LAW—WILL—contd.****5. CONSTRUCTION OF WILLS—contd.****(b) ESTATES ABSOLUTE OR LIMITED—contd.**

"have issue." The testator, after providing that

shall, as aforesaid, enjoy the income for their lives, and those who have issue shall enjoy the whole

It was held that the birth of issue was the event on which the absolute gift of a half share to either daughter was to take effect; and that there was no reason for construing the words "have issue" to mean "leave issue." Therefore, under the will, one of the daughters, whose only issue died before her, took a heritable share, and that share did not go over on her death to her surviving sister who had children. **GURUSAMI PILLAI v. SIVAKAMI AMMAL**

I. L. R. 16 Mad. 347  
L. R. 22 I. A. 119

**36. ———— Gift to sons—Life-estate—Gift of residue—Meaning of words "have issue sons."** A Hindu died leaving a widow (N) and two sons (Damodar and Dayabhai), and a grandson K, the son of Dayabhai. Damodar had had two sons born to him in the testator's lifetime, but both had died in infancy and before the date of the will. This

will, dated 1865, the testator disposed of certain dwelling-houses which belonged to him and of the residue of his estate as follows: "8. I have given the houses to my wife N for her to enjoy the income thereof. . . . In the event of the decease of my wife, N, my sons, Damodar and Dayabhai, may take in equal shares, half and half, the income that may be received, and may enjoy and may expend and may make donations for religious and charitable purposes, and the heirs also of both these my sons may always take the income from time to time and may divide and take the income. To the same no one has any claim or title." "13. Afterwards giving to all what is written in this will, all the residue of the estate (iskamat), the whole of it should be divided and taken in equal shares by my sons, Damodar and Dayabhai."

not have issue sons, then, on his death, if my other



HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

death of my afore-said daughter, the sons born of her womb will equally own all my property." *Held*, upon a construction of the will, that it was the intention of the testator to give to Surjamon an absolute estate. GOVINDA CHANDRA GUPTA v. BENODE CHUNDER DUTT (1903) 12 C. W. N. 44

42. ——— Request to widow "on account of maintenance"—*Gift to widow of immovable property—Widow's power of alienation* ; adoption ; property ; account of

her maintenance. *Held*, concurring the decision of the Court below, that though it was competent to testator by apt language to clothe his widow with a power of alienation, yet in the absence of such words, regard being had to the surrounding circumstances and to the ideas which Hindus have regarding the interest ordinarily enjoyed by women in immovable property, it must be presumed that testator only meant to bequeath a life-interest. *Held*, also, that the heir-at-law was not liable to

43. ——— Direction as to management of endowment by testator's daughter and her husband and their male children successively—*Estate created by such direction*. A Hindu testator, after by his will creating an endowment for "religious worship in a *pagoda*," directed that the *sebatship* should be held by his wife, and after his death by his son, and after his death "by my daughter and her husband Nundo Doolal Bose and their male children successively." *Held*, affirming the decision of the High Court, that the word "successively" controlled the whole gift to the daughter, her husband, and the male children; and that the intention of the testator was to give life estates in the *sebatship* to the sons of his daughter in succession. On the death of the last surviving son of his daughter the succession of *sebats* failed, and the *sebatship* reverted to the heirs of the testator. GOPAL CHUNDER BOSE v. KARNICK CHUNDER DRY (1902) 1 L. R. 29 Cal. 718

44. ——— Bequest of estate of inheritance—*Milakshara School—Order of Succession not recognized by Hindu law—Agreement, if*

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

said estate Shookmoy v. Monohurri, L. R. 12 I. A. 103, where there were directions for accumulation and for no disposal of the property, distinguished. *Held*, further, that an *ekarnama* executed subsequently by the testator's younger son in favour of the eldest son, relinquishing all his claims to the estate attached to the said *guddi*, was not void by reason of the ignorance of the parties as to the effect of certain inoperative clauses of the will regarding perpetuity and inalienability. The property was the self-acquired property of their father, in which they had no interest at the time of the execution of the will.

distinguished. *Held*, also, that the *ekarnama*, being a valid instrument, was binding on a

L. R. 27 I. A. 215, referred to. RAMESHWAR PRASAD SINGH v. LACHMI PRASAD SINGH (1903) 7 C. W. N. 868

45. ——— Words conferring absolute estate by subsequent terms held to confer only life estate—*Will, construction of—Self-acquired properties, power of acquirer over—Devise, effect of, when devisee not in existence at testator's death* Properties acquired by a Hindu, who had inherited no ancestral property, out of income derived by him in Government service are his self-



HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

would give them only a right to the income of the incorporeal properties, referred to them on coming of age:—*Held*, that the sons were given a life interest in such properties. Where a testator after giving a life interest in certain properties to his sons devised the residue "in favour of the male issue of the sons, such issue failing, in favour of female issue and that again failing, in favour of the grand-daughters by his daughter" and where at the testator's death, there were no grand-children by

48. ——— Absolute estate—Will—Devise—Nature of estate devised—No presumption that it is of limited extent only. Where a Hindu gave by will

terred had she been a male, i.e., an absolute estate, and that a bequest by the donee herself by will of all the properties so bequeathed was a good and valid bequest. In Hindu law there is no presumption that a gift to a mother or such confers a limited estate only. Such a presumption exists only in the case of a gift or devise of immoveable property to the wife.

*Shewu*

*v. Ch*

*and*

*Luchu*

*Debya v. Sanyasi Churn Sircar*, 1 L. R. 24 Calc 646, followed. *ATUL KRISHNA SIRCAR v. SANYASI CHURN SIRCAR AND ANOTHER* (1905)

I. L. R. 32 Calc. 1051  
S. C. 9 C. W. N. 784

47. ——— *Mitakshara*—Will, construction of—Property devised to wife as "malik"—Estate taken by widow. Where a Hindu governed by the *Mitakshara* law devised immoveable property to his wife stating that she would be the "malik" of the property after his death: *Held*, that the word "malik" imported an absolute proprietary interest, and that, in the absence of any indication of a contrary intention on the part of the testator, the widow took an absolute, and not merely a life estate in the property so devised. *Surajmani v. Rabi Nath*, 1 L. R. 25 All. 351,

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(b) ESTATES ABSOLUTE OR LIMITED—*contd.*

dissented from. *Jamna Das v. Rannautar Pande*, 1 L. R. 27 All. 364, distinguished. *Lala Ramjewan Lal v. Dal Koer*, 1 L. R. 24 Calc 406, *Lalit Mohan Singh Roy v. Chullun Lal Roy*, 1 L. R. 21 Calc. 334, and *Raj Narain Bhadury v. Asutosh Chuckerbutty*, 1 L. R. 27 Calc. 41 and 649, followed. *PADAM LAL v. TEK SINGH* (1906)

I. L. R. 29 All. 217

48. ——— Request to daughters "and their respective sons"—Construction of will—Whether absolute estate or estate for life—Principles of construction of Hindu wills—Hindu Wills Act (Act XXI of 1870)—Succession Act (Act X of 1865), ss. 82, 111. The will of a Hindu directed his executors in case of failure of his sons, natural or adopted, and after the death of his wife "to make over and divide the whole of my estate both real and personal unto and between my daughters in equal shares to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die,"

and of two sons adopted by his widow after his death, the former died and the adoption of the latter was held by the Privy Council to be illegal. In a suit brought after the death of the widow by one of the two daughters: of the testator for construction of the will, it was held—

were entitled to the testator's estate in equal shares for life with benefit of survivorship between themselves. The language of the will clearly showed that the testator's intention was to exclude his daughters' daughters from the succession, to which they would have been entitled under ordinary Hindu law, had their mother's estate been an absolute one. The principles as to construing the will—

I. L. R. 35 Calc. 898  
S. C. I. R. 35 I. A. 118

49. ——— Gift of immoveable property to a Hindu widow—*Malik*—Absolute estate. When the question was whether a Hindu

**HINDU LAW—WILL—contd.****5. CONSTRUCTION OF WILLS—contd.****(b) ESTATES ABSOLUTE OR LIMITED—contd.**

widow acquired a right to alienate the property (immoveable) in suit under a deed of gift or testamentary disposition of her late husband, wherein the word used was *malik wa khud ikhtiyar*, their Lordships held that in order to cut down the full proprietary rights that the word *malik* imports,

*Chullun Lal Roy, L. R. 24 I. A. 76, s.c. I. L. R. 24 Calc. 834*, was a man, but the principles of interpretation laid down in that case were of general application. *Kollany Koor v. Luchmee Pershad*, 24 W. R. 395, referred to *SURAJMANSI v. RABI NATH OJHA* (1907) 12 C. W. N. 231

**50. ————— Construction—**

*Bequest to widow—Power of appointment—Bequest for life, with power of alienation—Gift over.* A will addressed by the testator to his wife, was to this effect: "You are my legally married wife and entitled to the property to be left by me. Should I

perities will remain after your death and she shall enjoy the same, keeping up and maintaining the aforesaid *sheba*, etc. The said daughter

for life with a power of alienation, and to the extent to which such power was not exercised, the daughter similarly took the property. *HARA KUMARI DAS v. MOHINI CHANDRA SARKAR* (1908) 12 C. W. N. 412

**(c) ADOPTION.****51. ————— Adoption directed by will—****HINDU LAW—WILL—contd.****5. CONSTRUCTION OF WILLS—contd.****(c) ADOPTION—contd.**

"made his adopted son." The following was the material part of the will: "15. During my lifetime, or subsequently to my decease, should a child (begotten) by me not be born of the womb of my wife *S*, then I direct and order and appoint as follows: There is my nephew *D*. He has now one son to whom he has not as yet given a name. My wife *S* is to take that son in adoption after my decease, and he is to be made my adopted son. And after what is mentioned in (this) my testamentary writing has been done accordingly, I give (him) as an inheritance all the residue of my property left at the time, and I appoint him as my heir. This I do to perpetuate (my) own name as (if he were) the son of my loins, and (he) is to pay as much respect to my wife *S* as (if she were) his own mother; and agreeably to her directions he is to

property left at the time. (It is given) in the following manner." In 1870 this suit was filed by the plaintiffs (the widow and executrix of testator) for the purpose of having the will construed. The plaintiff complained, *inter alia*, that the defendant *D* had refused to give his infant son in adoption to the plaintiff, and had named him *S D* and had no other son. In his written statement filed in 1871 the defendant *D* denied that he had refused to give his said son in adoption. In a subsequent written statement filed on the 4th March 1872 he informed the Court that a second son (*N*) had since been born to him and he submitted to the Court what

ready and willing to adopt him and had offered to do so, but that his father (the first defendant) had refused to give him in adoption. She prayed,

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

always willing to give his son *S D* to be adopted by the plaintiff on certain conditions, but that she had refused to consent to them, or to anything which would in the least interfere with her authority as a mother over the boy when adopted. He stated that the plaintiff was an adherent of a sect which held certain pernicious and immoral doctrines to which he was much opposed and which had been abhorred by the testator; and that unless certain conditions, which he suggested, were imposed upon the plaintiff, the moral character of his son, if adopted,

in adoption on the conditions proposed by the first defendant, his natural father. *SHANAVAHOO v. DWARKADAS VASANJI*. I. L. R. 12 Bom. 202

52. — Adoption directed to be made not by testator's widow, but by the widow of his deceased son.—*Adoption of testator's nephew directed by will—Bequest of property to such nephew—Persona designata*. *A*, a Hindu testator, by his will, dated the day before his death, declared that it was his wish to adopt his nephew *K* as his son, but that, if he should be unable to do so in his lifetime, his daughter-in-law, *L* (the widow of a deceased son *H*), was "to take the said *K* in adoption." His will then continued: "His adoption ceremony is to be performed. My property, which may remain as a residue after all the things mentioned in my will have been done, I give to this lad as his inheritance, and I appoint him as my heir." A subsequent clause of the will directed as follows:—"In the twenty-

any lad who may be found fit. And if the said *L*

flored above is duly to be given in inheritance. And his adoption ceremony is to be performed. And the outlays on the occasion of his marriage also are duly to be made as written above." *Held*, that the direction by the testator to his daughter-in-law to adopt a son was a direction to her to adopt a son to herself and her deceased husband and not to adopt a son to the testator; the former being the only adoption which she was by Hindu law competent to perform. *Held*, also, that, unless *K* was adopted as directed by the will, he was not entitled to the testator's property. His adoption was a condition precedent to his inheritance. *KARANDAS NATHA v. LADKAVAHU*

I. L. R. 12 Bom. 185

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

*KARANSI MADHOWJI v. KARANDAS NATHA*

I. L. R. 20 Bom. 718

On appeal to the Privy Council:—*Held*, affirming the decree of the High Court, that the adoption was a condition precedent, and that the boy, not having been adopted, could not take under the will. *KARANSI MADHOWJI v. KARANDAS NATHA*

I. L. R. 23 Bom. 271

53. — Gift to person as an "adopted son," though not actually so.—*Gift, whether conditional—Persona designata*. Where a testator recited in his will that he had been keeping a minor as his adopted son, and thereby gave properties to him absolutely, describing him as adopted son:—*Held*, that by the true construction of the will the gift was not conditional upon adoption having been effected. *SUBBAYYER v. SUBBAYYAR*. I. L. R. 27 I. A. 182

4 C. W. N. 805

54. — Intention of refusal to adopt a Hindu. "I give out of my personal the defend- he plaintiff).

Besides the two-anna share of the wealth in ready money and landed property which remains, you

sons to be received in adoption." The brother died leaving a will, by which he committed to his

*PRASANNAMAYI DASI v. KADAMBINI DASI*

3 B. L. R. O. C. 85

55. — Double adoption.—*Gift to sons by implication as devisees—Intention—Persona designata*. *N C G*, a Hindu, died without issue, leaving a widow (the plaintiff). He left a will by which he gave a conditional power of adoption in

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

tioned below, but if a daughter be born, she will in that case adopt the twin mentioned below, and whatever property there shall exist consisting of moveables and immoveables, etc., my executors shall divide into three equal shares, and give the

below, and for that purpose I give her, that is to say my wife, permission that she, that is my said wife, shall, in conformity with our shastras, adopt

ing to this will and in pursuance of the permission given by me, cause the said two children to be received in adoption. If any of the said adopted sons depart this life before attaining the age of majority, then one of the uterine brothers of the deceased adopted son shall be received in adoption according to law in the room of deceased adopted son," etc. The plaintiff did not give birth to

## DOSSEE v. PRODHOMONIE DOSSEE

2 Ind. Jur. N. S. 18

## 56. — Gift—Condition precedent

—*Persona designata*. Assuming that the testator, in using the words, "According to our shastras, the said two adopted sons will perform our

## v. DOORACHURN SPIT

2 Ind. Jur. N. S. 23; Bourke O. C. 360

## 57. — Testamentary

gift—*Intention*—*Subsequently adopted son*—*Res judicata*—*Pending administration suit*—*Persona designata*. P, a Hindu inhabitant of Calcutta of the Sudra caste, having two wives, H, the elder

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

this my direction, and having done so, should a similar misfortune happen, she shall have the option of adopting other sons in succession, and that son shall inherit the share of my deceased son. Further, besides one-half share of the moveable and immovable properties of which I am possessed jointly with my elder uterine brother, whatever, etc., belonging to me in my separate, etc., account, my said executor and executrixes shall become possessed of the whole after my decease, and shall re-

The executor and two executrixes proved the

infants, filed a bill by their next friend against P's executor and executrixes for the administration of the estate. N afterwards died before the present

of appeal, that there was a clear designation of the plaintiff and S, and of O, the subsequently-adopted son, to enable them to take under the will. Held, also, by both Courts, that the administration suit was no bar to the present suit. And held by TAYLOR, J., dissenting from the rest of the Court on the appeal, that the instrument executed by P was partly a will and partly a permission to adopt; that as to the first part of the instrument, there was sufficient designation of the persons as held by the rest of the Court; and as to the second part, that it was a condition precedent to any one taking under that permission that he should be a validly adopted son according to the Hindu law. MOFEMOTHATH DAY v. ONOTHANATH DAY. 2 Ind. Jur. N. S. 24

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

s c. in Court below . Bourke O. C. 189

58. ——— Gift by implication—*Persona designata*—Power to adopt. A Hindu testator died, leaving a widow, and leaving also a will, which contained the following clause:—"My wife is supposed to be pregnant with child; if a daughter be born, she will in that case adopt the twain mentioned below (the plaintiff and one S G); and whatever property there shall exist, consisting of moveable and immoveable, my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority." S G died; no child was borne by the widow. The plaintiff, having attained his majority, brought a suit for declaration of his title, alleging that he had been duly adopted under the will; but that, whether he had been adopted or not, he was entitled under the will to a share in the moveable and immoveable property of the testator. No valid adoption took place. *Held*, that there was no gift by implication to the plaintiff. The testator only intended him and S G to take under the will in the event of their being adopted. *Dossmoney Dossee v. Prossomoye Dossee*, 2 Ind. Jur. N. S. 18, followed. ABHAI CHABAN GHOSE v. DASHAKI DASI, 6 B. L. R. 623

59. ——— *Persona designata*—Bequest to person not holding character supposed by testator. Plaintiff sued as the widow of an adopted son for the property of the adoptive father, and also on the ground that the adopted son was the devisee of the adoptive father. The Civil Judge decided that the adoption of the plaintiff's husband was invalid according to Hindu law, and that the devise, having been made to the plaintiff's husband as adopted son, was invalid. *Held* (reversing the decision of the Civil Judge), that as the language of the testator sufficiently indicated the person who was to be the object of his bounty, the person so indicated was entitled to take, although the testator conceived him to possess a character which in point of law could not be sustained. JAYANI BHAI v. JYU BHAI, 2 Med. 462

80. ——— *Son about to be adopted*—Adoption. Where in a will there was a clear indication of the testator's intention before making an adoption to give the greater part of his property to the boy whom he was about to adopt, and the bequest was by name to the latter, who was

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

was made to a person whom the testator falsely described as his "aurasa," or "naturally-born"

L. R. 12 I. A. 72; I. L. R. 11 Cal. 453, distinguished. VENKATA SURYA MAHIPATI RAMA KRISHNA RAO v. COURT OF WARDS

I. L. R. 22 Mad. 393

L. R. 28 I. A. 83

3 C. W. N. 415

82. ——— Adopted son where adoption is invalid—Endowment—Gift to shebais—Effect of *shranams* between widows in favour of sons whose adoption was invalid. A testator bequeathed all his property to a family thakur, and, to secure the *debsheha*, directed that his two widows should each

them as shebais all the property bequeathed; and out of the surplus income, after payment of the expenses of the *debsheha* the two sons were to receive a fixed allowance, the residue being undisposed of,

come into two equal shares, making accumulations, which should be handed over by each to the son adopted by her on his attaining majority. In a suit by the son purported to have been adopted by the elder widow, who was then dead, against

there was no gift to him. *See also* on the

for their estates for life, so that interest upon the part which taken as part of the series of acts, gave to the boys, so far as the widows' interests extended, the same benefit

I. L. R. 10 Cal. 101  
L. R. 19 I. A. 101

61. ——— False designation of person in bequest—Validity of bequest. A bequest

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

that they would have taken had they been heirs; and although they were not, and could not have been at their age, parties to the *ikramama*, yet that they could insist on the performance of the contract, by which each widow bound herself to the other to deal with the estate in their favour. *Fourthly*, that each boy was entitled on attaining majority to

DOSSEE . . . I. L. R. 18 Cal. 513  
I. R. 18 I. A. 108

63. ——— Restricted power to widow to adopt. A Hindu in 1834 made a will therein described as being executed by him and his wife.

tor's death, the widow, as in exercise of the power conferred on her by the will purported to adopt a boy who did not come within the description in the first of the above clauses, although one of the testator's brothers offered his own son in adoption. In a suit by the testator's brothers for a declaration that the adoption purported to have been made by the widow was invalid:—*Held*, that, notwithstanding the general terms of the second of the above clauses, the widow's power to adopt was restricted by the first, and the adoption purported to have been made by her was invalid. *ANANTHAYAN v. KATHARAYAN* I. L. R. 14 Mad. 65

64. ——— Request to a boy directed by the testator to be adopted by his widow—*Direction for the boy's maintenance—Rights of the legatee, no adoption having been made*. A Hindu made his will whereby he provided that his property should be enjoyed by his widow, who should maintain certain persons, including the plaintiff, whom she was thereby directed to take in adoption, and added: "My aforesaid wife shall enjoy all my abovementioned properties in every way as long as she may be alive, and after her death the same shall be taken possession of by the aforesaid adopted son. The testator died not having taken the plaintiff in adoption, and his widow did not adopt him. In

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

65. ——— Power to adopt conferred on testator's widow ended on estate vesting in his son's widow—*Gift of beneficial interest*. On a claim by the children of the testator's daughter, as against his brother's son,—*Held*, that the testator's direction to his executor (who was his elder brother) to make over whatever remained of

meant, in order to be consistent with the above, "dies before attaining full age." On the death of the testator's son after attaining full age and leaving a widow, the testator's widow, although empowered by the will to adopt if the testator's son should die without son or daughter (which he did) could not exercise this power after the estate had, consequently upon the son's death, vested in his widow for her widow's estate. *Thayammal v. Venkataramma Aiyar*, L. R. 14 I. A. 67; I. L. R. 10 Mad 203, referred to and followed. The testator's son, having succeeded to the estate under

not an absolute gift of the beneficial interest, and that the claim of the children of the daughter of the parent testator was valid. *TARACHURN CHATTERJI v. SURESH CHANDER MUKERJI*

I. L. R. 17 Cal. 122  
I. R. 16 I. A. 168

66. ——— Right of adopted son to the corpus and surplus income during the lifetime of his adoptive mother—*Direction for accumulations with proper limitation—Power of Hindu testator*. After giving authority for the adoption of a son, a testator by the ninth clause of his will, after directing certain payments to be made out of the income of the estate, proceeded as follows:—"But in no case shall such adopted son have or exercise any control or dominion over my estate and effect until the death of my wife; after which events, I direct my said executors and trustees to make over the whole of my estate and effect, both real and personal, moveable or immovable whatsoever and wheresoever and of what nature or quality soever, to such adopted son who shall survive my wife, if he shall have attained his age of eighteen years during the lifetime of my wife, or on his so attaining such age after her decease, to whom and his heirs I give, devise, and bequeath the same." *Held*, that the adopted son was not

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

incompetent for a Hindu testator with proper limitation, to direct an accumulation of the income of property which under his will vests in his executors or trustees. In the absence of special provision, the limit must be that which determines the period during which the course or devolution of property can be directed and controlled by a testator. *AMRITO LALL DUTTA v. SUBBANAYE DASSEE*

I. L. R. 24 Calc. 589

1 C. W. N. 345

67. Request to testator's adopted son, not conditional on adoption having taken place. A testator stated in his will that he had been keeping a minor as his adopted son, and recited, in a bequest of property to him, "whereas my adopted son is a minor." On this appeal the question was whether the meaning and effect of the will was to entitle the minor to inherit under the bequest, assuming that he had not been validly adopted by the testator. *Held*, that the expression that the testator had been keeping the minor as his adopted son meant keeping him with a view to his adoption, and that the bequest to the minor was not conditional on his having been adopted, but was effectual, whether he had been adopted or not. *SUBBARAYAN v. SUBBANAYE* (1900)

I. L. R. 24 Mad. 214

68. Absolute bequest to widow—Hindu widow—Testator—Alienation—Administrators—Title derived from such administrators. When, by will, an authority to adopt is given to a Hindu widow, it does not necessarily follow that the widow takes only a life-estate in the property left to her under the will, especially when the power of disposition over the property is given to her. The intention of the testator must be gathered from the terms of the will itself. The defendant purchased certain immoveable property from the administrators to the estate of the widow of *E*, who, by his will, left all his moveable and immoveable properties to the widow, authorizing her to take in adoption one or

TOOLSI DASS KURNOKAR v. MADAN GOPAL DEY (1901)

I. L. R. 28 Calc. 499

69. Construction of document—Document of a testamentary nature—Declaration made in *vajib-ul-arz*, by the sole proprietor of a village, as to his wishes respecting the devolution of the property after his death. The sole proprietor of a certain village caused the following

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

entry to be recorded in the village *vajib-ul-arz*: "I am the only *zamindar* in this village. I am a Marwari Brahmin. Seven years ago I adopted my sister's son, Murli. He is my heir and successor (*malik*). If, after this agreement, a son is born to me, half the property would be received by him and half by the adopted son. If more than one

testamentary declaration of the wishes of the proprietor of the village, and that the person described therein as the adopted son was entitled by virtue of it to half of the village. The description of the devisee as an adopted son was treated as a mere misdescription, which ought not to affect what appeared to be the real intention of the testator. *FARANDRA DEB RAIKUT v. RAJESWAR DAS*, L. R. 12 I. A. 72, 89, and *NIDHOMONI DEBYA v. SARODA PERSHAD MOOKERJEE*, L. R. 3 I. A. 253, referred to. *LALI v. MURLIDHAR* (1901)

I. L. R. 24 All. 185

70. Gift to third person conditional—*adoption*—*Hindu will*

dying without issue issue and second son second, and in the event of such second son

validly got a life-interest in the estate of the deceased. In the eye of the law his capacity for inheriting was the same as if he was born in the testator's lifetime. *Babu Anaji v. Rainoji*, I. L. R.

HINDU LAW—WILL—*contd.*3. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

21 Bom. 319, followed. SARAT CHANDRA MULLICK v. KANAI LALL CHUNDER (1904) 8 C. W. N. 286

71. ——— Request over to widow—Will—Construction of will—Request of absolute interest—Defeasance—Contingent bequest—Hindu Wills Act (XXI of 1870), s. 2—Succession Act (X of 1865), ss. 82, 111—Hindu Law—Adoption—Adoption by widow—Termination of authority to

there is a bequest to an adopted son and on his death and until another adoption the estate is bequeathed to this testator's widow, and no time is mentioned in the will for the happening of the death of the adopted son, who survived the period of distribution. *Held*, that, under s. 111 of the Indian Succession Act and s. 2 of the Hindu Wills Act the bequest over to the widow was invalid. *Jotindramohun Tagore v. Ganendramohun Tagore*, L. R. Sup. I. A. 47, 18 W. R. 359, and *Narendra Nath Sircar v. Kamalbasini Dasi*, I. L. R. 26 Calc. 363, L. R. 23 I. A. 78.

pendent during the lifetime of A's widow and that the adoption of the second defendant was invalid. *Bhoobun Meys Debis v. Ram Kishore Achary Choudhry*, 10 Moo I. A. 279, 3 W. R. P. O. 15, *Padma Kumari Dibi Choudhary v. Court of Wards*, I. L. R. 8 Calc. 302, L. R. 8 I. A. 229, *Thayammal v. Yankalarama*, I. L. R. 10 Mad. 205, L. R. 14 I. A. 67, *Tara Churn Chatterji v. Suresh Chunder Mukerji*, I. L. R. 17 Calc. 123, L. R. 16 I. A. 166, *Krishnarav*

I. L. R. 33 Calc. 1306

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

72. ——— Gift over to testator's daughters—Will—Construction—Authority to adopt—Request to adopted son—Authority to adopt declared invalid—Testacy or intestacy—Nature of interest taken by each daughter—Daughter with natural children and daughter with adopted child—Preferential right to inherit—Meaning of "to whom and whose respective sons I give, devise and bequeath the same"—Limitation, words of—Whether the will defective for want of a general administrator. A testator by his will authorised an adoption in a manner which in a suit brought by the adopted son was held to be invalid under Hindu Law. By the same will he further directed "his executors and executrix and trustees to pay out of the income and interest of his estate and effects monthly" certain expenses "and invest the rest and residue in Government securities" and he declared that "in no case was such adopted son to have or exercise any control or dominion over his estate and effects until the death of his wife" after which event the executors and trustees were directed "to make over the whols of the estate and effects to such adopted son, to whom and his heirs he bequeathed the same." *Held*, that this amounted to a present bequest to the adopted son accompanied by directions to accumulate and restraints on enjoyment and possession both of which would probably be held to be invalid beyond the date of majority of the adopted son. The will further directed that "in

of his estate both real and personal unto and he-

being words of limitation and not of purchase. A preliminary objection, viz., that the suit was defective for want of a party representing the estate of the testator, was overruled as all the parties, who could by any possibility have an interest in the estate, were already before the Court and the plaintiff asked for administration only in case such relief were deemed necessary and the Court in this case did not deem it to be necessary. *RANJAN DASSEE v. PREMOMNEY DASSEE* (1903) 9 C. W. N. 1033

73. ——— Will, construction of—Adoption—Authority to adopt declared invalid—Gift over to the daughters—Nature of interest taken by each daughter—Daughter with natural children and daughter with adopted child—Testacy



HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

*cr intestacy*—Meaning of words "to whom and their respective sons I give devise and bequeath the same"—Words of limitation—Succession Act (X of 1865), ss. 82, 111, 116, 117. A by his will directed that on his failure to adopt, his widow B, executor and trustee, should adopt three sons in

make over and divide the whole estate both real and personal between his two daughters E and F in equal shares; but should one of them die without issue, then the surviving daughter and her sons should be entitled to the share of the deceased daughter, or in case of either daughter leaving sons, the share of such daughter should be paid to her sons "share and share alike." A afterwards died, leaving surviving him his widow B and his two daughters E and F, but without adopting any son. On the 9th August 1876 B adopted C, who died unmarried on the 9th January 1881. Subsequently B adopted a second son D, on the 9th February

instituted this suit for construction of A's will. *Held*, that the prior bequest of A had failed ab initio by reason of its object never having come into existence, and that such failure did not make the bequest to E and F void, but that they each

*v. Jones*, 2 V. & L 517, *Blackburn v. Bennett*, 5 Sim 78, *Atchyn v. Ward*, 1 Ves 420, referred to. *Held*, also, that there was a necessary implication

15 Cal 253, referred to. Under Hindu Law a married daughter takes by inheritance a limited estate, but under a devise by will she takes an absolute estate, unless her interest is curtailed by express words or by necessary implication. S 82 of the Succession Act referred to. *Ramasami v. Papayya*, 1 L R 16 Mad 466, *Lala Rampjivan Lal v. Da Koer*, 1 L R 24 Cal 406, *Mussamut Kollany*

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(c) ADOPTION—*contd.*

*Koer v. Luchmee Pershad*, 24 W. R. 355, *Bhoba Tarini Debya v. Peary Lal Sanyal*, 1 L R 24 Cal 446, *Atul Krishna Sircar v. Sanyasi Charan*

an estate for life in favour of his daughters with a remainder over to their sons, and such words could not be construed as creating joint estates in favour of his daughters and their sons. The word "sons" is a word of limitation and is intended to have the same effect as the words "sons, grandsons, etc." *Held*, also, that there being no contest as to the adoption of G by E after the death of the testator, E attained the status of a daughter with a son. It is now settled by law that an adopted son holds precisely the same position as a son born, as regards inheritance from the adoptive mother's relations, and the status of an adopted son, unless modified by express texts, is similar to that of a son born, as regards the performance of periodical obsequial ceremonies and inheritance. *Pudda Kumari Devi v. Jogat Kishore Acharya*, 1 L R 5 Cal 615, *Uma Sankar Moitra v. Kali Kumal Mozumdar*, 1 L R 10 I. A. 138, referred to. It is

s.c. 10 U. W. N. 666

74. — Adopted son to take after widow, if of good character—Will—Con-

on her death the adopted son was of good character and obedient to the widow. *Held*, that the condition, viz., that the adopted son should be of good character

*Hough*, (1876) Meriv. 20, 10 Mowbray 200, referred to. Adoption there is no implied contract with the natural father that in consideration of the gift of his son the adopter will not make a Will. *Surya Mahipati Ram v. Court of Wards*, 3 C. W. N. 415; s.c. 1 L R 26 I. A. 83, followed. *SURENDRA NATH GHOSE v. KALA CHAND BANERJEE* (1907) 12 C. W. N. 668.

## (d) BEQUEST TO IDOL.

75. — Appointment of shebait. A testator by will left certain property to.

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(d) REQUEST TO IDOL—*concl'd.*

an idol and appointed a shebait. The person so appointed died without taking charge of the property or filling the office, and the lands remained in the possession of the testator's family. *Held*, that this property would follow the course of the other properties left by the testator, and be divided with them among the devisees under the will *SARODA SUNDARI DEBI v. GOBINDMANI DEBI*

2 B. L. R. A. C. 137 note

78. ——— A bequest to an idol not in existence at the time of the testator's death is void. *NOENDRA NARAYAN DASST v. BENOU KRISHNA DEBI* (1902)

I. L. R. 30 Calc. 521 : s.c. 7 C. W. N. 121

77. ——— *Will—Endowment—Shebaitship—Validity of bequest—Intention of foundress—Usage—Custom* Where the intention of the foundress of a private religious endowment was that all her lineal descendants should hold the debutter property and jointly perform the worship of the idol, and the testator (one of her descendants) bequeathed the *pala* or turn of worship to his wife and on her demise to one of his two nephews, *grandnephew* and their lineal descendants to the exclusion of the other nephew. *Held*, that the bequest was not in accordance with the intention of the foundress, nor the Hindu Law; and that there was no established usage or practice in the family to justify it. The office of *shebait* is not divisible except by custom. *RAJESHWAR MCLICK v. GOPESHWAR MCLICK* (1907)

I. L. R. 34 Calc. 828

## (e) REQUEST FOR PERFORMANCE OF CEREMONIES

78. ——— *Bequest for giving feasts to Brahmins—Disquest of undivided share of joint property.* A bequest by a Hindu for the performance of ceremonies and giving feasts to Brahmins is valid. A Hindu has no power to bequeath his undivided share of joint family property. *LAKSHMISHANKAR v. VALINATH*

I. L. R. 8 Bom. 24

79. ——— *Managers, incapacity of, to act—Appointment of other managers.* Where particular persons have been ap-

pointed in the will, they may make over to any person concerned the requisite expenses for such ceremonies. *ANUND COOMAR GANGOOLY v. RAJNAL CHUNDER ROY*

8 W. R. 278

## (f) REQUEST FOR IMMORAL CONSIDERATION.

80. ——— *Condition of future cohabitation—Invalidity of bequest—Suc-*

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(f) REQUEST FOR IMMORAL CONSIDERATION—*concl'd.*

*cession Act (X of 1865), s. 114.* A bequest by a Hindu testator, made conditional on the continuance of immoral relations between himself and the legatee, is void. *TATARAMMA v. SITHARAMA-SAMI NAIDU*

I. L. R. 22 Mad. 673

## (g) REQUEST FOR CHARITABLE PURPOSES.

81. ——— *Valid dedication—Inheritance.* A Hindu testator in Bombay who left a nephew (son of a deceased brother) made a bequest for charitable purposes. The nephew, entitled either as heir or as legatee of the residue of the estate, contended that the only property of which the testator during his lifetime was in possession was joint family estate, and that under the law of the *Mitakshara* the testator had no power to dispose of it as he had attempted. A specific part of the testa-

with them in carrying out the trust, and became one of the trustees. *Held*, that the property had been validly dedicated to the charitable purposes; whether or not, the will alone was sufficient, with regard to the nature of the testator's interest in the estate, to constitute the trust as against the heir. *PARNANANDAS v. VENAKERAO*

I. L. R. 7 Bom. 19 : 12 C. L. R. 82

I. L. R. 8 I. A. 88

82. ——— *Gifts void for uncertainty Charitable gifts—Void gifts.* A testator by his will directed that his executors should "get a Shiva's temple erected at a reasonable cost in a suitable place within the compound of the brickbuilt bastakhana-house inclusive of the building and garden thereto," in which he had constantly resided. *Held*, that the direction was not void for uncertainty, and that under the circumstances 3 per cent. of the testator's movable estate was a proper sum to allow for the cost of erecting the temple. *Held*, also, that a direction to the executors to "perform all the acts properly and *bona fide*, to the best of their respective information and judgment, and according to the provisions of this will," did not give the trustees an absolute discretion to fix the amount proper to be expended on the erection of the temple. The testator further declared that "the said executors or any of," his "heirs and representatives" should "not



HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(g) REQUEST FOR CHARITABLE PURPOSES—*contd.*

*See also: 1732 Construction of Wills—Charitable*

given to *dharma*. There was no residuary clause in the will. *Held*, that the gift to *dharma* being clearly bad, and there being no residuary clause in the will, the corpus of the Rs.4,000 was undisposed of and went to the testator's widow. *MORANJI CULLIANJI v. NENBAI*. I. L. R. 17 Bom. 351.

85. ——— Void bequests—*Bequest to dharmada*—*Bequest void for uncertainty* A bequest in favour on *dharmada* is void by reason of uncertainty. The law of this point is the same in the *mofusi* as in the *presidency town*. *DEVSHANKAR NARANSINGH v. MOTIRAM JAGESHWAR*.

I. L. R. 16 Bom. 138

86. ——— Request to "*dharma*"—*Charitable bequest*—*Bequest to "dharma" void*. One G by his last will and testament bequeathed certain properties to his daughter in the following words:—"They (the executors) shall deliver all other properties to her on her attaining proper age (i.e.) 18 years, my daughter shall use and enjoy the properties for her life. These properties shall, after her, be taken by her issue. In case my daughter may not perchance have any such issue, she should dispose of as she pleases all the properties she may have. In case she, perchance, being short-lived die before so attaining her age, the executors shall utilise those properties for *dharmam*." The daughter died issueless before attaining majority. The plaintiff, one of the executors, and the next heir of the deceased G, brought this suit for declaring the bequest to "*dharma*" void and to declare the right of plaintiff to succeed to the properties bequeathed to the daughter. *MR. JUSTICE BODDAI* held the bequest to "*dharmam*" void and decreed the plaintiff's claim. On appeal; *Held*, *PER CHIEF JUSTICE*.—The bequest to "*dharmam*" is void. *RUNCHORDAS VANDRAVANDAS v. PARVATIBAI*, L. R. 26 I. A. 71, followed. *PER SUBRAMANIA AYYAR, J.*—The word "*dharmam*" when used in connection with gifts of property by a Hindu has a perfectly well-settled meaning and connotes *tshta* and *poorta* donations. The word is a compendious term referring to certain classes of pious gifts, and is not a mere vague and uncertain expression. The testator must be presumed to have used the word with reference to the definite objects inculcated by shastric precepts and well known to the people and therefore the gift to "*dharmam*" is not void for indefiniteness. *PARTHASARATHY PILLAI v. THIRUVENKATA PILLAI* (1907).

I. L. R. 30 Mad. 340

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(g) REQUEST FOR CHARITABLE PURPOSES—*contd.*

87. ——— *Bequest for dharma*. Where a testator gave bequests for *dharma* (charitable purposes) which were of a such a manner as to give me a good name:—*Held*, that the bequest was void. *CURSANDAS GOVINDJI v. VUNDRADVANDAS PURSHOTAM*. I. L. R. 14 Bom. 482.

88. ——— *Gift to dharam*—*General and indefinite charitable bequest* One C died without issue on 6th January 1869, leaving two widows, G and N, who thereupon took a widow's estate in such of his immoveable property as was not validly disposed of by him. By his will,

bequests for *dharam* were void, and that the property bequeathed for that purpose was undisposed of. He claimed to be entitled to the whole of the testator's immoveable property including that which had been devised to the widows for life. *Held*, that the devise to *dharam* was too general and indefinite for the Court to enforce, and was therefore void. *VUNDRADVANDAS PURSHOTAM v. CURSANDAS GOVINDJI*. I. L. R. 21 Bom. 648.

*Held* by the Privy Council on appeal that the bequest for *dharam* was void. The objects which can be considered to be meant by that word are too vague and uncertain for the administration of them to be under any control. *MORICE v. BISHOP OF DURHAM*, 9 Vesey 399, 10 Vesey 521, referred to and followed. *RUNCHORDAS VANDRAVANDAS v. PARVATIBAI*. I. L. R. 23 Bom. 725.

L. R. 26 I. A. 71  
3 C. W. N. 621

89. ——— Request of residuary estate—*Will*—*Bequest to religious and charitable purposes* The residuary clause of the will of a Hindu governed by the *Mitakshara* school of Hindu Law was as follows:—"And as to the rest and residue of my estate, I give and devise the same to my executor in trust to spend and give away the whole thereof in charity in such manner and to such religious and charitable purposes as he may, in his discretion, think proper." The bequest of the residuary estate was held to be

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(g) BEQUEST FOR CHARITABLE PURPOSES—*contd.*

a valid charitable bequest. The direction to spend and give away the whole of the residue in charity governs the words that immediately follow,

*Dub Shankar Narankhai v. Motiram Jageshwar*,  
11 B. 19 Bom. 136. *Ranchhodas Vandrauandas v.*  
*see v. Bishop of*  
*havar Mulla, 1*  
*Damothar*  
*Madhoojee, 1 Bom. H. C. 76 note; Blair v. Duncan,*  
*A. C. 37*  
*1 Fulton*  
*referred*  
*UPADHY*

90. ——— Will, construction of—Charitable bequest—Residuary bequest—Shebari, appointment of—Bequest to poor relatives—

A direction to the executors to set apart a specific sum for distribution among the testator's "poor relations, dependents and servants," is a valid charitable bequest *Morice v. Bishop of Durham*, 10 Ves 522, distinguished *Attorney General v Duke of Northumberland*, 7 Ch. D. 745, and *Horde v. Earl of Suffolk*, 2 Mylne & Keene 59, referred to. Where a testator devised specific immovable property to C for life only, and further directed his executors to sell the residue of his moveable and immovable properties and transfer it to a University: Held, that the reversion in the property devised to C for life passed on his death under the specific residuary devise, to the University *MANORAMA DASSI v. KALI CHARAN BAKERJEE* (1904) I. L. R. 31 Cal. 616 s.c. 6 C. W. N. 273

91. ——— Feeding and paying Brahmins—Will, construction of A direction in a will for feeding and paying the Brahmins on the day following the night of the *Suvaratra* is a valid bequest *Duarkanath Byrak v. Burroda Pershad Bysack*, I. L. R. 4 Cal. 443, *Lakshmi-sankar v. Vajjnath*, I. L. R. 17 Bom. 351, followed *KEDAR NATH DUTT v. ATUL KRISHNA Ghosh* (1908) 12 C. W. N. 1083

## (h) ELECTION, DOCTRINE OF.

92. ——— The doctrine of election applies to wills made in India. D, a Hindu

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(h) ELECTION, DOCTRINE OF—*contd.*

widow, died, making a will in respect of property which she had inherited from her husband. She bequeathed Rs. 2,000 as a legacy to the plaintiff and, the immovable property to K, the defendant's father. The plaintiff and K were the heirs of her husband. The plaintiff sued for the legacy under the will, and for half the immovable property as heir. Held, that the plaintiff should be put to his election whether to take the legacy under the will or half the property as heir of the testator's husband. *MAHQADAS v. RANCHHODAS BHAYANIDAS* I. L. R. 14 Bom. 438

## (i) VESTED AND CONTINGENT INTERESTS.

93. ——— Inability of widow to recover property not in possession of husband. A Hindu testator, after the death of his brother C, A and a

A's moiety under the will as tenants-in-common, and that each of them had a vested interest in a one-fourth share, though the actual enjoyment was

the husband was a minor. Deed, though the actual enjoyment thereof was postponed during the lifetime of another. *REWUN PERSAD v. RADHA BEFEBY*

7 W. R. P. C. 85; 4 Moo. I. A. 187

94. ——— Joint tenancy—Tenancy-in-common—Hers of my property, Related in 1876,

to depart from the general principles of Hindu law, which only gave her a right to maintenance, was silent as to how

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(1) VESTED AND CONTINGENT INTERESTS—*contd.*

far her right of heirship was to extend. The right was to be construed in a manner most consistent with the general principles of Hindu law; and to

contemplation. **LAKSHMI BAI v. HIRADAI**  
I. L. R. 11 Bom. 69

widow's estate in a joint share) the entire property vested absolutely in N. On N's death, the property (subject as aforesaid) vested in the plaintiff L as his widow and heir for a widow's estate, and she became entitled to joint possession with the defendant H. A widow taking under her husband's will takes only a widow's estate in the property bequeathed to her, unless the will contains express words giving her a larger estate. **HIRADAI v. LAKSHMI BAI**  
I. L. R. 11 Bom. 573

88. — *Joint tenancy—Gift to husband and wife—Survivorship—Alienation by husband to creditor invalid.* A Hindu

husband of N. Held, that the grantees were joint tenants and not tenants in common, and that the joint tenancy was not severed by an alienation of the land by the husband to a creditor. **VEDINADAI v. NAGASWAMI**  
I. L. R. 11 Mad. 258

89. — *Construction of right of transfer exercised by one of two legatees of property bequeathed equally to each—Alienation of share by widow—Severance of joint tenancy.* Where a Hindu testator bequeathed a 4-annas share of a zamindari to his youngest widow and her son, "for your maintenance," with power to them to

maintenance did not reduce the interest of either legatee to one for life only. Held, also, that the widow's conveyance of her share operated as a severance of a joint tenancy which had been created.

I. L. R. 20 Cal. 670  
I. L. R. 23 I. A. 37

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(1) VESTED AND CONTINGENT INTERESTS—*contd.*

87. — *Deed of gift—*

regard to a family idol, for religious observances, etc., after which the deed went on to say: "You will divide in three equal shares and receive the ready money and company's papers and bank's shares, etc., which I have; you will not be able to give in gift or sell these properties under twenty years of age, the children legitimately begotten by you will receive the same. If no son or daughter be born, or

no claim or demand for any share in my real and personal property, etc., and the debts, and so forth. She shall not be able to make any claim on

tained in its earlier clause similar provisions to those contained in the earlier part of the deed of gift; it

husband during her lifetime; she will not become

not under (their) control, then in that case she will

specified in this deed of gift, whatever property will (i.e., may) be acquired after the date of this my will the same shall be taken by my sons in equal shares." 23rd section. The property of

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(i) VESTED AND CONTINGENT INTERESTS—*contd.*

probability of (his) having a son at a subsequent

in 1844, since which time *G* remained in possession of the property. *T* died about 1838 without issue, and his widow *B* sued the surviving brothers *G* and *M* for her husband's share in the estate. This suit they compromised by a payment to *B* *G* and *M* afterwards and within twenty years had issue sons and daughters. In a suit to have the will and deed construed: *Held*, that, although the deed was not produced when probate of the will was taken out, it was sufficiently proved before the Court in the present suit to allow its being acted on; that the provisions in the will controlled the inconsistent provisions in the deed of gift, that consequently the son's childless widow took her husband's share.

son going to his own son or sons only, and not to grandsons of the testator generally. The restriction on alienation extended to both the moveable and immovable property. *Held*, also, that the widow of *T*, having received a sum of money from *M* and *G* in lieu of *T*'s share, that share went to *M* and *G* in equal shares for life, and on the death of either of them his share would go to his own sons absolutely. SATCOWRIE SEIN v. GOVIND CHUNDER SEIN. 2 Ind. Jur. N. S. 56

98. — Gift of estate subject to widow's vested interest—Curtailed enjoyment. *V S*, a Hindu, died in 1838, leaving a will whereby he appointed *G* and *S* his executors to conduct his affairs as directed in the will. After pay-

by them, after the death of *L*, *G* and *S* were directed to divide the property that remained in equal shares between them and to continue to enjoy the same in equal shares. *L* survived both *G* and *S*, who died in 1875 and 1879 respectively. *Held*—in a suit in 1879 by the divided nephew of *V S*, against *L*, and the representatives of *G* and *S*,

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(i) VESTED AND CONTINGENT INTERESTS—*contd.*

of *L*, but that *G* and *S* took a vested interest on the death of *V S*. KOLLA SUBRAMANIAM CHETTI v. THELLANAYAKALU SUBRAMANIAM CHETTI. I. L. R. 4 Mad. 124

99. — Fund set apart by will for payment of monthly allowances proving insufficient—Right to supply deficiency from the general estate—Interest chargeable on property of a testator deposited with a firm. *C*, a separated Hindu, died in 1874, leaving a will by which he

ing two widows and one daughter named *J*. By cl. 2 of his will, dated 4th July 1874, he directed, as to his share in the houses, that his wives should have a right to reside therein as long as they might live, and, in the event of their decease, that his nephew *B*, the son of his brother *V*, should be the owner; and should the decease of *B* take place, then whoever might be the son of *V* should be the owner. By a subsequent clause (the 16th) of his will the testator declared that, should the decease of his two wives

*B* left a widow him surviving, who claimed that under cl. 2 *B* took a vested estate in the testator's share in the two houses, which on his death devolved upon her, and that under cl. 16 *B* and *M* took a vested estate in joint tenancy; that on *M*'s death his interest survived to *B*, and on his death

absolutely, and on his death his interest was trans-

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(i) VESTED AND CONTINGENT INTERESTS—*contd.*

notes which were to be purchased by his trustees' ...

should contribute. The funds belonging to the testator's estate had, in accordance with the directions in his will, been kept in the firm of Visram Mowji, in which the testator had been a partner. *Held*, under the circumstances of the case, that the firm should be charged interest at the rate of six per cent. per annum. JAIRAM NARONJI S. KEVERKARI

I. L. R. 0 Bom. 491

100. ————— *Executor, estate of—Administrator, suit by—Trustees—Notice—Charitable Trust—Parties. B K, a Hindu, by his will, executed in Bombay and dated 6th Janu-*

four executors on 24th September 1808. On 23rd June 1820, *R* claiming as executrix according to the tenor, obtained an order granting probate to her as

to *R*, but without prejudice to any act done in due course of administration by *R*, and granted letters of administration *cum testamento annexo* and *de bonis non* of *B K* to *A T*. On 13th July 1873 *A T* died. On 1st May 1875 the plaintiff, who was the only son and heir of *A T*, instituted the present

the other heirs, was the sole surviving heir who had any beneficial interest in *B K*'s estate. The plaintiff

was on these letters that he now based his claim.

the character merely of executors, take any estate, properly so called, in the property of the deceased.

HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*(i) VESTED AND CONTINGENT INTERESTS—*contd.*

premises would devolve upon the surviving heirs of the testator subject to the trust, and such heirs

completed act of a predecessor against the person claiming by virtue of such act, would not lie. *Scindle*. That as it appeared that the impersonations of Valabh never had availed themselves, and never were likely to avail themselves, of the house, the sale of it by *R* to the defendant was not a breach of trust. MANIKLAL ATMARAM V. MANCHAPPA DINGSHA

I. L. R. 1 Bom. 269

101. ————— *Construction of will—Executor's interest.* By the first clause of the will of a Hindu the testator devised all his real and personal estate to his five sons. By a subsequent clause the testator provided as follows: "But should peradventure any among my said five sons die not leaving any son from his loins,

MULLICK 1 Ind. Jur. O. S. 37  
4 W. R. P. C. 114  
6 Moo. I. A. 528

102. ————— *Bequest by a Hindu to his wife—Life estate—Reversionary—Vested remainder—Contingent bequest.* One *J N* died in 1876, leaving a will which, after stating his property in detail, provided as follows: "When I die, my wife, named *S* is owner of that property



HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(i) VESTED AND CONTINGENT INTERESTS—*contd.*

And my wife has powers to do in the same way as I have absolute powers to do when I am present. And in case of my wife's death, my daughter M is owner of the said property after that (death)" Held, that S took only a life-estate under the will with remainder over to M after her death. Held, also, that the bequest to M was not contingent on her surviving S, but that she took a vested remainder which upon her death passed to her heirs. *LALLU v. JAGMOHAN*. I. L. R. 22 Bom. 409

103. —Words "malak and waras." A Hindu died, "malak and waras." "malak and waras." "malak and waras." "malak and waras."

whom I have, after the lifetime of myself and of my wife, appointed heir to my property, and as to the surplus the heir to the same is my daughter N." The testator died in 1894, N in 1895, and the wife in 1897. Thereupon the testator's step-mother claimed the property as his reversionary heir. Held, that under the will N took an estate vested in interest from the testator's death, which would pass to her heirs on her death, and the step-mother would have no title. There is no real difference in the meaning of the words "waras" (heirs) and "malak" (owner) *Lallu v. Jagmohan*, I. L. R. 22 Bom 409, followed *CHUNILAL v. Bai Mohi* I. L. R. 24 Bom. 420

104. —Words of inheritance—O putra pautradi, meaning of—Hindu widow's estate—Estate for life—Intention of the testator— "After for the term of her natural life (jivat jivan) of my properties, shall perform the Isuar Seba and other rites. My widow shall have power to adopt. After the death of my widow, my brother's son and his sons and grandsons, etc. (o putra pautradi), being in possession of my properties, shall perform the Isuar Deb Seba." The widow died without adopting any son. Held, that the words "o putra pautradi" are equivalent to putra pautradi frame and are words of inheritance. The intention of the testator was to give the widow, not a Hindu widow's estate, but an ordinary life estate. The brother's son took a vested estate of inheritance, subject to the widow's life estate, and only liable to be divested by the widow's adoption of a son. The

term of her natural life (jivat jivan) of my properties, shall perform the Isuar Seba and other rites. My widow shall have power to adopt. After the death of my widow, my brother's son and his sons and grandsons, etc. (o putra pautradi), being in possession of my properties, shall perform the Isuar Deb Seba." The widow died without adopting any son. Held, that the words "o putra pautradi" are equivalent to putra pautradi frame and are words of inheritance. The intention of the testator was to give the widow, not a Hindu widow's estate, but an ordinary life estate. The brother's son took a vested estate of inheritance, subject to the widow's life estate, and only liable to be divested by the widow's adoption of a son. The

I. L. R. 29 Calc. 689; s.c. 8 C. W. N. 721

HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*

## (i) ACCUMULATIONS.

105. —Direction 'to accumulate income—Omission to create beneficial interest. Per TREVELYAN, J.—A Hindu testator cannot direct the accumulation of the income of his estate for an indefinite period, if there is no beneficial interest created in the property in order to render the gift, whether under the will or *inter vivos*, valid. *ANRITO LALL DUTT v. SERNOMONI DASI*

I. L. R. 25 Calc. 682  
2 C. W. N. 389

106. —Direction to live jointly. The meaning of the testator is to be ascertained by the words which he has made use of, having regard to the laws which prevail in India relative to these subjects. A testator directed his

purpose of carrying on his trade, but is more analogous to the tenancy in common which prevails in England. The will also directed that on the death

during the joint lives of the sons, which belonged to the deceased son, goes over to the other sons of the testator as they would go according to law, as from a consideration of the various terms of the will itself there was an absence of all directions on the part of the testator to accumulate the profits or to dispose of the profits which were the property of the son. *PRANERISTO CHUNDER v. BANASOONDARY DOSSEE*. 9 W. R. P. C. 1

S. C. BISSONAETH CHUNDER v. BANASOONDARY DOSSEE. 12 Moo. I. A. 41

107. —Contingent remainders—Executory devise. There is nothing in

the clause of a will in which the testator, after devising all his real and personal estate among his five sons (a joint undivided family) contained this clause: "Should any among my

such of my sons and my sons' sons as shall intermarry, they will receive that wealth according to their respective shares. If any one acts repugnant

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(j) ACCUMULATIONS—*contd.*

to this, it is inadmissible. However, if any sonless son shall leave a widow, if that event she will only receive R10,000 for her food and raiment." The family remained joint. S, one of the sons, died after the testator's death without issue male, but leaving a widow his heiress at-law. Held, that, by the words "not leaving any son from his loins, nor any son's son," the testator meant not an indefinite failure of male issue, but a failure of male issue of any one of his sons at the time of the death of that son. Held, further, (i) that upon the death of S without male issue, his interest in the capital of the estate determined, and that his widow became entitled to hold and enjoy as a Hindu widow a fifth part of the accumulations from the testator's estate from the time of his death to the death of his son S; and (ii) that she was also entitled absolutely in her own right to the interest and accumulations which had since S's death arisen from such fifth part of the accumulations. By the decree S's widow was declared entitled to the R10,000 given by the will with the benefit of a residence in the family dwelling-house, and participations in the means of worship. The question of the amount of her maintenance as a Hindu widow was left open.

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(1) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

110. ——— Trusts. A Hindu by his will left all his property "in full and absolute right, property, and ownership" (nevertheless upon the conditions and trusts, and with the intent and for the purposes thereafter described), to certain persons named, and to their successors in

persons and their successors in the trusts. He then desired that all his property should be preserved and held for ever under the trusts, and for the purposes of the said will and settlement. In the second, third, and fourth clauses of the will, the testator went on to direct the "executors and trustees" to pay to his sons therein named a certain monthly sum, "such payment to be continued after his decease to his children and descendants *per stirpes*." After directing the executors and trustees to make other payments, etc., in the eighteenth clause he directed: "With respect to accumulations of money in the hands of the executors and trustees, I direct that the same be converted into such Government or other security as to the executors and trustees may seem best, and that the interest and produce of such security be accumulated and in like

sons or the survivors, or survivor, together with the descendants of such of them as may be deceased,

of my property be perpetuated. In the Court below—Held *per* MARKAY, J., that trusts cannot be

quest cannot be held good as a trust created for the

ways prevailed in the Courts in India and in the

108. ——— Will—Direction to accumulate, when valid—Charitable bequest. In

HINDU LAW. *Amit Lal Dutt v. Surmonee Lall*, I. L. R. 25 Calc. 692, followed. A direction to spend income in feeding poor, indigent Hindus is a valid charitable bequest under Hindu law. *Dwarkanath Bysack v. Burroda Persaud Bysack*, I. L. R. 4 Calc. 443, referred to. *RAJENDRA LALL AGARWALLA v. RAJ COOMARI DABI* (1906) I. L. R. 34 Calc. 6

## (1) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.

109. ——— Perpetuities—Trusts—Absence of disposition of beneficiary interest. A Hindu by will attempted to create a trust for the accumulation for 99 years of the surplus income (after certain yearly payments) of his estate in the purchase of zamindars, etc., from time to time, and empowered his trustees to continue such trust after the expiration of the 99 years' term. The will contained no disposition of the beneficial interest in the

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(i) VESTED AND CONTINGENT INTERESTS—*contd.*

And my wife has powers to do in the same way as I have absolute powers to do when I am present. And in case of my wife's death, my daughter M is owner of the said property after that (death) "Held, that S took only a life-estate under the will with remainder over to M after her death. Held, also, that the bequest to M was not contingent on her surviving S, but that she took a vested remainder which upon her death passed to her heirs LALLU v. JAGMOHAN . I. L. R. 22 Bom. 409

103. ——— Vested remainder —Words "malak and waras." A Hindu died, leaving a will which provided (*inter alia*) as follows: "After my death, my wife, if she be alive, is the rightful heir, and if she be not alive, and after the death of my wife, my daughter N is my rightful heir (hakdar)." As to my daughter N, whom I have, after the lifetime of myself and of my wife, appointed heir to my property, and as to the surplus the heir to the same is my daughter N." The testator died in 1894, N in 1895, and the wife in 1897. Thereupon the testator's step-mother claimed the property as his reversionary heir. Held, that under the will N took an estate vested in interest from the testator's death, which would pass to her heirs on her death, and the step-mother would have no title. There is no real difference in the meaning of the words "waras" (heirs) and "malak" (owner) Lallu v. Jagmohan, I. L. R. 22 Bom. 409, followed. CHUNIAL v. BAI MULI I. L. R. 24 Bom. 420

104. ——— Words of inheritance—O putra paultradi, meaning of—Hindu widow's estate—Estate for life—Intention of the testator—Power given to adopt, effect of. A will contained, amongst others, the following directions:—"After my death, my widow, being in possession for the term of her natural life (*jabat jiban*) of my properties, shall perform the *Iswar Seba* and other rites. My widow shall have power to adopt. After the death of my widow, my brother's son and his sons and grandsons, etc. (*o putra paultradi*), being in possession of my properties, shall perform the *Iswar Deb Seba*." The widow died without adopting any son. Held, that the words "o putra paultradi" are equivalent to *putra paultradi* frame and are words of inheritance. The intention of the testator was to give the widow, not a Hindu widow's estate, but an ordinary life estate. The brother's son took a vested estate of inheritance, subject to the widow's life estate, and only liable to be divested by the widow's adoption of a son. The widow not having adopted any son, the brother's son took the ultimate estate absolutely, and his sons would inherit equally, though some of them were not born at the time of the testator's death GOOROO DAS MUSTAFI v. SARAT CHUNDER MUSTAFI (1902)

I. L. R. 29 Calc. 699 : a.c. 6 C. W. N. 721

HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*

## (i) ACCUMULATIONS.

105. ——— Direction to accumulate income—Omission to create beneficial interest *Per TREVELYAN, J.*—A Hindu testator cannot direct the accumulation of the income of his estate for an indefinite period, if there is no beneficial interest created in the property in order to render the gift, whether under the will or *inter vivos*, valid. AMRITO LALL DUTT v. SURNOMONI DASI

I. L. R. 25 Calc. 662  
2 C. W. N. 389

106. ——— Direction to live jointly. The meaning of the testator is to be ascertained by the words which he has made use of, having regard to the laws which prevail in India relative to these subjects. A testator directed his

purpose of carrying on his trade, but is more analogous to the tenancy in common which prevails in England. The will also directed that on the death

the testator as they would go according to law, as from a consideration of the various terms of the will itself there was an absence of all directions on the part of the testator to accumulate the profits or to dispose of the profits which were the property of the son PRASRISTO CHUNDER v. BANASOONDARY DOSSEE . 8 W. R. P. C. 1

S C BISSONNAUTH CHUNDER v. BANASOONDARY DOSSEE . 12 Moo. I. A. 41

107. ——— Contingent remainders—Executory devise There is nothing in

testator, after devising all his real and personal

them, with any such words as "I have obtained of the immovables and moveables of my said estate: in that event, of the said property, such of my sons and my sons' sons as shall then be alive, they will receive that wealth according to their respective shares. If any one acts repugnant

**HINDU LAW—WILL—*contd.*****5. CONSTRUCTION OF WILLS—*contd.*****(j) ACCUMULATIONS—*contd.***

to this, it is inadmissible. However, if any sonless son shall leave a widow, if that event she will only receive Rs. 10,000 for her food and raiment." The family remained joint. S, one of the sons, died after the testator's death without issue male, but leaving a widow his heiress-at-law. *Held*, that, by

estate determined, and that his widow became entitled to hold and enjoy as a Hindu widow a fifth part of the accumulations from the testator's estate from the time of his death to the death of his son S; and (ii) that she was also entitled absolutely in her own right to the interest and accumulations which had since S's death arisen from such fifth part of the accumulations. By the decree S's widow was declared entitled to the Rs. 10,000 given by the will with the benefit of a residence in the family dwelling-house, and participations in the means of worship. The question of the amount of her maintenance as a Hindu widow was left open.

**108.** ——— *Will—Direction to accumulate, when valid—Charitable bequest* In Hindu Law, a direction to accumulate is not per se

*I. L. R. 25, Calc. 652*, followed. A direction to spend income in feeding poor, indigent Hindus is a valid charitable bequest under Hindu law. *Dwarkanath Bysack v. Burroda Persaud Bysack*, *I. L. R. 4 Calc. 443*, referred to. *RAJENDRA LALL AGARWALLA v. RAJ COOMARI DABI* (1906) *I. L. R. 34 Calc. 6*

**(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.**

**109.** ——— *Perpetuities—Trusts—Absence of disposition of beneficiary interest.* A Hindu by will attempted to create a trust for the accumulation for 99 years of the surplus income (after certain yearly payments) of his estate in the purchase of zamindaris, etc., from time to time, and empowered his trustees to continue such trust after the expiration of the 99 years' term. The will contained no disposition of the beneficial interest in the zamindaris so to be purchased. *Held*, that such trust was void. *Semble*: Perpetuity (save in the case of religious and charitable endowments) is not sanctioned by Hindu law. *ASIMA KRISHNA DEB v. KUMARA KRISHNA DEB*. *3 D. L. R. O. C. 11*

**HINDU LAW—WILL—*contd.*****5. CONSTRUCTION OF WILLS—*contd.*****(l) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.***

**110.** ——— *Trusts.* A Hindu by his will left all his property "in full and absolute right, property, and ownership" (nevertheless upon the conditions and trusts, and with the intent and for the purposes thereafter described), to certain persons named, and to their successors in the trusts of the settlement thereafter provided, declaring the "trusts and objects of his said will and settlement, and the methods, plans, and acts" he desired "to be performed and observed" by such persons and their successors in the trusts. He then desired that all his property should be preserved and held for ever under the trusts, and for the purposes of the said will and settlement. In the second, third, and fourth clauses of the will, the testator went on to direct the "executors and trustees" to pay to his sons therein named a certain monthly sum, "such payment to be continued after his decease to his children and descendants *per stirpes*." After directing the executors and trustees to make other payments, etc., in the eighteenth clause he directed "With respect to accumulations of money in the hands of the executors and trustees, I direct that the same be converted into such Government or other security as to the executors and trustees may seem best, and that the interest and produce of such security be accumulated and in like manner be invested, and that, when and so soon as the aggregate thereof shall amount to Rs. 10,000, it is to be transferred to, and divided among, my sons or the survivors, or survivor, together with the descendants of such of them as may be deceased, *per stirpes*, and as soon as new accumulations arise

twenty-first clause the testator made provision for the appointment of new "executors and trustees," "as it is my intent and desire that the disposition, the conditions, and control I am now devising in regard to the future arrangement and enjoyment of my property be perpetuated." In the Court below:—*Held per MARKBY, J.* that trusts cannot be

HINDU LAW—WILL—*contd.*

5. CONSTRUCTION OF WILLS—*contd.*

(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

Privy Council, a Hindu may legally deal with his

not expressly recognised by the old Hindu law, there is nothing in it forbidding them, or repugnant to them, or inconsistent with their existence. *Held*, both in the Court below and on appeal, that the general scheme of the will failed, because the trusts were intended for an illegal purpose, namely for

at the time of the testator's death, and on the ground of uncertainty, it being impossible to ascertain at the testator's death who would be entitled to participate in the several divisions of accumulation directed to be made. As to the bequests in the second, third, and fourth clauses of the will:—*Held* in the Court below per MARKBY, J., that they could only operate in favour of specified persons in existence at the death of the testator. On appeal:—*Held* per PEACOCK, C.J., that they operated as "gifts to the sons for life, with remainders to such children of the sons as were in existence at the time of the death of the testator per stirpes." Per MACPHERSON, J.—There was a good gift in remainder to the children of such sons as were alive at the time of the testator's death. It is not a violation of the principles of Hindu law to

SAYI. KRISHNARAMANI DAS I ANANDA KRISHNA BOSE ANANDA KRISHNA BOSE I RAJENDRA NARAYAN DEB . . . 4 B. L. R. O. C. 231

III. — Trusts—Life-estate—Estates-tail—Gifts inter vivos—Disinheritance. P. K. T. died leaving an only son, G. M. By his will

J. M., and D. P. M. (hereafter called the trustees),

and debts and such legacies as might be payable in the ordinary course of administration within one year from the testator's death; after paying the funeral expenses, debts, and legacies, upon trust to sell and convert into money such portion of the personal estate as should remain unexpended, and not consist of money or security for money, and to

HINDU LAW—WILL—*contd.*

5. CONSTRUCTION OF WILLS—*contd.*

(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

vest the proceeds on good securities; and out of the annual income of the estate

being entitled to the beneficial enjoyment of the real property, or of the rents and profits or surplus rents and profits thereof; and so soon as all the annuities and legacies should have fallen in and been fully paid and satisfied, in trust absolutely for the person or persons entitled to the beneficial or absolute enjoyment of the real property. As regards realty, upon trust, until all the debts and legacies had been paid and all the annuities had fallen in and been fully satisfied, to receive and collect the rents, issues, and profits thereof, and thereout in the first instance to pay (such if any)

use of such person or persons respectively. The testator then desired the trustees to hold the real estate

net annual income the person entitled to the beneficial enjoyment to the real property or of the income or surplus income thereof should receive for his own use every year, Rs. 2,500 a month or Rs. 30,000 a year, and that the various legacies and annuities should only be paid gradually and as found possible by the trustees out of the balance

so far as the then condition of circumstances will permit, and so far as such limitations and directions can be introduced into any deed of conveyance or settlement without infringing upon or violating any law against perpetuities which may then be in

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

the use of the first and other sons successively of the eldest son of J M according to their respective seniorities, and the heirs male of their respective bodies issuing successively; and upon the failure or determination of that estate, to the use of the second and other sons of J M born during the testator's life, successively, according to their respective seniorities; and upon the failure or determination of that estate, to the use of the first and other sons successively of such second or other sons of J M, and the heirs male of their respective bodies issuing, so that the elder of the sons of J M, born in the testator's lifetime, and his first and other sons

first and other sons successively, and the heirs male of their respective bodies issuing. And after the failure or determination of the uses and estates thereinbefore limited, to the use of each of the sons of J M who should be born after the testa-

tors to other members of the testator's family and their sons, sons' sons, etc. Further, the testator declared his will and intention to be that the said

and not subject to any law or custom of England, whereby an entail may be barred, affected, or destroyed; provided always, and I hereby declare, that if any devise or tenant-for-life, or in tail, or otherwise, or any person entitled to take as heir by descent or adoption or otherwise in any manner, under the limitations hereinbefore contained, shall permit or suffer the property so devised, etc., to be sold for arrears of Government revenue, etc., then and immediately thereupon the devise and limitations in this my will declared and contained shall wholly cease and determine as to him," etc. Finally, he appointed the trustees executors of his will. J M had no son born during the life of the testator. G M, the son of the testator, sued to have the will set aside, except as regards the payment of debts, legacies, and annuities. He also charged the executors with waste and asked for an account. *Held*,

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

both in the Court below and on appeal, that the devise were not void, merely upon the ground that the estates were devised upon trust, and that the testator had power to create by means of a devise to trustees such estates and beneficial interest as he could have created without the intervention of

heritance, the devise must be construed as amount-

series of such devises is not bad for remoteness, for there is nothing in Hindu law to prevent a testator from making a gift of property to an unborn person, provided the gift is limited to take effect, if at all, immediately on the close of a life

testator was that J M should take an immediate

in existence, so that, as soon as the property is relinquished and passes out of the donor, it may vest in the donee. That in the case of a will would be a



HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*(1) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

Rs 7,000 a year, their Lordships, without deciding whether a son could be deprived of maintenance, considered that he had received an adequate maintenance. All the existing parties interested in a will being before the Court, a decree can be made as to the rights of all parties. *Lady Langla's v. Briggs, 8 De Gex M. & G. 311*, distinguished. *JOTINDRA MOHAN TAGORE v. GANENDRA MOHAN TAGORE. GANENDRA MOHAN TAGORE L. JOTINDRA MOHAN TAGORE*

9 B. L. R. P. C. 377 : 18 W. R. 359  
L. R. I. A. Sup. Vol. 47

112. ———— **Bequest to a class—Vested and contingent interest** A will made by a Hindu contained the following clause: "I bequest to my elder daughter Rs 25,000, subject to the condition that she shall invest the same in lands . . . shall enjoy the produce . . . and shall transmit the corpus intact to her male descendants." Within a month after the testator's death his eldest daughter was delivered of a son, who died in a few months. She died subsequently leaving the plaintiff, her husband, but no male issue surviving. The plaintiff sued as heir of his son to recover the amount of the above bequest. *Held*, that, as the daughter's son never acquired a vested interest in the bequest, the plaintiff's suit must be dismissed. *Srinivasa v. Dandayudapani*

I. L. R. 12 Mad. 411

113. ———— **Fund residuary bequests—Trusts for maintenance and religious trusts—Perpetuities.** A testator by his will directed as follows: "To my daughter A B I give the interest on a Government promissory note for Rs 3,000, to be paid to her, as the same becomes due, . . ."

death of the said A B, the said security for Rs 4,000 shall thereupon fall into the general residue of my estate." He also directed, after having bequeathed five, "one-sixth share shall be retained by my executors, and the income thereof accumulated and . . ."

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

of having the due forms of worship carried out after his death, he further directed that certain lands should be held by his executors on trust, to apply the rents and profits (i) in the celebration of certain *poojas* and in the performance of periodical turns of worship of the family *thakors* and other religious festivals, at the same expense and in the same style as the testator himself had done, or at such expense and in such style as the executors should think fit; and (ii) in the maintenance out of the surplus of the five younger sons, their wives, sons, and male descendants, and female descendants until their marriage. *Held*, that the bequests to the children of the daughter and to the children of H were void. *CHUNDER MOONLE DASSEE v. MOTILAL MULLICK*

5 C. L. R. 496

114. ———— **Gift to male issues—Remoteness—Applicability of English rules to Hindu wills** A Hindu testator died in 1837, leaving four sons and two grandsons by a deceased son. By his will, dated in 1837, after directing that his property should be divided into five shares, of which his four sons were to take one each, and his two grandsons the remaining one, the testator made the following devise: "On the death of any or either of my said four sons, or of the said R D and M D (his grandsons) leaving lawful male issue, such male issue shall succeed to the capital or principal of this share, or respective shares, of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of 21 years, but if any or either of my said four sons shall die without leaving any male issue, or if he or they shall die leaving such male issue, and the whole of such issue shall afterwards die under the age of 21 years, and without . . ."

ly after their deaths in the same manner and proportion as is hereinbefore described respecting their original shares." U, one of the sons, died in 1853, leaving an only son S, born in the lifetime of the testator, who died shortly after his father intestate, and without male issue. In a suit by the widow of . . .

Courts in deciding questions of remoteness, that regard is to be had to possible and not to actual



**HINDU LAW—WILL—contd.****5. CONSTRUCTION OF WILLS—contd.****(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—contd.**

events, is applicable to the interpretation of the wills of Hindus. The gift to the male issue being void, the subsequent limitations were also void. *S* therefore, and through him the plaintiff, was entitled to a share in such part of the testator's estate as by reason of the invalidity of the gifts in his will was undisposed of. **Soudamney Dossee v Jogesh Chunder Dutt**, I. L. R. 2 Calc. 282

**115.** ———— *Class of whom some only are in existence.* A bequest by a Hindu to a class of persons, some of whom are not in existence at the date of testator's death, is wholly void, and the fact that some of the class are then living and capable of taking will not enable the class to open out and let in any after-born members of the class. **Kherodemoney Dossee v. Doopga-money Dossee** I. L. R. 4 Calc. 455

2 C. L. R. 112; 3 C. L. R. 315

But see **Ramlal Sett v. Kanai Lal Sett**

I. L. R. 12 Calc. 663

and **Rai Bishen Chand v. Aswaida Koer**

I. L. R. 6 All. 560; L. R. 11 I. A. 164

**116.** ———— *Gift to sons or daughters of M who may be alive at M's death—Gift to a class to be ascertained at future time—One member of such class in existence at testator's death—Tagore Gase—Hindu Wills Act (XXI of 1870), s. 3—Succession Act (X of 1865), s. 98.* *P*, a Hindu, died in September 1836, and left two sons, *112*, the plaintiff and one *M*. By his will *P* left the residue of his property to trustees, who were to invest it in Government promissory notes and to pay the interest thereof to the wife of his son

clause he directed that, if there should be no one living of his son *M*'s race or descent, the said Gov-

September 1889, and *M* himself died in October 1889. The plaintiff then filed this suit claiming the property in question as heir of the testator to the

**HINDU LAW—WILL—contd.****5. CONSTRUCTION OF WILLS—contd.****(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—contd.**

who could should do so. Here there was one member of the class who could take the property, and it might be inferred that the testator meant that she should take it, rather than that his intention should be defeated altogether. **Mangaldas Parmanandas v. Tribhuvandas Narsidas**

I. L. R. 15 Bom. 652

**117.** ———— *Gift to a class some of whom are not in existence at testator's death—Right to live in a house given to parent and their children—Right of children under such gift independently of the parents.* *B*, who died in 1836, left a will, in the English form, whereby he bequeathed a house to his two sons *V* and *M*, and directed that they should not sell or mortgage it, but were either to live in it or enjoy the rents and revenue thereof for ever. He further directed as follows:—"My son-in-law *N* with his wife *S* and children to live in the house for ever." *V* died in 1838, and his four grandsons were the first four defendants in this suit. *M* became insolvent, and

ever since. Both the plaintiffs (her sons) were born in the testator's lifetime. *N* died in 1844.

possession of the rooms, and for a declaration that they and their families were entitled to reside there. The defendants contended (i) that there was no

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(1) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS  
AND REMOTENESS—*contd.*

*Dutt, I. L. R. 2 Calc. 262, and Kherotemoney Dossee v. Doorgamoney Dossee, I. L. R. 1 Calc. 455, are not overruled by Rai Bishenchand v. Amarda Koer, I. L. R. 6 All. 560; I. L. R. 11 I. A. 161, KNISHANATH NARAYAN v. ATVARAM NARAYAN*

I. L. R. 15 Bom. 543

118. ———— Gift to a class some of whom are not in existence at testator's death—Contingent gift—Subsequent gift valid, though prior gift void—Contingent gift—Succession Act, ss. 98, 100, 102, 103—Power of appointment given by will, effect of—General power of appointment *M P* by his will, dated 14th April 1873, after appoint-

and legacies and to stand possessed of the residue in trust (i) for his (the testator's) wife *B* and *A* the wife of his brother *J* during the life of both, or the survivor of them, for their or her sole use; (ii) and from and after decease of the survivor of them in trust for the male issue of *J* if any there be; (iii) and, in default of such male issue, in trust for any person or persons, in any shares or share, and in such manner as his brother *J* should by any deed or deeds or writing or writings appoint with or without power of revocation or new appointment *J* proved the will, and as executor managed the estate until his death on the 17th October 1883. He had no male issue, but he had two daughters, who were the defendants in this suit. Shortly before his death, viz., on the 7th October 1883, he made a will (as stated therein) in accordance with

in favour of the male issue of *J* was void under the rule laid down in the *Tagore Case*, 9 B. L. R. 377. *L. R. I. A. Sup. Vol. 47* The testator plainly meant that the male issue of *J* living at the death of the survivor of the tenants for life should take the estate according to the rules of Hindu law, without distinguishing between those born in the lifetime of the testator and those born prior to that event, but subsequently to his death. At the death of the testator, *J* had no male issue, and the bequest was therefore a bequest to a person or persons not in being, and void. *Held*, also, regarding the subsequent creation of the

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(2) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS,  
AND REMOTENESS—*contd.*

Hindu law. It was not a gift over to him on an indefinite failure of his male issue. It came into force immediately on the death of the surviving tenant for life if at that time he should have had no male issue alive between the death of the testator and the latter event. If a son had been born to him after the testator's death, the gift to him could not have come into operation. It was only in the event of no son being born to him that he could take. It would not therefore make any difference that the testator made an ineffectual and inoperative disposition in favour of such son if born. The rule of the *Tagore Case*, that the gift of an estate to take effect after the failure of previously created invalid estates is void, did not apply. *Held*, further, that the power of appointment given by *M P*'s will operated to confer ownership upon *J* after the death of *B* upon his executing his will, and that the bequests given by his will to his daughters, the defendants, were valid bequests. *Held*, on appeal, that the devise in *M P*'s will in favour of the male issue of *J* meant in favour of such male issue as should be living at the time of the death of the survivor of the tenant for life, whether born in the lifetime of the testator or after his death; and as, at the death of the testator, *J* had no male issue, it was a gift to a person or persons not in being at that time, and therefore void under the rule in the *Tagore Case*. *Held*, also, that the devise over, in default of such male issue, was an alternative gift to take effect on an event to be determined at the death of the survivor of the tenant for life, and consequently was not open to objection. *Held*, further—as to the bequest to such person or persons as *J* should, by deed or writing, appoint—that there was no clear principle of Hindu law which forbade such a bequest being construed, and effect given to it, according to its plain and literal terms, always subject, how-

when he made his will. Original Court's decree varied accordingly; the share in the residue appointed by *J* to his daughter *M* (born after the testator's death) being declared to be part of *M P*'s

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

estate of which he died intestate, and to belong, therefore, to his (M P's) heir JAYRAI v. KARBIBAI I. L. R. 16 Bom. 482

varying decree in s.c. in lower Court.

I. L. R. 15 Bom. 326

119. *One member of such class in existence of date of gift—Will directing deed to be executed—Date of deed is date of gift.* A Hindu died in 1856 leaving a will whereby he directed his widow and executrix L to purchase an estate worth Rs. 20,000 for his grand-son T, and that this estate should be conveyed to trustees, to be held by them in trust for T for his life or until his insolvency, and after his death for his son or other male heir. The executrix purchased the estate, but no trust deed was executed. T therefore brought a suit in 1871 to have the will carried out and a trust deed executed. T R (one of the plaintiffs in the present suit, who was T's uncle, was made a party to it at suit, and a consent decree was passed which ordered that the executrix L and T R should execute a trust deed in accordance with the directions in the will. A deed was accordingly executed in 1876 whereby the property was conveyed to trustees on the trusts declared in the will. At the time of the testator's death, T had no sons, but at the date of the deed in 1876 he had one son C and in 1883 another son G (the defendant) was born to him. T died in 1890, C died childless in 1901. The plaintiffs, who were T R, the son, and T R's son, the grandson, of the testator, now claimed the property. They contended that, as neither of T's sons were in existence at the date of the testator's death, they could not take under his will or under the deed which was afterwards executed to carry out the will; that, although at the date of the deed in 1876 one of the sons (C) was in existence, nevertheless he could only claim as one of a class, and that class was not ascertained or ascertainable at the date of the testator's death, nor at the date of the deed, G not having been born until 1883. The whole class was therefore excluded and the property after T's death was undisposed of. *Held*, that, in view of the direction of the will that a deed was to be executed which should declare the trusts of the property, it was the date of the deed subsequently executed which should be regarded in order to determine the validity of the limitations of the property bequeathed, and not the date of the testator's death, and that, under the deed, on the death of T, his son C became entitled to the property. In the case of a gift to a class if there is a person in existence at the time of the gift capable of taking and whom undoubtedly the donor intends to benefit, he is entitled to take, although others of the same class subsequently come into existence whom the donor meant the gift also to benefit, but who cannot take because of their non-existence at the date of the

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(l) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

gift. TRISHUVANDAS RUTTONJI v. GANGADAS TRICHIJI I. L. R. 18 Bom. 7

120. *Request to "children"—Meaning of the expression "children"—Gift to a class—Gift of income as required under trust for accumulation of balance. Considerations which only show that a testator has made a disposition in his will which the Court is surprised to find there, though they might have determined the sense in which the testator had used an ambiguous expression, cannot of themselves lead the Court to refuse to give effect to the plain language he has employed, e.g., to read a bequest to "children" as a bequest to "sons" only. A bequest to "the children of R living at his decease," where some such children are in existence at the date of the will, need not be construed as a gift to a class of which some members might come into existence after the testator's death, when such a construction would manifestly defeat the primary object of the testator. A direction in a will to trustees to pay to a Hindu lady so much of certain dividends as she might from time to time require for her own use and support, etc., and to accumulate the surplus not required by her upon trusts, entitles the legatee to receive, if she requires it, the whole interest as it falls due, but not to claim afterwards amount which she did not require as they fell due, and which have been accumulated, and this is so whether the trust for which accumulation is directed is valid or invalid. KRISHNARAO RAMCHANDRA v. BENABAI I. L. R. 20 Bom. 571*

121. *Members of a class not in existence at testator's death—Void gift—Intention of testator. Gift to widows of sons is a*

vision was made in certain events for the widows of his deceased sons. He left him surviving his five sons, three grandsons and three granddaughters. After his death two more granddaughters were born. *Held*, that the gifts to the sons, daughters, and widows of deceased sons were void. They were gifts to a class of which some members were

void comes he primary of a class of its being void, yet if the Court can deduce a secondary intention that at least such members of the class should take as were in existence at the time of the

HINDU LAW—WILL—*contd.*5 CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

testator's death, then effect should be given to such secondary intention but not otherwise. For the purpose of ascertaining those primary and secondary intentions, it is, of course, necessary to take all the material facts as to the testator's family into consideration and to read the various provisions of his will as a whole. A gift in a will to widows of sons is, in the case of Hindus, a gift to a class, as Hindus by their law are permitted to have more than one wife at the same time. *Ram Lal v. Kanai Lal*, I. L. R. 12 Calc. 663; *Krishnanath v. Almaram*, I. L. R. 15 Bom 543; *Mangaldas v. Tribhovandas*, I. L. R. 15 Bom. 652; *Tribhovandas v. Gangadas*, I. L. R. 18 Bom. 7; and *Krishnarao v. Benabai*, I. L. R. 20 Bom 571, referred to *KHIMJI JAIRAM NARRAJI v. MORARJI JAIRAM NARRAJI* I. L. R. 22 Bom. 633

122. — *Remoteness*—"Descendants"  
—*Bequest creating series of life-interests* Under a bequest by a Hindu of Rs 10 per month, followed

ever "import in an English instrument; thirdly, that the descendants in existence at the time of the tenant-for-life's death took absolutely as a class, and fourthly, that such descendants were entitled in

testator in a Hindu will would include children and grandchildren living at his decease, but not the testator's brother or widow. There is no rule of Hindu law imposing any restriction in point of time on the operation of a bequest creating a series of successive life-interests in each generation of a legatee's descendants; but, *semble*, the grounds of the rules against perpetuities are applicable to the property of Hindus, and the Court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period. *ARUNACHAL MUDALI v. AMINI AMMAL* . . . 1 Mad. 400

123. — *Estate tail*—*Accumulation* A Hindu by his will directed that his estate should remain intact, and that the profits should be applied, in the first place, towards performing religious duties; and he provided that his immovable property, business, and the capital stock thereof should also remain intact, and that his heirs, sons' sons, and great-grandsons in succession should be entitled to the profits, no person having any right of alienation. The testator then provided that his eldest son should act as manager and shebait and prepare accounts, and that he should have no

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(A) PERPETUITIES, TRUSTS, REQUESTS TO A CLASS, AND REMOTENESS—*contd.*

power of alienation. He then made provisions for

directed that his eldest son should receive five-sixteenths of the ten annas share; if another son should be born of the testator's third wife, the remaining eleven-sixteenths was to go to her sons. If no son was born, then the eldest son was to take

family were to be defrayed from the six annas share. In case of separation, the shares of the sons were to be placed to their respective credits every year, each son on attaining majority to be entitled to his share. The testator then provided that, in case of separation, his sons (with the exception of the landed properties and capital stock

He then provided for the maintenance of his third wife and minor sons out of the six annas share, each son on attaining majority to be entitled to his share under the will absolutely. After providing that his sons should live in his ancestral dwelling-house, but that none of them should have any power of alienation, the testator directed that, if any of his heirs died without male issue, the widow of such heir should receive maintenance only, and that his

form the duties of karta and shebait. In a suit by the widow of one of the testator's sons by his third wife, seeking to recover such a share of the testator's property as she would have been entitled to in case of intestacy.—*Held*, that the intention of the testator in disposing of the profits of the six annas share was not an intention to create a valid estate in the corpus in favour of any individual, but to tie up such corpus and to give the profits only to his male descendants, or, in other words, to create a sort of estate in tail male in the profits and that the bequest was void. *Held*, also, that the disposition of the ten annas share of the profits was void, there being in one event a direction to accumulate for ever without a disposition of the profits; and in the other event, the gift was void for the same reasons as the gift of the six annas share. *Held*, further, that the

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

disposition of the family dwelling-house, save in so far as it prohibited alienation, was good, and that there was a sufficient disposition of the moveable property. *SROOKHOR CHUNDER DAS v MONOWARI DASI*. I. L. R. 7 Calc. 289, 8 C. L. R. 473

*Held* on appeal by the Privy Council, affirming the decision, that the Hindu law does not allow such a disposition of property as would have been made by a testator whose intention was to give to his descendants the profits only of his estate for their benefit, and for the maintenance of religious services, but not to dispose of the estate itself.

clause would have been merely void. *It is*, accordingly, that this bequest was invalid. An account of the profits of the estate, from the date of the death of the testator, having been ordered by the decree of the Court below in favour of the inheritor of a share at whose instance the bequest was held invalid:—*Held*, that this did not mean that enquiry should be made into the different pay-

L. R. 12 I. A. 103

124. ————— *Perpetuities—Trusts for worship—Recital in will as to inten-*

pecuniary legacy, gave and bequeathed all his moveable estate to the Official Trustee of Bengal for the time being, on trust out of the income to pay over the same to the trustees of the will, to whom he devised and bequeathed all his immovable

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

two widows, K and L, with their children and families to reside in the family dwelling-house

monthly Rs 95, during the same period, and on her decease to her children and their heirs according to Hindu law, monthly Rs 100 for ever, for their support and maintenance. (Similar trusts in favour of L and her children followed.) The residue of the income of the moveable estate was directed to be paid, by moieties to the widows, and on the death of each, her share was to be given to her issue in the same way as the other sums were directed to be paid to them respectively. *Held*, that the recital

powering them with their families and any others whom they might choose to make members of their families to reside in the house; that the trust to be for the testator's children, and their heirs on the death of the widow, to occupy the house, was void; that the wives were entitled to Rs 5 monthly, and the children of each, during the lives of their respective mothers, to Rs 5, equally, that the

I. L. R. 11, 211

125. ————— *Bequest void for remoteness.* A Hindu testator died possessed of considerable property, and leaving a will, dated 12th September 1870, by which he appointed his wife executrix in the following words: "I appoint my wife, A D, executrix on my behalf, and vest her

purda woman, and that his three sons were obedient and extravagant, he appointed certain persons managers to perform certain duties under the will which could not be performed by a purda woman; and after various minor bequests and directions, he directed that, if it should appear to the executrix or executors for the time being that

**HINDU LAW—WILL—contd.****5 CONSTRUCTION OF WILLS—contd.****(1) PERPETUITIES, TRUSTS, REQUESTS TO A CLASS, AND REMOTENESS—contd.**

they would not be able to protect the property, then they should form a family fund in the Gov-

will divide and take the same in accordance with the Hindu law. God forbid it, but should I have no great grandsons in the male line, then my daughter's sons, when they are of age, shall take the said property from the trust fund and divide it according to the Hindu shastras in vogue." The testator left living at the time of his death one son's son, three sons, and a daughter and her sons,

against parties who might have any interest therein  
**SHRAJANATH DEY SIKKAR v. ANANDAMAYI DAS**  
8 B. L. R. 280

126. — — — Successive interests, bequest of—Gift over after life-interest—Construction of gift to persons, and the heirs male of their bodies. A will cannot institute a course of succession unknown to the Hindu law, and in conferring successive estates, the rule is that an estate of inheritance must be such a one as is known to the Hindu law, which an English estate-tail is not. It is competent to a Hindu testator to provide for the defeasance of a prior absolute estate contingently

not only that a gift to a person unborn is invalid, but that an attempt to establish a new rule of inheritance is invalid. A testator bequeathed the residue of his estate to his executors upon trust to pay the income to his daughter during her lifetime; and after her death in trust to convey the residue to his

**HINDU LAW—WILL—contd.****5 CONSTRUCTION OF WILLS—contd.****(1) PERPETUITIES, TRUSTS, REQUESTS TO A CLASS, AND REMOTENESS—contd.**

two half-brothers, in equal moieties, and to the heir

them, the daughter (to whom children, as well as to the half-brothers, had been born), making all persons interested parties, claimed that the trust

the gift of the residue, so far as it purported to confer an estate of inheritance on the half-brothers and the heirs male of their bodies, were contrary to law and void, that the gift to the plaintiff's sons

queathed, in remainder expectant on the death of the plaintiff; and that accordingly, on the death of the half-brother, who had died before this suit was brought, the inheritance of his moiety had devolved on the plaintiff, as daughter and heir of her father, and as she claimed. **KRISTOROWNT DAS v. NARENDRA KRISHNA BANADER**

I. L. R. 16 Calc. 383  
L. R. 18 I. A. 28

127.

Male issue—

Gift to unborn person—Bequest void for remoteness. Where a testator directed in his will that (first) "on the death of either of my four sons leaving lawful male issue, such issue shall succeed to the capital or principal of the respective shares of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of twenty-one years; (second) if either of my four sons shall die leaving male issue and the whole of such issue shall afterwards die under the age of twenty-one years and without male issue, the share or shares of the same residue shall pass and belong to

vivors of my said sons and my two grandsons (named in the will) for life, and their respective male issue absolutely after their death in the same manner and proportions as hereinbefore described respecting their original shares: *Held, first*, that a vested interest was conferred upon the issue immediately upon the death of the father. The expression "to be paid or transferred to them respectively on attaining the age of twenty-one years" was a mere attempt to defer the period of payment to, or enjoyment by, such issue. *Second*, that the gift over was void, because the event on which it was to take

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

*Tagore, 4 B. L. R. O. C. 104*, a gift by a Hindu to a person not ascertained or capable of being ascertained at the time of the death of the testator cannot

the whole bequest must fail. *Held*, also, in accordance with *Ganendra Mohan Tagore v Upendra Mohan Tagore, 4 B. L. R. O. C. 103*, that a Hindu cannot, under any circumstances, make a gift by will to an unborn person or persons. *BRAMHAYI DAS v JAGES CHANDRA DUTT, 8 B. L. R. 400*

129. — *Gift void for remoteness.* Where a will gave the testator's widow permission to adopt and made provision for the adopted son entering into possession after her death, providing further that, if the adopted son died unmarried, the estate should pass to the testator's nearest sapinda gyanis:—*Held*, that the gift or bequest was, according to the doctrine laid down by the Privy Council in the *Tagore Case, 9 B. L. R. 377*,

129. — *Hindu Wills Act (XXI of 1870), ss 2, 3, and 6—Succession Act (X of 1865), ss 58, 59 and 101—Gift to unborn persons.* A Hindu testator, by his will made in 1872, provided that, should he never have a son, his daughter's sons, when they came to years of discretion, should receive certain properties in equal shares; and he directed that, if his daughters had no sons, or should not be likely to have sons, then that such of his daughters as should reside in the ancestral family dwelling-house should receive a certain monthly allowance. The testator died in 1873, leaving only his daughters him surviving. *Held*, that, the will being governed by the Hindu Wills Act, the bequest to the daughter's son was valid. The rule of construction laid down in the *Tagore Case, 9 B. L. R. 377*,

ring only to the estate or interest which can be given, without reference to the further question to whom it can be given. *ALANGANJORI DABEE v SONAMONTI DABEE*

I. L. R. 8 Calc. 157; 9 C. L. R. 121

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*contd.*

*Held*, on appeal, that a gift by will to persons unborn at the time of the death of the testator, whether made prior or subsequently to the passing of the Hindu Wills Act, is void. The words "to create an interest," in the fifth proviso to s. 3 of the Hindu Wills Act, apply both to the quantity and quality of the interest created, and in their natural and ordinary meaning include the capacity of a donee to take. *ALANGANJORI DABEE v SONAMONTI DABEE*

I. L. R. 8 Calc. 637; 10 C. L. R. 459

130. — *Gift to grandsons after death of annuitants—Vesting, postponement of—Inconsistent declarations rejected.* A testator after charging certain annuities and other payments on his estate, gave the whole of his property to his grandsons in these words: "I give the whole of my property to my grandsons; but until those portions of the said property and the monthly stipends which I have given to some to enjoy for the natural term of their lives shall revert to the estate after their deaths, my estate shall not be divided amongst any of my grandsons or my executors." *Held*, that all the remainders have

accumulation, must be rejected or disregarded as inconsistent or repugnant. *Held*, also, that the fact that the estate was subject to partial trusts or charges did not postpone the vesting in possession. *English law.*

*Tagore Estate v. Upendra Mohan Tagore, 4 B. L. R. O. C. 104*, discussed by *POSTIFER, J. KALLY NATH NAUGH CHOWDHRY v. CHUNDER NATH NAUGH CHOWDHRY*

I. L. R. 8 Calc. 679; 10 C. L. R. 207

131. — *Gift of residue of income of property "to be used for the purposes of A and B as trustees think proper"—Gift to future children of testator's daughter—Power of appointment by will given to daughter in case no appointment by will.* *English law of Bombay by*

**HINDU LAW—WILL—con'd.****5. CONSTRUCTION OF WILLS—con'd.****(4) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—con'd.**

person to whom *M* appointed should be a person in existence at the death of the testator. *Bai Motiahoo v. Bai Manubai*. L. R. 19 Bom. 647

In the same case on appeal to the Privy Council,

to the persons to whom transfer can be made, as regulated by the Hindu law of gift. The *Tagore Case*, 9 B L R 377 L R 1 A Sup Vol 47,

by her, did not take the gift from her, but from the testator. The judgment in *Hiron v. Oliver*, 13 Ves. 108, was not applicable. According to the already settled law, if the testator himself had designated the persons to take in the event of his daughter having no child, the gift would have been valid as an executory bequest, supported by preceding life-interests, but valid only under the following

**HINDU LAW—WILL—con'd.****5 CONSTRUCTION OF WILLS—con'd.****(1) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—con'd.**

restriction, viz., that to render the gift valid, the taker so designated must have been, either actually or in contemplation of law, in existence at the death of the testator. In this case, no principle of Hindu

power might be validly exercised. There was no application of the English law of "powers," which was not fit to be applied generally to Hindu wills. Subject to the above restriction, the power in question was valid. It was not decided upon whom the property would devolve, if the power should not be exercised. *Bai Motiahoo v. Bai Manubai*

L. R. 21 Bom. 709

L. R. 24 I. A. 73

1 C. W. N. 388

132. — *Executory bequest—Gift to an idol not in existence at the testator's death—Existence of idol—Dedication.* No valid gift or dedication of property can be made by will to an idol not in existence at the time of the testator's death. The power conferred by will to make a gift must be a power to convey property to a person in existence, either actually or in contemplation of law, at the death of the testator. *Bai Motiahoo v. Bai Manubai*, 1 L. R. 21 Bom. 709 L. R. 24 I. A. 73, relied upon. *UPENDRA LAL BORAL v. HEM CHANDRA BORAL*

L. R. 25 Cal. 405

3 C. W. N. 295

133. — *Succession Act (X of 1865), ss 101, 102, and 152—Power of disposition of moveable property—Effect of subsequent void gift—Gift of balance of rents of immovable property, in hands of trustees—Evidence of intention to limit duration of enjoyment of bequest—Gift by implication, what is necessary to constitute—Estates according to Hindu law in ancestral property, presumption as to—Effect of assent to provision of will by son of Hindu testator, where there is doubt whether property is ancestral or self-acquired. Where it is doubtful whether the property with which the will of a deceased Hindu purports to deal is ancestral or self-acquired, the assent of his only son to the provisions of the will, some of which are favourable and some unfavourable to his interest and that of his sons, will bind the latter as*



HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, REQUESTS TO A CLASS,  
AND REMOTENESS—*contd.*

estate of *G* would be liable to be divested on a son or sons of *G* attaining the age of twenty-one years, and asking for a division; but that gift being clearly void under ss. 101 and 102 of the Succession Act (X of 1865), its insertion has no effect on the words of absolute gift preceding it. A direction in the will of a Hindu that immoveable property should be retained in the hands of trustees appointed by the will, and that the balance of the rents, profits, etc., after the payment of expenses, should be used and enjoyed by the testator's son *G* in such manner as he might think fit, with a provision empowering the sons of such son to call him to account for the management of the property on attaining the age of twenty-one, and with a direct, though void, gift

nature of the estates which they are intended to take. A direction that until the son or sons of the tenant for life of immoveable property should attain a certain age, no person on behalf of such son

by express terms the estates which arise by virtue of the doctrine of Hindu law in regard to the rights

testator by implication, since to do so would be to construct a will for him based upon his supposed intention, not on the words which he has used.  
ANANDRAO VINAYAK v. ADMINISTRATOR-GENERAL OF BOMBAY I. L. R. 20 Bom. 450

134. ———— *Ancestral property—Trust by the father—Trust Act (II of 1852), s. 6—Will—Executors—Legatees.* A Hindu, who had a son living jointly with him, made a will whereby he appointed his son as heir to his whole property, which was ancestral, and also appointed trustees in order to administer the property until his son should attain 21 years. The trustees were empowered to take the whole of the property into their possession. *Held*, that the appointment

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, REQUESTS TO A CLASS,  
AND REMOTENESS—*contd.*

of trustees was void since at the moment of the testator's death the whole of the property became the property of the son. *Held*, further, that no trust was created by the will because the property in question was not one transferable to the beneficiary. Certain legacies were devised by the will to relatives of the testator and others. *Held*, also, that as the Court had held that the appellants were not validly appointed executors, the legatees were not represented by them and no declaration could be made as to the validity or otherwise of the legacies. HARILAL BAPUJI v. BAI MANI (1905)  
I. L. R. 29 Bom. 351

135. ———— *Construction of will—Bequest to a class—Unborn person—Primary and secondary intentions.* There is no rule of Hindu Law to the effect that a gift *inter vivos* or a bequest to a class of persons some of whom are incapable of

gifts infringing the rule against perpetuities does not

intention is that all members must

Kocir, I. L. R. 11 A. 111; Hurday Narain v. Rooder Perlash, L. R. 11 I. A. 24; Ram Lal Set v. Kanai Lal Set, I. L. R. 12 Cal. 663; Srinivasa v. Dandayudapani, I. L. R. 12 Mad. 411; Rai Kishori Dasi v. Dabendra Nath Sircar, I. L. R. 15 Cal. 499; Bhoba Tarini Dobi v. Peary Lal Sanyal, I. L. R. 24 Cal. 646; Manamma v. Padmanabhayya, I. L. R. 12 Mad. 373; Nar.

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(k) PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS—*concl'd.*

20 Bom. 571; *Khimji Jivram Narronji v. Morari Jivram Narronji*, I. L. R. 2 Bom. 536; *Gor dhandas Soonderdas v. Bat Ramcoover*, I. L. R. 10 Bom. 449; *Advocate General v. Karmali Rahimbhai*, I. L. R. 29 Bom. 433; *In re Mosley's Trusts*, 11 Ch. D. 100.

## (l) BEQUEST EXCLUDING LEGAL COURSE OF INHERITANCE

138. \_\_\_\_\_ *Gift ineffectual*

devolve on the surviving nephews, and their male descendants, and not on their other heirs." In a

*Held*, on appeal, by the Privy Council, that a gift by will, attempting to exclude the legal course of inheritance, is only effectual, in favour of such person as can take, to the extent to which the will is consistent with the Hindu law; and it is a distinct departure from that law to restrict the order of succe-

petent; it being to persons alive, and capable of taking on the death of the testator, and to take

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(l) BEQUEST EXCLUDING LEGAL COURSE OF INHERITANCE—*contd.*

effect on the death of a person or persons then alive.

SUB ROY & SUSHI SHIKHURESSUR ROY. SUSHI SHIKHURESSUR ROY & TAROKESSUR ROY  
I. L. R. 9 Calc. 952; 13 C. L. R. 62  
I. R. 10 I. A. 51

137. \_\_\_\_\_ *Restrictions on bequest—Restrictions upon estate bequeathed, effect of, if contrary to Hindu law—Restriction separable from valid dispositions.* In the will of a Hindu restrictions contrary to law made by the will upon the valid dispositions if they are separable from the latter, need not be held to invalidate them. Three documents, of which the second and third were executed by a testator after the first, contained

only the remaining amount of profit according to their respective shares in perpetuity. At the same time, the Court held good a provision for defraying the marriage expenses of sons from joint funds, with the direction in the will that until the youngest son should attain majority none of the sons should have a right to partition; any son who should separate from the others getting, up to the time of his attaining majority, merely maintenance, and not the profits accruing upon his share. A gift over was that on the death of a son surviving sons should take his share proportionately to their own, and that, if any of

Committee. RAIKISHORE DAS v DEBENDRANATH SIRCAR  
I. L. R. 15 Calc. 409  
I. R. 15 I. A. 37

138. \_\_\_\_\_ *Construction of will—Bequest to a female on her death to her adopted son—Interpretation of the word 'Malik'—Bequest*

to a female on her death to her adopted son—Interpretation of the word 'Malik'—Bequest

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(l) BEQUEST EXCLUDING LEGAL COURSE OF INHERITANCE—*concl'd.*

his predeceased son's daughters were to be excluded. *Held*, that it was the intention of the testator to make K the object of his bounty irrespective of adoption. *Fanindra Deb v. Rajeswar*, I. L. R. 12 I. A. 72, referred to *MURARI LALL v. KUNDAN LALL* (1939) . I. L. R. 31 All. 339

## (m) RESIDUARY ESTATE.

139. ————— *Residue undisposed of—Balance undisposed of, disposition of—Bequest to heir, effect of, on his right to residue—Disinheritance.* In a suit in which a will of one L C was alleged to be a forgery:—*Held*, on the evidence, that the will of L C was genuine. By the said will, L C had directed R25,000 to be paid to the plaintiff's mother and her family. He appointed the defendant's father (T L) his executor, and

balance was a residue undisposed of by the will, and that the plaintiff was entitled to a half share of such residue which was to be divided as if there was no will. But the business itself from the date of the testator's death was to go to T L. Mere bequests of special portions of the testator's estate to the heir without language of disinheritance do not exclude him from the undisposed of residue. *TOOLSEIDAS LUDHA v. PREMJI TRICUMDAS* I. L. R. 13 Bom. 61

## (n) SURVIVORSHIP.

140. ————— *Gift to two persons for life jointly—Gift to a daughter and her children—Effect of power giving to a daughter if she had no children to dispose of property bequeathed by will—Bequest for house expenses—Bequest by testator of his wife's ornaments—Election.* J, a Hindu inhabitant of Bombay, died in November 1869, leaving a will, dated October 1869. He left a widow and one child, the plaintiff M, then about fourteen years of age. She had then been married for two years, but up to the time of this suit she had had no children. By this will the testator directed that his immoveable property in Bombay should be formed into a trust, and that the trustees were to collect the income thereof. By the fourteenth and fifteenth clauses of his will he directed that out of the trust fund R50 per month were to be paid both to his wife and daughter for their personal expenses. In the seventh clause he directed as follows: "After deducting expenses . . . money is to be paid out of the net income, whatever it may amount to, for the personal expenses of my wife

HINDU LAW—WILL—*contd.*5. CONSTRUCTION OF WILLS—*contd.*(n) SURVIVORSHIP—*contd.*

and my daughter M, and for the children of my daughter M after her death agreeably to the fourteenth and fifteenth clauses of this will; and after paying the same, whatever income may remain is to be paid for the purposes of my wife and my daughter M and her children in such manner as my trustees may think proper." The eighth clause directed that, if M should have children, the trust should stand valid during the lifetime, and the trust-property should then be apportioned amongst the heirs. It then proceeded: "But should there be no children born of the womb of my daughter M, then after the death of M and my wife this trust is to become void, and the property delivered to such persons as my daughter M may direct it to be delivered by making her will." *Held*, (i) that the direction in the seventh clause amounted to a gift of the residue for the use of the testator's wife and M; that his wife and M were, under the clause, entitled to the income of the fund in equal shares during their joint lives, and that the survivor would take the whole for her lifetime. (ii) That M having no children at the date of the testator's

absolute gift to her if she gave the requisite direction by will. The gift did not offend against the rule in the Tagore case. The persons to whom the property is given would take it from M, and not from the testator. The testator by his will further directed that R750 a month were to be paid to his wife for the purpose of defraying the expenses of the house and the worship of thakur (God). *Held*, that no part of this sum could be awarded to M. The testator expected that she would live with the testator's wife and made no provision for the event of her ceasing to do so. The testator also disposed of ornaments described as "my own and my wife's ornaments." *Held*, that the clause did not raise a question of election. The wife's stridhan ornaments would not fall within the clause if there were other ornaments which she wore, and of which the testator had power to dispose. *RAT MANJURJI v. DOSA MORARJI* . I. L. R. 15 Bom. 443

141. ————— *Contingent executory bequest of distribution of property*



**HINDU LAW—WILL—*concl.*****5. CONSTRUCTION OF WILLS—*concl.*****(p) MAINTENANCE—*concl.***

must be presumed to prescribe for the interest, which the will purports to give him; and the burden of proving that he prescribed for something less will be on the party alleging it. *RAMACHANDRA NAIKER v. VIJAYARAGAVULU NAIDU* (1908) **I. L. R. 31 Mad. 349**

**6. REVOCATION OF WILL**

**1. *Mitakshara***  
*Inheritance—Two grandsons through the same daughter take as joint ancestral estate—Practice—Costs of printing record.* Amongst Hindus actual destruction of a will, or its formal revocation, is not essential to constitute revocation. A Hindu will was executed in 1866, and registered while the testator was very ill. He recovered, and executed a power-of-attorney appointing a wakil

**2. *Retraction—Will***  
*of self-acquired property of Hindu testator not revoked by birth of posthumous son—Hindu Wills Act (XXI of 1870), ss. 2 and 3—Indian Succession Act (X of 1865), ss. 56 and 57.* Under ss. 2 and 3 of the Hindu Wills Act and s. 57 of the Indian Succession Act, a will to which the Hindu Wills Act applies can be revoked only in the modes provided in s. 57 of the Indian Succession Act. The incorporation of s. 57 of the Indian Succession Act in the Hindu Wills Act and the enactment of the provision of a

rule to them was an inconsistency.  
gical. *SUBBA REDDI v. DORASAMI BATHIN* (1907)  
**I. L. R. 30 Mad. 369**

**7. SELF-ACQUIRED OR FAMILY PROPERTY.**

**1. *Will by member***  
*of joint family—Nature of property bequeathed—Self-acquired or family property.* The question raised

**HINDU LAW—WILL—*concl.*****7. SELF-ACQUIRED OR FAMILY PROPERTY—*concl.***

in a suit was whether certain property which a Hindu testator had purported to deal with by his will was his self-acquired property or was the family property of the testator and his son and grandson. *Held*, that the separate property of the testator would be (i) property acquired by his own exertions, (ii) without the aid of family funds, (iii) which he did not mix with family property with the intention of adding it to the family funds. Also, that a statement contained in the will was not evidence on the question whether the property dealt with by the will was or was not self-acquired, nor was the conduct of the testator's son in not objecting to the will, nor was a so-called reference to arbitration by the son and grandson. The fact that the property in the hands of the testator had increased during a long period to a considerable value from a small nucleus of family property was not sufficient to rebut the presumption that it was all family property. *Ramanna v. Venkata*, **I. L. R. 11 Mad. 246**, distinguished and explained. *TOTTENTUDI VENKATASWAMI v. TOTTENTUDI SESHASWAMI* (1904)  
**I. L. R. 27 Mad. 228**

**HINDU LAW—WORSHIP.**

*See CIVIL PROCEDURE CODE, 1882, s. 11*  
**I. L. R. 39 Cal. 102**  
**10 C. W. N. 505**

***See HINDU LAW—ENDOWMENT.******See IDOL.***

***Hindu temple—***  
*Temple of Shiva in Southern India—Right of Shanars or Nadars to worship—Custom—Trustees surrendering decree on appeal—Power of Court to join beneficiaries as co-plaintiffs—Compromise, unlawful—Civil Procedure Code (Act XIV of 1882), ss. 375, 437—Breach of trust—Introducing new worshippers contrary to usage.* Where it was proved that men of the "Shanar" or "Nadar" caste were by custom not allowed to worship in a temple dedicated to Shiva in which the

in other respects were of no avail and could not be entertained. Where the hereditary trustees of the temple after a decree had been made in his favour as representing the worshippers at the temple and pending an appeal by the Shanars, sought to enter into a compromise with them by admitting their right to worship in the temple contrary to the decision of the Court, and it was alleged and not disproved that he did so for a corrupt motive: *Held*, that the Appellate Court

**HINDU LAW—WORSHIP—concl'd.**

were well stated and applied by the High Court. In all cases where the Court sees that the trustees are wholly uninterested in the matter and there are parties, who are materially interested in the question, it never makes a decree in the absence of those parties who are alone interested in the contest; *Clegg v. Bowland*, L. R. 3 Eq. 368, 373, followed. It is the duty of the trustee to maintain the customary usage of the institution, and if he fails to do so he is guilty of a breach of trust and still more so, if he deliberately attempts to effect a

s.c. 12 C. W. N. 848  
L. R. 35 I. A. 178

**HINDU TEMPLE.**

See PRE-EMPTION I. L. R. 28 All. 369

**HINDU WIDOW.**

See ADMINISTRATOR PENDENTE LITE.  
12 C. W. N. 267

See ADOPTION I. L. R. 33 Bom. 107

See CHAMPERTY, CRIMINAL PROCEDURE  
CODE, MAINTENANCE

See HINDU LAW I. L. R. 31 All. 161

See HINDU LAW—ALIENATION—WIDOW.

See HINDU LAW—PARTITION—RIGHT TO  
PARTITION—WIDOW.

See HINDU LAW—PARTITION—SHARES  
ON PARTITION—WIDOW.

See HINDU LAW—REVERSIONERS.

See HINDU LAW—WIDOW

See LAND ACQUISITION ACT (I of 1894).  
s. 32 I. L. R. 35 Cal. 1104

See LIMITATION ACT (XV OF 1877), SCH.  
II, ART 125 I. L. R. 29 All. 239

See LIMITATION ACT, 1877, SCH II,  
ART 141

See MAINTENANCE I. L. R. 33 Bom. 50

See PRE-EMPTION—RIGHT OF PREEMP-  
TION I. L. R. 1 All. 452

I. L. R. 8 All. 17  
I. L. R. 7 All. 880

See WILL I. L. R. 31 All. 308

— gift to—

See HINDU LAW—GIFT—CONSTRUCTION  
OF GIFTS.

— power of alienation of—

See HINDU LAW—ALIENATION—ALIENA-  
TION BY WIDOW.

**HINDU WIDOW—concl'd**

— power of, to adopt—

See HINDU LAW—ADOPTION—REQUI-  
SITES FOR ADOPTION—AUTHORITY.

See HINDU LAW—ADOPTION—WHO  
MAY OR MAY NOT ADOPT.

— right of residence in family  
dwelling-house.

See HINDU LAW—FAMILY DWELLING-  
HOUSE.

— with permission to adopt, posi-  
tion of—

See HINDU LAW—ADOPTION—FAILURE  
OF ADOPTION OR OMISSION TO EXERCISE  
POWER.

Mortgage—Benamidar  
—Assignment of mortgage—Representatives of  
deceased mortgagee—Letters of administration, if  
obligatory in the case of Hindus. The widow  
of a Hindu sufficiently represents her deceased  
husband when there is no other person, short  
of obtaining letters of administration to his estate  
who can be said to represent his estate. It is not  
obligatory on a Hindu heir to obtain letters of  
administration to the estate of the last owner.  
*JOGENDRA CHUNDER DUTT v. APURNA DASGI* (190).  
13 C. W. N. 1190

**HINDU WIDOW'S RE-MARRIAGE  
ACT (XV OF 1856).**

See HINDU WIDOW I. L. R. 31 All. 161

1. — s. 2—Hindu widow, re-marriage  
of—Effect of re-marriage on rights of  
inheritance accruing after such re-marriage. The  
right of a Hindu widow, who remarries during  
the lifetime of her son, to succeed by inheritance to  
the ancestral property of such son on his death, is  
not within any of the exceptions referred to in s.  
2 of Act XV of 1856, and she is entitled to succeed  
notwithstanding her re-marriage. *Chamar Haru v.  
Kashi*, 1 L. R. 26 Bom. 338, referred to and  
followed *LAKSHMANA SASANALLA v. SIVA SASANAL-  
LAYANI* (1905) I. L. R. 28 Mad. 425

2. — Hindu widow—  
Re-marriage permitted by rules of caste—Widow not  
deprived of property of her first husband Where

on suit by D and S for recovery of the property  
transferred, that the plaintiffs were not bound to

# HINDU WIDOWS' RE-MARRIAGE ACT (XV OF 1856)—*concl'd.*

reimburse the defendants (*K*, *L* and *L's* mortgagées) in respect of any debts of *G* which they might have paid. *KHUPPO v. DURG A PRASAD* (1906) . . . I. L. R. 29 All. 122

ss. 2, 3, 4, and 5—*Hindu widow—Gift of a son by first husband in adoption by widow after her re-marriage.* According to the texts the right of a female parent to give her son in adoption results from the maternal relation and is not derived by delegation from her husband. Assuming that the mother has by Hindu law a right to give her son in adoption to her husband.

may, under certain conditions, be transferred from the mother to one of the other relations of the child, does not carry with it the right to give in adoption, for that is a right which can only be exercised by a parent. *Panchappa v. Sanganbappa*, I. L. R. 24 Bom. 89, considered. *PATILABAI v. MAHADU* (1908) . . . I. L. R. 33 Bom. 107

# HINDU WILLS ACT (XXI OF 1870).

See HINDU LAW—WILL—CONSTRUCTION OF WILLS . . . I. L. R. 33 Calc. 1306

See HINDU LAW—WILL—NUNCUPATIVE WILLS . . . I. L. R. 1 Bom. 641

See PARTIES—PARTIES TO SUITS—EXECUTORS . . . I. L. R. 13 Bom. 621

See PROBATE—EFFECT OF PROBATE . . . 8 B. L. R. 208  
I. L. R. 8 Bom. 241  
I. L. R. 12 Bom. 621  
I. L. R. 18 All. 280

See PROBATE—JURISDICTION IN PROBATE CASES . . . I. L. R. 14 Calc. 37

See PROBATE—PROOF OF WILL . . . 10 C. L. R. 550

See PROBATE—TO WHOM GRANTED . . . 7 B. L. R. 563

See SUCCESSION ACT, s. 96 . . . I. L. R. 16 Calc. 549

ss. 2—

See PROBATE—JURISDICTION IN PROBATE CASES . . . I. L. R. 8 Bom. 241  
8 C. L. R. 138

See PROBATE—OPPOSITION TO, AND REVOCATION OF, PROBATE . . . I. L. R. 17 Calc. 272

See PROBATE—POWER OF HIGH COURT TO GRANT AND POWER OF . . . I. L. R. 6 Bom. 452, 703

See REPRESENTATIVE OF DECEASED PERSON . . . I. L. R. 14 Mad. 454

# HINDU WILLS ACT (XXI OF 1870)—*concl'd.*

ss. 2—*concl'd.*

See WILL—ATTESTATION.

I. L. R. 1 Calc. 150  
I. L. R. 8 Calc. 17  
I. L. R. 20 Bom. 674

ss. 2, 3—

See HINDU LAW—WILL.

I. L. R. 20 Mad. 389

ss. 3—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS . . . I. L. R. 8 Calc. 157, 837  
I. L. R. 15 Bom. 852

ss. 5—

See ADMINISTRATOR-GENERAL'S ACT, s. 31 . . . I. L. R. 21 Calc. 732  
I. L. R. 22 Calc. 788  
I. L. R. 22 I. A. 107

# HINDUS OF BEHAR.

See MAHOMEDAN LAW—PRE-EMPTION . . . I. L. R. 35 Calc. 575

holder in due course—

See NEGOTIABLE INSTRUMENT.

I. L. R. 38 Calc. 239

# HOLDING.

See AGRA TENANCY ACT, ss. 22, 32 (2) . . . I. L. R. 31 All. 49

# HOLDING OVER.

See ADVERSE POSSESSION . . . 10 C. W. N. 343

See BENGAL TENANCY ACT (VIII OF 1885), s. 16 . . . 12 C. W. N. 438

See EJECTMENT, SUIT FOR.

I. L. R. 34 Calc. 398

# HOLIDAY.

See CIVIL PROCEDURE CODE, 1882, s. 307 . . . I. L. R. 20 Bom. 745

See LIMITATION ACT, 1877, s. 4 . . . I. L. R. 20 Mad. 469

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION . . . I. L. R. 22 Calc. 176

time expiring on—

See BENGAL RENT ACT, 1880, s. 29 . . . I. L. R. 4 Calc. 50

See DECREE—CONSTRUCTION OF DECREE—PER-EMPTION . . . I. L. R. 3 All. 850  
I. L. R. 7 All. 107

See LIMITATION ACT, 1877, s. 5.

Good Friday—*Admission of*

KUMAR CHOWDHARY v. HARGOPAL NAU . . . 3 B. L. R. Ap. 72 : 11 W. R. 537

**HOLIDAY—contd.**

2. ——— Sunday—Admission of *plaint.*  
A *plaint* may be received and admitted by  
a *Munsif* on a Sunday or other holiday. *USKOT-*  
*RAM CHATTERJEE v. PRATAP CHUNDER SHIROMONEE*  
18 W. R. 231

3. ——— Trial on Sunday  
.....  
.....  
.....

8 B. L. R. Ap. 12

4. ——— Judicial work—  
*Duty of Magistrate.* Magistrates should not take  
up judicial work on Sundays. *GRIFFITHSON v.*  
*ISHWACHUNDER* W. R. 1864, Cr. 2

5. ——— Judge, duty of  
—Local investigation. A Judge should not hold a  
local investigation on Sunday. *JITUBOO SAROO v.*  
*JUSSODA KOER* 17 W. R. 230

6. ——— Close holiday—Bengal Civil  
Courts Act (VI of 1871), s. 17—Proceedings on  
civil side of District Court during vacation—Juris-  
diction—Irregularity—Consent of parties—If *Fauar*, 8,  
17 of the Bengal Civil Courts Act (VI of 1871) was  
framed in the interests of the Judges and officials  
of the Courts and probably also in the interests  
of the pleaders, suitors, and witnesses, whose reli-  
gious observances might interfere with their  
attendance in Courts on particular days. On a  
close holiday, a Judge might properly decline to

be entitled to have the proceeding set aside as  
irregular, probably in any event, and certainly  
if the *plaintiff* had been warned and had not

on a close holiday does attend, and without protest  
takes part in a judicial proceeding, cannot after-  
wards successfully dispute the jurisdiction of the  
Judge to hear and determine such matter. *Bernett*  
*v. Potter*, 2 C. & J. 622; *Andrews v. Elliott*, 5 E. &  
B. 502; 6 E. & B. 338; and *Biram Mahlon v.*  
*Sahib-un-nissa*, 1 L. R. 3 All. 333, referred to.  
*RAM DAS CHACKARBATI v. OFFICIAL LIQUIDATOR*  
*OF THE COTTON GINNING COMPANY*

1 L. R. 9 All. 366

**HOMESTEAD.**

See *BENGAL TENANCY ACT*  
I. L. R. 31 Calc. 1014  
8 C. W. N. 454

See *BENGAL TENANCY ACT*, s. 182.  
10 C. W. N. 844

See *OCCUPANCY TENANT*  
I. L. R. 28 Bom. 72; 94

**HOMICIDE OR EPILEPSY.**

See *MEDICAL JURISPRUDENCE*,  
13 C. W. N. 822

**HOROSCOPE.**

See *EVIDENCE ACT*, ss. 17 AND 18.  
I. L. R. 17 Mad. 134

See *EVIDENCE ACT*, s. 32, CL. 6.  
I. L. R. 9 Calc. 613  
I. L. R. 17 Calc. 849

**HORSE RACING MACHINE.**

See *GAMBLING ACT*, s. 11.  
I. L. R. 31 Calc. 542

**HOSPITAL, BEQUEST TO.**

See *WILL—CONSTRUCTION—CHARITABLE*  
*GIFT* 6 O. W. N. 321  
14 B. L. R. 442

**HOTEL-KEEPER AND GUEST.**

1. ——— Lodging or boarding-house.  
keeper and lodger—Inn-keeper—Liability for  
goods lost. This suit was brought to recover the  
value of certain articles stolen from the plaintiff's  
rooms at an hotel in Bombay. The defendant was  
the licensed proprietor of the hotel, who was in the

not that of boarding-house-keeper and lodger)

2. ——— Liability of guest at hotel in  
respect of furniture used by him—Contract  
Act (IX of 1872), ss. 118, 157, 152—Contract—Bail-  
ment—Liability of bailee. The defendant's wife  
went to stay at a hotel owned by the plaintiffs.



**HOTEL-KEEPER AND GUEST—concl'd.**

used by her during her illness. The plaintiffs subsequently sued to recover the value of such furniture from the defendant, *Held*, that, in the absence of evidence to show that the deceased had not taken as much care of the furniture as a person of ordinary prudence would, under similar circumstances, take of his own goods, the defendant was not liable, having regard to ss. 151 and 152 of the Contract Act, 1872. *Shelds v. Wilkinson*, 1 L. R. 9 All. 398, referred to *RAMPAL SINGH v. MURRAY & Co.* 1 L. R. 32 All. 184

**HOUSE-BREAKING.**

See CRIMINAL TRESPASS

1 L. R. 18 Calc. 857

1 L. R. 22 Calc. 984

See PRIVATE DEFENCE, RIGHT OF.

1 B. L. R. S. N. 8

2 W. R. Cr. 42

— and theft,

See SENTENCE—CUMULATIVE SENTENCES

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION 1 L. R. 17 All. 120

— intent to have sexual intercourse which would be adultery. The prisoner was convicted of house-breaking, his object being to have sexual intercourse with the complainant's wife *Held*, that the conviction was valid, the object, if accomplished, being an offence ANONYMOUS . . . 8 Mad. Ap. 6

**HOUSE-SEARCH BY MAGISTRATE.**

See TORT . . . 12 C. W. N. 973

**HOUSE TRESPASS.**

See CRIMINAL TRESPASS.

1 L. R. 23 Calc. 123; 391

1 L. R. 19 All. 74

See TRESPASS—HOUSE TRESPASS.

**HUNDI.**

COL.

1. LAW APPLICABLE TO . . . 5538

2. ACCEPTANCE . . . 5539

3. ENDORSEMENT . . . 5540

4. PRESENTATION . . . 5542

5. NOTICE OF DISHONOUR . . . 5543

6. LIABILITY ON . . . 5545

7. INTEREST ON . . . 5548

8. PROPERTY IN HUNDI AND FORGED HUNDIS . . . 5548

9. JOINT HUNDI . . . 5550

10. PAYMENT TO WRONG PERSON . . . 5551

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.

1 L. R. 16 All. 157

1 L. R. 21 I. A. 6

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1 L. R. 24 Calc. 533

**HUNDI—cont'd.**

See NEGOTIABLE INSTRUMENTS.

See STAMP ACT, 1869, s. 20.

1 L. R. 4 Calc. 259

See STAMP ACT, 1879, s. 3

1 L. R. 8 Calc. 284

1 L. R. 13 All. 66

1 L. R. 14 Mad. 32

See STAMP ACT, 1879, s. 10.

1 L. R. 3 Mad. 173

— dishonour of—

See BOND . . . 1 L. R. 20 Bom. 791

See HINDU LAW—CONTRACT—BILLS OF EXCHANGE . . . 2 W. R. 314

12 C. L. R. 333

— endorsement of, by debtor.

See LIMITATION ACT, s. 20.

1 L. R. 19 All. 307

— execution of—

See STAMP ACT, s. 16.

1 L. R. 19 Bom. 835

— payable at sight—

See NEGOTIABLE INSTRUMENTS ACT, (XXVI OF 1881), ss. 30, 39.

12 C. W. N. 844

— suit on—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS.

1 L. R. 18 Bom. 369

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS

See LIMITATION ACT, 1877, s. 14.

1 L. R. 20 Bom. 193

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, ETC.

1 L. R. 1 Bom. 295

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . . . 7 B. L. R. 535

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . . . 4 C. L. R. 145

See STAMP ACT, s. 34.

1 L. R. 18 Bom. 369

**1. LAW APPLICABLE TO.**

1. — Application of English law—*Analogy between hundi and bill of exchange.* Where the analogy between native hundi and English bills of exchange is complete, the English law is to be applied. *SUNDOONATH GROSE v. JODDONATH CHATTERJEE* . . . 2 Hyde 259

HUNDI—*contd.*

## 2. ACCEPTANCE.

1. — Communication of acceptance to holder and drawer—*Omission by drawer to notify non-acceptance.* An insolvent firm had drawn certain hundis on the plaintiffs payable to the defendant. The defendant had endorsed them to one M. The plaintiffs' Bombay firm was the agent of M, and M accordingly sent the hundis to the plaintiffs, as his agents, for realization. The hundis, however, were dishonoured, and M thereupon returned them to the defendant, and received their value from the defendant, who in this suit sought to get off the amount on this ground.

30th October the plaintiffs had stated by letter to the drawer's firm that the hundis had been accepted. That meant that all things had been done to make the acceptance complete. The absence of entries in the plaintiffs' book, with reference to the hundis, afforded no inference that they were not accepted. *Semle:* A communication of acceptance to the drawer, or to a previous holder, binds the acceptor as well as a communication to the present holder, inasmuch as the acceptance enters for the benefit of them as well as for the actual holder, and the primary contract is between the drawer and the acceptor. *PRADAS THAKURDAS v. DOWLATRAM NANTRAM*. 1 L. R. 11 Bom. 257

2. — Acceptance of hundi as conditional or absolute payment. In a suit for the amount due on account of goods sold and delivered and money lent, the defence was that plaintiff had accepted hundis in discharge of the debt and was in consequence debarred from suing on the original consideration, and that his remedy, if he had one, was on the hundis. It was also contended that the hundis had been accepted as cash payment, in consideration of a discount of 2½ per cent. and that, in consequence, plaintiff had no

operate as absolute or conditional payment, and the

HUNDI—*contd.*2. ACCEPTANCE—*contd.*

quence, precluded from suing on the original debt. *JAMBU CHETTY v. PALANIAPPA CHETTIAR* (1902)  
1 L. R. 26 Mad. 528

## 3. ENDORSEMENT

1. — Necessity for endorsement—*Hundi given for particular purpose—Hundi payable to order.* A party who receives a hundi for a particular purpose must apply the same accordingly, and neither he nor any third party knowing the facts can by afterwards receiving the amount detain the same from the principal. *Quare:* Whether a hundi made payable "to order" is, according to Hindu law and the custom of native merchants, negotiable without a written endorsement by the payee. *RAJ-ROOPRAM v. RUDDOC*

1 Ind. Jur. O. S. 93; 1 Hyde 155

2. — Assignment of hundi—*Bills of Exchange Act, V of 1866.* A hundi which contains a direction on sufficient consideration to the drawee and accepted by him is within the terms of the Bills of Exchange Act, and such a document is assignable without any regular form of endorsement if sufficient cause appears in the handwriting of an endorser to indicate an intention to assign it. *EAST INDIA BANK v. VOLLIE GOOLWANY*  
[1 Ind. Jur. N. S. 247

3. — Proof of endorsement—*Power of endorser to sue.* Where a hundi had been endorsed to purchasers who subsequently returned it

possession that he had a right to it, unless the contrary were shown. *BYRNATH SAHOO v. BACHU RAM*. 1 Ind. Jur. N. S. 78; 5 W. R. 86

4. — Cancellation of endorsement—*Endorse for purposes of collection, liability of.* An endorsee for purposes of collection of certain hundis, under the circumstances, ordered to cancel such endorsement and to re-deliver the hundis to the endorser. Such an endorsee not having received the amount of the hundis, was held, under the circumstances, not liable to be sued for the value thereof. *GYANEE RAM v. PALEE RAM* 2 N. W. 73

5. — Suit after endorsement—*Bill payable to depositors—Member of joint family.* A hundi payable to the depositor is only payable to the drawer or his endorsee. When the drawer and his brother are members of an undivided Hindu family, it may be presumed that the latter is entitled to act for the former. *VELIET DOS v. BENARESSEE ROY*. W. R. 1864, 262

6. — Suit by endorsee against acceptor—*Notice not to discount, effect of—Bond fide holder for valuable consideration—To an action by the endorsee against the acceptor of a*

HUNDI—*contd.*3. ENDORSEMENT—*contd.*

hundi, the defence was a certain verbal contract between acceptor and payee of which the plaintiff had notice; and that by the custom of shroffs the defendant was exonerated by such notice. *Held*, that it is the custom of shroffs to make enquiries

7.

Shahjoge hundi—

*Endorsee for realization—Effect of such endorsement—Maintainability of a suit by such endorsee for realization—Delivery, title by—Negligence—Payment to wrong person—Forged signature—Hundi made over to servant for realization, effect of—Estoppel. A*

and sent by him to the plaintiffs. The plaintiffs handed the hundi to one S, the plaintiffs' jemadar who had been in the habit of taking hundis on their behalf for acceptance and payment, to be taken by him to the defendants for acceptance. S took the hundi to the defendants, but subsequently, one R, who had no authority from the plaintiffs to receive payment, acting on information either from S or from some other source, represented himself to the defendants as a jemadar of the plaintiffs, wrongfully obtained the hundi from the defendants, forged the plaintiffs' signature to it, and obtained payment. The defendants, before such payment, had made no inquiries as to the position or respectability of R, and paid the hundi on the faith of the forged signature. *Held*, that such an endorsement, coupled with the delivery of the hundi, entitles the plaintiffs to sue for and receive payment of the hundi from the acceptors, though as between the drawer and the plaintiffs the latter are mere agents or parties with a defeasible title. Such an endorsement is in the nature of a restrictive endorsement, giving the endorsee the right to receive payment of the hundi and if necessary to sue the acceptor for the amount, but not to transfer his rights as endorsee to another.

hundi continued to be shahjoge even after such endorsement. *Gones Dass v. Luchmi Narayan*, I. L. R. 18 Bom 570, referred to. *Held*, also, that the plaintiffs were entitled to claim the amount

and fraudulently obtained payment from defendants, there was no negligence on the part of the plaintiffs,

HUNDI—*contd.*3. ENDORSEMENT—*contd.*

*v. Trustees of Evans Charities in Ireland*, 5 H. L. Cas. 339; *Arnold v. The Cheque Bank*, 1 O. P. D. 578; *Mayor, etc. Merchants of the Staple of England v. Bank of England*, 21 Q. B. D. 160, and *Bank of England v. Vagliano Bros.*, [1891] A. C. 107, referred to. *Quare*: Whether such a hundi would not, before acceptance, pass by *Goat-foot-note*, L. R. 275, referred to. *BUTTERHAM v. HARI PRIO COACH* (1900) 5 C. W. N. 313

## 4. PRESENTATION.

## 1. Time for presentation—

*Hundi payable on arrival—Liability of drawee—Time of presentation—The custom of alhotties at Jeypore—Negotiable Instruments Act (XXI) of 1881, s. 61. A hundi was drawn in Calcutta upon a firm at Jeypore, and made payable on arrival at the place. The hundi reached Jeypore on the 5th April, but was not presented for payment until the 29th of that month, when it was dishonoured, and soon after the drawee's firm became in-*

regard should be had to the situation and interests of both drawer and payee and to the distance of the place where the hundi is drawn from that where it is to be accepted. *MUTTY LALL v. CHOENELL*, I. L. R. 11 Cal. 344

## 2. Reasonable time—

*Question of time of presentation—Drawer without*

within reasonable time was impermissible. *NINKUND ANANTAPA v. MENSHI APURAYA*, I. L. R. 10 Bom. 346

## 3. Presentation by

*purchaser. A purchaser is bound to present a hundi for payment within a reasonable time. GOPAL DAS v. SEETA RAM*, 3 AGA 268

## 4. Suit by holder

*and indorsee against payee and indorser—Local usage as to presentation—Usage of presentment at Dushire—Negotiable Instruments Act (XXI) of*

**HUNDI—contd.****4. PRESENTATION—contd.**

1851), ss. 70, 71, 75, and 137. The plaintiff as holder and indorsee of a hundi drawn on one H of Buhire sued defendant as payee and indorser to recover Rs. 1,193-4 on a hundi which had been dishonoured by the acceptor. It was found by the Court (i) that the local usage at Buhire was to present the hundi for payment at the bank, and for the acceptor to call at the bank at due date and effect settlement; (ii) that the hundi in question was presented for payment to the authorized agent of the acceptor at the bank on the due date; (iii) that the said agent refused payment and informed the bank that the acceptor would not pay the hundi. It was argued that presentment at the bank was not good presentment having regard to ss. 70, 71, and 137 of the Negotiable Instruments Act (XXVI of 1881). *Held*, that the local usage made the presentment a good presentment. **IMPERIAL BANK OF PERSE.**  
**FATTECHAND KRECHAND**

I. L. R. 21 Bom. 294

**5. NOTICE OF DISHONOUR.**

**1. Reasonable notice—Custom—English law.** A purchaser is bound to give reasonable notice of dishonour, that is, within the time

**2. Custom—English law.** Although the English law of prompt notice by return of post does not apply to cases of native hundis drawn by natives upon natives and endorsed by natives, yet reasonable notice of dishonour is essential. **RADHA GOBIND SHAMA v. CHUNDER KATH DASS SHAMA** 8 W. R. 301

See **SUBBHOONATH GHOSH v. JUDHUNATH CRATTERJEE** Cor. 88

**3. Hundis drawn by a manager of Hindu family—Liability of member of family—Notice of dishonour to the drawer—Negotiable Instruments Act (XXVI of 1881).**

I. L. R. 20 Bom. 488

**4. Custom—English**

**HUNDI—contd.****5. NOTICE OF DISHONOUR—contd.**

able time of his intention to come upon him, so as to enable the latter to take the necessary steps for his own protection. The question as to what is reasonable notice is to be settled by local custom; and where a party has been prejudiced by the want of such notice, this is to be taken into consideration. **ANANT RAM AGRAWALLA v. NATHALL**

31 W. R. 63

**5. English law—Non-payment of hundi.** Although the strict rules of English law as to bills are not applicable to hundis, notice of dishonour or non-payment must be given within reasonable time to enable the drawer or endorsee to protect himself against the claims of subsequent endorsee. **TILSHI SHAHU v. NARSING RAM** 12 C. L. R. 333

**6. Demand of a peth—Notice to endorser.** In order to charge the endorser of a dishonoured hundi, the holder must give reasonable notice of such dishonour to the endorser he seeks to charge. The demand of a peth cannot be deemed to be equivalent to a notice of dishonour. **MEERAT JAGANNATH v. GOKALDAS MATHEWAS** 7 Bom. C. C. 137

**7. Hundi inadmissible in evidence for want of Stamp—Independent admission of loan—Suit on the original consideration.** In a suit based on the consideration independently of a hundi, it is not necessary to prove notice of dishonour. **KRISHNAJI NARAYAN PANKHI v. RAJMAL MANIKCHAND MARWADI** I. L. R. 24 Bom. 300

**8. Sufficiency of notice—Principal and agent—Custom—Delay in giving notice.** The drawers of a hundi in favour of the plaintiff at Dacca (where all the parties to the hundi lived) were held not liable on proof that they were the gomarstans of the acceptor, that they had no interest in the hundi, and that, according to custom in Dacca, where the hundi was drawn and accepted, agents under the signature were a dishonour month. **MOHAN BYSAK v. KRISHNA MOHAN BYSAK** 9 B. L. R. Ap. 1; 17 W. R. 443

**9. Promise to pay endorsed on hundi—Waiver of notice.** A promise to pay endorsed upon a hundi after it had been

15 W. R. 420

a c. before remand, Gopal Das v. Ali

3 B. L. R. A. C. 103

**10. Damage to parties liable by omission to give notice—Formal written notice—Suit on hundi.** Previous formal written notice of

**HUNDI—contd.****5. NOTICE OF DISHONOUR—concl'd.**

dishonour of a hundi is not necessary before suit brought, unless it can be shown that the parties charged have been prejudiced by such omission.

**GOVIND RAM MARWARY v. MATHOORA SABOYA**  
I. L. R. 3. Calc. 339; 1 C. L. R. 429

**11. ——— Suit on hundi—**  
*Negotiable Instruments Act (Act XXVI of 1881), ss. 93, 94, 98 (c).* In the absence of any local usage to the contrary, it is just and equitable that the doctrine of notice of dishonour propounded in the

of such a hundi, which had been dishonoured, sued the prior endorsers on it, without having given them such notice and did not prove that they could not suffer damage for want of such notice, the suit must fail. **MOTI LAL v. MOTI LAL**. I. L. R. 6 All. 78

**12. ——— Notice of dishonour to drawer, where drawee has failed to accept.**  
S.

18! of the wh thereon. So, where a drawee of a bill of exchange does not accept it, though the drawer is primarily liable, the payee should give notice of dishonour to the drawer. **JAMBU CHETTY v. PALANIAPPA CHETTIAR** (1902). I. L. R. 28 Mad. 526

**13. ——— Negotiable Instruments Act (XXVI of 1881), ss. 30, 93, 98—**  
*Liability of drawer.* In order to make the drawer of a hundi liable in case of dishonour by the drawee or acceptor thereof, it is necessary for the plaintiff to show that due notice of dishonour was given to the drawer, or that he (the drawer) did

**BEFARI v. BHALADOOR KHAN** (1903)  
I. L. R. 30 Calc. 977; s.c. 7 C. W. N. 878

**6. LIABILITY ON.**

**1. ——— Usage of shroffs—Consideration—Dishonour of hundi—Holder for value.** The plaintiff, as agent and banker of an Ajmir constituent, received a hundi for collection, and on its acceptance by the drawee, credited the Ajmir constituent with the amount as of the date when the hundi would become payable. *Held*, that, as between the plaintiff and the Ajmir constituent, the plaintiff upon such credit in account being given, became a holder for value. *Held*, also, that, the hundi being dishonoured at due date by the drawee, the plaintiff was justified, by the usage of shroffs, in treating the Ajmir constituent as still entitled

**HUNDI—contd.****6. LIABILITY ON—cont'd.**

to credit for the amount, and himself as a holder for value. *Held*, also, that, as between the Ajmir constituent and the first indorser (the defendant and appellant) the giving by the Ajmir constituent to the defendant of another hundi which was never presented in Bombay for acceptance or payment was a consideration for the endorsement by the defendant to the Ajmir constituent of the hundi sent by the latter to the plaintiff and sued on by him. **MULCHAND JOHARIMAL v. SUGANCHAND SHIVDAS**. I. L. R. 1 Bom. 23

Affirming the decision in **SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL**. 12 Bom. 113

**2. ——— Notice of dishonour—Negotiable Instruments Act (XXVI of 1881), s. 61—**

that, since the defendant did not prove that the

I. L. R. 14 Mad. 410

**3. ——— Liability of drawer, acceptor, and indorsee—Separate contract—Decree against one without satisfaction.** The drawer, against one intermediate endorser of a hundi

**4. ——— Defendants not all resident in jurisdiction—Parties—Act XXIII of 1861,**  
In a suit on a hundi

the decree, the lower appellate court of 1861, pass a decree against the defendants who resided beyond its jurisdiction—*Held*, following the English law that it was not necessary to sue the

I. L. R. 1 All. 392

## HUNDI—contd.

## 6. LIABILITY ON—contd.

5. ——— Cause of action—*Suit on hundi—Inability to discover drawer.* Where, on account of a loan of Rs 500, the lender gave the borrower two hundis for Rs 500 and took away Rs 500 as discount for Rs 500, and the borrower, being unable to discover the drawer of the hundis, sued the lender, not on the hundis, but on two alleged loans of Rs 500 and Rs 500, respectively:—*Held*, that the only right of action left to the borrower was on the hundi themselves. **RAM LAL SINGH v. GOPAL DOSS** 7 W. R. 154

8. ——— Duplicate of lost hundi—*Suit for money had and received.* The plaintiff obtained a hundi from a banker, B, at Baluchar for a certain amount drawn upon the firm of the latter at Calcutta. Afterwards on her representation to B that the hundi was lost, B issued a duplicate of the hundi.

come null and void. The duplicate was presented to the agent of B at Calcutta, and payment was refused on the ground that the original had been presented and accepted and paid in due time. *Held*, that the plaintiff had no cause of action against B for non-payment of the duplicate hundi, nor for money had and received on account of the original consideration having failed. **INDU CHANDRA DROH v. LACHMI BIRI**

7 B. L. R. 693: 15 W. R. 561

7. ——— Accommodation bill—*Transferee for value—Liability of party accommodated.* P drew a hundi on S (in which S accepted for P's

8. ——— Stolen hundi—*Shah jog hundi endorsed to a particular person—Payment by drawee without enquiry to wrong person—Liability of drawee to lawful owner of hundi—Conversion—Trove.* On the 8th December 1893, the plaintiff at Sholapur having brought a shah jog hundi, there

## HUNDI—contd.

## 6. LIABILITY ON—contd.

(u) that the hundi continued to be shah jog after being indorsed to a particular person. **GANESNAS RAMNARAYAN v. LACHMINARAYAN**

I. L. R. 18 Bom. 570

9. ——— Hundi payable at fixed date—*Discount by non-acceptance—Cause of action—Right of suit—Negotiable Instruments Act (XXVI of 1881).* On 11th June 1900 the defendant

of a hundi payable at a fixed date gives an immediate cause of action against the drawer, and there is no need to wait until the maturity of the hundi

of action in a suit against the drawer. **RAM RAJJI JAMONEKAR v. PRALHADAS SURKARN**

I. L. R. 30 Bom. 133

## 7. INTEREST ON.

1. ——— Usage of native bankers—*Hundi drawn payable at sight.* According to the

## 8. PROPERTY IN HUNDI AND FORGED HUNDIS.

1. ——— Property in hundi sent to agent for realisation S & R, the plaintiffs' agents in Calcutta, accepted hundis for Rs 12,000

Rs 7,000 of this amount, and they had realized Rs 4,400 out of the Rs 11,100, when they stopped payment. At that time two unmatured hundis, for Rs 2,000 each, remained in their hands, and these they endorsed over to the defendant after maturity in trust for their creditors. In an action by the plaintiff against the defendant to recover the two hundis

HUNDI—*contd.*8. PROPERTY IN HUNDI AND FORGED HUNDIS—*contd.*

—*Held*, that the hundis, having been sent to *S R* for the special purpose of enabling them to meet their acceptances for Rs 12,000, remained the property of the plaintiffs, subject to a lien of *S R* of Rs 600. *HAZARI MULL NAHATTA v SORAGH MULL DUDHA*  
9 B. L. R. 1

2. ——— Forged hundi—*Mercantile*

hundi, and such hundi afterwards turns out to be

ever, relieves himself from such liability by producing the actual forger. *DAVALTRAM SHIRAN v. BALAKIDAS KHEMCHAND* 6 Bom. O. C. 24

3. ——— Forged endorsement—*Suit to recover hundi*. The plaintiffs, being holders of a hundi, sent the same to their *hoti* in Calcutta without endorsement. The hundi was lost or stolen on the way and came into the defendants' hands as endorsees, the endorsement of the plaintiffs having been forged. The defendants, without notice of the forgery, paid full consideration for the hundi.

to acceptance, by delivery. *GOURSHINULL v. DHANSHUK DAS*

7 B. L. R. 280 note: 16 W. R. 10 note

4. ——— *Suit to recover hundi—Bond fide holder for valuable consideration*. A hundi which had been purchased by the plaintiff at Delhi for value was, he alleged, endorsed by him to the firm of *R B D* of Calcutta, "for realization," and sent to that firm by post. Between Delhi and Calcutta the hundi was lost or stolen, and never reached the firm of *R B D*. It eventually came into the hands of the defendant, bearing no endorsement to *R B D*, but endorsed to *U D H*, and by *U D H*. The defendant alleged that he took it in the ordinary course of business, and for valuable consideration,

to be endorsed to the defendant's firm. When presented to the acceptors for payment, it was

presented to the firm of *U D H*, and demanded payment, but that firm stated that their endorsement

HUNDI—*contd.*8. PROPERTY IN HUNDI AND FORGED HUNDIS—*contd.*

*Held* that the endorsement to the firm of *U D H* was

## 9. JOKHMI HUNDI.

## 1. ——— Equitable assignment of

hundi drawn in favour of plaintiffs by & upon his firm in Bombay. The hundi contained a statement that it was "drawn against" twenty-nine bales of wool shipped at Tuna, and it was made payable eight days after the safe arrival of the ship at Bombay. The plaintiffs obtained from *L*, at the same time, a letter addressed by him to his firm at Bombay, which contained the following passage: "Upon you a jokhmi hundi is drawn, the particulars whereof are as follows: (Rs 4,000). The

plaintiffs obtained the hundi & goods referred to had been already shipped. On the

**HUNDI—*concl.*****R. JOKHMI HUNDI—*concl.***

1st January 1879, the firm of L was adjudicated insolvent by the High Court at Bombay. On the 5th January 1879, the ship arrived at Bombay with the goods in question on board, and on the 7th January the shipowners delivered them to the Official Assignee. The plaintiff sued the Official Assignee (as assignee of the estate and effects of L) and the shipowners to recover possession of the wool or

also contended that the above letter of the 22nd December 1878 operated as a valid equitable assignment of the wool to him. *Held*, that the plaintiff, as holder of a jokhmi hundi, had no charge upon the wool in question, and could not upon this ground recover from the defendants the possession of the wool or the amount due upon the hundi; but *Held*, also, on the authority of *Dunn v. Carralho*, 4 M. & Cr. 690, that the letter of the 22nd December 1878 operated as an equitable assignment of the wool to the plaintiff, on the safe arrival of the vessel, as a security for the payment of the hundi, and that the plaintiff was therefore entitled to obtain possession of the wool. **JADOWJI GOPAL v. JETHA SHAMJI**  
I. L. R. 4 Bom. 333

**10. PAYMENT TO WRONG PERSON.**

**L. ———— Stolen Hundi—**  
*Ganesh Das Ram Narayan v. Luchminarayan*,  
I. L. R. 18 Bom. 570; *Kleinwort Sons & Co.*  
*v. Comptoir National D'Escompte De Paris*, L. R.  
2 Q. B. 157, followed. **SAHU LALTA PERSAUD**  
*v. McLeod* (1903) . . . 9 C. W. N. 841

**HURT.**

|                            |      |
|----------------------------|------|
|                            | Col. |
| 1. CAUSING HURT . . . . .  | 5552 |
| 2. GRIEVOUS HURT . . . . . | 5554 |

**See COMPOUNDING OFFENCE.**

I. L. R. 1 Bom. 147  
19 Bom. 68

**See CULPABLE HOMICIDE.**

I. L. R. 3 Calc. 623  
1 C. L. R. 141  
I. L. R. 2 All. 522, 788  
I. L. R. 3 All. 597, 776

**See GRIEVOUS HURT.****See PENAL CODE, s. 81.**

I. L. R. 17 Bom. 626

**See PENAL CODE, ss. 319 to 330.****HURT—*concl.*****See SENTENCE—CUMULATIVE SENTENCES.**

7 W. R. Cr. 00  
9 W. R. Cr. 33  
I. L. R. 11 Calc. 340  
I. L. R. 7 All. 414  
I. L. R. 19 Calc. 725  
I. L. R. 19 Calc. 105

**— — — grievous—****See SENTENCE—CUMULATIVE SENTENCES.**

2 W. R. Cr. 29  
I. L. R. 6 All. 121  
I. L. R. 7 All. 29, 414, 757  
I. L. R. 9 All. 645  
I. L. R. 10 Calc. 442, 725  
I. L. R. 10 Calc. 105  
I. L. R. 17 Bom. 260

**1 CAUSING HURT.**

1. ——— Nature of Injury constitut-  
ing "hurt"—*Causing serious disability*. *Causing a disability for a fortnight is punishable for voluntarily causing hurt.* **QUEEN v. BISHNOORAM SERMA** . . . . . I W. R. Cr. 9

2. ——— Penal Code, s. 328—"Other thing" The words "other thing" in s. 328 of the Penal Code—*the words "other thing" in s. 328 of the*

3. ——— Blow with umbrella—*Penal Code, ss. 95, 119.* The pain caused by a blow across the chest with an umbrella was held to be not of a . . . . .

4. ——— Penal Code, s. 324—*Manner of using weapon.* On the construction of s. 324 of the Penal Code;—*Held*, that it is not necessary that the manner of use of the weapons must be such as is likely to cause death. **ANONYMOUS**  
7 Mad. Ap. 11

5. ——— Administering harmful drugs—*Penal Code, ss. 326, 328.* *Held*, by the majority of the Court (*dissentiente SITON-KARR, J.*), that the offence of administering . . . . .

6. ——— Causing hurt on grave provocation—*Penal Code, ss. 324, 333.* Causing hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324 of the Penal Code. **REG v. BHALA CHULA** . . . . . Bom. 17

7. ——— Causing death after provocation—*Dissease of spleen.* The prisoner, having received great provocation from his wife, pushed her so as to throw her with violence to the ground, and after she was down struck her with his open hand. She died, and on examination it appeared there were



**HURT—contd.****1. CAUSING HURT—contd.**

no external marks of violence on the body, but that there was disease of the spleen and that death was caused by rupture of the spleen. *Held*, that, under the circumstances, the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder. *QUEEN v. PUNCHANN TANTER*

5 W. R. Cr. 97

8. ———— **Chance injury on provocation—Penal Code, ss. 319-322.** Where a wife died from a chance kick in the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself and by his conduct immediately afterwards that he had no intention or knowledge that the act was likely to cause hurt endangering human life.—*Held*, that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not an offence under ss. 330 and 322. *QUEEN v. BYSAGOO NOSHVO*

8 W. R. Cr. 29

9. ———— **Causing death unintentionally—Penal Code, s. 323.** Where, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view to chastising the deceased, her daughter of eight or ten years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face the result of which was death.—*Held*, that the conviction should be under s. 323, Penal Code, of voluntarily causing hurt, and the punishment one year's rigorous imprisonment. *QUEEN v. BESHOR BEWA*

18 W. R. Cr. 29

10. ———— **Hurt caused in extorting confession of offence—Penal Code, s. 330—Witchcraft.** To bring a case under s. 330 of the Penal Code, it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offences or misconduct punishable under the Penal Code. That section therefore does not apply to a case where the confession extorted had reference to a charge of witchcraft. *QUEEN v. MOONDEE*

13 W. R. Cr. 23

11. ———— **Hurt caused to extort information of offence—Penal Code, s. 330.** A charge may be made under s. 330, Penal Code, of

describe is that of inducing a person by hurt to make a statement or a confession having reference to offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial. *QUEEN v. NIM CHAND MOOKPATE*

20 W. R. Cr. 41

12. ———— **Assault and causing hurt—Penal Code, s. 352—Aforethought.** A person who is tried and discharged for the offence of assault under s. 312, Penal Code, cannot again, upon the

**HURT—contd.****1. CAUSING HURT—contd.**

same complaint, be tried for "causing hurt." *KAPTAN v. SMITH*

7 B. L. R. Ap. 25; 16 W. R. Cr. 3

13. ———— **Causing hurt—Penal Code, s. 330—Causing hurt to constrain a person to satisfy a demand.** A husband, in order to constrain his wife to satisfy his demand that she should return to his house, voluntarily caused hurt to her. He was convicted under s. 330 of the Penal Code. *Held*, on appeal, that the conviction under that section was bad. *QUEEN-EMRESS v. ELLA BOYAN*

1 L. R. 11 Med. 257

**2. GRIEVOUS HURT.**

1. ———— **Nature of hurt constituting grievous hurt.** What amounts to "grievous hurt" considered. *REG. v. ANTA BIN DADORA*

1 Bom. 101

2. ———— **Serious disability.** A disability for twenty days constitutes grievous hurt. *QUEEN v. BISHNOORAM SURMA*

1 W. R. Cr. 9

3. ———— **Proof of offence—Penal Code,**

12 W. R. Cr. 10

4. ———— **Requisites for offence—Voluntary hurt—Penal Code, s. 323.** To make out the offence of voluntarily causing grievous hurt the offence of voluntarily causing grievous hurt

23 W. R. Cr. 85

5. ———— **Joint attack by several persons in serious injury—Assault.**

12 W. R. Cr. 12

6. ———— **Want of intention, likelihood, or knowledge that injury is likely**

7. ———— **Want of intention to cause death—Robbery.** Where, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to

8. ———— **Grievous hurt in commission of lurking house trespass—Penal Code,**

HURT—*contd.*2. GRIEVOUS HURT—*contd.*

ss. 324, 459, 460. A person who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 459 and 324 of the Penal Code. *QUEEN v. LUKHAY DOSS* 2 W. R. Cr. 63

3. ——— Conviction of grievous hurt—Constructive guilt—Abettor—*Penal Code (Ad XLV of 1860), ss. 114, 325, with 149.* Where the accused persons have been acquitted of

other member of the same assembly, or that the offence was such as each member of the assembly knew to be likely to be committed in prosecution of that object. The mere presence as an abettor of any person would not, under the terms of s. 114 of the Penal Code, render him liable for the offence committed. *Empress v. Chattradhari Gonsa*, 2 C. W. N. 49, explained. In order to bring a person within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, if absent, he would have been liable to be punished as an abettor, and then to show that committed

4 C. W. N. 548

drowned. *Held*, that there was no evidence to convict the prisoners of causing grievous hurt. All presumptions consequent on the man's body being found drowned should have been put aside, and the original assault alone considered. *QUEEN v. NUNKOO DOSS* 2 W. R. Cr. 46

11. ——— Driving over deaf man—*Penal Code, s. 338—Negligence.* Defendant was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the de-

HURT—*contd.*2. GRIEVOUS HURT—*contd.*

ther there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed. *ANONYMOUS* 6 Mad. Ap. 32

12. ——— Grievous hurt on grave and sudden provocation—*Penal Code, s. 335.* Causing grievous hurt on grave and sudden provocation is punishable under s. 335 of the Penal Code, without any intention or knowledge of likelihood of causing such hurt. *QUEEN v. AMERICA TASTINER* 4 W. R. Cr. 21

*QUEEN v. BHADOO PORAMNICK* 4 W. R. Cr. 23

13. ——— Hurt caused in house-breaking—*Penal Code, ss. 459, 460.* Ss. 459 and 460 of the Penal Code

aplicable where the principal act done by the accused person amounts to no more than a mere attempt to commit lurking house-trespass or house-breaking. *QUEEN-EMPRESS v. ISMAIL KHAN*

L. L. R. 8 All. 649

14. ——— Charge of grievous hurt—*Committal for trial.* A prisoner charged with the offence of causing "grievous hurt" should be committed for trial to the Sessions Court. *REG. v. ANANTH DADOBA* 1 Bom. 101

15. ——— Child-wife—Culpable homicide not amounting to murder—Causing death by a rash and negligent act—Rashness and negligence—*Penal Code, ss. 304, 304A, 325, 335—Husband and*

probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immature and wholly unfit for sexual intercourse; that under such circumstances sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of peno-

**HURT—*contd.*****2. GRIEVOUS HURT—*contd.***

tration effected. The prisoner was charged with (a) culpable homicide not amounting to murder

that, in such a case, when the girl is a wife and above the age of 10 years, and when therefore the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law; that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous, and punishable or over that age as safe and right, but that each case must be judged according to its own individual

knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law. *Held*, further, that, if the jury were of opinion (a) that the act of the prisoner caused the death of the girl, that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina and so causing the hæmorrhage which led to her death; (b) that the act of cohabitation between a fully developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences, (c) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing, one which the husband of the

prisoner caused the death of a girl by a rash and

18. **Proof of grievous hurt—**  
*Penal Code (Act XLV of 1860), ss. 320 and 326—*  
*Remaining in hospital for twenty days—Presumption* The accused were charged with causing grievous hurt. The Joint Sessions Judge, relying apparently on evidence that the injured person remained in a hospital for the space of twenty days, drew from that circumstance alone the inference that he was during that period unable to follow his ordinary pursuits, and convicted the accused under

**HURT—*contd.*****2. GRIEVOUS HURT—*contd.***

s. 325 of the Penal Code (XLV of 1860). *Held*, reversing the convictions, that in the absence of any evidence that the injured person was unable to follow his ordinary pursuits during the space of twenty days, such an inference could not legally be drawn. Before a conviction can be passed for the offence of grievous hurt, one of the injuries defined in s. 320 of the Penal Code must be strictly proved, and the eighth clause is no exception to the general rule that a penal statute must be construed strictly. Proof of being in a hospital for the space of twenty days cannot be taken as equivalent to proof of grievous hurt. *QUEEN-EMPRESS v. VASTA CHELA*

I. L. R. 19 Bom. 247

17. **Penal Code (Act XLV of 1860), ss. 304, 149, 326—Commitment for offences of rioting and culpable homicide not amounting to murder—Constructive guilt of members of unlawful assembly—Grievous hurt, whether it may be regarded as a minor offence or as involved in the offence under s. 304, read with s. 149—Conviction for grievous hurt on a trial for**

Penal Code S. 326 can only apply to a person who does a substantive act himself, namely, inflicts a blow which causes grievous hurt, as defined in the Code. A person accused of, and charged for, offences under ss. 149 and 304, read with s. 149, Indian Penal Code, cannot, in the event of the charges not being sustainable, be convicted of an offence under s. 326, Indian Penal Code. S. 304

reason of their being members of the unlawful assembly, and of a person being killed in prosecution of the common object of the assembly. *RAJ SARKAR v. EMPEROR* (1901) . 8 C. W. N. 98

**HUSBAND.**

*See* COMPLAINANT I. L. R. 26 Calc. 338  
I. L. R. 14 Mad. 379

death of—

*See* ABATEMENT OF PROSECUTION.  
4 Mad. Ap. 55

**HUSBAND AND WIFE.**

*See* ADULTERY.

*See* BURNESSE LAW—DIVORCE  
I. L. R. 19 Calc. 469

*See* CONTRACT ACT, s. 178.  
I. L. R. 24 Bom. 456

*See* DEFAMATION—IMPUTATION ON A WIFE . I. L. R. 25 Bom. 151

*See* DIVORCE ACT.



HUSBAND AND WIFE—*contd.*ment. *TOOLSEEMONEY DOSSEE v. CORNELIUS*

11 B. L. R. 144

4. ——— Deed of separation—*Agreement not to molest husband*—*Right of suit* A suit is not maintainable by a wife for an allowance from her husband on an agreement, for which the sole consideration is a stipulation that the wife is not to communicate with or molest her husband, such stipulation falling within the general rule that a deed of separation entered into by husband and wife without the intervention of trustees is void. *HUGHES v. HUGHES* . . . . . 16 W. R. 250

5. ——— Principal and agent—*Agency*—*Authority of wife to pledge husband's credit*. *Held*, that the liability of a husband for his wife's debts depends on the principles of agency, and the husband can only be liable when it is shown that he has expressly or impliedly sanctioned what the wife has done. In a suit by a creditor to recover from his debtor and her husband the amount of money lent by the plaintiff to the former on her notes of hand, it appeared that the defendants had always lived together, that the wife had an allowance wherewith to meet the household expenditure and all her personal expenses, and that the money had been borrowed without the husband's knowledge, and not to meet any emergent need, but to pay off previous debts, and had been raised by successive borrowings over a considerable period, the debts having increased by high rates of interest. It was also found that it had not been shown that the plaintiff looked to the husband's credit, or that the husband had ever previously paid his wife's debts for her. *Held*, that, under these circumstances, no agency on the wife's part for her husband had been established, and that the husband was therefore not liable to the claim. *GIRDHARI LAL v. CRAWFORD*

I. L. R. 9 All. 147

6. ——— Plea of coverture—*Separate property of wife*—*Suit on promissory note*—*Personal decree*. The defendant, a married woman living with her husband, both domiciled in British India and resident in Calcutta, where they had been married on 21st May 1866, and having property to which she was absolutely entitled under the provi-

ture. *Held*, that she was liable to pay the amount of the promissory note out of her own property, and the Court would, if necessary, make a personal decree against her. *ARCHER v. WATKINS*

S B. L. R. 372

7. ——— Divorce—*Suit for nullity of marriage*—*Suit by wife against husband*—*Costs of wife*—*Alimony*—*Maintenance*—*Suit between Maho-*

HUSBAND AND WIFE—*contd.*

*medans*—*Mahomedan law*. The English law which makes the husband in divorce proceedings

order was made by the Court adjourning the further hearing of the suit for one year, in order that the parties might resume cohabitation for that period. The husband desired to carry out the order of the Court and was anxious that his wife should live with him; she, however, refused to do so, and only paid occasional visits to his house. The suit was subsequently dismissed with costs. The wife appealed, and subsequently applied for alimony until the disposal of the appeal. *Held*, that, having regard to the conduct of the wife, she was not entitled to

8. ——— Married woman's power to contract in respect of her separate property—*Roman and English law*. A married woman is capable of contracting in respect of her separate estate. The doctrines of the Roman and English law upon the subject examined. *NARAYAN CHETTY v. JENSEN* . . . . . 2 Mad. 353

9. ——— Separate property of wife—*Jewels given to wife during coverture*. Jewels

*CONEX v. AUCTION & Co* . . . . . 111908 100

10. ——— Custom prevailing amongst Parsis as to ownership of presents

with regard to special and costly clothes (i.e., clothes intended to be worn only on special occasions and ceremonies) presented during the same period. *BYRAMJI BHIMJI BHAI v. JANSETJI NOWROJI KARADIA* . . . . . I. L. R. 16 Bom. 630

11. ——— Parsis—*Ornaments given to wife by her father*. The rule laid

I. L. R. 11 Bom. 75

HUSBAND AND WIFE—*contd.*

12. ———— *Husband managing separate property of wife.* Where husband and wife are living together, and the wife has property of her own which the husband is in possession of and manages, his possession must be considered to be his wife's. He has no right to part with such property without her consent. *SOONIA RAM DOOS v. JOOGUL KISHORE GOORIO.* 24 W. R. 274

13. ———— *Legacy—Purchase with wife's legacy.* C, a married woman, was entitled, under her father's will, to certain money "at . . . the . . . and . . . her . . . on her sole and personal receipt. . . . entitled, C borrowed from her husband the purchase-money of certain real property, on the understanding that she would pay him back such money when she obtained her legacy. The conveyance of such property was made to C, but not to her separate use, C subsequently assigned her legacy by sale, and out of the money obtained by such assignment repaid her husband the purchase-money of the property purchased. *Held*, that the conversion by C of her legacy did not alter its character and conditions, and that the property purchased was her own separate property and was not subject to the debts or liabilities of her husband. *HURST v. MISSOONIA BANE.* I. L. R. 1 All. 783

14. ———— *Legacy—Property purchased with legacy—Sale in execution of decree—Right of purchaser.* C, a married woman, was entitled, under her father's will, to certain money "absolutely for her sole use and benefit, free from the control, debts, and liabilities of her husband," and under such will such money was

veyance of such property was made to C, but not to her separate use. C subsequently assigned her

her, and that, where such property was purchased

*HURST.* I. L. R. 1 All. 772

15. ———— *Married Woman's Property Act (III of 1874), ss. 7 and 8—Succession Act (X of 1865), s. 4—Action for trover—Wife against husband.* The plaintiff was, at the

HUSBAND AND WIFE—*contd.*

time of her marriage in 1870, possessed in her own right of certain articles of household furniture given to her by her mother. Since January 1875, she had lived separately from her husband, but the furniture remained in his house. In February 1875 her husband mortgaged the property to B, without the plaintiff's knowledge or consent. In June 1875 one K C D, a creditor, obtained a decree against the husband and B, in execution of which he seized the furniture as the property of the husband, and it remained in Court subject to the seizure. In July 1875 the plaintiff instituted a suit in her own name in trover, to recover the articles of furniture or their

plaintiff. The husband and wife were persons subject to the provisions of the Succession Act, s. 4, and the Married Woman's Property Act, 1874. *Held*, that, under s. 7 of the latter Act, the suit was

*HARRIS. HARRIS v. KOYLAS CHUNDER BANDO-PADIA.* I. L. R. 1 Calo. 285

18. ———— ss. 4, 7, 8—*Execution of decree against separate property of wife—Domicile—Agency.* The Married Woman's Property Act (III of 1874) applies to persons having an English domicile. Accordingly, the separate property of a married woman (whose husband's

17. ———— *Execution of document by pressure and concealment of material facts—Trustee and cestui que trust—Independent advice.* Where a husband obtained the execution of a deed by his wife, creating a charge over her separate property, by concealment of material facts: *Held*, that the deed was not binding on the wife. *TURNBULL & Co. v. DUVAL* (1902)

8 C. W. N. 809

18. ———— *Suit for restitution of conjugal right—Sue by an excommunicated member of a caste—Mussalman Kharwa community of Broach—Custom.* The plaintiff, an excommunicated member of the Mussalman Kharwa community of Broach, sued his wife defendant No. 1)

**HUSBAND AND WIFE—concll.**

for restitution of conjugal rights. At the time of their marriage, the parties were members of the caste; but subsequently the plaintiff was excommunicated from his caste. The defendant contended that she should not be compelled by the Court to go and live with him as his wife before the plaintiff was re-admitted into the caste. *Held*, upholding the contention, that at the time of marriage she was not only a Mahomedan by faith but also a member of the Kharwa community; occupying that status, she married the plaintiff. It was, therefore, of the essence of the marriage contract that they married because they were members of that particular community and they must be regarded as having entered into the marital relation on the basis of that status. *BAI JINA v. KHARWA JINA* (1907)

I. L. R. 31 Bom. 368

19. ——— Implied authority of wife to pledge husband's credit, when rebutted. The presumption of implied authority on the part of the wife to pledge her husband's credit for necessities may be rebutted by proof of circumstances inconsistent with the existence of such authority. *MAHOMED SULTAN SAHIB v. HORACE ROBINSON* (1907)

I. L. R. 30 Mad. 543

**HUTS.**

See **TILED HUTS.**

——— right of tenant to remove—

See **LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS**

14 B. L. R. 201

——— seizure of, in execution—

See **SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY**

8 B. L. R. 508, 510 note:

513 note; 514 note

2 B. L. R. A. C. 77

See **SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MOVEABLE PROPERTY**

10 B. L. R. 448

I. L. R. 26 Calc. 778

3 C. W. N. 580

4 C. W. N. 470

**HYPOTHECATION.**

See **ACCOUNT** . I. L. R. 35 Calc. 298

See **CIVIL PROCEDURE CODE (Act XIV of 1882), s. 257A.**

I. L. R. 35 Calc. 870

See **MORTGAGE**

**HYPOTHETICAL BUILDING SCHEME.**

See **LAND ACQUISITION ACT.**

I. L. R. 33 Bom. 325

**HYPOTHETICAL DEVELOPMENT.**

See **LAND ACQUISITION**

I. L. R. 33 Bom. 28

**IDIOTCY.****I**

See **HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE—INSANITY.**

See **INSANITY.**

See **REGISTRATION ACT, 1877, s. 33** (1871, s. 35)

I. L. R. 1 All. 485

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**IDOL.**

See **CIVIL PROCEDURE CODE, 1892, s. 11.**

I. L. R. 32 Calc. 102

See **CRIMINAL PROCEDURE CODE, SECTION 144**

8 C. W. N. 378

See **DEBUTTER.**

See **HINDU LAW—ENDOWMENT; SHERAITS; WORSHIP.**

See **LIMITATION** . I. L. R. 32 Calc. 129

See **LIMITATION ACT, 1877, s. 7.**

8 C. W. N. 809

See **PROCESSIONS.**

See **RIGHT OF WORSHIP.**

I. L. R. 31 Mad. 238

——— bequest to—

See **HINDU LAW—PARTITION—AGREEMENT NOT TO PARTITION AND RESTRAINT ON PARTITION** .

8 B. L. R. 60

See **HINDU LAW—WILL—CONSTRUCTION OF WILLS—REQUEST TO IDOL.**

2 B. L. R. A. C. 137 note

——— dedication to—

See **HINDU LAW—ENDOWMENT.**

——— gift to, and direction to establish—

**Hish—**

See **HINDU LAW—GIFT—CONSTRUCTION OF GIFTS** .

I. L. R. 29 Calc. 280

——— grant of letters of administration for debutter property of—

See **PROBATE ACT, s. 18-23.**

I. L. R. 12 Calc. 375

——— joint ownership in right of worship of—

See **HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.**

I. L. R. 17 Bom. 271

——— offerings to—

See **ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY.**

——— position of—

See **LIMITATION ACT, ART. 144—ADVERSE POSSESSION** .

I. L. R. 23 Calc. 538

See **PARTITION—RIGHT TO PARTITION—GENERAL CASES**

14 B. L. R. 168

I. L. R. 6 Bom. 286

**IDOL—*enid.***

public worship of—

See PROCESSIONS.

I. L. R. 30 Mad. 186  
I. L. R. 34 I. A. 63

right of, to remove—

See CIVIL PROCEDURE CODE, s. 11.

10 C. W. N. 505

I. L. R. 32 Calc. 102

suit brought in name of—

See PARTIES—PARTIES TO SUITS—IDOL.

See PLAINT—AMENDMENT OF PLAINT.

I. L. R. 10 All. 336

See RES JUDICATA—PARTIES—SAME  
PARTIES OR THEIR REPRESENTATIVES

6 C. W. N. 178

suit for turn of worship of—

See LIMITATION ACT, 1877, Art. 131 (1839,  
s. 1, Cl. 16)

6 B. L. R. 352

I. L. R. 4 Calc. 683

I. L. R. 8 Calc. 807

Right of suit of  
worshipper—Idol, location of—Religious ceremony.

Temple in which the idol should be ordinarily

10 C. W. N. 600

**ILLEGAL CESS.**

See ABWABS.

See CESS

See CONTRACT ACT, s. 23—ILLEGAL  
CONTRACTS—ILLEGAL CESSES.

2. ——— Payments in nature of rent  
in kind—Local custom Certain payments which  
were not so much in the nature of cesses as of rent  
in kind, and which were fixed and uniform and had

3. ——— Purabes—Consideration for  
agreement. A purabee, when it is part of the consi-  
deration for ———  
not in the n  
JUGGODISH  
SIRCAR

**ILLEGAL CONTRACT.**

See CONTRACT ACT, s. 23.

Illegal distress—

See LIMITATION, I. L. R. 36 Calc. 141

**ILLEGAL GRATIFICATION.**

See PENAL CODE, ss. 161-165.

See PENAL CODE, s. 161.

9 C. W. N. 547

See PUBLIC SERVANT, 5 C. W. N. 332

7 B. L. R. 446

21 W. R. Cr. 6

I. L. R. 1 All. 530

I. L. R. 4 Calc. 378

1. ——— Public servant receiving  
money for services rendered—Penal Code  
(Act XLV of 1860), s. 161. A person who receives  
money from others for the purpose or with the  
object of rendering any service to them is guilty  
of an offence under s. 161, Penal Code. In the  
matter of NAJIBUDDIN, 4 C. W. N. 798

2. ——— Attempt to obtain bribe—  
Penal Code, s. 161—Asking for bribe. To ask for

cluded by declaring that A would sue and repent  
the rejection of it:—Held, that the offence of at-  
tempting to obtain a bribe was consummated.  
EMFRESS V. BALDEO SAHAI, I. L. R. 2 All. 253

3. ——— Non-commission of act for  
which bribe was given—Penal Code, s. 161.  
The taking of a bribe by a serishtadar to influence  
a Principal Sudder Ameen in his decisions is

ceives a gratification as a motive for doing what he  
does not intend to do, or as a reward for what he  
has not done," is punishable. QUEEN V. KALIE-  
CHURN, 3 W. R. Cr. 10

4. ——— Money paid to obtain release  
of person wrongfully confined. Money paid  
for obtaining release of a person wrongfully confined  
by police officer cannot be regarded as illegal gra-  
tification, but as money extorted. AKHOY KUMAR  
CHAKRABUTTY V. JAGAT CHANDRA CHAKRABUTTY  
4 C. W. N. 755

5. ——— Taking bribe for inducing  
public servant to forbear to do certain offi-  
cial act—Penal Code, s. 162. A person who ac-  
cepts for himself or for some other person a grati-  
fication for inducing, by corrupt or illegal means, a



**ILLEGAL GRATIFICATION—*concl'd.***

public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162 of the Penal Code. *QUEEN v. OBUOTCHURN CHUCKEN-BUTTY* 3 W. R. Cr. 19

6. ——— Patwari taking grain in

of the Penal Code. *QUEEN v. MUHSOODDEEN*  
2 N. W. 148

paying a sum of Rs300 towards the repair of the village temple. *Held*, that the Patel, being a public servant, had committed an offence under s. 161 of the Penal Code. *QUEEN-EMPERESS v. AFFAJI BIN YADAYRAO* I L. R. 21 Bom. 517

8. ——— Proper order on conviction.  
*Sentence—Order to refund money.* On a conviction

LALL CHATURPADRIA . . . . .

9. ——— Demand of dasturi by Civil Court peon—*Penal Code (Act XLV of 1860), s. 161.* A demand of dasturi by a Civil Court peon from the plaintiff, as a motive or reward for serving the summonses on his witnesses without

s.c. 9 C. W. N. 547

**ILLEGITIMACY.**

See HINDU LAW—MARRIAGE

See HINDU LAW—SUCCESSION.

I. L. R. 32 Bom. 563

See HUSBAND AND WIFE.

II B. L. R. 144

See ILLEGITIMATE CHILDREN.

See MAHOMEDAN LAW—ACKNOWLEDGMENT.

See MAHOMEDAN LAW—INHERITANCE  
I. L. R. 30 Cal. 68

See MARRIAGE.

**ILLEGITIMACY—*cont'd.***

— proof of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PETITIONS.

I. L. R. 10 Mad. 33

See WITNESS—CIVIL CASES—PERSON COMPETENT OR NOT TO BE WITNESSES  
I. L. R. 18 Bom. 48

— question of—

See EXECUTION OF DECREE—EXECUTION BY OR AGAINST REPRESENTATIVES

I. L. R. 2 Cal. 321

L. R. 4 I. A. 64

17 W. R. 428

See RES JUDICATA—PARTIES—SAMED PARTIES OR THEIR REPRESENTATIVES

I. L. R. 2 Cal. 321

L. R. 4 I. A. 66

I. L. R. 4 All. 82

1. ——— Right to bastard's estate—*Forfeiture—Non-assertion of claim by Crown—Escheat.* *M*, the widow and administratrix of a bastard who had died intestate and without issue, received a letter in 1841 from the Lords Commissioners of the Treasury stating that they did not deem it expedient to take any steps for the assertion of the rights of the Crown with regard to her late husband's estate. Previous to this, *M* had obtained possession of that estate, and two months before the receipt of the letter she had contracted a second marriage. No settlement was made upon this marriage, and since the time of the marriage, *M*'s second husband had had the exclusive management of the property. In execution of a decree against the husband, his right, title, and interest in and to a portion of the property were put up for sale and purchased by the plaintiff. The plaintiff's right to possession was disputed by *M*.

would be estopped by the Treasury in 1841 from asserting that *M* had a right against the Treasury  
I. L. R. 144

2. ——— Letters of administration—*General Act, XXIV of 1855, s. 224.* will of one and executors had

the document was or was not her will.

**ILLEGITIMACY—*encl.***

the Administrator General would be entitled to letters of administration under s. 15, Act XXIV of 1867, and that it was not necessary to make the Government a party to the suit. *Scmdle*. The Administrator General would have been entitled to apply for letters of administration under s. 224 of Act X of 1867. *DeMello v. Brodantov* . . . 11 B. L. R. Ap. 8

**ILLEGITIMATE CHILDREN.**

*See* CUSTODY OF CHILDREN.

I. L. R. 4 Calc. 374

*See* HINDU LAW—

INHERITANCE—ILLEGITIMATE CHILDREN.

MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE

7 C. W. N. 618

3 B. L. R. P. C. 1

*See* HINDU LAW—PARTITION—RIGHT TO PARTITION—ILLEGITIMATE CHILDREN . . . I. L. R. 12 Mad. 401

*See* MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . . . I. L. R. 18 Bom. 488  
I. L. R. 19 Mad. 461  
I. L. R. 18 Calc. 781

— custody of—

*See* MARRIAGE, NULLITY OF.

I. L. R. 35 Calc. 381

**ILLUSTRATIONS TO SECTIONS OF ACTS.**

*See* CONTRACT ACT . . . I. L. R. 1 All. 487  
22 W. R. 387

*See* LIMITATION ACT, 1877, s. 26.  
I. L. R. 7 Calc. 13

**IMMORAL TRANSACTIONS.**

*See* CONTRACT ACT (IX of 1872), s. 23.  
I. L. R. 32 Bom. 561

**IMMORALITY.**

*See* SECURITY FOR GOOD BEHAVIOUR.  
I. L. R. 30 Calc. 366

**IMMOVEABLE PROPERTY.**

*See* APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE  
I. L. R. 29 Calc. 724

*See* ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.  
I. L. R. 11 Mad. 193  
I. L. R. 14 All. 30

*See* CIVIL PROCEDURE CODE, 1882, s. 16 (d) . . . I. L. R. 28 All. 603

*See* COMPROMISE . . . I. L. R. 35 Calc. 837

*See* CRIMINAL BREACH OF TRUST.  
I. L. R. 23 Calc. 372

**IMMOVEABLE PROPERTY—*contd.***

*See* DOMICILE . . . I. L. R. 32 Calc. 631

*See* FISHERY, RIGHT OF.  
I. L. R. 20 Calc. 446

*See* HINDU LAW . . . I. L. R. 33 Calc. 23

*See* JURISDICTION . . . I. L. R. 32 Calc. 802

*See* LETTERS PATENT, ART. 12.  
I. L. R. 28 Mad. 216, 487

*See* LIMITATION . . . I. L. R. 32 Calc. 450

*See* LIMITATION ACT, 1877, ss 3 AND 17.  
I. L. R. 27 All. 463

*See* LIMITATION ACT, 1877, ART. 144—IMMOVEABLE PROPERTY.

*See* MENSUR, JURISDICTION OF.  
I. L. R. 2 All. 698 ; I. L. R. 19 Calc. 8

*See* POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH THE MAGISTRATE CAN DECIDE AS TO POSSESSION.  
I. L. R. 11 Calc. 413

I. L. R. 12 Calc. 637

I. L. R. 13 Calc. 179

I. L. R. 15 Calc. 627

I. L. R. 18 Calc. 513

I. L. R. 15 All. 394

I. L. R. 23 Calc. 80

3 C. W. N. 148

*See* POSSESSION, ORDER OF CRIMINAL COURT AS TO—

LIKELIHOOD OF BREACH OF THE PEACE.  
I. L. R. 28 Calc. 416

DISPOSSESSION BY CRIMINAL FORCE.  
5 C. W. N. 374

*See* POWER OF ATTORNEY.  
I. L. R. 35 Calc. 854

*See* REGISTRATION ACT (III of 1877), s. 17 . . . I. L. R. 28 All. 277

*See* SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES  
I. L. R. 29 Calc. 1 ; 459

*See* SALE IN EXECUTION OF DECREE—IMMOVEABLE PROPERTY.  
I. L. R. 1 All. 348

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*See* SECURITY FOR COSTS—SUITS.  
7 B. L. R. Ap. 80

*See* SMALL CAUSE COURT, MUFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY.  
I. L. R. 21 Bom. 387

*See* SMALL CAUSE COURT, MUFUSSIL—JURISDICTION—MOVEABLE PROPERTY.

*See* SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY, RECOVERY OF.

*See* SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—TITLE, QUESTION OF . . . I. L. R. 15 Bom. 400

**IMMOVEABLE PROPERTY—*concl'd.***

See SPECIAL OR SECOND APPEAL—SMALL  
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I. L. R. 10 Cal. 554

I. L. R. 13 Mad. 54

I. L. R. 13 All. 537

I. L. R. 23 Bom. 873

See TRESPASS . I. L. R. 39 Cal. 28

dispossession of—

See LIMITATION ACT, 1877, Sec. II, Art.  
163 . . . I. L. R. 25 All. 343

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COURT AS TO—DISPOSSESSION BY CRIMINAL  
FORCE.

document relating to or creat-  
ing charge on, or interest in—

See REGISTRATION ACT, 1877, ss. 17 AND  
40.

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See DOCUMENT . I. L. R. 30 Cal. 433

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See LIS PENDENS . 11 C. W. N. 828

**IMPARTIBLE ESTATE.**

See BABUANA GRANT.

See GRATWALI TENURE.

I. L. R. 22 Cal. 158

See GRANT—CONSTRUCTION OF GRANTS.

I. L. R. 17 Mad. 150

I. L. R. 30 Cal. 20

See HINDU LAW—ALIENATION.

I. L. R. 27 Mad. 131

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I. L. R. 29 Cal. 343

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I. L. R. 29 Cal. 433

IMPARTIBLE PROPERTY.

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I. L. R. 30 All. 406

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5 C. W. N. 602

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**IMPARTIBLE ESTATE—*concl'd.***

succession to—

See HINDU LAW—SUCCESSION.

I. L. R. 32 Mad. 429

Succession Certificate  
Act (VII of 1889)—Successor to impartible  
zamindari not entitled to recover debts due to his  
predecessor without a certificate under the Act. The  
successor to an impartible estate is not a co-owner  
with his predecessor in the moneys due to the  
latter before his death. He derives his title to such  
debts only at the death of his predecessor, as part  
of such predecessor's effects, and cannot recover  
them without obtaining a certificate under Act VII  
of 1889. The rule of succession in impartible  
estates is based on a theoretical co-parternary and  
not on any actual unity of interest between the  
predecessor . . .

purpose (other purpose whatsoever, and impartible estate,  
I. L. R. 22 Mad. 397, referred to. Observations  
of SANKARAN NAIR, J., in Nachiappa Chettiar v.  
Chinnayasami Naicker, I. L. R. 29 Mad. 459,  
considered and not followed. Kali Krishna Sastri  
v. Raghunath Deb, I. L. R. 31 Cal. 224, not fol-  
lowed. RAJAH OF KALAHASTI v. ACHUDADU (1905)  
I. L. R. 30 Mad. 454

**IMPOTENCE.**

See HINDU LAW—MARRIAGE—RE-  
STRAINT ON, OR DISSOLUTION OF MAR-  
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See COMPENSATION—CRIMINAL CASES—

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2 C. L. R. 507

I. L. R. 21 Cal. 979

I. L. R. 22 Cal. 586

I. L. R. 16 All. 98

I. L. R. 19 All. 73

5 C. W. N. 213, 214

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See CONTENT OF COURT—PENAL CODE,

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See CONTRACT . I. L. R. 35 Cal. 1035

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See CRIMINAL PROCEDURE CODE, s. 370 (1)

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CHANGE OF LAW PENDING EXECUTION

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See FALSE IMPRISONMENT.

See INSOLVENT ACT, s. 50

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See MAINTENANCE, ORDER OF CRIMINAL  
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I. L. R. 9 All. 240

I. L. R. 23 Calc. 291

I. L. R. 20 Mad. 3

I. L. R. 25 Calc. 291

See RAILWAYS ACT, s. 113

I. L. R. 18 Bom. 440

I. L. R. 20 Mad. 385

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See SENTENCE—IMPRISONMENT.

See WHIPPING . I. L. R. 18 Bom. 357

———— in default of payment of compensation—

See COMPENSATION—CRIMINAL CASES—  
FOR LOSS OR INJURY CAUSED BY  
OFFENCE . I. L. R. 25 Calc. 164

———— in default of payment of fine—

See CATTLE TRESPASS ACT (1 OF 1871),  
s. 22 . . . . . 5 C. W. N. 32

———— nature of—

See CIVIL PROCEDURE CODE, 1882, s. 359.  
11 C. W. N. 740

1. ——— Period of imprisonment of  
judgment-debtor—*Civil Procedure Code, 1882, s.*  
342. The Court cannot fix any period for the  
imprisonment of a judgment-debtor under Civil  
Procedure Code, s. 342. *SUBUDHI v. SINGI*  
I. L. R. 13 Mad. 141

2. ——— Civil Procedure  
Code (Act XIV of 1882), s. 342—Imprisonment for  
debt—Period of imprisonment—Jurisdiction. The  
Court cannot fix any term of imprisonment for a  
debt under s. 342, Civil Procedure Code, when  
committing a debtor to jail *Subudhi v. Singi*,  
I. L. R. 13 Mad. 141, followed. *SUJAN BIBI*  
*v. SAGAR MANDAL* (1900) . . . . . 5 C. W. N. 145

3. ——— Simple or rigorous imprisonment—Civil Procedure Code (Act XIV of  
1882), s. 359—Omission to specify the nature of  
the imprisonment when passing order under s. 359  
—The power to subsequently declare it to be rigorous  
—Jurisdiction—S. 622, Civil Procedure Code. The  
imprisonment ordered under s. 359, Civil Pro-  
cedure Code, may be either simple or rigorous,  
but the nature of the imprisonment must be spe-

IMPRISONMENT—*contd.*

cified when the order is made. *Government v. Radhoo*  
*Charan Ash*, 13 W. R. Cr. 3, referred to. When  
the Judge in passing orders under s. 359, Civil  
Procedure Code, omits to state whether the im-  
prisonment awarded is to be simple or rigorous,  
it must be taken to be simple imprisonment. After  
the Judge has made an order under s. 359, his  
power under that provision of the law is exhausted  
and he has no jurisdiction subsequently by an  
administrative order passed without notice to the

MATHOO SAHOO (1907) . . . . . 11 C. W. N. 740

IMPROPER QUESTIONS IN CROSS-  
EXAMINATION.

See DEFAMATION . I. L. R. 38 Calc. 375

## IMPROVEMENTS.

See BENGAL TENANCY ACT, s. 29 (b).  
11 C. W. N. 82

See CIVIL PROCEDURE CODE, 1882, s.  
244—QUESTIONS IN EXECUTION OF  
DECREE . I. L. R. 28 Mad. 501

See CO-SHARERS—SCITS BY CO-SHARERS  
WITH RESPECT TO THE JOINT PROPERTY.  
I. L. R. 28 Calc. 223

See LANDLORD AND TENANT.  
I. L. R. 28 Bom. 580

See LANDLORD AND TENANT—BUILDINGS  
ON LAND; RIGHT TO REMOVE, AND  
COMPENSATION FOR IMPROVEMENTS.

See MALABAR LAW.  
I. L. R. 25 Mad. 588

See MORTGAGE—ACCOUNTS.

See SALE FOR ARREARS OF REVENUE—  
PROTECTED TENURES  
I. L. R. 3 Calc. 293  
I. L. R. 8 Calc. 110

See SMALL CAUSE COURT, MOFFUSIL—  
JURISDICTION. RENT.  
I. L. R. 24 Mad. 356

See TRUST . I. L. R. 11 Mad. 360

1. ——— Occupier of land without title  
—Right to compensation for improvements. Where  
a person had held a property on a false title, and the

See FURZUND ALI KHAN v. AKA ALI MAHOMED  
3 C. L. R. 184

2. ——— Calingula constructed by  
Government—Necessary effect to cause water  
to flood plaintiff's lands—Rights of Government  
in connection with the distribution of water—Li.

IMPROVEMENTS—*contd.*

mitation Act (XV of 1877), s. 24—Continuing wrong. In 1882 a calingula was constructed by Government for the purpose of reducing the

ago channel was formed by Government to carry off the surplus water. Plaintiffs contended that the drainage channel was not sufficient to carry off the water and that the water which flowed over the calingula stagnated on their lands and made them unfit for cultivation. They prayed for a mandatory injunction directing that the calingula be blocked up. *Held*, that they were entitled to the relief claimed. Government have the right to distribute the water of Government channels for the benefit of the public subject to the rights of a ryotwari land-holder, to whom water has been supplied by Government, to continue to receive such supply as is sufficient for his accustomed requirements. But the rights of Government in connection with the distribution of water do not include a right to flood a man's land because, in the opinion of Government, the erection of a work, which has this effect, is desirable in connection with the general distribution of water for the public benefit. The fact that the opening of the calingula was necessary for the protection of the tank, and the fact that there was no negligence in the con-

construct the calingula in question, it would be for Government to show that they could not exercise their statutory powers without injuring the plaintiffs' lands. The position of persons acting under statutory authority discussed. *Held*, also, that the injury was a continuing one and that the suit was governed by s. 24 of the Limitation Act and was not barred by limitation. SANKARAYADIVELU PILLAI v. SECRETARY OF STATE FOR INDIA (1905) . I. L. R. 28 Mad. 72

3. — Water-course—Construction of new channel—Prior to construction water flowed naturally or percolated without definite course—Material alteration. Plaintiff sued for an injunction to restrain defendant from making or using a water channel. Prior to the construction of the channel, all the water that flowed from the defendant's land on to the plaintiff's found its way there by natural flow or percolation and was not carried down by any definite water course. The effect of the channel was to collect water, which formerly flowed from a large tract of land at different points in a definite channel and to throw it all into a particular part of the plaintiff's channel. *Held*, that plaintiff was entitled to the relief sought. Even though no greater quantity of water might eventually be carried into plaintiff's channel than had hitherto run into it, the new channel effected a material alteration in the mode

IMPROVEMENTS—*contd.*

of the passage of the water from the defendant's land into that of the plaintiff. Such a change plaintiff was entitled to object to. VEKKATAGIRI v. MODDURKISHNA (1905) . I. L. R. 28 Mad. 15

## INAM.

See ACT OF STATE.

I. L. R. 11 Bom. 235

See BOMBAY REVENUE JURISDICTION ACT, s. 4 . I. L. R. 16 Bom. 319

See GRANT—CONSTRUCTION OF GRANTS.

4 Bom. A. C. 1

11 Bom. 182

I. L. R. 9 Mad. 307

I. L. R. 13 I. A. 32

I. L. R. 16 Mad. 1

I. L. R. 16 Mad. 257

See GRANT—RESUMPTION OR REVOCATION OF GRANT.

I. L. R. 14 Mad. 341

See INAM COMMISSIONER.

See INAMDAR.

See JACHIR.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

11 Bom. 39

I. L. R. 16 Bom. 525

See LIMITATION . I. L. R. 27 Mad. 16

See PARTITION—RIGHT TO PARTITION—

GENERALLY . I. L. R. 21 Bom. 458

I. L. R. 27 Bom. 353

See RESUMPTION—EFFECT OF RESUMPTION . . . . . 1 Bom. 22

I. L. R. 9 Bom. 419

I. L. R. 10 Bom. 112

I. L. R. 11 Bom. 235

See SERVICE TENURE.

I. L. R. 17 Bom. 431

I. L. R. 20 I. A. 50

See . . . . .

See RESUMPTION—EFFECT OF RESUMPTION . . . . . I. L. R. 26 Mad. 339

See RIGHT OF SUIT—OFFICE OR ENROLLMENT . . . . . I. L. R. 8 Mad. 249

I. L. R. 15 Mad. 284

I. L. R. 20 Mad. 454

I. L. R. 21 Mad. 47

I. L. R. 22 Mad. 204

I. L. R. 23 Mad. 47

Government and a fresh grant in favour of

## INAM—cont'd.

persons named in the title-deed. It disannexes the inam from the office, converts it into ordinary property and releases the reversionary rights of the Crown in the inam, but does not confer on the persons named in the title-deed any rights in derogation of those possessed by other persons in the inam at the time of the enfranchisement. Case-law considered. *Narayana v. Chenzalamma*, 1 L. R. 10 Mad. 1, approved. *Gunnayyan v. Kamakshi Ayyar*, 1 L. R. 6 Mad. 332, approved. A Hindu widow cannot alienate beyond her own life-time service inam enfranchised in her name under Madras Act IV of 1864. *PINGALA LAKSHMIATH v. BOMMIREDDIPALLI CHALAMAYYA* (1907) 1 L. R. 30 Mad. 434

2. ——— Enfranchisement of lands framing—Enfranchisement, no resumption and fresh grant—Adverse possession, right acquired by, can be inherited or conveyed—Lapse of time does not change character of estate. Where a service inam, which consists of land and not the assessment only thereon, is enfranchised, such enfranchisement only disannexes the land from the office and converts it into ordinary property releasing the reversionary right of the Crown in the inam. It has not the effect of a resumption and fresh grant so as to affect the rights of other persons existing at the time of the enfranchisement. *Pingala Lal-himipathi v. Bommireddipalli Chalamayya*, 1 L. R. 30 Mad. 434, referred to. A person holding property adversely for less than the statutory period, acquires, as against every one but the true owner, an interest capable of

statutory period, converted into an absolute estate. Mere lapse of time will not change the character of such estate, in the absence of evidence to show that she claimed an absolute interest in such properties. *SUBBAROYA CHETTY v. AYYASWAMI AYYAR* (1908) 1 L. R. 32 Mad. 88

## INAM COMMISSIONER.

See INAM.

See INAMDAR.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY. 1 L. R. 13 Bom. 442

——— rent fixed by—

See MADRAS REGULATION XXV of 1802, s. 4 1 L. R. 18 Mad. 34

See MADRAS RENT RECOVERY ACT, s. 1 1 L. R. 18 Mad. 40

1. ——— Certificate of, effect of—*Mad. Reg. IV of 1831*. The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person to whom it was granted, nor is his decision one over which the Civil Courts have

## INAM COMMISSIONER—cont'd

no jurisdiction. His duties were not of a judicial character, but he was authorized to deal with those in possession of inams on certain terms varying with the nature of the holding which incidentally he was to determine, but for the prescribed purpose only, the nature of the title by which the person whom he found in possession actually held it. *Sundaramurti Nudali v. Pallinayaki Ammal*, 1 Mad. 465, distinguished. *VISSAFFA v. RAMAJOGI* 2 Mad. 341

2. ——— Effect of decision of—*Right of suit by inamdar against Government officer infringing decision*. The Inam Commissioner's decisions, under Act XI of 1852, on matters falling within his jurisdiction, are final, except when and as modified by an appeal to Government in its judicial capacity under the Act, and binding not only upon the inamdar, but upon the Government itself

10 Bom. A. C. 471

3. ——— In an enquiry under Act XI of 1852 the Inam Commissioner, on

1 L. R. 2 Bom. 520

## INAMDAR.

See BOMBAY LAND REVENUE ACT, ss. 83, 86 1 L. R. 18 Bom. 586

See BOMBAY LAND REVENUE ACT, s. 216. 1 L. R. 18 Bom. 525

See BOMBAY LOCAL FUNDS ACT, 1869, s. 8 1 L. R. 17 Bom. 422

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE 8 Bom. A. C. 23

1 L. R. 3 Bom. 141, 348

1 L. R. 17 Bom. 475

1 L. R. 29 Bom. 415

See FOREST LANDS 1 L. R. 28 Mad. 80

See GRANTS 1 L. R. 29 Bom. 480

See INAM.

See INAM COMMISSIONER.

See JURISDICTION OF CIVIL COURT—CUSTOMARY PAYMENTS. 1 L. R. 18 Bom. 849

See LANDLORD AND TENANT—EJECTMENT—GENERALLY. 1 L. R. 19 Bom. 138

See LANDLORD AND TENANT—NATURE OF TENANCY 1 L. R. 17 Bom. 475

See LAND REVENUE CODE (BOM. ACT V of 1879).



**INAMDAR—concl'd**

grant is to last during the term of its existence on its dissolution a similar result follows. Where there has been a well-established user extending over a long series of years it is the duty of the Court, if possible, to find a legal origin to the existing facts. **SECRETARY OF STATE v. MAHABRAO HARI** (1904) **I. L. R. 28 Bom. 270**

**5. — Land Revenue Code (Bombay Act I of 1879), s. 53—Grantee of Royal share of revenue or of soil—Miras tenant—Enhancement of rent—Sheri lands—Contractual relation—Usage of the locality—Enhancement to be just and reasonable.** A grant to an Inamdar may be either of the Royal share of revenue or of the soil; but ordinarily it is of the former description and the burden rests on the Inamdar to show that he is an alienee of the soil. Where an Inamdar is alienee only of the land revenue, then his relations towards those who hold land within the area of the Inam grant, vary according to certain well-recognized principles. If the holding was created prior to the grant of the Inam, then the Inamdar as such can only claim land-revenue or assessment;

tenants in possession of them, even if only a grantee of revenue. With respect to the latter class of holding, direct contractual relations would be established between the Inamdar and the holder. If no such contract can be proved, recourse must be had to s. 83 of the Land Revenue Code (Bombay Act V of 1879). In the absence of satisfactory

an Inamdar to enhance rent of Miras land, it must be determined whether what was paid was rent and whether the Inamdar has a right to enhance as against one, who holds on the same terms as the defendant does; the test is whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure. **RAJYA v. BALKRISHNA GANGADHAR** (1905)

**I. L. R. 28 Bom. 415**

**INCITEMENT.**

**See NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT** **I. L. R. 38 Calc. 405**

**INCOME.**

**See ACCUMULATIONS.**

**See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION OF INCOME AND ACCUMULATIONS.**

**See MADRAS DISTRICT MUNICIPALITIES ACT** **I. L. R. 27 Mad. 547**

**INCOME TAX.**

**See BENGAL CESS ACT, 1871.**

**I. L. R. 4 Calc. 576**

**See BENGAL CESS ACT (REV. ACT IX OF 1880).** **I. L. R. 28 Calc. 637**

**See CESS, ASSESSMENT OF.**

**II C. W. N. 1053 ;**

**I. L. R. 35 Calc. 82**

**See MINES** **I. L. R. 34 Calc. 257**

**Contract Act (IX of 1872) ss. 69, 70—Money paid for income-tax by the person assessed and on whom demand is made cannot under these sections be recovered from a person who is alleged to be the party really liable to pay.** When the income-tax authorities assess a person in respect of certain income alleged to be derived by him and recover the tax so assessed from him, such person cannot, under s. 69 or s. 70 of the Contract Act, recover the amount so paid from another person on the ground that such other was in actual receipt of the income. **S. 69** cannot

**RAGHAVAN v. ALAMELU ANIMAL (1907)**

**I. L. R. 31 Mad. 35**

**INCOME TAX ACT (XXXII OF 1880).**

**See ESTOPPEL—STATEMENTS AND PLEADINGS**

**8 W. R. 252**

**24 W. R. 173**

**See RIGHT OF SUIT—INCOME TAX**

**11 W. R. 425**

**(IX of 1880), ss. 24, 25, 27—Appeal in criminal case—Failure to make payment—Sanction of Collector and discretion of.** There were

take the case out of the provisions of that section. To render such a conviction valid, it must be shown that the prosecution was instituted at the instance of the Collector, and the mere sending on the tehsildar's report with an expression of the Collector's general desire to prosecute defaulters cannot be held tantamount to the institution of a prosecution at the instance of the Collector. The provisions of s. 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted. **QUEEN v. CHIT RAM** **2 N. W. 113**



# INCOME TAX ACTS (IX OF 1869 AND XXIII OF 1880).

See APPEAL IN CRIMINAL CASES—ACTS—  
INCOME TAX ACT . 14 W. R. Cr. 71

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

7 Bom. Cr. 78

14 W. R. Cr. 70

## INCOME TAX ACT (II OF 1880).

ss. 3, 4, 5—Religious endowment—

*Madanashin as distinguished from that of Mutuchli—Wali-Farrukhshari property.* The Sajadana-shin of the Sasseeram Khanakah is not liable to be assessed with income-tax under the provisions of Act II of 1880 in respect of such moneys as he draws from the Khanakah properties for the purpose of his own maintenance and that of his family.  
SECRETARY OF STATE FOR INDIA v. MOHIDDIN AHMAD . . . I. L. R. 27 Calc. 674

ss. 21, 22—Liability of agent of company not resident in India. The liability for income-tax of the agent of a company not resident in British India, but in receipt through such agent of income chargeable under the Income Tax Act (II of 1880) . . .

s. 30—Civil Procedure Code (Act XIV of 1882), s. 368—Bringing one out of several legal representatives of a defendant on record—Effect of decree on the estate—Sale of property for arrears of tax—*Lis pendens*—Purchase at sale for arrears of income tax—Subsequent sale in execution of prior mortgage decree—Duty of purchaser at revenue sale to pay amount due under mortgage and prevent sale in execution. Plaintiff, as the assignee of a mortgage executed by the father of first defendant, sued the mortgagor, in 1894, on the mortgage. During the pendency of the suit, and before the decree in it was passed, the mortgagor died. Plaintiff thereupon brought the first defendant on the record, as legal representative, under s. 386 of the Code of Civil Procedure. In December, 1894, a decree for sale was passed which was never impeached as being fraudulent or collusive. As a fact first defendant was not the sole legal representative of the mortgagor, who left two other sons and three daughters. The second son was, at a date subsequent to the decree, assessed to pay income-tax for arrears of which the mortgaged property was sold (under the Revenue Recovery Act), and purchased by second defendant in 1896. In 1897 the mortgaged property was sold in execution of the decree in plaintiff's suit on the mortgage, and plaintiff became the purchaser, the sale being confirmed soon after, and plaintiff obtaining a sale certificate which purported to convey the whole of the mortgaged property to him, and obtaining delivery of

# INCOME TAX ACT (II OF 1880)—contd.

s. 30—contd.

the property, under a 318 of the Code of Civil Procedure, in 1898 Plaintiff was subsequently dispossessed by defendants Nos 2 to 5, and brought the present suit to recover possession of the property. *Held*, that the sale of the property for arrears of income-tax affected only the share of the second son, and not the shares of the other co-heirs, and that, in consequence, the whole of the mortgaged property had not passed to the second defendant under that sale. *Held*, also, that the second defendant, by his purchase, had acquired only the equity of redemption in respect of the second son's share in the mortgaged property. The effect of s. 30 of the Income Tax Act is not to convert income-tax into an arrear of land revenue, due in respect of the land which may be brought to sale . . .

whom he alleges to be the legal representative of the deceased defendant, such person sufficiently represents the estate of the deceased for the purposes of the suit, and, in the absence of fraud or collusion, the decree passed in the suit will bind the estate. *Held*, lastly, that the sale in execution of plaintiff's decree, subsequently to the second defendant's purchase in the revenue sale, extinguished second defendant's equity of redemption. KADIR MOHIDEEN MARAKKAYAR v. METTUKKISHNA AYYAR (1902) . . . I. L. R. 28 Mad. 230

36, Rule 15.

See EVIDENCE ACT, ss. 123, 124, 162.  
I. L. R. 32 Mad. 83

s. 47—Principal place of business of a person, power of Governor-General to declare. S. 47 of the Income Tax Act, so far as it empowers the Governor-General in Council to declare which of several places of business should be deemed to be the principal place of business, applies only to the case of a company or a firm, and not to the case of an individual carrying on business. HADJEE AJAM GOLAN HOSSEIN v. SECRETARY OF STATE FOR INDIA (1901) . . . 5 C. W. N. 257

## INCOME-TAX RETURNS.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR.  
I. L. R. 23 Calc. 850  
I. L. R. 23 I. A. 93

See RULES MADE UNDER ACTS—INCOME TAX ACT (II OF 1880)  
I. L. R. 26 Calc. 281

**INCOMPETENCE.**

*See* MASTER AND SERVANT  
Cor. 70 : 2 Hyde 100  
I. L. R. 2 Calc. 33

**INCONTINENCE.**

*See* UNCHASTITY

**INCORPOREAL HEREDITAMENT.**

*See* FISHRY, RIGHT OF 12 B. L. R. 210

**INCORPOREAL RIGHT.**

*See* SPECIFIC RELIEF ACT (1 of 1877). s. 9  
I. L. R. 20 Calc. 614

— grant of, at the permanent settlement—

*See* BETTHAN RAJ . 13 C. W. N. 454

**INCUMBRANCE.**

*See* BENGAL TENANCY ACT, s. 166 and 167

*See* CIVIL PROCEDURE CODE, 1882, s. 310.  
8 C. W. N. 55

*See* ENCUMBRANCE.

*See* EVIDENCE . I. L. R. 33 Calc. 710

*See* PARTITION . I. L. R. 28 Bom. 201

*See* REVENUE SALE LAW, s. 37.  
10 C. W. N. 497

*See* REVENUE SALE LAW, s. 54  
13 C. W. N. 407

*See* SALE FOR ARREARS OF RENT—INCUMBRANCES

*See* SALE FOR ARREARS OF REVENUE—INCUMBRANCES.

*See* SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY.

5 C. W. N. 497

*See* VENDOR AND PURCHASER—NOTICE.

annulment of—

*See* LANDLORD AND TENANT.  
I. L. R. 34 Calc. 298

**INDECENCY.**

*See* SECURITY FOR GOOD BEHAVIOUR.  
I. L. R. 30 Calc. 366

**INDEMNITY.**

*See* PRACTICE . I. L. R. 31 Bom. 465

— contract of—

*See* VOLUNTARY PAYMENT  
I. L. R. 14 Bom. 299

**INDEMNITY BOND.**

*See* STAMP ACT, 1869, SCH. I, ART. 15  
I. L. R. 1 Mad. 133

**INDEMNITY NOTE.**

*See* STAMP ACT, 1879, SCH. I, ART. 5.  
I. L. R. 5 Bom. 476

**INDEPENDENT ADVICE.**

*See* ATTORNEY AND CLIENT.  
I. L. R. 36 Calc. 493

**INDIAN COUNCILS ACT, 1861 (24 & 25 VICT., c. 67).**

*See* BOMBAY CITY IMPROVEMENT ACT.  
I. L. R. 27 Bom. 424

(24 & 25 Vict., c. 67)—Circular orders passed by Judicial Commissioner of Punjab The circular orders as to the liability of Government for debts of rebels, issued by the Judicial Commissioners of the Punjab, were outlaws within the meaning of 24 and 25 Vict., c. 67. SALJORAM V. SECRETARY OF STATE

12 B. L. R. 187 : 18 W. R. 369  
I. L. R. 1 A. Sup. Vol. 119

s. 22—

*See* APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

I. L. R. 1 Calc. 431

*See* FOREIGNERS

I. L. R. 18 Bom. 686

*See* HIGH COURT, JURISDICTION OF—NORTH-WESTERN PROVINCES, CIVIL.

I. L. R. 11 All. 490

*See* JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

I. L. R. 8 Calc. 68

I. L. R. 4 Calc. 172

I. L. R. 5 I. A. 178

*See* STATUTES, CONSTRUCTION OF.

I. L. R. 11 All. 490

s. 42

— power of Indian Legislatures to affect the prerogative of the Crown—

*See* MADRAS CITY MUNICIPAL ACT s. 341.  
I. L. R. 25 Mad. 457

**INDIAN COUNCILS ACT, 1892 (55 & 58 VICT., c. 14).**

s. 5—

*See* BOMBAY CITY IMPROVEMENT ACT.  
I. L. R. 27 Bom. 424

**INDICTMENT.**

*See* CHARGE.

*See* CHARGE, ADDITION TO OR ALTERATION OF . I. L. R. 32 Calc. 22

**INDIGO.**

*See* INDIGO CONCERN.

*See* INDIGO FACTORY.

*See* INDIGO PLANTER.

— agreement as to cultivation of—

*See* CONTRACT—CONSTRUCTION OF RE-FORTS . . . Marsh. 386

7 W. R. 368

10 W. R. 420

**INDIGO—concl'd.****—cultivation of—**

See Co-SHARERS—ENJOYMENT OF JOINT  
PROPERTY—CULTIVATION.

8 B. L. R. Ap. 45  
23 W. R. 428  
25 W. R. 313, 374  
I. L. R. 8 Calc. 448  
I. L. R. 15 Calc. 214  
I. L. R. 16 Calc. 10  
I. L. R. 17. 110

**Manufacture of indigo—Agricultural purposes—**"Purposes of the tenancy"—**Injunction—Specific Relief Act (I of 1877), s. 54, Illus (k)—Bengal Tenancy Act (VIII of 1885), ss. 23, 25 (a), 188.** The manufacture of indigo cakes from indigo plants is not an agricultural purpose. Where a land has been let out for agricultural purposes generally, the erection of an indigo factory on any part of such land renders it unfit for the "purposes of the tenancy," and the landlord is entitled to a permanent injunction restraining the tenant from erecting the factory. **SURENDRA NARAIN SINGH v. HARI MOHAN MISSEY** 1904) I. L. R. 31 Calc. 174

**INDIGO CONCERN.**

See INDIGO FACTORY.

See LIEN . . . I. L. R. 2 Calc. 68  
11 W. R. 194

See PASTURAGE . . . I. L. R. 31 Calc. 503

See RIGHT OF OCCUPANCY—ACQUISITION  
OF RIGHT—PERSONS BY WHOM RIGHT  
MAY BE ACQUIRED 25 W. R. 117  
I. L. R. 11 Calc. 501

**INDIGO FACTORY.**

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 718

**—assignment of—**

See VENDOR AND PURCHASER—PUR-  
CHASERS, RIGHTS OF.

B. L. R. Sup. Vol. 54  
10 W. R. 311

1. **Lien by custom for price of seed—Liability of mortgagee of factory in possession.** A sold to B, the proprietor of an indigo  
the sale, and after the seed had been planted, C,

upon an indigo factory, or upon the produce of an  
indigo factory, in respect of any debt of the factory

**MONOHUR DASS v. MCNAUGHTEN**  
I. L. R. 3 Calc. 231

**INDIGO FACTORY—concl'd.**

2. **Mortgagee in possession after foreclosure—Liability for rent.** The mortgagee of an indigo factory foreclosed and took possession of the concern in the month of Jey 1282. The rents due from the rayats for the year 1282 became due at the end of Jeyt 1282, and were collected by the mortgagee; the rents for 1283 due to the land-owners from the owners of the indigo concern also became due at the end of Jeyt 1282. Held, that the mortgagee in possession was liable for them. **MACNAUGHTEN v. BHEEKAREE SINGH** 2 C. L. R. 323

**INDIGO PLANTER.**

See INSOLVENT ACT, s. 60.

I. L. R. 21 Calc. 1018

**INFANT.**

See GUARDIAN.

See MINOR.

**—beneficiary—**

See TRESPASS . . . I. L. R. 36 Calc. 28

**contract by—Contract Act (IX of 1872), ss. 10, 11, 63, 247 and 248—Infant's contracts, if illegal—Bond securing debts contracted during minority as well as sum advanced when adult, liability for—Fresh consideration—Infants Relief Act, 1874 (37 & 38 Vict., c. 62), s. 2.** There is nothing unlawful in an infant's paying for the property he has received and promised to pay for—only if he does not perform his promise he cannot be compelled by law to pay. S, an infant, had a business in piece-goods in the course of which he had various dealings

**INFANT MARRIAGE.**

See HINDU LAW—MARRIAGE—INFANT  
MARRIAGE, THEORY OF

I. L. R. 1 Calc. 289

**INFANTICIDE.**

**Infanticide Act, VIII of 1870, s. 2—Rules made by Local Government, North-Western Provinces, Rule VI—Act XVI of 1873, s. 8, cl (3)—Departures of women of proclaimed families from**

**INFANTICIDE—*contd.***

other villages, but also, "other deaths, removals, and arrivals," this last duty is not cast upon him by the provisions of the Infanticide Act itself; for Rule VI is not on this point consistent with the Act. *Held*, therefore, that a chowkdar who had omitted to report the departure of a woman of a proclaimed family from her home was not guilty of an offence under the Infanticide Act. *Held*, also, that the heads of proclaimed families are not bound by any of the rules framed under the Infanticide Act to give information to the chowkdar regarding the departure of the woman of their families. *EMERSON v. BHUTAL* . . . I. L. R. 6 All. 380

**INFANTS' RELIEF ACT, 1874 (37 & 38 VICT., C. 62), s. 2.**

See INFANT . . . 11 C. W. N. 135

**INFLUENCE.**

See UNDER INFLUENCE.

**INFORMATION OF COMMISSION OF OFFENCE.**

See ABETMENT . . . 4 B. L. R. A. Cr. 7  
24 W. R. Cr. 26

See ACCOMPLICE . . . 24 W. R. Cr. 55  
I. L. R. 21 Cal. 328

See CRIMINAL PROCEDURE CODES, s. 45  
(1872, s. 90).

See PENAL CODE, s. 217.  
I. L. R. 1 Mad. 366

See REMAND—CRIMINAL CASES.  
9 B. L. R. Ap. 31

See SEARCH-WARRANT.  
I. L. R. 35 Cal. 1076

1. ——— Duty of Village Munsif. The Village Munsif is bound to report the commission of all offences committed in his village to such person and in such manner as may be most likely to be effectual for the apprehension of the offenders. *ANONYMOUS* . . . 3 Mad. Ap. 31

2. ——— Duty of karnam of village—

3. ——— Obligation to give informa-

*In the matter of the petition of* LUCHMAN PERSHAD GOROO . . . 18 W. R. Cr. 22

4. ——— Presumption of knowledge of offence—Penal Code, s. 176—Refusal to join in offence. The refusal of a person to join in

**INFORMATION OF COMMISSION OF OFFENCE—*contd.***

deceit does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment under s. 176 of the Penal Code for intentional omission to give notice or information for the purpose of preventing the commission of an offence. *QUEEN v. LAHAI MENDEL*, 7 W. R. Cr. 29

5. ——— Omission to report offence—*Penal Code*, s. 186, s. 135  
punished under " " "  
was no omission of an act which he was bound to perform which facilitated the commission of an offence; but that he should be convicted under s. 176, Penal Code, as he was bound to report the offence under s. 135, Act XXV of 1861, after he was informed of it. *GOVERNMENT v. KESREE* . . . 1 Agra Cr. 37

6. ——— Criminal Procedure Code, 1882, ss. 87, 88—Penal Code, s. 176—Omission to give information to police—Proclamation of offender—Presumption—*Omnia presumuntur rite esse acta*—Application of maxim. K was convicted, under s. 176 of the Penal Code, of having intentionally omitted to inform the police of the presence of J, a proclaimed offender, at a certain village. It was presumed by the Court that J was a proclaimed offender because it was proved that the property of J had been attached under the provisions of s. 88 of the Code of Criminal Procedure, 1882. *Held*, that the prosecutor was bound to prove the fact of proclamation. A person legally bound to give information to the police of the presence of a proclaimed offender at a certain place ought not to be prosecuted for omitting to give such information where the police are already aware of the fact. *In re PANDYA* . . . I. L. R. 7 Mad. 436

*BRACHERSON, J.*—It is not necessary, in order to support a conviction under s. 176 of the Penal Code against a person falling within the provisions of s. 45 of the Criminal Procedure Code, for not giving information of an occurrence falling under cl. (d) of that section, to show that the death actually occurred on his land, when the circumstances disclosed show that a body has been found under

that the death took place there. *Idem* (per MITTER,

# INFORMATION OF COMMISSION OF OFFENCE—concl'd.

J.)—It is necessary, to secure a conviction in the latter case, to prove that the death took place or

8. ——— Duty to report sudden death—Criminal Procedure Code, s. 45—Owner of house, distinguished from owner of land—Penal Code, s. 176 Under s. 45 of the Code of Criminal Procedure every owner or occupier of land is bound to report the occurrence therein of any sudden death. The head of a Nayar family was convicted and fined under s. 176 of the Penal Code for not reporting a sudden death in the family house. *Held*, following former decisions of the Court, that the conviction was illegal, because s. 45 of the Code of Criminal Procedure does not apply to the owner of a house. *QUEEN-EMPEROR v. ACHUTHA*

I. L. R. 12 Mad. 92

9. ——— Conviction of giving false information—Penal Code, s. 203. To justify a con-

that the offence had actually been committed, and that the accused knew or had reason to believe that the offence had been actually committed. *QUEEN v. JOYABAI PATRO*

20 W. R. Cr. 68

10. ——— First information—Criminal Procedure Code (Act V of 1893), s. 154. Where, upon information received, from the chaukidar, of the offence (and which information was duly recorded in the Station Diary), the Sub-Inspector had gone to the Hospital to see the wounded man, and had there recorded the statement made by him: *Held*, that this record of such statement can in no sense be regarded as a first information of the offence within the meaning of s. 154 of the Code of Criminal Procedure. *KING-EMPEROR v. DAULAT KUNJRA* (1902)

8 C. W. N. 921

11. ——— Criminal Procedure Code, s. 154—First information, when should it be recorded—Police officer's memorandum, in addition to entry in the diary. Information on which an investigation has commenced is the first information of the occurrence. The law does not contem-

8 C. W. N. 340

# INFRINGEMENTS.

See COPYRIGHT I. L. R. 35 Calc. 463

See EASEMENT I. L. R. 35 Calc. 661

See TRADE-MARK I. L. R. 35 Calc. 311

I. L. R. 34 Calc. 495

# INHERENT POWER.

See PRESIDENCY SMALL CAUSE COURTS Act, 1892, Chap. VII.

I. L. R. 31 Bom. 45

Jurisdiction—Power of High Court to restrain by injunction a person from proceeding with a suit in the Small Causes Court. The High Court of Bombay has inherent power to restrain by injunction a defendant in a suit filed in the High Court from proceeding in the Small Cause Court at Bombay with a suit filed by the defendant referring to the same matter to which the suit in the High Court relates; or from filing further suit relating to the same subject.

# INHERITANCE.

See GRANT 8 C. W. N. 105

I. L. R. 35 Calc. 1069

See HEREDITARY OFFICES ACT (BOMBAY Act III of 1874), ss. 4, 5.

I. L. R. 25 Bom. 470

See HINDU LAW—

CUSTOM—INHERITANCE AND SUCCESSION;

INHERITANCE;

STRIDHAN—DESCRIPTION AND DETENTION OF STRIDHAN;

WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

See MAHOMEDAN LAW—INHERITANCE.

See MALABAR LAW—INHERITANCE.

See NATIVE CHRISTIANS.

I. L. R. 31 Bom. 25

See OUDH ESTATES ACT, s. 22.

disqualification for—

See MALABAR LAW—CUSTOM.

I. L. R. 13 Mad. 209

See MALABAR LAW—INHERITANCE.

I. L. R. 14 Mad. 289

forfeiture of—

See HINDU LAW—

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE;

WIDOW—DISQUALIFICATIONS.

right of—

See HINDU LAW—ADOPTION.

I. L. R. 36 Calc. 824

INHERITANCE—*contd.*

1. ——— Inheritance, partial acceptance or renunciation of—*Liability of heirs for rent*. There cannot be a partial acceptance or renunciation of an inheritance, nor can one of several heirs accept a part only of an inheritance, to the prejudice of the other heirs and of the creditors of the deceased. An acceptance in part has the effect of an acceptance of the whole and carries with it the same liability. If a person accepts the inheritance, in whole or in part, he is bound to discharge the liabilities which attach to the late tenants from whom he inherits, unless he can prove that he has since made a formal surrender of the holding to the landlord. *Mozam Hossain Chowdhury v. Brooddy* (1900) . 5 C. W. N. 189

2. ——— Chiefship of Tank—*Family custom—Inheritance—Primogeniture—Tank, Chiefship of, before British rule—Re-settlement by British Government, effect of—Claim of junior members for maintenance—Grants arising from different sources, if admit of election*. It was found that before the introduction of British rule, the country known as Tank belonged to the Chief for the time being as both ruler and proprietor. Also that succession devolved upon the eldest son, the other members of the family being entitled to maintenance only. On the introduction of British rule, the British Government recognised the proprietary title of the then Chief over some only of the villages, which formerly formed the Pergunnah of Tank, by con-

the above and certain other deductions. In a suit brought by the plaintiff against the defendant in which the former claimed the whole estate, the Chief Court gave the plaintiff the decree asked for and further put the defendant on his election as to "which maintenance he was to take," viz, the village given him by the Chief or the cash allowance made by Government. *Held*, that the Chief Court

the defendant ought not to have been put to his election as to the cash allowance and the assignment of the village, as the two grants had arisen from different sources and were independent of each other. The question whether the grant of the vil-

INHERITANCE—*concl.*

lage to the defendant was permanent or otherwise, was left open. *Sardar Mohammad Aziz Khan v. Nawab Ghulam Kasim Khan* (1901). 8 C. W. N. 81

## INITIALS.

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 C. W. N. 447

See WILL—ATTESTATION. I. L. R. 15 Mad. 812

## INJUNCTION.

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TION OF CONDITIONS OF TENANCY—  
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INJUNCTION—*contd.*

See SUITS VALUATION ACT (VII OF 1887)

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1 C. W. N. 281

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— enforcement of—

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BY AND AGAINST REPRESENTATIVES.

I. L. R. 26 Bom. 283

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See BOMBAY CITY IMPROVEMENT ACT.

I. L. R. 27 Bom. 424

— right to use of water—

See EASEMENT. I. L. R. 30 Calc. 1077

— suit for—

See JURISDICTION OF CIVIL COURTS.

I. L. R. 30 Mad. 400

— to restrain levy of tax—

See BOMBAY DISTRICT MUNICIPAL ACT

(BOMBAY ACT III OF 1901), ss. 32 (c)

AND 86. . . I. L. R. 27 Bom. 403

— to restrain marriage.

See HINDU LAW—MARRIAGE—RESTRAINT

OF, OR DISSOLUTION OF, MARRIAGE.

I. L. R. 1 All. 349

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GIVE IN MARRIAGE AND CONSENT.

I. L. R. 12 Bom. 110

2 C. W. N. 521

See HINDU LAW—MARRIAGE—VALIDITY

OR OTHERWISE OF MARRIAGE.

I. L. R. 14 Mad. 316

— to restrain sale.

See MORTGAGE—POWER OF SALE.

I. L. R. 2 Bom. 252

I. L. R. 17 Bom. 711

— valuation of suit for—

See COURT-FEES ACT (VII OF 1870), s. 7,

CL. IV (d). . . I. L. R. 24 Mad. 34

## 1. UNDER CIVIL PROCEDURE CODES.

1. — Interim injunction—Principles on which it is granted. The Court, in granting an *ad interim* injunction, will first see that there is a *bond fide* contention between the parties, and then on which side, in the event of obtaining a success-

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

ful result to the suit, will be the balance of inconvenience if the injunction do not issue, bearing in mind the principle of retaining immovable property in *statu quo*. On those principles an injunction was granted to restrain the defendants from "selling, alienating, or otherwise disposing of" certain houses, the subject of a suit in which the plaintiff, claiming under the will of his father, sought to set aside proceedings in execution taken by an executor (under whom the defendants claimed) after the death, but before the grant of probate of the will of the deceased, and by which proceedings the executor had seized the houses in satisfaction of his own debt. *GOMES v. CARTER*

1 Ind. Jur. N. S. 411

## 2. — Injunction against person

For guardianship of a minor girl it was alleged on behalf of the applicant, the mother, that an improper marriage was going to be performed by the father and an injunction was prayed for to restrain various persons (including a person who

3. — Power to make order for injunction—*Civil Procedure Code, 1859, s. 92*—Court in which suit is pending—Jurisdiction. Where a Court has no jurisdiction to make an order, it can have no jurisdiction to modify such order. It was not lawful for a District Court, under s. 92 of Act VIII of 1859, to issue an injunction to stay waste, etc., or to appoint a receiver or manager, in respect of property in dispute, in a suit pending in a subordinate Court. The District Judge might withdraw the suit from the subordinate Court to

4. — *Civil Procedure Code, 1859, s. 92*. S. 92, Act VIII of 1859, applies to a case where it is shown to the satisfaction of the Court that the defendant in possession is likely to endamage or make away with any property in dispute in the suit, and empowers the Court in such a



INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

case to issue an injunction to the defendant to refrain from the particular act complained of, and in case of necessity to appoint a receiver or manager of so much of the property only as is in dispute. *JORNAIN GEEREE v. SHIEPESHAD GEEREE* . . .

6 W. R. MIA. 1

5. ———— *Civil Procedure Code, 1859, s. 92—Ground for granting injunction.* The power given to the Civil Court by s. 92, Act VIII of 1859, of issuing injunctions and appointing a receiver *pendente lite* was intended to be exercised only in cases where property, which it was essential should be kept in its existing condition, was in danger of being destroyed, damaged, or put beyond the power of the Court. *MEK MOHSEE DASSEE v. ICHAMOE DASSEE* . . .

13 W. R. 60

6. ———— *Expression of intention to take attached property—Ground for granting injunction.* In a suit to recover a specific sum of money which had been attached by the Magistrate where defendant expressed his intention to take the money for the purpose of investing it in trade. *Held*, that defendant's admission was sufficient evidence to show that the money was in danger of being alienated within the meaning of s. 92 of the Code of Civil Procedure. *GOLUCK CHUNDER GOONO v. MOHRI CHUNDER GHOSE* . . .

13 W. R. 85

7. ———— *Injunction as to property, duration of—Receiver.* The power of a Court to attach property and to appoint a receiver extends only to the better management or custody of any property which is in dispute, and ceases when the suit comes to an end. An injunction in respect of property cannot be maintained after a claim is dismissed, or pending an appeal. *MONEOODDEEN v. AHMED HOSSEIN* . . .

14 W. R. 384

8. ———— An injunction could not be issued under s. 92, Code of Civil Procedure, on a mere allegation that the defendant wished to realize debts by bringing actions in Court, without proof of an intention of waste, damage, or alienation. *PROSSENO MOYEE DOSSEE v. WOOMA MOYEE DASSEE* . . .

14 W. R. 403

9. ———— *Grant of injunction—Stay of proceedings in mofussil against Court receiver.* Injunction granted by the Court to restrain proceedings in the mofussil against the Court Receiver. *BEERA CHAND GOSSAI v. HOGA* . . .

Cor. 58

10. ———— *Stay of sale.* The plaintiffs, who were in possession of certain

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

tor, had no interest in the property at the time of their mortgage to the defendant. The plaintiffs applied for an *ad interim* injunction, and the Court granted the application. *RUFAL KHETTY v. MAHIMA CHANDRA ROY* . . .

5 B. L. R. 254

SEZENARAIN CHUCKERBUTTY v. MILLER

5 B. L. R. 254 note

11. ———— *Restrain execution of decree—Family dwelling house—Suit for partition.* A obtained a decree against B and others (Hindus), on a title of purchase from them, for possession of an undivided moiety of a dwelling-house, to the remaining moiety of which C (a Hindu) alleged he was jointly entitled, and that he and his family were in possession. On A's proceeding to obtain execution of his decree, C brought a suit, alleging that A had obtained no title under his purchase, and praying for partition of the property. On application for an interim injunction to restrain A from executing his decree pending the partition suit, the Court granted the application. *ANANT NATH DEY v. MACKINTOSH* . . .

6 B. L. R. 571

12. ———— *Stay of execution of decree—Civil Procedure Code, s. 1559, s. 92.* The purchaser of a share of a decree who has failed in the endeavour to get the Court executing it to put him upon the record for the purpose of obtaining the benefit of the decree has no right to an injunction to prevent the decree-holder from executing the whole decree without regard to the sale, even if the purchase is made on behalf of the judgment-debtor; he could only get a right to an injunction of the kind if the sale amounted to a release from the decree-holder to the judgment-debtor from his liability under the decree. *ROBINUNISSA v. LEAKY ALI KHAN* . . .

22 W. R. 508

13. ———— *Stay of sale in execution of decree—Civil Procedure Code, 1859, s. 92.* Certain immovable property was attached in execution of a decree obtained by F against N. A claim was made by S, who alleged that the property was his, and that he was entitled to execute his decree against the property in dispute. N was subsequently made a party to the suit under s. 73 of Act VIII of 1859. From the order granting the injunction L appealed to the High Court. *Held*, that this was not a proper case for the issue of an injunction under s. 92. There was nothing to show that the property in dispute was in danger of being wasted, damaged, or alienated by L, nor was the property in his possession. The proper course would have been for S to have applied by petition for a postponement of the sale, the attachment continuing. The Court ordered the injunction to be dissolved, and that an order should be entered on the execution proceedings staying the sale pending S's suit, leaving it open to L, in case there should be

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

undue delay, to make application to the Court for an immediate sale. LUTCHMEPUT SINGH v. SECRETARY OF STATE

11 B. L. R. Ap. 28; 20 W. R. 11

See DOORGA CHURN CHATTERJEE v. ASHUTOSH DUTTA 24 W. R. 70

14. ———— *Civil Procedure Code, 1882, ss. 492, 494—Temporary injunction—Practice—Notice to opposite party.* Where a Court made an order granting a temporary injunction under s. 492 of the Civil Procedure Code without

portunity to show cause. *Held*, that the order was irregular. Where ancestral property was attached in execution of a decree, and a son of the judgment-debtor instituted a suit to establish his right to the property and made an application for a tem-

cedure Code being made as prayed, the temporary injunction ought not to have been granted. ANJOLAK RAM v. SAMBI SINGH 1 L. R. 7 All. 550

15. ———— *Notice under s. 494—Civil Procedure Code (Act XIV of 1882), s. 492.* The appellant took a lease of certain lands below Paresh-nath Hill and commenced manufacturing hog's lard thereupon. The plaintiffs, who belong to the Jain community, applied for an injunction restraining the said manufacture on the ground that it wounded their religious prejudices. The Deputy Commissioner, without any notice to the opposite party, granted the injunction on the ground that the matter was urgent in connection with offending religious feelings and customs. *Held*, that

25, approved of. BADDAM v. DHANPUT SINGH 1 C. W. N. 429

a Subordinate Judge, which decree was confirmed by the High Court on appeal. A then applied for execution. In the execution-proceedings the sons of B intervened claiming a portion of the properties

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

attached; this claim was dismissed, and the sons of B brought a regular suit before the same Subordinate Judge to have their rights to the property declared, and obtained an interim injunction restraining A from executing the decree without the

their appeal to the High Court. This application was granted. *Held*, that the Subordinate Judge had no right to restrain the decree-holder from executing his decree merely on the possibility of the Appellate Court reversing his decision. GOSSAIN MONEY PURER v. OURU PERSHAD SINGH

I. L. R. 11 Cal. 146

17. ———— *Injunction to stay sale pending suit to establish title—Civil Procedure Code, 1882, s. 492—Civil Procedure Code, 1859, s. 92—Superintendence of High Court under s. 622, Civil Procedure Code, 1882.* A claim by R to certain property which had been attached by B in

the Code of 1882 has, and was intended to have, wider application than s. 92 of Act VIII of 1859 had, and provides a remedy where property is "in danger of being wrongfully sold;" if the circumstances justified it, an order could have been obtained under that section from the Court of the second Subordinate Judge to stay the sale. There being this alteration in the law, and such a remedy provided, and no express provision in the Code for stay of execution by a Court executing a decree on the application of a third party, the order of the first Subordinate Judge was made without jurisdiction, and should be set aside. *In the matter of the petition of BROJENDRA KUMAR RAI CHOWDHURI, BROJENDRA KUMAR RAI CHOWDHURI v. RUTALL Doss* I. L. R. 12 Cal. 516

18. ———— *Contradictory affidavits—Irreparable injury—Letters Patent, 1862 and 1863—Civil Procedure Code, 1859, ss. 92 and 94—Ap-*

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

performance of an alleged agreement between themselves and the defendants, under which they were, on certain terms, entitled to the use and occupation of the dock until the repairs of two of their vessels were completed; and for an injunction to restrain the defendants from ejecting them until the completion of the repairs. In support of an application for an interim injunction to restrain the defendants from taking proceedings to eject the plaintiffs until their suit had been heard, the affidavits of the plaintiffs stated that on the faith of the agreement one of their steamers had been docked and taken to pieces; that the repairs could not be finished for a considerable time, and that the vessel could not be removed from the dock without great loss and irreparable injury to them. The affidavits

ment having come to an end, they were entitled to reject the plaintiffs; they did not deny the loss to the plaintiffs which would be the result of moving the vessel before repairs were completed, nor did they allege any delay in making the repairs, but they submitted that such loss would be the consequence of the plaintiffs' own act in docking their vessel without any final agreement having been come to between the parties. The dock was situated in the district of Hooghly, and the defendants' suit for possession unless transferred to the High Court, would be tried in the Hooghly Court. There were facts which, in the opinion of the Court, went to show that the plaintiffs had acted *bona fide*. *Held* (per *BLACKBURN, J.*), on the above facts, that, inasmuch as the plaintiffs' statements, if true, raised a fair and substantial question for decision as to the rights of the parties, and looking to the inconvenience of allowing the same matter to be litigated simultaneously in different Courts between the same parties, the plaintiffs were entitled to an interim injunction restraining the defendants from bringing their suit until the plaintiffs' suit was heard. *Semle*: An interim injunction may issue, although there is a contradiction on the facts. On appeal the Court was of opinion that, under the circumstances, there was an equity which entitled the plaintiffs to be kept in quiet and undisturbed possession of the dock until the repairs were completed, and confirmed the order for an interim injunction but modified it by restraining the defendants not from bringing their suit, but merely from executing any decree they might obtain therein until the plaintiffs should have had a reasonable time to complete the repairs of their vessel. Although by the Letters Patent of 1863 the provisions of Act VIII of 1859 were not expressly made applicable to the High Court, as was done by the Letters Patent of 1862, *semle*: the order granting the injunction was an order under s. 82, Act VIII of 1859, and therefore an appeal lay under s. 94. *MONAN & RIVERS STEAM NAVIGATION COMPANY v. 14 B. L. R. 352*

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

19. ——— Suit for specific performance of agreement to give in marriage—*Civil Procedure Code, 1859, s. 92, 93* Ss. 92 and 93 of Act VIII of 1859 are not applicable to a suit for specific performance of a contract to give in marriage, and the Court will not grant an interim injunction to restrain the defendant from making another marriage with a third person. *In the matter of GUNPAT NARAIN SINGH*

*I. L. R. 1 Cal. 74*

*S. G. GUNPAT NARAIN SINGH v. RAJEN KOOER*

*24 W. R. 207*

20. ——— Temporary injunction—*Civil Procedure Code, 1852, s. 493*—"Other injury" The words "or other injury" in s. 493 of the Code of Civil Procedure do not include acts of trespass upon property. *DARAN KUAR v. GOURT KUAR*

*I. L. R. 23 All. 449*

21. ——— *Civil Procedure Code, s. 492, 493*—Temporary injunction restraining alienation of property in suit—Mortgage of such property not void—Contract Act (IX of 1872), s. 23. The effect of a temporary injunction granted under

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for the breach of an injunction granted under s. 492  
*DELHI AND LONDON BANK v. RAM NARAIN*

*I. L. R. 9 All. 497*

22. ——— *Civil Procedure Code, 1852, s. 492*—"Wrongfully" sold in execution

and the judgment-debtors, in which he claimed (a) a declaration of his right to the bond and (b) to the payment of money from the judgment debtors

temporary injunction under s. 492 of the Code restraining the decree-holder from bringing the bond to sale in execution of the decree. *Held*, that, although in such cases the provisions of s. 492 should be applied with the greatest care, one of the objects of the Legislature in passing that section was to guard as far as possible against multiplicity of suits, and as many complications probably resulting in further litigation were likely to arise if the decree-holder were allowed to proceed with the

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

execution-sale, and no practical injury to any one would be caused by restraining her from so doing until the decision of the appeal, a temporary injunction should be granted subject to security being given by the appellants. *KIRPA DAYAL v. RANI KISHORI* I. L. R. 10 All. 80

23. ———— *Civil Procedure Code, 1882, ss. 422 and 603—Appointment of receiver.* The distinction between a case in which a temporary injunction may be granted and a case in which it may not be granted is that in the former the plaintiff has a fair question to raise as to the existence of the right alleged, while in the latter case a good and sufficient title has been established.

that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged, while in the latter case a good and sufficient title has been established.

1892) was set aside, and an order for a temporary injunction, under s. 492 of the Code, granted *CHANDIDAT JHA v. PADMANAND SINGH* I. L. R. 23 Cal. 459

24. ———— *Temporary injunction Civil Procedure Code (Act XIV of 1882), s. 493—Specific Relief Act (I of 1877), ss. 54, 56, 57—Breach of negative covenant.* Plaintiffs advanced money to the defendants for the purpose of carrying on work in certain mica mines, in pursuance of an agreement by which defendants undertook in consideration of the advance, to send all the mica produced from the mines to plaintiffs, and bound themselves not to send any of it to any firm other than plaintiffs, or keep any in stock. Plaintiffs now complained that defendants had, in breach of their agreement arranged to consign, and had already made consignments of, mica to another firm, and were keeping mica in stock. Plaintiffs filed this suit for specific performance, and for an injunction restraining defendants from acting in violation of the terms of the agreement. A temporary injunction was subsequently applied for and obtained. Upon an appeal being preferred by defendants against the order granting the temporary injunction. *Held*, that the injunction was rightly granted. The granting of such an injunction, under s. 493 of the Code of Civil Procedure, is a matter of judicial discretion. *Quære*—Whether the principles which govern the grant of a temporary injunction under the Code of Civil Procedure are the same as those which are laid down in the Specific Relief Act relating to the grant of a perpetual injunction. *Nusservanji Merwanji Panday v. Gordon*, I. L. R. 6 Bom. 265, referred to. *SUBBA NAIDU v. HAJI BADSHA SAHIB* (1902) I. L. R. 28 Mad. 166

25. ———— *Temporary injunction to restrain suit brought by defendant in the*

INJUNCTION—*contd.*1. UNDER CIVIL PROCEDURE CODES—*contd.*

*Small Causes Court—Civil Procedure Code (XIV of 1882), ss. 492, 493—Specific Relief Act (I of 1877), ss. 53, 54 and 56.* In a suit by plaintiffs in the High Court to recover damages for breach of contract they sought to obtain an interlocutory injunction restraining the defendant from proceeding with a suit filed by the defendant against the plaintiff in the Small Causes Court, in respect of the same contract, until the hearing of the High Court suit. *Held*, that an application to restrain a suit in the Small Causes Court does not come within the provisions of ss. 492 and 493 of the Civil Procedure Code. The provisions of the Civil Procedure Code as to temporary or interlocutory injunctions are not the same as those under the Judicature Act, 1873, s. 25, sub-cl. 8. As the injunction asked for is a perpetual one, it can, under the Specific Relief Act, only be granted by the decree made at the hearing. *JAIRAMDAS GANESHDAS v. ZAMONYAL KISSORILAL* (1903) I. L. R. 27 Bom. 357

26. ———— *Civil Procedure Code, s. 492—Indian Contract Act (IX of 1872), s. 23* *Held*, that an alienation made pending a temporary injunction under s. 492 of the Code of Civil Procedure is not void under either s. 23 of the Indian Contract Act, 1872, or any other law. *Delhi and London Bank, Ltd. v. Ram Narain*, I. L. R. 9 All. 497, followed. *MANOHAR DAS v. RAM AUTAR PANDE* (1903) I. L. R. 25 All. 431

27. ———— *Jurisdiction—* *instituted in the High Court for money due on a balance of account, sought for an injunction to restrain the defendants from proceeding with a suit previously instituted in the Court of the Subordinate Judge at Bareilly, in which the present defendants sought to recover from the present plaintiffs a sum of money as balance due to themselves on the same account. Held*, that the High Court was competent to grant the injunction. The powers of the High Court to grant temporary injunctions are not confined to the terms of ss. 492 and 493 of the Civil Procedure Code. *MCNOLLE CHAND v. GOPAL RAM* (1906) I. L. R. 34 Cal. 101

28. ———— *Jurisdiction—General equity—Jurisdiction of High Court—Injunction to restrain proceeding with Small Cause Court suit—Civil Procedure Code (Act XIV of 1882), ss. 492, 493—Specific Relief Act (I of 1877), ss. 53, 54* *Held*, that an application to restrain a suit in the Small Causes Court for ejectment of the former from

## INJUNCTION—contd.

1. UNDER CIVIL PROCEDURE CODES—concl'd.

the same premises. *Held*, that the High Court has power under its general equity jurisdiction to grant an injunction of this character, independently of the Code of Civil Procedure. *Jairamdas Ganeshdas v. Zamonlal Kisorilal*, 1 L. R. 27 Bom. 357, dissented from. *Hukum Chand Boid v. Kamal-nand Sing*, 1 L. R. 33 Cal. 927, *Hart v. Grosier*, 9 C. W. N. 748, *Mungle Chand v. Gopal Ram*, 1 L. R. 34 Cal. 101, referred to. RASH BEHARY DEY v. BHUVANI CHANDR BOSE (1906)

L. L. R. 34 Calc. 97

29. ——— Injunction to restrain proceedings in Court beyond jurisdiction—Jurisdiction of High Court—Injunction to restrain proceedings in a *Mofful Court*—Jurisdiction of Courts of Equity—*Foreign Courts*. The jurisdiction of the High Court to restrain proceedings in Courts outside its jurisdiction is governed by the same principles as those that govern Courts of Equity in England, namely, that the party, whom it is sought to restrain must be either the *locus in quo* or the *res*.

*L. O. 416*, followed. *Munglé Chand v. Gopal Ram*,  
*I. L. R. 34 Cal. 101*, not followed. A Court of  
 Equity can only restrain a person from proceeding

## 2. SPECIAL CASES.

(a) ALIENATION BY WIDOW.

1. ——— Interim injunction, grounds for continuing to hearing—Consent of next reversioner—Rights of remote reversioners. A Hindu died, leaving a widow and also leaving A, his immediate reversionary heir, and B and C, more remote reversionary heirs. The widow obtained a certificate to collect debts, but such certificate did

widow and *D* and *A* for the purpose of having the first-mentioned decree set aside, for a declaration that the decree on the compromise was inoperative to establish or confirm the fraudulent decree, or to enlarge the powers of the widow to deal with the Government securities, and obtained an interim injunction. *Held*, that, apart from the question as to whether an alienation by a widow and next reversioner without the consent of subsequent

**IN JUNCTION—contd.**

## 2. SPECIAL CASES—contd.

(c) ALIENATION BY WIDOW—concl'd.

reversioners is binding on them, which question the Court was prepared to answer in the negative, it would, under the circumstances of the case, be an

MOKERJEE v. KALLY DOSS MELICK

I. L. R. 10 Cal. 225

#### (b) BREACH OF AGREEMENT

2. — Association of artisans for acquisition of gain—Registration of association—Illegal agreement. Where more than twenty artisans signed an agreement, whereby they constituted themselves an association for the purpose of enhancing the price of their work by turning all the business of the trade into one shop, done amongst all, but which was a company under Act X of 1860; Held, that the Court could not grant an injunction to restrain the breach of such agreement. **BEKAJI SABAJI v. BAPU SAGJI**

3. ——— Agreement for a charter-party—Interim injunction—Threatened breach of

is only an agreement for a charter-party, no such injunction will be granted. **ABDUL ALLARAKHI v. ABDUL BACTIA** . . . I. L. R. 6 Bom. 5

4. ——— Restraining partner from excluding co-partner from partnership  
Injunction granted to restrain a partner from excluding his co-partner from the partnership business and from doing any act to prevent its being carried on according to the articles. **VIRDACHELLA NATTAI v. RAJASWAMI NAYAKAN**. 1 Mad 341

without the consent of the co-sharers, or the separation of his share by a butwarrah, because of alleged interference with the rights of the said co-sharers, holding that the remedy lay in an action for damages. CROWDY v. INDAR ROY. 1914, 108

6. ——— Interim injunction—Injunction to restrain adoption—Practice. A, a Hindu, and immovables be-  
thar and an agree-

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(b) BREACH OF AGREEMENT—*contd.*

ment, one of the terms of which was that the widow (the defendant) should not adopt a son, and that

the plaintiff, he applied for an interim injunction, alleging that the defendant intended to adopt a son the next day (Sunday, 26th August). The Court refused the interim injunction. *Assur PURSHOTAM v. RATANBAI*. I. L. R. 13 Bom. 56

7. ——— *Specific Relief Act (I of 1877), ss. 20, 21, 57—Contract Act (IX of 1872), s. 39—Contract for personal service—Contract for more than three years.* The defendant signed an agreement in England with a railway company, whereby he contracted to serve the company exclusively for four years in India under a penalty of £100. The defendant, having come to India at

locomotive superintendent. *Idem*, that the defend-

8. ——— *Agreement not to work for a rival tradesman—Specific Relief Act (I of 1877), ss. 22, 54, and 57—Agreement made when under criminal charge—Discretion of Court in granting specific performance—Negative agreement—Damages—Form of decree.* The plaintiff was a

he was indebted to the plaintiff for moneys not accounted for and also in respect of loans made to him. The plaintiff instituted criminal proceedings in the Police Court against the defendant for criminal breach of trust, and procured a warrant for his arrest. The defendant surrendered, and at the time of the agreement hereinafter mentioned the proceedings in this matter were going on. The defendant was out on bail, and was then in the

(u) to enter plaintiff's service as cutter and to serve him for ten years from the date of agreement; (vi) to serve plaintiff honestly; (iv) in case plaintiff

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(b) BREACH OF AGREEMENT—*contd.*

was obliged to dismiss him for some "fault" then until the expiration of the said period of ten years, the defendant should not carry on the business of

quently called upon the defendant to enter his employment in accordance with the agreement, but the defendant refused, and remained in the service of B. The plaintiff therefore filed this suit

discretion permitted to the Court by s. 22 of the Specific Relief Act (I of 1877) the injunction should be refused. *CALLIANJI HARJIVAN v. NARSI TRICUM*. I. L. R. 18 Bom. 702

ordered an inquiry as to damages. The plaintiff

9. ——— *Contract for personal service—Contract not to practice as physician.* A agreed on certain terms to become assistant for three years to B, who was a physician and surgeon practising at Zanzibar. The letter which stated the terms "which B offered and which (as the Court found) A accepted, contained the words "the ordinary clause against practising must be drawn up." At the end

I. L. R. 23 Bom. 103

10. ——— *Breach of negative covenant—Civil Procedure Code (Act XIV of 1852), s. 493—Temporary injunction—Specific Relief Act (I of 1877), ss. 54, 55, 57—Injunction.* Plaintiff advanced money to the defendants for

## INJUNCTION—contd.

## 2. SPECIAL CASES—contd.

## (b) BREACH OF AGREEMENT—contd.

the purpose of carrying on work in certain mica mines, in pursuance of an agreement by which defendants undertook, in consideration of the advance, to send all the mica produced from the mines to plaintiffs and bound themselves not to send any of it to any firm other than plaintiffs, or keep any in stock. Plaintiffs now complained that defendants had, in breach of their agreement, arranged to consign, and had already made consignments of, mica to another firm, and were keeping mica in stock. Plaintiffs filed this suit for specific performance, and for an injunction restraining defendants from acting in violation of the terms of the agreement; a temporary injunction was subsequently applied for and obtained. Upon an appeal being preferred by defendants acting, the order granting the temporary injunction: *Held*, that the injunction was rightly granted. The granting of such an injunction under s. 493 of the Code of Civil Procedure is a matter of judicial discretion. *Quere*: Whether the principles which govern the grant of a temporary injunction under the Code of Civil Procedure are the same as those which are laid down in the Specific Relief Act relating to the grant of a perpetual injunction. *Narayanji Jiwansaji Pandey v. Gordon*, I. L. R. 6 Bom. 266, referred to. *SCBBA NARAYAN v. HARI RAMESH SAINI* (1902) I. L. R. 26 Mad. 168

## (c) BUILDING.

11. ——— Temporary injunction—*Damages*. Where a plaintiff sues the defendant for a perpetual injunction restraining him from building a house on a parcel of land alleged to be within the plaintiff's patti and let out to the defendant as a mere tenant-at-will, and the Court below had granted a temporary injunction *pendente lite*; *Held* that the temporary injunction must be maintained upon the plaintiff undertaking to indemnify the defendant in the event of the dismissal of his action; *Held*, further, that in such a case matters should be allowed to remain as far as possible *in statu quo*, and that the defendant must not be placed in a position to say afterwards, upon the basis of his own act, that on equitable considerations demolition should not be insisted upon. *CHANDRA NATH PAL v. GOVIND CHOWDHRY* (1900) 8 C. W. N. 308

12. ——— Mandatory injunction—*Discretion of Court*—Landlord cannot have mandatory injunction in respect of building, if, knowing of the obstruction he does not object. Where the tenant of an agricultural holding constructs a building of a character not suitable to such holding, with the knowledge of the landlord, such landlord is bound not only to object but to take legal steps to stop the progress of the work; and, in default of doing so, the landlord is not

## INJUNCTION—contd.

## 2. SPECIAL CASES—contd.

## (c) BUILDING—contd.

entitled to a mandatory injunction for the demolition of the building. The same principle will apply where the party building is not the tenant, but one who does so under agreement with the owner of the land in right. *Renele Coomaraswamy Dass v. Sudhakar Dass*, I. L. R. 16 Cal. 252, followed. *Sankaralingam Chettiar v. Stephen Augustus Ellis*, S. J. No. 339 of 1911 (unreported), followed. *ULAKARTI ANSULIN v. CHIDAMBARAM CHETTY* (1901)

I. L. R. 29 Mad. 497

## (d) COLLECTION OF RENTS.

13. ——— Suit to restrain collection of rents—*Damages*, *proof of*. An injunction to restrain the defendant from collecting, without any title, from the raiyats of the plaintiff's estate, two annas rent over and above the full sixteen annas in the rupee, may be granted without proof of actual damage. *NADARATHNA CHOWDHRY v. RAM CHANDER SETHA* . . . W. R. 1864, 862

## (e) CUTTING TREES.

14. ——— *Muslims*: Cases of *adumu gus* and *ruqba al-alam*—*Question whether common law rights of owner can be limited by religious prejudices of neighbours*. Certain plaintiffs sued for an injunction restraining defendants from obstructing them in cutting certain branches of a pipal tree overhanging their property. The pipal tree grew in the inclosure of a temple, and the resistance was based on the ground that the tree was an object of veneration to Hindus, and that the lopping of its branches would be offensive to the religious feelings of the Hindu community. *Held*, that the plaintiffs were entitled to the injunction prayed for, and that the fact that the plaintiffs' action might cause annoyance to a large number of Hindus was not a sufficient ground for cutting down the well-recognized common law rights of an owner of property. *BEHARI LAL v. GHNA LAL* (1902) I. L. R. 24 All. 489

## (f) DIGGING WELL.

15. ——— Restraining the digging of a well—*Zamindar*—*Talukdar*. The digging of a well by a talukdar intermediate between the zamindar and the raiyats is not an act of waste to restrain which the Court will issue an injunction. *MCGVERAR CHOWDHRY v. GUNEND DUTT SINHA* W. R. 1864, 273

## (g) ENCROACHMENTS.

16. ——— Encroachment on land—*Building over a dhora*—*Compensation not proper remedy*. The defendant encroached on an abut-

**INJUNCTION—contd.****2. SPECIAL CASES—contd.****(g) ENCROACHMENTS—contd.**

ment (dhora) of the wall of the plaintiff, which stood on a piece of ground belonging to the plaintiff. The wall divided the properties belonging to the parties. The abutment was on the defendant's side of the wall. The lower Appellate Court awarded compensation for this encroachment on the ground that there was merely technical encroachment on the part of the defendant, because only a foot or so of the plaintiff's ground was covered thereby. *Held*, that relief by way of injunction was the proper remedy in such a case, for to allow compensation would be to let a trespasser put a value or money's worth on another man's property and deprive him of it against his will. *Goodson v. Richardson, L. R. 9 CA 221*, followed. *JETHALAL HIRACHAND v. LALBHAI DALPATBHAI (1904)*

**I. L. R. 28 Bom. 298**

**17. ——— Mandatory injunction—Trespasser.** A mandatory injunction should not be granted against a trespasser compelling him to come on the land on which he had trespassed to remove an encroachment made thereon by him. *NAYROJI MANERJI WADIA v. DASTUR KHARSEJI MANCHERJI (1904)*

**I. L. R. 28 Bom. 20**

**(A) EXECUTION OF DECREE.**

**18. ——— Stay of execution of decree**  
—Court of co-ordinate jurisdiction—Specific Relief

granted to him by a Court exercising co-ordinate jurisdiction with the Court in which the injunction was applied for, on the ground that the proceedings by which the decree was obtained against the person applying for the injunction were altogether illegal. The cases in which injunctions were granted by the Court of Chancery in England against proceedings in other Courts rested upon the assumption that the rights of the parties could not be enquired into, except through the Courts of Chancery, and are therefore not applicable to India. Injunctions to stay proceedings under the Specific Relief Act can only be granted in cases where the Court in which the proceedings are to be stayed is subordinate to that in which the injunction is sought. *DHROOVINATH SEN v. AGRA BANK. I. L. R. 4 Calc. 380; 2 C. L. R. 263*  
**3 C. L. R. 421**

**19. ——— Restraining decree holder from executing decree improperly or illegally obtained—Order substituting judgment-debtor—Sale or transfer of *dena-powna*. A, the**

**INJUNCTION—contd.****2. SPECIAL CASES—contd.****(h) EXECUTION OF DECREE—contd.**

patnadar of the talukh, whose rights were thus extinguished, then sued and obtained a decree for damages against A. After C had obtained this decree against A, A sold his equity of redemption in the entire mortgaged concern to B, and by this sale all the *dena* and *powna*, or liabilities and outstandings of the concern, were transferred from A to B. C then after notice to B, obtained an order by which B was made the judgment-debtor in the place of A. B took no proceedings within one year to set aside this order; but, after the lapse of three years, upon C attempting to execute his decree, instituted the present suit to set aside the order, and for an injunction to restrain B from executing the decree against him. *Held*, first, that the purchase by B of the *dena-powna* of the indigo concern of which A had been the proprietor did not make B liable to pay the amount, for which C had obtained a decree against A, as

**20. ——— Injunction restraining execution of a decree obtained in a suit against plaintiffs' karnavan—Specific Relief Act (I of 1877), s. 56 (b)—Suits by junior members of a family**

the defendants, other than the members of the plaintiffs' tarwad, from executing a decree of a District Court, passed on appeal from a Munsif's Court, whereby certain lands of the devasom were decreed to be surrendered to them in the character of udlars, it appeared (i) that plaintiffs' karnavan was a party to the suit in which the abovementioned decree was passed; (ii) that the plaintiffs' tarwad was otherwise entitled to the uraima right by adverse possession if not immemorial title. *Held*, that the injunction sought was not precluded by Specific Relief Act, s. 56 (b), and that the plaintiffs were entitled to the decree as prayed. *ARPU v. RAMAN*

**I. L. R. 14 Mad. 425**

District Court of Trichinopoly, entered into a composition with their creditors, and a deed was executed to which the defendant became a party in respect of his judgment-debt. The defendant



INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(A) EXECUTION OF DECREE—*contd.*

subsequently applied for execution of this decree. The trustees, to whom the debtor's assets were made over under the deed, together with the debtors now brought a suit in the same Court for an injunction restraining the defendant from executing or proceeding to execute his decree. The plaintiff

was not necessary to prevent a multiplicity of proceedings within the meaning of the Specific Relief Act, s. 56, cl. (a). *Semble*: The suit for the injunction prayed for was not maintainable with reference to the Specific Relief Act, s. 56, cl. (b).  
**VENEKATESA TAWKER v. RAMASHAWI CHETTIAR**  
 I. L. R. 18 Mad. 338

ss. 492 and 311—Material irregularity in sale. In a

postponed the sale of property No. 1, and caused two other properties on the list to be sold. Objection was made under s. 311 of the Civil Procedure

only to perpetual injunctions, temporary injunctions being left by s. 53 to be regulated by the Code of Civil Procedure, and s. 56 was not intended to affect injunctions applied for under s. 492 of the Civil Procedure Code. The temporary injunction,

*Bank, I. L. R. 4 Cal. 380 I. L. R. 5 Cal. 56*, on review, distinguished. *Brojendra Kumar Rai Chowdhry v. Rup Lal Das, I. L. R. 12 Cal. 515*, referred to. *AMIR DULHIN alias MAHOMEDJAN v. ADMISTRATOR GENERAL OF BENGAL*

I. L. R. 23 Cal. 351

23. ——— Right to injunction—Specific Relief Act (I of 1877), s. 56, cl. (b)—Trust Act (II of

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(A) EXECUTION OF DECREE—*contd.*

1832). ss. 21, 25—Decree obtained on a benami mortgage by benamidar—Suit by real mortgagor—Right to declaration of right to execute decree. A mortgaged a land to B as either agent or benamidar for C. B sued on the mortgage and obtained a decree. C now sued A and B for a declaration that he was entitled to the benefit of the decree and had the right to execute it, and for an injunction restraining A from paying the money to B and B from receiving the money from him. *Held*, that the plaintiff was entitled to the declaration, but not to the injunction. **SETHERAYAR v. SHANMUGAM PILLAI**  
 I. L. R. 21 Mad. 353

## (i) INTRUSION ON OFFICE.

24. ——— Office of vatandar joshi—Damages against intruder into office—Receipt by another of fees properly due to vatandar joshi. The vatandar joshi of a village has the right to recover pecuniary damages from a person who has intruded into his office and received fees properly payable

services of a priest whom they were unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire. **RAJA VALAD SRIVASA v. KRISHNABHAT**  
 I. L. R. 3 Bom. 232

25. ——— Right to an office in a temple—Civil Procedure Code, s. 11. Plaintiffs sued for an injunction to prevent defendant from interfering with their right to present to certain persons at a certain festival in a certain temple a crown and water. The lower Courts found that

granted. **SRINIVASA v. TIRUVENKADA**  
 I. L. R. 11 Mad. 450

26. ——— Purchaser of share in kul-karni vatan and joshi vritti—Obstruction in performance of duties—Specific Relief Act (I of 1877), s. 54. The plaintiff, who had bought a share in a kul-karni vatan and joshi vritti, was obstructed by the defendants in the performance of his duties. *Held*, that he was entitled to an injunction against the defendants. **MORO MAHADEV v. ANANT BHIMAJI**  
 I. L. R. 21 Bom. 821

27. ——— Property in word—Specific Relief Act (I of 1877), ss. 52, 54—Use of word to

or "and others" ) The undersigned

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(i) INTRUSION ON OFFICE—*contd.*

two temples and of three minor ones only, having limited rights and duties and being in many respect subordinate to the vicaranakarta, had, in pursuance of immemorial custom, used a seal in connection with his office, which had never borne more than a single figure, without legend. He had now made and used in the conduct of temple affairs a new seal, bearing the same figure, but with the legend "Tirumalai" "Tirupati, vagaira devasthanam dharmakarta" added to it. On the vicaranakarta suing for a declaration and for a perpetual injunction to restrain the use of a seal containing such words;—*Held*, that, although the legend might in a sense be accurate in representing what the defendant actually was, and the vicaranakarta had no property in the word "vagaira," yet the defendant should be restrained from using it upon the seal, since, from the manner in which that word had been used in the seal of

claim a position co-extensive with that of the vicaranakarta, which in fact he did not possess.  
**RAMANUJA PEDDA JIVANGARU v. RAMA KISORE DOSSJEE . . . I. L. R. 22 Mad. 189**

## (i) NUISANCE.

**28. — Nuisance from cotton mill**  
 —Noise—Smoke and puff of mill—Damages—Combination of injunction and damages—Specific Relief Act (I of 1877)—Delay—Acquiescence—Right of reversioners to sue. The plaintiffs were

numbered, respectively, Nos 1, 2, 3, and 4, and

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(i) NUISANCE—*contd.*

that it is intended to carry on the business of spinning and weaving in the buildings now being erected. A business of this nature carried on so close to the Grant Buildings will render our clients' property comparatively valueless, and we are instructed to bring this fact to your notice and to say that the Bank will not permit any business of the kind to be carried on to the detriment of their property." To this letter the company replied that the business of the Hydraulic Press Company had been previously carried on by that company on the same site without any remonstrance either from the plaintiffs or from the occupants of the Grant Buildings; that the value of the plaintiffs' property would be impaired, not damaged, by

into a spinning and weaving mill, and that they should have entered their protest months before; that under the circumstances the plaintiffs had no right to interfere in the working of the mill, and that the Nicol Company, therefore, intended

solicitor sent a notice to the liquidators of the company referring to what had taken place and warning them not to sell the mill without giving the purchaser notice of the plaintiffs' intention to take proceedings against any person who should recommence to work the mill. Advertisements to that effect were also published in the English and native daily newspapers. On the 9th August 1880, hearing that the mill was to be put up to auction, the plaintiffs sent to the liquidators a similar notice. On the 23rd August 1880, the defendants' mill was put up for sale and the notices were read

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(i) NUISANCE—*contd.*

out by plaintiffs' solicitor. The defendants were present and heard the notice read. The defendants purchased the property for Rs. 3,61,000, and the sale was confirmed by the Court. On the 1st January 1881, the mill recommenced working, having been idle for two years. On the 26th January 1881, a notice was sent to the defendants to discontinue the working of the mill on pain of a suit. The defendants replied denying the nuisance and stating that any suit would be defended. The suit was filed on the 5th February 1881. The plaintiffs alleged a nuisance, especially to the tenants of the eastern block of the Grant Buildings, arising from the noise, smoke, and cotton fluff and smells issuing from the defendants' mill. They complained that the said nuisance would be much increased when the defendants carried out their intention of completing the number of spindles and looms for which the mill was built. They prayed for an injunction and Rs. 1,000 damages. The defendants denied the alleged nuisance, and contended that the plaintiffs were debarred from the relief claimed. At the time of the filing of the suit the only rooms in the Grant Buildings that were vacant were the following: In the east block two rooms in Division No. 1, one room in Division No. 3, and one room in Division No. 4. In the west block five rooms were vacant. The total net rental of the vacant rooms was Rs. 350 a month, and of the occupied rooms Rs. 2,410. Evidence was given that many tenants had vacated their rooms in the east block on account of the nuisance experienced from the mill, but that the

suit four rooms were vacant in the east block and none in the west block. Between the date of the filing of the suit and the hearing, changes had been effected in the mill which decreased the nuisance, — e.g., new boilers were erected, smokeless coal was used, screens, steam-jets, and baffleplates were introduced. In order to diminish the noise, double

the plaintiffs were not debarred from suing by acquiescence or laches, but that the defendants and

reason of (a) the noise and also by reason of (b) the smoke and cotton fluff issuing from the mill during the monsoon; (3) that the only cause of action on which the plaintiffs could rely in support of their

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(i) NUISANCE—*contd.*

claim to an injunction was the diminution in the value of their property owing to the working of the mill being a nuisance in respect of the four rooms vacant in Divisions Nos. 2, 3, and 4, at the time of the filing of the suit; (4) that the efficacy of the changes and improvements made by the defendants after the filing of the suit for the purpose of diminishing the nuisance complained of depended so much on the good intention and constant personal care of the defendants and their servants that it ought not to influence the question of injunction when once the nuisance was proved to have existed;

value of the property arising from the nuisance, — the fact that render it unring an action in respect of all the other rooms in Divisions Nos. 2, 3, and 4 after giving the tenants notice.

the rooms in Divisions Nos. 2, 3, and 4, the interest of the plaintiffs in the Grant Buildings being a personal interest and the only object of the plaintiffs having been to secure the highest value for their property, and considering that from the nature of the case, an injunction, such as the plaintiffs prayed for, would place the defendants entirely in the power of the plaintiffs, the relief given to the plaintiffs should assume the form of pecuniary compensation rather than of an injunction, and directed further evidence to be taken as to the diminution in value of the

and also restraining defendants from allowing any smoke or cotton fluff to issue so as to cause such nuisance as aforesaid with liberty to plaintiffs

# INJUNCTION—*contd.*

## 2. SPECIAL CASES—*contd.*

### (i) NUISANCE—*contd.*

to apply in case the noise be materially increased beyond what it is at present. On appeal: *Held per BAYLEY, C.J. (Acting), and WEST, J.*, that admitting that money compensation was a right form of relief, it should be compensation measured by the premises not owned, but occupied by the plaintiffs; in other words, the rooms unlet. It was only in respect of these that the plaintiffs were competent to sue, and they could not be entitled to compensation on a more extensive ground. It was only in respect of the rooms in question that the present suit and the decree therein could guard the defendants against further actions. An award of Rs. 40,000 to the plaintiffs could not prevent any tenant of the rooms affected by the nuisance from

the damages arising to the plaintiffs on account of the rooms unlet at the institution of the suit Rs. 1,000 would afford sufficient compensation, and the sum awarded should be reduced to that amount. The decree was varied accordingly, and a clause was also inserted distinctly providing against any increase of smoke, cotton fluff, or noise of machinery beyond what subsisted at the date of the decree; and further providing that in case any invention should be made by which the nuisance might easily be diminished, the decree was not to be deemed to prejudice the right, if any, the plaintiffs as owners or the tenants of the Grant Buildings possessed to require the defendants to introduce such invention into the said mill so as to cause the least annoyance reasonably possible. *LAND MORTGAGE BANK OF INDIA v. ANNEEDSHOY HUSBHOY* I. L. R. 8 Bom. 35

29. — Overhanging trees—Mandatory injunction—Perpetual injunction—Trees overhanging neighbour's land—Continuing nuisance—Threatened damage—Specific Relief Act (I of 1877), s. 55 As every owner of land is under an obligation to grow extend to the of such an obligation, it is open to the Court to grant a mandatory injunction for the removal of the nuisance under s. 55 of the Specific Relief Act. *Lemmon v. Webb*, [1895] A. C. 1. *Hari Krishna Joshi v. Santar Vithal*, I. L. R. 19 Bom. 420; *Norris v. Baker*, 1 Roll. 393; *Baten's Case*, 4 Rep. 53; *Shelfer v. City of London Electric Lighting Company*, [1895] I. Ch. 287, referred to. A perpetual injunction restraining the defendant from planting trees the roots of which are likely to penetrate the foundation of the plaintiff's building and wall, is held to be unworkable. *Bridg-*

# INJUNCTION—*contd.*

## 2. SPECIAL CASES—*contd.*

### (i) NUISANCE—*contd.*

*Banani Choudhrani v. Jahnabi Choudhrani*, I L. R. R. 24 Calc. 260, referred to *LAKSHMI NARAIN BANERJEE v. TARA PROSARNA BANERJEE* (1904) I. L. R. 31 Calc. 844

(1) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)

30. — Injunction by one member of a joint Hindu family against another when granted—Joint family property. In disputes between members of a joint Hindu family with respect of joint property, the exercise of the Court's jurisdiction to grant relief by injunction should be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster. *ANANT RAMRAV v. GOPAL BALWANT* I. L. R. 19 Bom. 260

31. — Suit by a co-parcener for an account of the profits of a joint family firm—Exclusion of partner from family partnership—Hindu law—Joint family. A member of a joint Hindu family cannot maintain a suit for an account of the profits of a partnership which is alleged to be joint family property, and an award of his share in such profits when ascertained. *Thia*

I. L. R. 23 Bom. 144

32. — Mandatory injunction, when to be granted—Judicial discretion—Damages—Rights of co-sharers. In granting or

33. — Co-sharers—Right to deal with joint property—Exercitation of task on joint property—Discretion of Court in granting injunction—

be has sustained, by the act the complaints of,

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(i) NUISANCE—*contd.*

out by plaintiffs' solicitor. The defendants were present and heard the notice read. The defendants purchased the property for R3,61,000, and the sale was confirmed by the Court. On the 1st January 1881, the mill recommenced working, having been idle for two years. On the 26th January 1881, a

filed on the 5th February 1881. The plaintiffs alleged a nuisance, especially to the tenants of the eastern block of the Grant Buildings, arising from the noise, smoke, and cotton fluff and smells issuing from the defendants' mill. They complained that the said nuisances would be much increased when the defendants carried out their intention of completing the number of spindles and looms for which the mill was built. They prayed for an injunction and R1,000 damages. The defendants denied the alleged nuisance, and contended that the plaintiffs were debarred from the relief claimed. At the time of the filing of the suit the only rooms in the Grant Buildings that were vacant were the following: In the east block two rooms in Division No. 1, one room in Division No. 3, and one room in Division No. 4. In the west block five rooms were vacant. The total net rental of the vacant rooms was

demand for rooms was so great that other tenants were found to fill the vacancies almost as soon as they occurred. At the time of the hearing of the suit four rooms were vacant in the east block and none in the west block. Between the date of the filing of the suit and the hearing, changes had been effected in the mill which decreased the nuisance,—e.g., new boilers were erected, smokeless coal was used, screens, steam-jets, and baffles were introduced. In order to diminish the noise, double fixed windows were put in on the north side of the

the plaintiffs were not debarred from suing by acquiescence or laches, but that the defendants and the previous owners of the mill had been at every stage acquainted with the plaintiffs' intention to resist the working of the mill if it proved to be a nuisance; (2) that the working of the mill was a nuisance to the occupants of Divisions 2, 3, and 4 by

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(i) NUISANCE—*contd.*

changes and improvements made by the defendants after the filing of the suit for the purpose of diminishing the nuisance complained of depended so much on the good intention and constant personal care of the defendants and their servants that it ought not to influence the question of injunction when once the nuisance was proved to have existed; (5) that although (the plaintiffs being at the date of the suit entitled only to complain of the nuisance as to four out of sixty-eight sets of rooms) it might be said there was no material diminution of the value of the property arising from the nuisance,

of granting the fact that under it upon an action in respect of all the other rooms in Division Nos. 2, 3, and 4 after giving the tenants notice, to on the can

as if the effect of all the only Buildings being a personal interest and the only object of the plaintiffs having been to secure the highest value for their property, and considering that from the nature of the case, an injunction, such as the plaintiffs prayed for, would place the defendants entirely in the power of the plaintiffs,

and injunction, and made an order for an injunction

payment of the said sum to them, an injunction to issue restraining defendants from working the said mill otherwise than with closed double glass windows on the side next the Grant Buildings, and also restraining defendants from allowing any smoke or cotton fluff to issue so as to cause such nuisance as aforesaid with liberty to plaintiffs

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(j) NUISANCE—*contd.*

to apply in case the noise be materially increased beyond what it is at present. On appeal: *Held per BAYLEY, C.J. (Acting), and WEST, J.*, that admitting that money compensation was a right form of relief, it should be compensation measured by the premises not owned, but occupied by the plaintiffs; in other words, the rooms unlet. It was only in respect of these that the plaintiffs were competent to sue, and they could not be entitled to

tenant of the rooms affected by the nuisance from suing the defendants on the same grounds as were taken by the plaintiffs in this suit. It would be unreasonable that the defendants should be made to pay as damages in bulk to persons not legally entitled what they might have to pay over again to those who are or may be entitled in detail. For the damages arising to the plaintiffs on account of the rooms unlet at the institution of the suit Rs. 1,000 would afford sufficient compensation, and the sum awarded should be reduced to that amount. The decree was varied accordingly, and a clause was also inserted distinctly providing against any increase of smoke, cotton fluff, or noise of machinery beyond what subsisted at the date of the decree; and further providing that in case any invention should be made by which the nuisance might easily be diminished, the decree was not to be deemed to prejudice the right, if any, the plaintiffs as owners or the tenants of the Grant Buildings possessed to require the defendants to introduce such invention into the said mill so as to cause the least annoyance reasonably possible. *LAND MORTGAGE BANK OF INDIA v. ANVEDBHAY HIRABHOY*. I. L. R. 8 Bom. 35

29. — Overhanging trees—Mandatory injunction—Perpetual injunction—Trees overhanging neighbour's land—Continuing nuisance

of such an obligation, it is open to the Court to grant a mandatory injunction for the removal of the nuisance under s. 55 of the Specific Relief Act. *Leimon v. Webb*, [1895] A. C. 1. *Hari Krishna Joshi v. Sankar Pithal*, I. L. R. 19 Bom. 420; *Norris v. Baker*, 1 Roll. 323; *Baten's Case*, 9 Rep. 53; *Shelfer v. City of London Electric Lighting Company*, [1895] 1 Ch. 287, referred to. A perpetual injunction restraining the defendant from planting trees the roots of which are likely to penetrate the foundation of the plaintiff's building and wall, is held to be unworkable. *Binds*

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(j) NUISANCE—*contd.*

## (4) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)

30. — Injunction by one member of a joint Hindu family against another when granted—Joint family property. In disputes between members of a joint Hindu family with respect of joint property, the exercise of the Court's jurisdiction to grant relief by injunction should be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster. *ANANT RAMRAV v. GOPAL BALVANT*. I. L. R. 10 Bom. 269

31. — Suit by a co-parcener for an account of the profits of a joint family firm—Exclusion of partner from family partnership—Hindu law—Joint family. A member of a joint Hindu family cannot maintain a suit

I. L. R. 23 Bom. 144

32. — Mandatory injunction, when to be granted—Judicial discretion—Damages—Rights of co-sharers. In granting or

CHATTERJEE I. L. R. 14 Cal. 189

33. — Co-sharers—Right to deal with joint property—Excavation of tank on joint property—Discretion of Court in granting injunction—

be has sustained, by the act the complaints

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

some injury which materially affects his position. *Lala Biswambhar v. Rajaram Lal*, 3 B. L. R. Ap 63, applied in principal. *Shamnuggur Jute Factory Co. v. Ram Narain Chatterji*, 1 L. R. 11 Cal. 189, approved. The fact that a portion of the land on which a tank had been excavated by the defendant was fit for cultivation does not constitute an injury of a substantial nature such as would justify an order of that nature. *Joy Chunder Rukht v. Bipro Churn Rukht*, I. L. R. 14 Cal. 236

34. ——— *Immovable property*  
—Cultivation of indigo by one co-sharer without consent of others—Injunction as between co-sharers—Practice of the English Courts in granting injunction, Applicability of. W, while in possession of an entire mouzah as *daradar*, had under an arrangement with the proprietors built factories and cultivated indigo by reclaiming a quantity of waste land. On the expiration of his lease, W, who still held a portion of the mouzah in *ijara* from a 2-anna co-sharer, continued to cultivate indigo on the khas lands, as before, and, disregarding the opposition of the 14-anna co-sharers, claimed an exclusive title to do so. The 14-anna co-sharers there-

injunction prohibiting the defendant from growing indigo on the khas lands without the consent of the plaintiffs. *Held*, that the plaintiffs were entitled to an injunction, but having regard to the circumstances under which the defendant cultivated the lands, it was necessary to vary the injunction

DUTT & WATSON & Co.

I. L. R. 15 Cal. 214

35. ——— *Village property*—As to what was the common property of a village, viz., a tank—Inability of any of the co-proprietors to exclude the rest from contributing to repair it. A village tank,

evidence, including that afforded by a compromise

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(l) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

made in 1842, it appeared that the repairs were to be effected by a common collection made through the person in management, who was to account for

entitled to an injunction prohibiting others from interfering with the general conservancy of the tank. *Muttaya v. Sivaraman*, I. L. R. 6 Mad. 229

*Held* by the Privy Council, on appeal, that it was equally at the option of the rest of the villagers either to permit the repairs to be done by the plaintiffs or to insist on the work being done at the common cost; the tank remaining the common property of the villagers otherwise, repairs.

I. L. R. 16 I. A. 48

36. ——— *Digging so as to endanger neighbours' land*—Specific Relief Act (I of 1877), s. 54—Threatened damage—Damage occurring after suit—Cause of action—Right of suit. Where an act threatening danger to a person's land is such that injury will inevitably follow, a Court may grant a perpetual injunction restraining the continuance of that act, even though no damage has actually occurred before institution of suit. And where actual injury has occurred subsequently to the filing of the plaint, the plaint may be amended so as to show the nature and extent of such injury. *Pattison v. Gilford*, L. R. 18 Eq. 259, applied. *Bindu Basini Chowdhurani v. Jahnabi Chowdhurani*, I. L. R. 24 Cal. 280

37. ——— *Light and air*—Ancient lights Principles on which the Court grants injunctions and assesses damages in the case of obstruction of ancient lights Effect of alteration of widows on plaintiff's right *Lackersteen v. Tarucknath Poramanick*, Cor. 91

38. ——— *Obstruction to light and air*—Door, light admitted by When the Court is asked to interfere by injunction to restrain the obstruction of light and air to a dominant tenement, the question to be determined is, is the obstruction such as seriously to

feet not being such an obstruction as to call for the interference of the Court. Motion refused without prejudice to action for damages *Barrow v. Archer*, Cor. 99

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

interfere with the comfort or enjoyment of the owners of the dominant tenement, or such as to cause a material injury to it—an injury which cannot be completely compensated by damages? English cases on the subject reviewed. The Court will in such cases interfere, as well by mandatory as by preventive injunction, provided that in the circumstances of the case there is nothing inequitable in putting in force the former remedy. The Court will look not merely to the use to which rooms

whether light is admitted through a window or a door. In case of obstruction, the owner of the dominant tenement is in either case entitled to protection. *RATANJI HARMASI v. EDALJI HARMASI* . . . . . 8 Bom. 181

40. ————— Obstruction to light and air—Mandatory injunction—Infringement of right by neighbouring owners of buildings—Damages. Where the plaintiff and the defend-

encroaching on the defendant's own verandah in breach of the agreement, is not sufficient in itself to justify the Court in granting a mandatory injunction ordering its removal. It should also be satisfied that the new wall so materially interferes with the comfort and convenience of the plaintiff that the consequences of the breach of agreement cannot adequately be compensated by damages. It should also satisfy itself whether the plaintiff protected against the new wall being built whilst in course of erection, or quietly acquiesced in what the defendant was doing, and only objected when the wall was completed. In the latter case the Court should only award damages. *RANCHOD JAMNADAS v. LALLU HARBHAI. LALLU HARBHAI v. RANCHOD JAMNADAS* 10 Bom. 85

41. ————— Obstruction to light and air—Damages—Injury not compensated for by damages—Demolition of house—Execution of decree—Ancient lights. Re-erection of his house

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

grant relief by issuing a mandatory injunction directing the defendant to pull down so much of the house as is necessary to stop the injury. The probability of the defendant suffering a greater loss by the demolition of his house than the

special circumstances. To determine what demolition of the house is necessary, the Court executing the decree was directed to employ a professional man agreed on by the parties if they could agree, or nominated by the Court if they could not. *JAMNADAS SHANKARLAL v. ATMARAJI HARJIVAN* . . . . . I. L. R. 2 Bom. 133

42. ————— Obstruction to light and air—Substantial injury—Damages—Acquiescence. Any act by which the control of light and air are taken out of the hands of the person entitled to them, or by which the access of light and air to the window of a dwelling-house is interfered with, is *prima facie* an injury of a serious character. Where the defendant, without leave or licence, took possession of the plaintiff's window as completely as if he had blocked it up altogether:—*Held*, that no precedent warranted the substitution of damages for an injunction in such a case against the plaintiff's will. *NANDKISHOR BALGOVAN v. BHABUBAI PRANVALUBHAI* I. L. R. 8 Bom. 95

43. ————— Obstruction to light and air—Attachment for infringement of injunction—Opinions of surveyors. When an injunction has been granted restraining a person from interrupting the access of light and air to certain windows, and the Court considers that the injunction has been infringed, an attachment will issue, even though the defendant has proceeded according to the advice of his surveyor and legal adviser in constructing the building complained of as a breach of the injunction. The Court in such cases does not consider itself bound by the opinion of surveyors, but will form its own judgment as to the probable effect of the structure complained of. *PRANJIVANAS HERJIVANDAS v. MAYANAI SARMALDAS* . . . . . 1 Bom. 148

44. ————— Specific Relief Act (I of 1877), s. 54—Remedy in damages. Under the Specific Relief Act, 1877, s. 54, the Court may grant a perpetual injunction against a defendant who invades or threatens to invade a plaintiff's right (e.g., to light and air) in cases there specified, and, *inter alia*, when the invasion is such that pecuniary compensation would not afford adequate relief. The rule so laid down differs from the rule upon which the decisions are



INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*

- (k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

based in English law. In the latter the right to an injunction is a *prima facie* right to which a plaintiff is entitled on proof that material injury has been sustained, provided that no circumstances are disclosed to deprive him of that *prima facie* right. Under the Specific Relief Act, an injunction is not to be given when the remedy in damages is considered adequate. *BORSON v DRAVE*

I. L. R. 23 Mad. 251

45. ———— *Mandatory injunction—Damages—Ancient rights.* Where a plaintiff has not brought his suit or applied for an in-

junction. Mere notice not to continue building so as to obstruct a plaintiff's rights is not when not followed by legal proceedings, a sufficiently special circumstance for granting such relief. *Jamasias Shankarlal v. Atmaram Harjivan*, I. L. R. 2 Bom. 133, referred to. The law regarding relief by mandatory injunction explained. *BEYODE COOBAHER DOSSEE v. SOUDAMINEY DOSSEE*

I. L. R. 18 Cal. 252

46. ———— *Discretion of Court as to granting mandatory injunctions—Delay on the part of the plaintiff in bringing his suit*

defendant had erected on such plot. The suit, however, was not brought until upwards of two years from the time when the buildings complained of were completed. It was found that the plaintiff was not entitled to proprietary possession of the land claimed by him, but that he had a right of user over it, and that the defendant was not entitled to build upon the land. The Court, however, on

47. ———— *Injunction or damages—Lord Cairns' Act (21 & 22 Vict. c. 27)—Specific Relief Act (I of 1877).* The plaintiff owned a house in Girgaon Road, Bombay, in which he had resided with his family for twenty-four years. Through certain windows in the south wall of his house, numbered respectively 3, 5, 7, and 8,

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*

- (k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

*Lissor* I. L. R. 13 Bom. 252

48. ———— *Damages—Specific Relief Act (I of 1877), s. 51, cl. (c)—Limitation Act (XV of 1877), s. 26—Mandatory injunction.* The plaintiff complained that the defendants intended to build so as to obstruct the passage of light and air through an ancient window in his house, and render a room therein unfit for use, and prayed for a perpetual injunction restraining the defendants from so building. It was proved that the wall intended to be built would so shut out the light and air as to render the room unfit for

lower Court's decree by ordering the removal of the injunction and directing, in its stead, a new

question was whether injunction or damages was the appropriate remedy under the circumstances of the particular case. *Held*, also, that, as the

decree in their favour and *prohibing the plaintiff's appeal to the High Court.* *KADARBHAI v. RAHIMBHAI* I. L. R. 13 Bom. 674

49. ———— *Light and air—Obstruction—Occupation uncomfortable—Rule of 45<sup>th</sup>—Decree.* In a suit for an injunction to restrain the defendant from obstructing the access of light

less than 45° or light, and *dismissed the appeal* further evidence. On appeal the lower Appellate

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

for the determination of the following issue: (i) Has there been a diminution in the quantity of light and air which has been accustomed to enter the windows of the plaintiff's house during the

I. L. R. 20 Bom. 146

50. ———— } Easement—Ancient lights—Injunction to restrain defendant from interfering with ancient lights. *Quia timet action, necessary ingredients for.* There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be

(1907) I. L. R. 32 Bom. 146

51. ———— Infringement of right to Easement—Specific Relief Act (I of 1877), s. 51. *Dhunjibhoj Cowasji Umrigar v. Lisboa, I. L. R. 13 Bom., 252 and Ghanasham Nikant Nadkarni v. Moroba Ram Chandra Pai, I. L. R. 18 Bom. 474, followed and approved, as to the circumstances in which the Court will grant an injunction where a right to light and air is infringed. SULTAN NAWAZ JUNG v. RUSTOMJI NANABHOY* I. L. R. 20 Bom. 704

52. ———— Specific Relief Act (I of 1877), s. 51—Easement—Injunction or damages. It was not intended by s. 51 of the Specific Relief Act, 1877, that a man should not have an injunction granted to him unless his property would otherwise be practically destroyed if the injunction were not granted. Where the plaintiff had for over twenty years carried on the business of manufacturing a particular kind of cloth in a certain house, and the defendant built

and not merely to damages. *Synsley v. Glover, L. R. 18 Eq. 544, and Holland v. Worley, L. R. 26 Ch. D. 535, followed. Dhunjibhoj Cowasji Umrigar v. Lisboa, I. L. R. 13 Bom. 252, and Ghanasham Nikant Nadkarni v. Moroba Ram Chandra Pai, I. L. R. 18 Bom. 474, referred to. YARO v. SANA-ULLAH* I. L. R. 19 All. 259

53. ———— Easement—Damages—Practice where amount of injury does not justify injunction. The plaintiff sued for an injunction restraining the defendant from erecting a building which interfered with the light and air com-

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

ing to the plaintiff's house. The lower Appeal

that the plaintiff's remedy, if any, was a suit for damages. *Held*, that the lower Court was right in not granting an injunction, but instead of dismissing the suit, and referring the plaintiff to another suit for damages, ought itself to have directed an inquiry as to the damages sustained by the plaintiff by reason of the diminution of the supply of light and air to his house. *KALLIANDAS v. TULSIDAS* I. L. R. 23 Bom. 786

54. ———— Water—Obstruction to right to flow of water—Substantial injury. In cases of obstruction of right to an uninterrupted flow of

I. L. R. 23 Bom. 786

KRISTNA AYYAN v. VENKATACHELLA MUDALI 7 Mad. 80

where it was found that no right of the plaintiffs had been invaded, no damage had accrued, and no case of prospective damage had been made out, so that he was not entitled to an injunction.

55. ———— Obstruction to flow of water—Erection of embankment—Requisite evidence to justify grant of injunction. In a suit for an injunction to compel defendant to reduce to its original dimensions an embankment which he had recently raised from a certain height to a greater height, on the ground that the effect of defendant's act had been, and would be, to injure plaintiff's land by preventing the passage of water which used to overflow that land:—*Held*, that plaintiff was bound to establish not merely an injury, actual or prospective, caused by the act complained of, but an injury caused by infraction of some right which plaintiff possessed, or by the omission of something which defendant was legally bound to do. *PRAN KRISTO ROY v. HORO CHANDER ROY* 10 W. R. 435

56. ———— Right to have water carried off over neighbouring roof—Party-wall, right to built on or continue—Eaves projecting for more than thirty years over neighbouring property—Damages, Suit for—Issues. Where the



INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

*Agricultural purposes—Change of use—Increase of servitude.* The defendants had a right of way to their field through an adjoining field of the plaintiff. Until shortly before suit, the defendants' field had only been used for agriculture, and the way through the plaintiff's field was used by them for ordinary agricultural purposes. The defendants, however, converted their field into a timber depot and began to use the way across the plaintiff's field for purposes connected with the timber trade. The plaintiff sued for an injunction. *Held*, that plaintiff was

61. ———— *Suit to prevent erection of door—Door erected after suit filed, but before hearing—At hearing the Court may grant mandatory injunction directing removal of door although only preventive relief prayed for in plaint—Practice—Procedure.* Plaintiff sued to restrain the defend-

the hearing contended that, inasmuch as the plaintiff prayed only to prevent the erection of the door and not for its removal when erected, the plaintiff could not obtain the latter relief in this suit, but must file a fresh suit. The lower Court dismissed the

suit was rightly framed in the light of the circumstances which existed when it was brought. It was the defendant's subsequent conduct which rendered it necessary that the plaintiff should be given, as prayed for in his plaint, such other relief as the Court might think fit. *MAGANLAL PUNJASA v. CHHOTALAL GHELA* (1901)

I. L. R. 26 Bom. 136

62. ———— *Possession of property—Practice—Procedure—Fact alleged by plaintiff and not denied in defendant's written statement or at hearing—Presumption—Repeated violation of legal right—Damages—Adequate remedy—Specific Relief Act (I of 1877), s. 54.* In a suit praying for an

in his written statement, or put in issue at the hearing. *Held*, that it might be presumed that

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(k) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY (LIGHT AND AIR, WATER, RIGHT OF WAY)—*contd.*

the defendant did not deny the fact of obstruction. Repeated violation of an established legal right cannot in ordinary cases be adequately met by damages, nor can these damages be satisfactorily ascertained. *APAJI PATIL v. APA* (1902)

I. L. R. 26 Bom. 735

## (l) POSSESSION OF JOINT PROPERTY.

63. ———— *Specific Relief Act (I of 1877), s. 54—Judicial discretion of Court—*

property, pecuniary compensation not being an adequate relief, an injunction would be the proper remedy. *Anant Ramrao v. Gopal Balwant, I. L. R. 19 Bom. 269*, followed. *SOSHI BHUSAN GHOSE v. GONESH CHUNDER GHOSE* (1902)

I. L. R. 29 Cal. 500

## (m) PUBLIC OFFICERS WITH STATUTORY POWERS.

their statutory powers considered. If the Municipal Commissioner of Bombay is desirous of

the street, he must exercise his powers when, or within fourteen days after, the householder gives

from continuing such trespass, merely because the plaintiff entertains vague apprehensions that the trespass may be recommenced. *CHABILDAS LALLUBHAI v. MUNICIPAL COMMISSIONERS OF BOMBAY*

6 Bom. O. C. 65

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(m) PUBLIC OFFICERS WITH STATUTORY POWERS—*contd.*

of injunction against the act of a corporation though in excess of their powers, which affects that individual's character and reputation, whether private, professional, or commercial, which he would not have been entitled to had the act complained of

transact; whether such decisions or opinions are

regard to such business, and whether the expression of such decisions, opinions, or advice may or may

pass resolutions affecting his character, and that

body to pass and record a resolution dictated by the Court. *SHERREDD v. TRUSTEES OF THE PORT OF BOMBAY* I. L. R. 1 Bom. 133

66. Right of municipal officers to levy taxes. *Quare*: Whether the Court ought

67. Powers of High Court to grant injunction against municipality—*Specific Relief Act (II of 1877), Ch. VIII.* There is nothing in Ch. VIII of the Specific Relief Act to prevent the High Court from granting an injunction against a municipality as part of the remedy in a regular suit. *Moran v. Chairman of Mothari Municipality*, I. L. R. 17 Cal. 329, considered. *Ganga Narain v. Municipality of Cawnpore*, I. L. R. 19 All. 313, referred to. *STRACHEY v. MUNICIPAL BOARD OF CAWNPORE* I. L. R. 21 All. 348

68. Powers of public body to collect tax—*Water-rate—Injunction to re-*

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(m) PUBLIC OFFICERS WITH STATUTORY POWERS—*contd.*

*strain collection.* Where a public body has received by statute a discretionary power to levy and is laid under an obligation to collect a rate, an injunction cannot be granted by a Court so as to deprive such public body of the power of exercising its discretion or to prohibit it from discharging the obligation. *MEXICITAL COMMISSIONERS, MADRAS v. BARANSON* I. L. R. 3 Mad. 201

69. Suits by agents of company to restrain it from carrying into effect a resolution of directors—*Power to appoint solicitors to company—Practise.* By the Memorandum and Articles of Association of the new Dharamsey Poonjalboy Spinning and Weaving Company, the plaintiffs, firm of M F & Co. were appointed agents of the company for twenty-five years, and it was provided that they should have the general control and management of the Company. Cl. 98 of the Articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and employ, in or for such agreement, entered into between the company and the partners

etc., and particularly to exercise all the powers contained in cl. 98 of the Articles of Association. Messrs. G & B were duly appointed solicitors to the company, and acted as such for a considerable time. Merwanji Framji, one of the members of the said firm of M F & Co., died in the middle of March 1876. The plaintiffs complained that G, one of the shareholders in the company, became desirous of ousting the plaintiffs from the position of agents of the company, and of becoming the managing director of the company; that in July 1881 he procured his own election and that of certain nominees of his as directors of the company; and on the 6th August 1881 procured the passing of a resolution at a board meeting to the effect that as

be made, and that business of the company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of G of ousting the plaintiffs from their agency, and getting the management of the company for himself; that Messrs. H C & L had been for a long time the solicitors of G, and had been advising him in his designs upon the company and upon the plaintiffs, and they contended that the resolution was a breach of

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(m) PUBLIC OFFICERS WITH STATUTORY POWERS  
—*contd.*

the contract between the company and the plaintiffs and a violation of the Articles of Association of the company. The plaintiffs sued *G* and two other directors of the company and the company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874, and in particular from carrying into effect the resolution appointing Messrs *H C & L* as solicitors for the company, and to restrain them from doing anything inconsistent with the Memorandum and Articles of Association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of Merwanji Framji, and that the powers conferred on the agents by cl. 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. It being admitted that the conduct of the defendants would be supported by the company in general meeting owing to their having a preponderance of votes:—*Held*, that, inasmuch as the Court would not, by a decree for specific performance or by injunction, compel the Company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the company from appointing a solicitor, which was only a violation of what was ancillary or

the Court would not interfere on behalf of the plaintiffs. *NESSERWANJI F GORDON*  
I. L. R. 6 Bom. 662

## (n) TRADE MARK.

70. — *Restraint of use of trade mark.* Injunction granted to restrain a bazar dealer from using trade marks similar to those of a Glasgow firm trading in India. *EWING v. CHONGEE LALL MULLICK*  
Cor. 150

71. — *Fraudulent intention.* In an application for an injunction to restrain the use of a trade mark, it is not a sufficient defence to say there was no fraudulent intention, and that is no reason for not granting the application. *GRAHAM v. KER, Dons & Co.*  
3 B. L. R. Ap. 4

72. — *Infringement of patent—Label—Details different but general similarity likely to deceive.* The plaintiffs sued the defendant for an infringement of their label used on tins of aniline dye, which they imported into Bombay. The label covered the top of the tin, and bore upon it the picture of an elephant in the centre of a curved band; the rest of the label being a combination in

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(n) TRADE MARK—*contd.*

green, red, and gold representations, for the most part, of coins, medals, and tracing. The defendant was the agent in Bombay of Cassella & Co. of Frankfort. Prior to 1892, Cassella & Co. had imported aniline dye into Bombay in tins bearing a label, the chief feature of which was an elephant. Of that label however, the plaintiffs did not complain. But in January 1892, Cassella & Co. adopted a new label, also bearing the picture of an elephant different in some respects from the picture on the plaintiffs' label and with new surroundings, to none of which, taken separately, did the plaintiffs object, but they complained that in its general effect this new label was so similar to their trade mark as to amount to a colourable imitation thereof, and to be likely to deceive purchasers. *Held*, that the plaintiffs were entitled to an injunction against the defendant. *Per SARGENT, C.J.*—The question in a case of this description is not what would be the effect on brokers or even dealers in Bombay, but how the label would be likely to strike incautious or unwary purchasers, such as are to be found more particularly in the mofussil. After a careful examination, I cannot feel any doubt that the attention of such purchasers would be arrested by the

possible for a label no part of which is a copy of another label, to be a colourable imitation of that other label and to be like it in general appearances as to be likely to deceive purchasers. *BADISCHE, ANILINE, AND SODA FABRIK v. MANECKJI SHAFURJI KATRAK*  
I. L. R. 17 Bom. 584

73. — *Interlocutory application—Ad interim injunction to restrain defendant from using plaintiff's alleged trade mark—Overwhelming prima facie case—Irreparable injury.* Where the plaintiffs by an interlocutory application sought to restrain the defendants from using the word "camelhair" in respect of certain belting sold by them alleging that in so using the words there was a false representation that the defendants' said goods were of the plaintiffs' manufacture: *Held*, that the plaintiffs' right to an ad interim injunction depended on their making out a strong, if not an overwhelming prima facie case that the words complained of signified that the belting was exclusively of the plaintiffs' manufacture and that the use of the description was such as was calculated to deceive purchasers into the belief that they were purchasing goods to the plaintiffs' manufacture, and that irreparable injury might be done, if the relief sought were not given. *Reddaway v. Banham, [1899] A. C. 199; and Reddaway v. Stephenson, Unreported, referred to. Held,*

INJUNCTION—*contd.*2. SPECIAL CASES—*contd.*(n) TRADE MARK—*contd.*

further, that failing to make out a strong *prima facie* case as above the plaintiffs' remedy was to apply for expedition of the suit. REDDAWAY & Co., LTD, v. SCHRODER SMIT & Co. (1905)

8 C. W. N. 151

See JOHN SMIT v. REDDAWAY & Co.

I. L. R. 32 Calc. 401

## (o) MINING OPERATIONS.

74. ———— Temporary injunction—Mining operations commenced by defendant under bond *fide* claim of title—Loss to plaintiff from non-cultivation—Balance of convenience—Standing by—Principles on which temporary injunction should be granted. The Defendant Company acting under a bond *fide* claim of right began to cut an incline and sink a pit for the purpose of working the minerals in certain lands and had already finished constructing a railway siding when the plaintiffs sued for a declaration of their under-ground rights in the said lands and for a permanent injunction restraining the Defendant

They  
suing  
defendant  
operating  
being  
Court

of first instance granted a temporary injunction mainly on the ground that the object of the suit would be frustrated, if the Defendant Company were allowed materially to alter the features of the locality. *Held*, that in making this order the Court had overlooked certain material considera-

proportion to the loss apprehended by the plaintiffs, especially as the plaintiffs (of whose title there was no evidence) would, if successful, be able to recover damages from the Company, which was a substantial one and which did not enter as a mere wanton trespasser. Moreover, it appeared that the plaintiffs stood by for a considerable time whilst the Defendant Company was spending a large amount of money over the works sought to be stopped. This is a circumstance of considerable importance in dealing with an application for injunction, especially in the case of a mining Company. SINGARAN COAL SYNDICATE v. INDRA NATH CHATTERJEE (1906)

10 C. W. N. 173

## 3 DISOBEDIENCE OF ORDER FOR INJUNCTION.

1. ———— Remedy for disobedience of order—Contempt of Court. The proper remedy

INJUNCTION—*contd.*3. DISOBEDIENCE OF ORDER FOR INJUNCTION—*contd.*

for disobedience of an order of injunction passed by a Civil Court is committal for contempt. In the matter of the petition of CHANDRAKANTA DE

I. L. R. 8 Calc. 445; 7 C. L. R. 350

2. ———— Perpetual injunction—Disobedience to order—Contempt of Court—Second suit for injunction—*Res judicata*—Act XV of 1877 (Indian Limitation Act), *Sch. II*, Art 170—*Limitation*—Where a plaintiff has once sued

and ignores such injunction, to sue again for a similar relief; in fact, such a suit would be barred by the principle of *res judicata*. When a Court issues an order to a party in a suit for abatement from any particular act, and when the person to whom the order has been issued disobeys that order, he is guilty of contempt of Court, and the Court can take proceedings to enforce its authority, notwithstanding anything contained in Art. 179 of the second Schedule to the Indian Limitation Act, 1877. RAM SARAN v. CHATUR SINGH (1901)

I. L. R. 23 All 465

## 4. REFUSAL OF INJUNCTION

Execution—Decree restraining defendant in user of land—Sale of land in execution of another decree—Purchaser at such sale in possession—No execution granted of former decree. The plaintiff obtained a decree restraining the defendant in his user of certain land, and applied for execution. Meanwhile the land had been sold in execution of another decree against the defendant, and the purchaser at the Court-sale obtained possession. The plaintiff thereupon applied that the purchaser should be made a party to the execution proceedings and that execution should go against him as well as against the defendant. *Held*, that no order for execution could be made. It could not go against the defendant, as all his interest in the land had been sold in execution of a decree; and it could not go against the purchaser, as an injunction does not run with the land. DAHYABHAI v. BAPALAL (1901)

I. L. R. 26 Bom. 140

## INJURY.

See CRIMINAL INTIMIDATION

I. L. R. 30 Calc 418

See DAMAGES—SUITS FOR DAMAGES—TORT.

See SALE IN EXECUTION OF DECREE—SETTLING ASIDE SALE—SUBSTANTIAL INJURY.

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See INJUNCTION—UNDER CIVIL PROCEDURE CODE . . .

14 B. L. R. 352

— by dogs, without provocation—

See DAMAGES, SUIT FOR—  
I L. R. 36 Calc. 1021

— or obstruction to rights of property—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

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I L. R. 36 Calc. 516**INN-KEEPER.**

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See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY.  
I L. R. 12 Bom. 36

— as to value of property, before granting probate or letters of administration—

See COURT-FEES ACT (VII of 1870), s. 191f . . . 6 C. W. N. 696

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19 W. R. Cr. 26See HINDU LAW—HUSBAND AND WIFE.  
I L. R. 13 All. 126**INSANITY—*conold.***

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I L. R. 14 Mad. 289

— of judgment-debtor—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.  
I L. R. 19 Mad. 219

1 ——— Death caused by insane person Unsoundness of mind as absolving a man from the consequences of death caused by him observed upon. QUEEN v. NOBIN CHUNDER BANERJEE

13 B. L. R. Ap. 20:20 W. R. Cr. 70

2. ——— Unsoundness of mind, test of—*Knowledge of wrong-doing* The tests to determine whether a person has committed an act which is charged against him as an offence was of sound mind at the time of its commission is whether he knew that he was doing wrong. QUEEN v. JOGO MOHUN MALA . . . 24 W. R. Cr. 53. ——— Penal Code s. 84—*Plea of insanity in criminal cases—Legal test of responsibility in cases of alleged unsoundness of mind* S. 84 of the Penal Code (Act XLV of 1860) lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. Thedid not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. *Held*, that, as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was therefore guilty of murder. QUEEN-EMPERESS v. LAKSHMAN DALDU . . . I L. R. 10 Bom. 5124. ——— Penal Code (Act XLV of 1860), s. 84. Where the unsoundness of mind deposed to was not such as would make the accused incapable of knowing the nature of the act or that he was doing what was contrary to law, it was held to be insufficient to exonerate him from responsibility for crime under s. 84 of the Penal Code. QUEEN-EMPERESS v. RAZA MIA  
I L. R. 22 Calc. 6175. ——— Penal Code (Act XLV of 1860), s. 84—*Legal test of criminal liability.* A person subject to insane impulses, but whose



INSANITY—*contd.*

cognitive faculties appear to be unimpaired, is not by virtue of s. 84 of the Indian Penal Code exempt from criminal liability. *Semble*: In extreme cases it is difficult to say that the cognitive faculties are not affected when the will and the emotions are affected. It may therefore be said that, under the provisions of s. 84 of the Penal Code, exemption from criminal liability by reason of unsoundness of mind extends as well to cases where insanity affects the offender's will and emotions as to those where it affects his cognitive faculties. *Queen-Empress v. Lakshman Dagdu*, 1. L. R. 10 Bom. 512; *Queen-Empress v. Venkateshram*, 1. L. R. 12 Mad. 459; and *Queen-Empress v. Razai Mia*, 1. L. R. 22 Calc. 317, followed. *QUEEN-EMPRESS v. KADER NASYER SHAH*, 1. L. R. 23 Calc. 604

6. ——— Question of sanity of prisoner on criminal trial—*Procedure*. If the Court entertains doubt as to the sanity of a prisoner, the fact of such insanity should be put in issue and tried. *REG v. HIRA PANJA* 1 Bom. 33

7. ——— *Criminal Procedure Code, 1861, ss. 389, 390, 391*. A prisoner who is insane and unaccountable for his actions, and therefore incapable of making his defence, instead of being tried, should be dealt with according to ss. 389 and 390, Code of Criminal Procedure. *QUEEN v. KALAI*, 3 W. R. Cr. 67

*QUEEN v. SAHA MAHOMED*, 3 W. R. Cr. 70  
*QUEEN v. NOORHAN CHOWDHURY*, 1 W. R. Cr. 11

*QUEEN v. MUSTAFA*, 1 W. R. Cr. 16

Now under ss. 464-475 of the Criminal Procedure Code of 1898.

8. ——— *Criminal Procedure Code, 1861, ss. 391, 312—Examination of medical officer—Proof of insanity*. A Magistrate

of Criminal Procedure. A mere written certificate of a medical officer that a prisoner is of unsound mind and incapable of making his defence is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness and be personally and carefully examined. *QUEEN v. RAM RUTON DOSS*, 9 W. R. Cr. 23

9. ——— *Criminal Procedure Code, 1872, ss. 425, 232—Trial of fact of unsoundness of mind*. Where on the trial of a prisoner

INSANITY—*contd.*

must be set aside and a new trial directed reading ss. 232 and 425 of the Criminal Procedure Code together. The preliminary issue of soundness of mind or otherwise ought to have been tried by the jury, and not by the Judge personally. *QUEEN v. BHEEROO KALWAR*

10 B. L. R. Ap. 10 : 19 W. R. Cr. 15

10. ——— *Acquittal—Procedure*. Where a prisoner was declared by the Civil Surgeon to be insane at the time he was called on to make his defence, it was held that it was irregular to acquit him; proceedings should have been stayed and the prisoner detained, pending the orders of Government. *In the matter of ROMON AUDHEE KAREE*, 10 W. R. Cr. 37

11. ——— *Criminal Procedure Code, 1861, s. 313*. Case in which the prisoner,

12. ——— *Imbecile—Inability to understand proceedings—Code of Criminal Procedure (X of 1872), ss. 186 and 423*. The provisions of s. 186 of the Code of Criminal Procedure do not apply to a person who is of unsound mind; they apply to persons who are unable to understand the proceedings from deafness, or dumbness, or ignorance of the language of the court in another similar cause. But where the inability

from doing injury to himself or any other person and for his appearance when required; and that, in default of such security being given, the case should be reported to Government. *EMRESS v. HUSEN*, 1. L. R. 5 Bom. 262

13. ——— *Penal Code, s. 34—Confession by ganja smoker of murder of wife*. The accused, who was a habitual ganja-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife because she quarrelled with him and objected to go to another village where he proposed a change of home on account of their poverty; he adhered to this statement when placed for trial before the Court of Session. The

INSANITY—*contd.*

on his trial in order that the Court might ascertain whether the provocation was grave and sudden

SAHARAN I. L. R. 14 DOM. 604

14. ———— *Penal Code, s. 84*  
*—Plea of insanity in criminal cases—Legal test of responsibility in cases of alleged unsoundness of mind* The accused stabbed a child (his brother's son) at his presence of other persons; and it appeared that he had been in the habit of treating the child kindly and affectionately. He was suffering from fever and want of food at the time, and the medical evidence showed it was possible that the act was committed under a sudden attack of homicidal

not proved to have been by reason of unsoundness of mind incapable of knowing the nature of his act

I. L. R. 12 Mad. 459

15. ———— *Jurisdiction of Criminal Courts—Criminal Procedure Code (X of 1872), ss 426, 432.* The authority of the Criminal Courts over an accused, declared under s. 426 of the Criminal Procedure Code to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the Local Government, and such authority can only be revived under the circumstances mentioned in s. 432. *EMRESS v. JOY HARI KON* I. L. R. 2 Cal. 356

INSANITY—*concl.*

between his wife and a young man, whom he actually saw enter his wife's room some time before midnight and again leave it after a considerable interval, and that in consequence of what he saw he

17. ———— *Unsoundness of mind—Delusion—Knowledge of the nature of the act—Penal Code (Act XLV of 1860), s. 84.* Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape

the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that s. 84 of the Penal Code applied. *DIL GAZI v. EMPEROR* (1907)

I. L. R. 34 Cal. 68

18. ———— *Voluntary drunkenness—Unsoundness of mind* *Empress v. Joy Hari Kon*

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## order in, Appeal from—

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dure Code—

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## setting aside adjudication.—

See CIVIL PROCEDURE CODE, 1882, s. 232.

4 C. W. N. 785

## I. CASES UNDER ACT XXVIII OF 1863.

## 1 — Order for winding up estate

—Effect of an execution proceeding—Leave to proceed  
 —Laches—Right of assignees and creditors. An  
 order made under Act XXVIII of 1863 for the  
 winding-up of the estate of a trader not only stayed  
 the further prosecution of suits, etc., against him, but  
 also prevented the completion of an execution  
 against his immovable or ordinary movable prop-  
 erty, if such execution had not been consummated  
 by seizure and sale before the filing in Court  
 of the resolution passed at the meeting of the credi-  
 tors, unless the leave of the Court be given to the  
 execution-creditor to proceed notwithstanding  
 the winding-up order. Such leave was not to be  
 given except upon special grounds. Laches  
 given except upon special grounds. Laches

tion bound the goods as against the assignees in  
 insolvency, subject to the right of the execution-  
 creditor to obtain satisfaction of his debt by sale.

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2 — Claims proveable under Act  
 XXVIII of 1863—Claim against directors of joint  
 stock company. A claim against the directors of a  
 joint stock company to make good funds of the

INSOLVENCY—*contd.*

## 1. CASES UNDER ACT XXVIII OF 1865

—*concl.*

3. ———— **Liability of trader for calls on shares—Act XXVIII of 1865, s. 24—Winding-up order—Discharge.** An insolvent trader, who has obtained his discharge under s. 24 of Act XXVIII of 1865, is not liable for calls made, after he has obtained his discharge, in respect of shares held by him in a joint stock company, when the order for the winding-up of such company has been made prior to the time of the insolvent trader obtaining his discharge. *In re MERCANTILE CREDIT AND FINANCIAL ASSOCIATION. PENNETT v. VINAYAK PANDURANG* . . . . . 9 Bom. 27

## 2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

1. ———— **Mortgage by insolvent—Priority—Rights of mortgagee—Official Assignee.**

of the Official Assignee under the insolventcy.  
**KERAKOOSSE v. BROOKS** . . . . . 4 W. R. P. C. 62  
8 Moo. I. A. 339

2. ———— **Attachment by decree-holder—Priority—Vesting order.** An attachment made by a decree-holder prior to a vesting order in favour of the Official Assignee must have preference to the claim of the Official Assignee. *SHEW NARAIN SINGH v. MILLER* . . . . . 17 W. R. 234

3. ———— **Attachment before judgment—Adjudication of insolvency subsequent to decree.** P., having attached R M's property and obtained a decree against him, subsequently had him adjudicated an insolvent. The Court ruled that the attachment was unaffected by the adjudication. *In re RAMCOMYE MITTER* . . . . . Bourke O. C. 149

4. ———— **Subsequent insolvency—Priority of Official Assignee.** Where an attachment previous to decree had been obtained against the property of the defendants, it was held that attachment did not give to the plaintiff any licence in respect of the property attached as against the assignee of the defendants, notwithstanding their insolvency having occurred after the plaintiff had obtained his order attaching the property. *PETUMBER MUNDLE v. COCHRANE*  
1 Ind. Jur. N. S. 11 : Bourke O. C. 339

5. ———— **Vesting order, effect of, on attached property.** An attachment of property before judgment places it in the custody of the law, but does not alter the property in it. An

**SEE MUNDLE v. GOCOL DASS SOONDERJEE**  
1 Ind. Jur. N. S. 337 : Bourke O. C. 240

6. ———— **Effect of vesting order—Priority.** Certain property was attached

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*contd.*

before decree under Act VIII of 1859, s. 83. On the 11th of May the plaintiff obtained a decree in

under the attachment, and received the proceeds from the officer of the Court. *RAMPERSAUN ROY v. CALLACHAND DASS* 1 Ind. Jur. N. S. 325 and on appeal Ind 373

7. ———— **Vesting order—Priority of Official Assignee.** The title of the Official Assignee of an insolvent under II & 12 Vict., c. 21 (the Insolvent Act), is preferable to that of a creditor of the insolvent who before the vesting

attached shall be forthcoming at the time of pronouncing the decree to abide whatever order the Court shall make upon it. A vesting order in insolvency is in effect an assignment in trust for the benefit of creditors, and is paramount to the right of an attachment before the judgment-creditor, as it is more equitable that property under the control of the Court should be applied for the benefit of all the creditors than for the exclusive advantage of one. *JAYA RANJI v. JADAVJI NATHU*  
1 Bom. 224

**SAYA RANJI v. JADAVJI NATHU. Ex parte GAMBLE** . . . . . 2 Bom. 165 : 2nd Ed. 142

8. ———— **Priority of Official Assignee.** Where movable property of

in those suits, and warrants for such execution had been lodged with the Nazir of the Court.—*Held*, that those warrants at the latest, on their delivery to the Nazir, bound the property without re-seizure

the orders of the Insolvent Debtors' Court at Bombay, made before sale by the Nazir of the attached property, but subsequently to the delivery to him of the warrants for execution. *Held*,

INSOLVENCY—*contd.*

7. ORDER AND DISPOSITION . . . 5664  
 8. VOLUNTARY CONVEYANCES AND OTHER  
 ASSIGNMENTS BY DEBTOR . . . 5671  
 9. INSOLVENT DEBTORS UNDER CIVIL PRO-  
 CEEDURE CODE . . . 5578  
 10. AD INTERIM PROTECTION—PRACTICE. 5700

## See APPEAL—ORDERS.

- I. L. R. 4 Calc. 888  
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## See ORDER IN INSOLVENCY.

- I. L. R. 23 All. 56

See ORDER REFUSING APPLICATION TO BE  
DECLARED INSOLVENT

- I. L. R. 27 Bom. 604

## See CIVIL PROCEDURE CODE, 1882, s. 336

- I. L. R. 29 All. 466

## See CLAIM TO ATTACHED PROPERTY.

- I. L. R. 8 All. 232

## See DEBTOR AND CREDITOR.

- 3 Agra 104; 321  
 I. L. R. 20 Bom. 636  
 I. L. R. 16 Mad. 65

## See FOREIGN COURT, JUDGMENT OF.

- I. L. R. 23 Mad. 458

## See INSOLVENCY ACTS.

See INTEREST—MISCELLANEOUS CASES—  
INSOLVENCY PROCEEDINGS

- 14 Moo. I. A. 209  
 10 C. W. N. 884

See LIMITATION ACT (XV OF 1877), SCH.  
II, ART. 179 . . . I. L. R. 28 All. 387

## See PRE-EMPTION . . . I. L. R. 27 All. 1

## See RIGHT OF SUIT—INSOLVENCY.

- I. L. R. 16 Bom. 453

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- I. L. R. 16 Bom. 404

INSOLVENCY—*contd.*

## order in. Appeal from—

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dure Code—

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I. L. R. 20 Bom. 310

See RECEIVER . . . I. L. R. 15 Mad. 233

## setting aside adjudication—

See CIVIL PROCEDURE CODE, 1882, s. 232.  
4 C. W. N. 765

## I. CASES UNDER ACT XXVIII OF 1865.

## 1. Order for winding up estate

—Effect of an execution proceeding—Leave to proceed  
 —Laches—Right of assignees and creditors. An  
 order made under Act XXVIII of 1865 for the  
 winding up of the estate of a deceased debtor

execution-creditor to proceed notwithstanding  
 the winding up order. Such leave was not to be  
 given except upon special grounds. Laches  
 of the execution-creditor was an obstacle to his  
 obtaining such leave. Under the Insolvent Debtors  
 Act (1 & 2 Vict., c. 110, English Repealed Act; 11  
 & 12 Vict., c. 21, India), the mere delivery of the  
 writ of *f. fa.* to the sheriff or his deputy for execu-  
 tion bound the goods as against the assignees in  
 insolvency, subject to the right of the execution-  
 creditor to have satisfaction of his debt by sale.  
 But in bankruptcy the law is otherwise. The  
 execution must be levied by seizure and sale before  
 the date of the fiat or the filing of the petition for  
 adjudication; otherwise the execution-creditor is  
 entitled only to a rateable part of his debt with the  
 other creditors. FINANCIAL ASSOCIATION OF INDIA  
 AND CHINA v. PRANJIVANDAS HARIJIVANDAS  
 5 Bom. C. C. 25

2. Claims proveable under Act  
 XXVIII of 1865—Claim against directors of joint  
 stock company. A claim against the directors of a  
 joint stock company to make good funds of the  
 company expended by them on behalf of the com-  
 pany.

INSOLVENCY—*contd.*1. CASES UNDER ACT XXVIII OF 1865  
—*concl.*

3. ———— *Liability of trader for calls on shares—Act XXVIII of 1865, s. 24—Winding-up order—Discharge.* An insolvent trader, who has obtained his discharge under s. 24 of Act XXVIII of 1865, is not liable for calls made, after he has obtained his discharge, in respect of shares held by him in a joint stock company, when the order for the winding-up of such company has been made prior to the time of the insolvent trader obtaining his discharge. *In re MERCANTILE CREDIT AND FINANCIAL ASSOCIATION, PENNETT v. VINAYAK PANDURAO* . 9 Bom. 27

## 2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

1. ———— *Mortgage by insolvent—Priority—Rights of mortgagee—Official Assignee.* A mortgage executed by an insolvent (who has not obtained a certificate and discharge) is subject to the lien of the mortgagee in priority to the claim of the Official Assignee under the insolvency. *KERAKOOSSE v. BROOKS* . 4 W. R. P. C. 62 8 Moo. I. A. 339

2. ———— *Attachment by decree-holder—Priority—Vesting order.* An attachment made by a decree-holder prior to a vesting order in favour of the Official Assignee must have preference to the claim of the Official Assignee. *SHEW NARAIN SINGH v. MILLER* . 17 W. R. 234

3. ———— *Attachment before judgment—Adjudication of insolvency subsequent to decree.*

attachment was unaffected by the adjudication. *In re RAMCHAND MITTER* . Bourke O. C. 149

4. ———— *Subsequent insolvency—Priority of Official Assignee.* Where an attachment made by a decree-holder prior to the

against the assignee of the defendants, notwithstanding their insolvency having occurred after the plaintiff had obtained his order attaching the property. *PETUMBER MUNDLE v. COCHRANE* 1 Ind. Jur. N. S. 11 : Bourke O. C. 339

5. ———— *Vesting order, effect of, on attached property.* An attachment of property before judgment places it in the custody of the law, but does not alter the property in it. An order, therefore, vesting the property of an insolvent in the Official Assignee vests in that officer property of the insolvent which has been so attached. *In the matter of GOCOL DASS SOONDERJEE, PETUMBER MUNDLE v. GOCOL DASS SOONDERJEE* 1 Ind. Jur. N. S. 327 : Bourke O. C. 240

6. ———— *Effect of vesting order—Priority.* Certain property was attached

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*contd.*

before decree under Act VIII of 1839, s. 83. On the 11th of May the plaintiff obtained a decree in

before decree passed to the Official Assignee under an insolvency where the adjudication and vesting order are obtained after decree, and where the attaching creditor has not proceeded to sell. *Semble* : The Official Assignee has priority over the execution creditor, unless the latter has actually sold under the attachment, and received the proceeds from the officer of the Court. *RAMCHAND ROY v. CALLACHAND DASS* 1 Ind. Jur. N. S. 325 and on appeal Id. 373

7. ———— *Vesting order—Priority of Official Assignee.* The title of the

before judgment is to secure that the property attached shall be forthcoming at the time of pronouncing the decree to abide whatever order the Court shall make upon it. A vesting order in insolvency is in effect an assignment in trust for the benefit of creditors, and is paramount to the right of an attachment before the judgment creditor, as it is more equitable that property under the control of the Court should be applied for the benefit of all the creditors than for the exclusive advantage of one. *JAYA RAMJI v. JADAVJI NATHA* 1 Bom. 224

*JAYA RAMJI v. JADAVJI NATHA. Ex parte GAMELE* . 2 Bom. 185 : 2nd Ed. 142

8. ———— *Priority of Official Assignee.* Where moveable property of

in those suits, and warrants for such execution had been lodged with the Nazir of the Court;—*Held*, that those warrants at the latest, on their delivery to the Nazir, bound the property without re-seizure

the orders of the Insolvent Debtors' Court at Bombay, made before sale by the Nazir of the attached property, but subsequently to the delivery to him of the warrants for execution. *Held*,

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS  
AND OFFICIAL ASSIGNEE—*contd.*

however, also, that mere attachment before judgment does not so bind the property attached as to give, to the attaching creditors priority over the Official Assignee, in whom the estates of the defendants had been vested by orders of the Insolvent Debtors' Court made subsequently to such attachment, but before decree and warrant for execution *Doe d.O'Hanlon v. Palologus, Mort.*, 323, observed upon. *GAMBLE v. BHOLAGIR*

2 Bom. 150 : 2nd Ed. 147

9. ——— Priority of Official Assignee—Civil Procedure Code, s 81—Insolvency Act (11 & 12 Vict., c. 21), ss. 7 and 49. The plaintiffs brought a suit against P & Co. for the recovery of a sum of money with interest, and on 15th May obtained a prohibitory order for attachment before judgment under s. 81 of Act VIII of 1859 under which they attached, on the 17th of May, the right, title, and interest of P & Co. in the premises in which they carried on business in Calcutte. On the 20th of May, P & Co. were adjudicated insolvents on the petition of other creditors, and the usual order was made vesting their estate

the property attached thereunder to be released.  
*BANK OF BENGAL v. NEWTON*

12 B. L. R. Ap. 1

10. ——— Vesting order—

MOHUN ROY

I L. R. 7 Cal. 213 ; 8 C. L. R. 213

11. ——— Vesting order—Civil Procedure Code, s 276—Official Assignee's title. Where a vesting order has been made under 11 & 12 Vict., c. 21, s. 7, after attachment and that the Official Assignee takes  
*Kristo Shana Chowanary v. Mitter, I. L. R. 10 Cal. 150, and Gamble v. Bholagiri, 2 Bom. 150, followed. SADAYAPPA v. PONNAMA. I. L. R. 8 Mad 554*

12. ——— Vesting order—Priority of claim of Official Assignee. A creditor

the suit in favour of the Official Assignee. On the case coming up before a Full Bench,—*Held, per*

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS  
AND OFFICIAL ASSIGNEE—*contd.*

*McDONELL, TOTTENHAM, and PRINSEP, JJ.*, that where there has been an attachment prior to decree, and the property of a judgment debtor subsequently

and MITTER, J., *contra*, that under the 34th Chapter of Act XIV of 1882, the Court had no power to remove the attachment before judgment or stay the sale at the instance of the Official Assignee.  
*SING KRISTO SHANA CHOWDHURY v. MILLER*  
I L. R. 10 Cal. 150 : 13 C. L. R. 433

13. ——— Insolvency of defendant whose property has been attached before judgment—Right of Official Assignee to attached property—Practice—Civil Procedure Code, 1882, ss. 276, 281, 351, and 487. Plaintiffs filed a suit in a subordinate Court, and attached before judgment

order was made. *Then, before judgment* was sent by an application to the Court, in which the suit was filed, to have the attachment raised before the defendant was declared an insolvent.

*Assignee creditor by a sale. Iva hyan Jara v. Kristo v. Jadaoji, I. L. R. 10 Cal. 150, and Sadayappa v. Miller, I. L. R. 10 Cal. 150, and Sadayappa v. Ponnama, I. L. R. 8 Mad. 554, referred to and followed. TURNER v. PESTONJI FARDUNJI*  
I L. R. 20 Bom. 403

14. ——— Attachment under decree—Priority of Official Assignee. Where money due to the judgment-debtor was attached in the hands of, the Administrator General in execution of a decree, and afterwards, before any further steps were taken by the attaching creditor, the judgment-debtor filed his schedule in the Court for the Relief of Insolvent debtors, and the usual vesting order was made :—*Held*, that the Official Assignee had priority over the attaching creditor under Act VIII of 1859. *ROY CHUNDER ROY v. BAMPOTN*  
2 Ind. Jur. N. S. 186

15. ——— Priority of Official Assignee under decree of A brought small Causes & Co., and On the 23rd day of Feb. 1882, by a vesting order, Official Assignee gave notice to the seizing bailliff of his

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS  
AND OFFICIAL ASSIGNEE—*contd.*

claim to the property seized. *Held* (per NORMAN, J., on a reference from the Small Cause Court), that the Official Assignee was entitled to the property in priority to *d. COCHRANE v. GLADSTONE, WYLLIE & Co.*

2 Ind. Jur. N. 6. 337

18. *Priority of Official Assignee as against execution-creditor.* The Official Assignee of the Insolvent Court is entitled, under the vesting order, to possession of the insolvents' estate, even when that estate has been attached in execution of a decree, and an order directing the sale of it has been passed. But if a sale has taken place before the vesting order, the property in the subject of the attachment has passed from the judgment-debtor to the auction-purchaser, and the proceeds of the sale are primarily charged with the satisfaction of the decree or decrees in execution of which the sale has been made. *SARKIES v. BUNDHOO RAJE*

1 N. W. Part 6, 61; Ed. 1873, 172

17. *Official Assignee—Priority.* A obtained a decree against B, and in execution attached property of B in Zillah Dmago-pore in January 1868, which was sold on the 19th of March. In the meantime B had been adjudicated

2 B. L. R. A. C. 61; 10 W. R. 353

INDRA CHANDRA DOGAR v. OFFICIAL ASSIGNEE  
11 W. R. 100

18. *Execution creditor—Official Assignee.* The property of A was attached under a decree obtained by B. After the attachment, but prior to the sale, A was adjudicated

etc., and the proceeds of the sale were banded over by them to the Official Assignee. Subsequently the petition of the insolvent was dismissed. Immediately thereupon, on the same day, C, another execution-creditor, attached the proceeds of sale in the hands of the Official Assignee. B applied to the Court to order the Official Assignee to hand over the proceeds to the credit of his cause. On the same day A filed a fresh petition in the Court for the Relief of Insolvent Debtors, and a second vesting order was made. C claimed that the proceeds of sale should be handed over to him. *Held*, that B was entitled to have the proceeds paid to him. *WINTER v. GARTNER*

1 B. L. R. O. C. 79

19. *Priority of Official Assignee—Vesting order—Attachment of money*

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS  
AND OFFICIAL ASSIGNEE—*contd.*

in execution of decree. In execution of a decree of the Small Cause Court, certain goods belonging to the judgment-debtor, together with a sum of R227 in cash, were seized on the 22nd November; and on the 30th, the R227, together with the proceeds of sale of some of the goods, were placed to the credit of the decree-holder in the books of the Court. On the 25th November, the judgment-

Official Assignee was not entitled to the sum of R227 as against the execution-creditor. *GRISH CHANDRA ROY v. PRASANNA KUMAR CHINA*

4 B. L. R. O. C. 94

20. *Priority of Official Assignee—Vesting order—Sale in execution of decree—Auction-purchaser.* In September 1867

mentioned sale now sued to recover the property from the purchaser at the sale in execution of A's decree. *Held* (per COCHRAN, C.J., BAYLEY, KEAR,

the Zillah Judge to order the sale was not affected by the vesting order; but before making the order for sale, the Official Assignee should be heard; and unless special reason be shown upon the Official Assignee's application, the execution proceedings should be stayed or set aside. In the present case it must be assumed that the Judge made the order for sale in due course, and consequently that sale operated to pass the property out of the hands of the Official Assignee into those of the auction-purchaser. *ANAND CHANDRA PAL v. PANCHILAL SERMA*

5 B. L. R. 691; 14 W. R. F. B. 33

In the same case it was afterwards held by the Division Bench that the title of the purchaser at a sale by the Official Assignee at the instance and with the concurrence of certain persons who held a mortgage on the property, dated 30th September 1866, on which they had obtained a decree for sale, did not prevail over the title of the attaching creditor at the



## INSOLVENCY—contd.

## 2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—contd.

sale in execution of his decree. **ANAND CHANDRA PAL v. PUNCHEE LAL SOOR** . 15 W. R. 257

21. — *Execution-creditor, right of, against Official Assignee—Payment* . . . . . and a decree in order for pursuant to a property 14th September the Sheriff was directed to sell the property so attached, and the sale was fixed for the 1st December. On 30th November, B filed his petition in the Insolvent Court, and the usual vesting order was made. On 1st December, the property was sold by the Sheriff under the order of 14th September, and the proceeds were paid into Court. *Held*, that the execution-creditor was entitled as against the Official Assignee to be paid out of the proceeds. **AGA MAHOMED ALI SHERAZI v. JUDAH**

7 B. L. R. 50; 17 W. R. 234 note

22. — *Rights created by s. 295 how affected by insolvency and vesting order—Civil Procedure Code (Act XIV of 1882), s. 295—Insolvency Act (11 & 12 Vict., c. 21), s. 49.* An order under s. 295 of the Civil Procedure Code affects only interests existing at the time. The insolvency of the debtor introduces a new state of things from the date of the insolvency, but as regards sums accrued due prior to the date of the insolvency the order under s. 295 creates rights which are not affected by the insolvency. **Soobal Chander Law v. Russick Lall Mitter, I. L. R. 15 Cal. 207, cited.** **HOWATSON v. DURRANT** . I. L. R. 27 Cal. 351 4 O. W. N. 610

23. — *Partnership—Insolvency of one partner—Vesting order—Subsequent decree against insolvent and attachment of the firm property in execution—Claim by Official Assignee to set aside attachment—Civil Procedure Code, 1882, ss. 278, 283.* The defendant was the manager of a joint Hindu family, consisting of himself and two nephews carrying on a family business in Bombay, Madras, and other places. In a suit brought in the High Court of Bombay against him as manager of the said joint family, a decree was passed on the 11th April 1896, which was in terms against the defendant alone. On the same day certain property in Bombay in which (as found by the Judge) the nephews and the defendant were jointly interested, was attached in execution of the decree. Two days previously, however, viz., on the 9th April 1896, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under a. 9 of the Indian Insolvent Act (Stat. 11 & 12 Vict., c. 21). On the 6th May 1896, the Official Assignee took out a summons to have the attachment removed. *Held*, that the claim of the Official Assignee must prevail and the property be released from attachment. As at the time of the claim of the Official Assignee the defendant's schedule had not been filed, the claim was

## INSOLVENCY—contd.

## 2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—contd.

therefore governed by s. 278 and the following sections of the Civil Procedure Code (Act XIV of 1882). As at the time of the attachment the defendant's interest in the property had by the vesting order been completely divested from him and vested in the Official Assignee, the property was in his possession partly on account of the Official Assignee and partly on account of the solvent partners of his firm; that is, wholly on account of other persons. All his property and all he could honestly dispose of, whether for his own benefit or for the benefit of the firm, had prior to the attachment ceased to

right of administering the joint estate, and in the interest of the joint creditors the decree-holder must be restrained from going on with the execution, and the partnership assets will be applied by the Insolvent Court in paying the joint creditors ratably, the Official Assignee receiving the insolvent's share of the surplus, and the rest being handed over to the solvent partners. **SARDARNA JAGONATH v. ARANVAYAL SAVHAPATTY** . I. L. R. 21 Bom 205

24. — *Charge on debts—Civil Procedure Code (Act XIV of 1882), s. 372—Devolution of interest of judgment-debtor upon Official Assignee.* In March 1897, B covenanted to repay by instalments a sum of money owing by him to

B remained in possession. In July 1899, plaintiff sued B on the mortgage-deed. In August 1899, upon an *ex parte* application by the plaintiff, an order by way of injunction was made in the suit restraining the mortgagor from disposing of the stock-in-trade and outstandings and debts payable to him.

disolved. notice to a claimed the mortgage. insolvent, and

In October 1899, plaintiff obtained a decree and that B should

1900, the person indebted to the Official Assignee. In September 1900, an order was made in plaintiff's suit against the insolvent, directing that the decree should be executed by the attachment of the money in the hands of the Official Assignee. In December 1900, plaintiff applied by summons in his suit against the insolvent for an order that the Official Assignee

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*contd.*

should pay over that money. *Held*, that plaintiff was not entitled to the order. The decree, as a mortgage decree directing the sale of the chattels including the debt in question, was void and imperative as against the Official Assignee, inasmuch as the whole right, title and interest of the defendant devolved by operation of law upon the Official Assignee during the pendency of the suit and before the decree had been passed. Nor was the position of the Official Assignee affected by the doctrine of

*Budd Singh Duthuria, I. L. R. 18 Calc. 13*, referred to. *PUNENTHAVELU MUDALIAR v. BHASHAYAN AYYANGAR (1901)*. I. L. R. 25 Mad. 406

25. *Insolvent Debtors (11 & 12 Vict. c. 21), s. 7—Vesting order, effect of—Prior attachment by a judgment-creditor—Attachment, effect of—Civil Procedure Code (Act XIV of 1852), s. 295—Civil Procedure Code (Act VIII of 1859), s. 370.* A judgment-creditor has no priority over the Official Assignee in respect of property attached by him previous to the passing of the vesting order. *Sookul Chunder Law v. Rassick Lall Mitter, I. L. R. 15 Calc. 302*, approved. *A. B. Miller v. Lakhimoni Debi, 5 C. W. N. 761*, overruled. *Anand Chandra Pal v. Panchi Lal Sarma, 5 B. L. R. 691*, and *Shri Kristo Shaha Choudhry v. Kishan Chand Golecha, I. L. R. 10 Calc. 150*, distinguished. An attachment does not confer any title; it merely prevents alienation. *Moti Lal v. Karabuddin, I. L. R. 25 Calc. 179*, referred to. *PEACOCK v. MADAN GOPAL (1902)*

I. L. R. 29 Calc. 426; *see* 6 C. W. N. 577

26. *Civil Procedure Code (Act XIV of 1852), ss. 268, 453—Attachment of money before judgment—Decree—Subsequent insolvency of judgment-debtor—Claim of Official Assignee—Priority of Official Assignee.* The effect of an attachment under the Code of Civil Procedure is to prevent alienation. It does not confer title. An order of attachment under s. 268 only operates so as to give the judgment-creditor certain rights in execution. It does not operate, when those rights are not exercised before the presentation of a petition in insolvency, so as to create in favour of the judgment-creditor a title which prevails against that of the Official Assignee, under the vesting order in insolvency made after the order of attachment. The plaintiff in a suit obtained an order for attachment before judgment of a sum of money belonging to the defendant. In due course a decree was obtained and subsequently to the decree the judgment-debtor was declared an insolvent. The Official Assignee then preferred a claim to the money under attach-

INSOLVENCY—*contd.*2. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—*contd.*

ment, contending that the attachment was of no effect as against him, and asking that it might be set aside. *Held*, that the Official Assignee was entitled to the order asked for. *KRISTNASAWMY MUDALIAR v. OFFICIAL ASSIGNEE OF MADRAS (1903)*  
I. L. R. 26 Mad. 673

27. *Banker and Customer—Fiduciary relationship, existence of, between—Ordinary relation that of creditor and debtor—No fiduciary relationship when customer pays money to banker without special directions.* The ordinary relation between a banker and customer, in respect of moneys paid by the latter to the former, is that of debtor and creditor, and no fiduciary relationship will be created in the absence of directions by the customer which convert the banker into a trustee in respect of the sums so paid. A trust will exist when the banker is to collect and remit but not where he is to use and repay. Where a customer remits money to a banker with directions to receive such money in fixed deposit for a certain period together with another sum to be remitted, the banker does not, when the latter amount is not paid, hold the former sum in trust by virtue of such direction, although he cannot claim to hold it as a fixed deposit payable only after the limited period. *In re Hallett's Estate, 13 Ch. D. 690*, referred to. *Dale's Case, 11 Ch. D. 772*, referred to. *Foley v. Hill, 2 H. L. 28*, referred to. *In re Brown ex parte Platt, 60 L. T. R. 397*, referred to. *Burdick v. Garrick, 5 Ch. A. 233*, referred to. *OFFICIAL ASSIGNEE OF MADRAS v. SMITH (1908)*  
I. L. R. 32 Mad. 66

## 3. RIGHT OF ELECTION AS TO LEASEHOLD PROPERTY.

*Right of Official Assignee to accept or disclaim leasehold property—Effect of taking possession—Liability for rent.* The Official Assignee has the right to elect whether he will accept or repudiate onerous (e.g., leasehold) property belonging to an insolvent and as such vest-

certain premises in Bombay from plaintiff as a monthly tenant at a rent of Rs 125, with liberty to

passed against A, handed over possession of them to the agent of the defendant, who remained in posses-

**INSOLVENCY—contd.****3. RIGHT OF ELECTION AS TO LEASEHOLD PROPERTY—contd.**

sion until the 30th September 1896, when he gave them up to the plaintiff. The plaintiff brought this suit against the defendant for the rent (R750) due from 1st April 1896 to the 30th September 1896. Held, that the defendant was liable. By entering into possession on the 30th August 1896, the defendant had elected to accept the lease and had thereby become assignee of it. The acceptance dated back the vesting order, and the Official Assignee (the defendant) became liable for the rent during the period that he continued to be assignee, his liability ending when with the landlord's consent he surrendered the term. **ABDUL RAZAK v KERNAN**

I L R. 22 Bom. 617

**4 SALES FOR ARREARS OF RENT.**

1. ——— Validity of sale against Official Assignee—*Insolvency Act, 11 & 12 Vict., c. 21—Rights of purchaser* When a tenant of land owing arrears of rental (rent) takes the benefit of the Insolvent Debtors' Act, 11 & 12 Vict., c. 21, the Official Assignee must elect, and express his election to take the land cum onere, otherwise he acquires no interest in it. Where such election has not been made, and a suit for possession is brought by a purchaser at an auction-sale held by the revenue authorities for the arrears, the insolvent cannot plead a *jus tertii* in the assignee. **CHINNA SUBBARAYA MUDALI v KANDASAMI REDDI**

I L R 1 Mad. 59

2. ——— Right to sell in execution of decree—*Landlord and tenant—Official Assignee—Beng. Act VIII of 1880, ss. 59 and 60—Insolvency Act, 11 & 12 Vict., c. 21.* A decree for arrears of rent of an under-tenure was obtained against a tenant who became an insolvent, and a sale for arrears was ordered in the Official Assignee's

right was to prove in the insolvency for the amount of his debt. Held, that, whether the arrears of rent became due before or after the insolvency of the judgment-debtor, the decree-holder was entitled to sell the tenure in execution of his decree. **CHUNDER NARAIN SINGH v KISHEN CHAND GOLECHA**

I L R. 9 Calc 855

**5. RIGHT OF OFFICIAL ASSIGNEE IN SUITS.**

Suit on promissory note endorsed by an insolvent—*Right of Official Assignee to intervene—Civil Procedure Code, s. 73.* In a suit brought on a promissory note, dated 15th February 1872, made by the defendant and payable to one L, and endorsed by L to the plaintiff

**INSOLVENCY—contd.****5. RIGHT OF OFFICIAL ASSIGNEE IN SUITS—contd.**

for value, it appeared in evidence on the hearing of the case as an undefended cause that L had been

**6. PROPERTY ACQUIRED AFTER VESTING ORDER.**

1. ——— After acquired property—*Purchaser from insolvent who had not obtained his discharge—Purchaser from Official Assignee—Rights of parties—Intervention of Official Assignee—Adverse possession.* Subject to the right and claim of the Official Assignee, and so long as he does not

by an insolvent in such a position may be adverse to the Official Assignee so as to bar the title of the latter by lapse of time. **KRISTOCOMUL MITTER v SURPUL CHENGAPPA**

I L R. 6 Calc 556; 12 C. L. R. 253

2. ——— *Insolvency Act (Stat. 11 & 12 Vict., c. 21), ss. 7 and 27—Salary—Pension—Personal earnings of insolvent—Attachment previous to vesting order.* After-acquired property of an insolvent, whether it consists of salary, personal earnings, or property of a different kind, is property which vests in the Official Assignee, but subject to the provision of s. 27 of the Indian Insol-

under s. 27 of the Act, nor such personal earnings at all unless and until in either case the insolvent

matter of DONAGHUE. I L R 18 Bom. 232

3. ——— *Insolvency Act (11 & 12—Mortgage assignee.*

INSOLVENCY—*contd*6. PROPERTY ACQUIRED AFTER VESTING ORDER—*contd*.

insolvency Act s. 36, for the delivery up to him of a house and furniture of which the occupants were in possession under a mortgage from an insolvent, dated December 1891. It appeared that the insolvent had been adjudicated in 1888, and had received her personal discharge in 1890, and had obtained the house in question under a deed of gift in April 1891, and had died intestate in May 1892, having never obtained a discharge under s. 59. The mortgagees took their mortgage with notice of the insolvency of the mortgagor. The Official Assignee did not become aware that the insolvent had acquired the property in question till September 1892, when he intervened and claimed the property free from the mortgage. *Held*, that the Official Assignee was entitled to the mortgaged property free from the mortgage. ROWLANDSON v. CHAMPION.

I. L. R. 17 Mad. 21

4. ———— *Deceased insolvent-debtor—Whether it vests in his administrator or in the Official Assignee—Policy of insurance—Vesting order, Effect of—Insolvency Act (11 & 12 Vict., c. 21), s. 7.* The Official Assignee sold a

was about to take out letters of administration to the

I. L. R. 10 Mau. 14

5. ———— *Insolvency Act (11 & 12 Vict., c. 21), s. 7—Payment to insolvent, after vesting order, of debt due before, effect of.* Payment to an insolvent, after a vesting order has

events that the circumstances were such as to put him on enquiry. *Kristo Comul Mitter v. Suresh Chunder Deb*, I. L. R. 8 Calc. 516, distinguished; *Rowlandson v. Champion*, I. L. R. 17 Mad. 21, referred to. MILLER v. ABINASH CHUNDER DUTT

2 C. W. N. 373

6. ———— *Undischarged insolvent may sue for after-acquired property.* An undischarged insolvent has, in respect of after-acquired property, moveable and immovable, a right against all the world except the Official Assignee and may sue to recover such property if the Official Assignee does not intervene. SRINIVASU NAIDU v. ANDALANMAL (1905)

I. L. R. 30 Mad. 145

INSOLVENCY—*contd*

## 7 ORDER AND DISPOSITION.

1. ———— *Order and disposition—Insolvency Act, ss. 23, 24—Partners.* R carried on business in Calcutta in partnership with B and C under the style and firm of B & Co. Goods were consigned on triplicate account to B & Co., B, B & Co., and another. The consignors wrote to B & Co.: "You will please hand over the goods, as per annexed list, to B, B & Co., Calcutta; they are bought, as you are aware, under special agreement on triplicate account." Before the goods had arrived B & Co. stopped payment. B, B & Co. were creditors of B & Co. After B & Co. had stopped payment,

the endorsement, R filed his petition of insolvency. *Held*, that, under s. 24 of the Insolvency Act, it

2 Ind. Jur. N. S. 273

2. ———— *Insolvency Act, s. 23.* An insolvent, J A, executed the following document in Calcutta, dated May 10th, 1897, in favour of M L & Co.: "Dear Sirs,—In consideration of your having advanced to me the sum of Rs. 700, I hereby assign to you the whole of the furniture and fittings now lying at my house, Fairy Hall, Dum

M L & Co. Before any sale took place, J A filed his petition in the Insolvent Court, and the usual vesting order was made. *Held*, that the furniture was in the "possession, order and disposition" of the insolvent within the meaning of s. 23 of the Insolvency Act. *In the matter of ANANDU*

2 Ind. Jur. N. S. 310

3. ———— *Specific appropriation—Insolvency Act (11 & 12 Vict., c. 21), ss. 23 and 24—Jurisdiction—Cause of action.* St. & Co., merchants carrying on business at Glasgow, brought a suit against J C, Official Assignee, who resided in Calcutta, as assignee of the estate of B & Co., merchants carrying on business at Cal-

INSOLVENCY—*contd.*7. ORDER AND DISPOSITION—*contd.*

cutta, and *Sm. & Co.*, merchants carrying on business at London. *St. & Co.* alleged in their plaint that they were the owners of certain goods, and sold the same to *B & Co.* and *Sm. & Co.*, and drew for the price on *Sm. & Co.*, who accepted the drafts;

and *B & Co.* subsequently suspended payment,—namely, in December 1866 and January 1867; that in February 1867 *B & Co.* filed their petition in the Court for the Relief of Insolvent Debtors at Calcutta, having previously delivered a portion of the goods, and endorsed the bills of lading for the remainder to *J S & Co.*, who had notice of the

goods had been handed over by *J S & Co.* to *J C*, who threatened and intended to apply the same in payment of the general body of creditors of *B & Co.* *St. & Co.* prayed that the rights of the parties to the suit might be declared; that an account might be taken of what had been received by *J C* for the goods; that *J C* should be ordered to pay to *St. & Co.* what was due to them; that *St. & Co.* should be ordered to pay to *J C* what was due to them; and that the case coming on for settlement of issues, the

owners, with the consent of *St. & Co.*, within the meaning of s. 23 of the Insolvency Act; and therefore the goods and the sale-proceeds rightly passed to *J C* as assignee; and further that the Court had not jurisdiction to declare the rights of all parties as prayed for; that the cause of action

was disclosed against *St. & Co.*, and it was granted to *St. & Co.* to set aside the order of the Court, and the Court to make such order as it might think fit. The Court, and the

plaint sufficiently disclosed a cause of action. *St. & Co.* had a right to have it tried whether they had an equitable charge upon the proceeds for the purpose of paying the bills. *STERLING v. COCHRANE* 1 B. L. R. O. C. 114

4. *Specific appropriation—Insolvency Act (11 & 12 Vict. c. 21), ss. 23 and 24—Jurisdiction—Cause of action.* *C & Co.*, merchants, carrying on business in Manchester, brought a suit against *J C*, Official Assignee, who resided at Calcutta, as assignee of the estate of *B & Co.*, merchants, carrying on business at Calcutta,

INSOLVENCY—*contd.*7. ORDER AND DISPOSITION—*contd.*

and *S & Co.* and *M & Co.*, and other merchants.

joint accounts; *S & Co.* had a one-third share, and *S & Co.* and *M & Co.* had a one-third share between

and *B & Co.* subsequently suspended payment in December 1866 and January 1867; that in February 1867 *B & Co.* filed their petition in the Court for the Relief of Insolvent Debtors at Calcutta, having previously sold a portion of the goods, and delivered the remainder to *J S & Co.*, as agents for sale on account of *C & Co.*, and the other parties in-

the whole of the goods; that the proceeds arising from the sale had been handed over by *J S & Co.* to *J C*, who threatened and intended to apply the same in payment of the general body of creditors of *B & Co.* *C & Co.* prayed that the rights of the parties to the suit might be declared; that an account might be taken of what had been received by *J C* for the goods; that *J C* should be ordered to pay to *C & Co.* what was due to them; that *C & Co.* should be ordered to pay to *J C* what was due to them; and that the case coming on for settlement of issues, the

parties to the suit, according to the merits of the case.

was disclosed against *St. & Co.*, and it was granted to *St. & Co.* to set aside the order of the Court, and the Court to make such order as it might think fit. The Court, and the

plaint sufficiently disclosed a cause of action. *St. & Co.* had a right to have it tried whether they had an equitable charge upon the proceeds for the purpose of paying the bills. *STERLING v. COCHRANE* 1 B. L. R. O. C. 131

INSOLVENCY—*contd.*7. ORDER AND DISPOSITION—*contd.*

5. ———— *Specific appropriation—Insolvency Act (11 & 12 Vict., c. 21), ss. 23 and 24.* In 1862 the plaintiff's former firm of *J S B & Co.* of Manchester, entered into an agreement

on *S & Co.* for cost of goods including packing charges; said bills to be discounted (and domiciled) at *Ovrend, Gurney & Co.* at 1½ per cent. in excess of bank's minimum rate. *B & Co.* to remit their

and 1½ per cent. for six months as provision for said six months' drafts. *B & Co.* on sale of goods, to specially remit proceeds to *Ovrend, Gurney & Co.* in first class bills drawn in favour of *Ovrend, Gurney & Co.* *Ovrend, Gurney & Co.* agree to give up *B & Co.*'s drafts on *S & Co.* on receipt of the said remittances under rebate. In the event of *S & Co.* being brought under cash advances, *J S B & Co.* agree to find cash to the extent of one-third the amount." In 1863 *J S B*, one of the members of the firm of *J S B & Co.*, retired from the firm, which was carried on under the name of *T B &*

plaintiff and shipped to *B & Co.* on triphcate account, and bills were drawn by the plaintiff on *S & Co.* as agreed, and were deposited with *A C & Co.*, not with *O G & Co.* On the 2nd January

1867. *B & Co.* stopped payment on the 27th December 1866, and *J H R.*, the only partner of that firm then in Calcutta, filed his petition in the Insolvent Court there on the 7th February 1867. *L B* filed his petition in the said Court on the 18th May 1867. *S & Co.* stopped payment in December 1866. On the 16th March 1867, an order of the Insolvent Court was made in the matter of the petition of *J H R.*, and in pursuance of this order *B B & Co.* delivered to the defendant, as Official

INSOLVENCY—*contd.*7. ORDER AND DISPOSITION—*contd.*

specifically appropriated to taking up the bills of *B & Co.* on *S & Co.*; and until they were paid, *B & Co.* had no interest in the goods which could justify their assignee in stopping the remittance of the proceeds or of taking the property out of the possession of *B B & Co.*, that the plaintiff was entitled to the proceeds with interest from the time the proceeds and

the two firms and Barlow wherein the outset part owners of these goods, and each became liable to the orders to contribute his share towards the cost price thereof. In November 1866 there ceased to be a binding agreement to remit the proceeds to *O C & Co.*, and no new agreement was substituted. The agreement of 2nd January did not renew the right to have the proceeds remitted for special appropriation, and it was, moreover, a fraudulent preference and void so far as *B & Co.* were concerned. On 16th January, when the goods were transferred to the plaintiff, he was merely a creditor, and therefore a transfer for his benefit, within two months of filing the petition of insolvency, was void under s. 24 of the Insolvency Act. *BARLOW v COCHRANE*

2 B L R. O. O. 56

Affirmed by the Privy Council, where it was held

ment of a speculation whilst the result is uncertain may be both honest and politic, as it entirely differs from undue preference of one creditor to others after a debt has been incurred. *MILLER v BARLOW*

14 Moo. I. A 208

6. ———— *Insolvency Act, s. 24.* On the night previous to *B*'s being adjudicated insolvent, about 10 p.m., the firm of *R B D*, at their place of business, promised to give *B* a loan of Rs. 5,000 if he would the next morning deliver to them goods to that amount, and would, in the meantime, satisfy them that he had sufficient goods in his godown, and allow the firm of *R B D* to put their lock on the door of the godown to secure the goods until they had received the value of the loan. Thereupon *B* took the godown of the firm of *R B D* to his godown, let him see that it contained goods worth more than Rs. 5,000, and allowed him to put a lock on the door, *B* at the same time

INSOLVENCY—*contd.*7. ORDER AND DISPOSITION—*contd.*

replacing his own locks. The gomastah and B then returned to the office of E H D where Rs. 5,000 were paid to B, who promised to deliver the next morning—

next day he was adjudicated an insolvent. Held, that the goods in the godown were not in the order and disposition of B within the meaning of s. 24 of the Insolvency Act. *In the matter of BUNOEE-DHUR KHITTEY, Claim of RAMLALL BUDRIE DOSS* I L. R. 2 Cal. 359

7. — *Insolvency Act, s. 23—Assignment of shares—Constructive trustee.* N, an original allottee of five shares in the A company, assigned them to B. No transfer was executed and no notice of the assignment was given to the company, which subsequently went into liquidation. N became insolvent. B sued the liquidators of the company for the amount due in respect of the five shares on the first distribution of assets. Held, that at the time of N's insolvency the plaintiff was the true owner of the shares.

of N, and consequently the shares and the right to receive any distribution of assets in respect of them vested, upon N's insolvency, in the Official Assignee. *Semble* The principle that a person who is under an obligation to convey property to another is, in a Court of equity, a trustee of such property, for

I L. R. 2 Bom 542

8. — *Insolvency Act (11 & 12 Vict., c. 21), s. 24—Goods pledged by insolvent and redelivered to him on commission sale.* M, who carried on the business of a watch and clock maker in Calcutta, borrowed from D M Rs. 6,000, for which he gave a promissory note, and as collateral security for the payment of which sum he pledged certain articles consisting of watches, clocks, etc., with D M. The articles remained for some months in the custody of D M, who then redelivered them to M for sale on commission, the proceeds to be applied in liquidation of the debt. M gave a receipt for the articles, and some of them were sold by M on those terms. On the 2nd of May 1877 M filed his petition in the Insolvent Court, and such of the articles as remained unsold came into the possession of the Official Assignee. On an application by D M claiming the articles and praying for an order directing the Official Assignee

INSOLVENCY—*contd.*7. ORDER AND DISPOSITION—*contd.*

to return them, it was alleged that it was customary for European jewellers in Calcutta to receive articles

the true owner of the goods. D M's interest ceased

them, and it could have been proved and a dividend recovered on it under the insolvency. Even if the interest of D M did not cease, the goods were in the order and disposition of the insolvent, there being nothing to show any publicity or notoriety in the

*Semble* No such arrangement would be upheld as against the Official Assignee. *In re MURRAY, Ex parte DWAKANATH MITTER* I. L. R. 3 Cal. 56

9. — *Insolvency Act (11 & 12 Vict., c. 21), s. 23—Reputed ownership—Possession—Consent of true owner—Partner out of jurisdiction—Mortgage of chattels—Priority.* In 1878 the members of the firm of A & Co. mortgaged the free and dead stock, chattels, and effects belonging to the firm to B, the mortgage-deed

creating the future charge with B as the firm's attorney. C and D, the two members of the firm, removed to Calcutta, remained in possession of the goods, when C was vested with possession and entered into possession. On the 20th June, 1877, the firm's

I. L. R. 8 Cal. 600  
7 C. L. R. 29; 9 C. L. R. 385

10. — *Insolvency Act (11 & 12 Vict., c. 21), s. 23.* Where goods are in the order and disposition of any person under such circumstances as to enable him by means of them to obtain false credit, then the owner of the goods, who

## INSOLVENCY—*contd.*

### 7. ORDER AND DISPOSITION—*contd.*

has permitted him to obtain false credit, must suffer the penalty of losing such goods for the benefit of those who have given the credit. *In the matter of MARSHALL*, I. L. R. 7 Calc. 421

Affirmed on appeal. *In the matter of MARSHALL, BOILEAU v. MILLER*, 10 C. L. R. 591

11. — *Insolvency Act (11 & 12 Vict., c. 21), s. 23—Reputed ownership* In 1893 *B* mortgaged to one *D* certain furniture standing in a house leased by him from one *F*. The

have power to enter the premises and deal with the

tion of *B* as reputed owner with the consent of the

being in the possession of *B* as reputed owner; that even if this had been so, the attachment under *V*'s execution took the goods out of the order and disposition of *B*, and that the mortgage was entitled to the benefit of that circumstance. *In re Agaley*, 2 Ind. Jur. N. S. 210, questioned. *In the matter of R. Brown*

I. L. R. 12 Calc. 629

### 8. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

1. — *Assignment by debtor—Fraud on creditors—Fraudulent assignment.* Where *G & Co.* were unable to meet the bills of *T & Co.*, and wrote to *T & Co.*, "If you do not arrange for renewal or payment of them, we must stop payment;" *G & Co.*, knowing that they were insolvent, but for the purpose of delay, and not for any benefit to the estate, agreed to mortgage to *T & Co.*, what was substantially the whole

## INSOLVENCY—*contd.*

### 8. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR—*contd.*

of the estate. *T & Co.* renewed the bills, and the

formance of the agreement, and held that it was a fraud against the general body of the creditors. *TEIL v. GORDON*, 2 Ind. Jur. N. S. 142

2. — *Assignment to one creditor—Fraud—Vendor remaining in possession.* When *A*, a holder of a hundi drawn up and accepted by the firm of *B*, procured that firm, when it was on the verge of insolvency, to sell him certain property in payment of the hundi; but, before his obtaining possession, *C*, another creditor of, and decree-holder against, the firm, got it sold in satisfaction of his debt:—Held on *A*'s suit, that the sale in his favour could not, in the absence of any finding of fraud, be set aside merely on the ground that the effect of it had been to deprive the other creditors of their powers to have recourse to the property. *DALOO RAM v. SHIVA PERSHAD*

2 Agra 71

3. — *Insolvency Act, s. 24—Voluntary assignment—Deposit of title-deeds—Right of Official Assignee.* The firm of *O N & Co.*, Calcutta, had an account with a Bank, of which *R* was the manager, under an arrangement that the Bank should discount bills accepted by *C N & Co.* to a certain amount, and that *C N & Co.* should keep in the Bank a certain fixed cash balance. In November, *R*, finding that the limit of the discount accommodation had been exceeded

verbally promised on 24th November to deposit with the Bank the title-deeds of the premises in which *C N & Co.* carried on their business; in consideration of such promise *R* discounted further bills from 24th to 29th November. *A* sent to *R* a letter on 25th November as follows: "In pursuance of the conversation the writer had with you yesterday, we now deposit the title-deeds of landed house property as security against our discount account." The letter enclosed certain title-deeds, of which *R* acknowledged the receipt. *R* subsequently discovered they were not the title-deeds which *A* had promised to deposit, and of this he gave *A* notice by letter on 28th November. *C N & Co.*, on 5th November 1870, suspended payment, and by the usual order their estate and effects vested in the Official Assignee, who thereupon, finding that the Bank claimed a lien on the deeds, brought a suit against the Bank for recovery of them. *Held*, that the deposit of the title-deeds was not void under s. 24 of the Insolvency Act.



INSOLVENCY—*contd.*8. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR—*contd.*

MILLER v. CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA. 6 B. L. R. 701

4. — *Insolvency Act, s. 24—Assignment to trustees for benefit of creditors—Voluntary assignment—Onus probandi—Right of creditor to set aside deed.* Where two insolvent partners, being sued by two of their creditors and urgently pressed by others, called a meeting of their creditors to consult them as to the course to be adopted, and the creditors at such meeting resolved that the affairs of the insolvents should be wound up, under a deed of assignment in trust for the benefit of their creditors, and, in pursuance of this resolution (which was not shown to have been proposed by or to have originated with the insolvents), a deed of composition was drawn up and executed by the insolvents, whereby they assigned their entire property to trustees for the benefit of all their creditors, who, before a certain specified time, should sign the deed: *Held*, that, under these circumstances, the composition deed could not be considered a voluntary assignment within the meaning of s. 24 of the Insolvent Debtors Act, and the deed was accordingly upheld.

to have an assignment by an insolvent to trustees set aside as voluntary. *In re ДРАЖИНА КНАЖЕТЪ РАТНАГАР*. 10 Bom. 327

5. — *Insolvency Act, s. 24—"Voluntary" conveyance by insolvent.* Where two days before a person was adjudicated an insolvent and his property had by order vested in the Official Assignee under the provisions of Stat. 11 and 12 Vict., c. 21, such person had, not spontaneously, but in consequence of being pressed,

void under that section as against the Official Assignee. *Held* by PEARSON, J., that such assignment was not a voluntary one in the sense that it was made spontaneously without pressure; that as the vesting order was not passed on petition by the insolvent for his discharge, that section was not relevant to the case. *SHEO PRASAD v. MILLER*. I. L. R. 2 All. 474

In the same case before the Privy Council, a firm,

INSOLVENCY—*contd.*8. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR—*contd.*

stopped payment in Calcutta, adjudication having followed on the second day after, purported to have been drawn by a debtor owing money to the Lucknow branch under its assignment in favour of the defendant to the amount of such debt. The latter received the money. *Held*, that, under all the circumstances, it was not necessary to decide whether the transfer was made on the date which the draft purported to bear, the conclusion upon all the facts being that the debt had been transferred "voluntarily" within the meaning of s. 24. *MILLER v. SHEO PRASAD*. I. L. R. 6 All. 84, L. R. 10 I. A. 98

6. — *Insolvency Act, ss. 23, 24—Equitable assignment of goods as security—Jokhmi hundi.* The plaintiffs at N purchased, on 22nd December 1878, from L, for Rs. 1,000, a jokhmi hundi, drawn in favour of plaintiffs by L upon his firm in Bombay. The hundi contained a statement that it was "drawn against" twenty-nine bales of wool shipped at Tuna, and it was

the particulars whereof are as follows: (Rs. 1,000) The value having been received from Jadwaj Gopalji, hundis for Rs. 1,000 drawn against 29 bales of sheep's wool shipped on board the 'Hanprasad,' owner Dayal Morari, from the seaport town of Tuna. . . . On the safe arrival of the vessel do you be good enough to land the goods and deliver the same to Jadwaj Gopalji, and as to the jokhmi hundis drawn before, if in respect thereof any money has to be paid to Jadwaj Gopalji, do you be good enough to pay the same." The above letter was duly presented by the plaintiffs to L's Bombay firm on the 27th December 1878. Evidence was given that, at the time the plaintiff obtained the hundi and the letter, the goods referred to had been already shipped. On the 1st January 1879, the firm of L was adjudicated insolvent by the High Court of Bombay. On the 5th January 1879, the ship arrived at Bombay with the goods.

On the 7th January the Official Assignee (as assignee) of the ship-ool or the amount of the hundi:—*Held*, on the authority of *Burn v. Carvalho, 4 M. & Cr. 702*, that the letter was not a voluntary assignment as an equitable

entitled to obtain possession of the wool. *JADWAJ GOPALJI v. JETHA SANJI*. I. L. R. 4 Bom. 333

7. — *Stat 11 & 12 Vict., c. 21, s. 24—Insolvent—Voluntary transfer.*

**INSOLVENCY—*contd.*****8. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR—*contd.***

On the 12th March 1881, a firm, the partners of which were subsequently, within two months from that date, adjudicated insolvents under 11 & 12 Viet., c. 21, suspended payment. On the night of the previous day, the 11th March, one of the creditors of the firm, the impending bankruptcy of the firm having become known, urged the latter to make over a part of their stock-in-trade as security for the debt, and to this the insolvents consented. The only pressure which appeared to have been exercised was that on the 11th March security was demanded from the insolvents. *Held*, that, there having been no pressure which could not be resisted, and no legal proceedings having existed against the insolvents, or which they could have feared, the transaction was a voluntary transfer, and therefore void under s. 24 of 11 & 12 Viet., c. 21. **PHILCHAND v. MILLER** . I. L. R. 7 All. 340

**S.** ———— *Assignment in fraud of creditors—Transferee in good faith and for value.* A transfer of property made to certain creditors fraudulently and in contemplation of the insolvency of the transferor is not voidable at the suit of another creditor if the transferees were purchasers in good faith and for consideration. **GOPAL v. BANK OF MADRAS**

I. L. R. 16 Mad. 397

**9.** ———— *Mortgage to secure a barred debt since renewed—Fraudulent preference—Voluntary transfer—Civil Procedure Code, ss. 344, 351.* On 1st January 1886 a partner—

the trustees of A's marriage settlement. A suit against the firm was pending at the date of the deed of dissolution, and it was dismissed by the Court of first instance, and an appeal was preferred to the High Court. Before the appeal came on for hearing, the debt to A's trustees was barred by limitation, but A by a letter consented to pay it, and the trustees demanded the execution of the mortgage as agreed on and offered to pay off the Bank. *Shankar v. Shankar*

On 2nd January 1889, B executed a mortgage of the plantation house in pursuance of the above agreement, and in June the trustees paid off the Bank.

**INSOLVENCY—*contd.*****8. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR—*contd.***

decree on the ground that the mortgage of 2nd January 1889 had been executed with the object of defeating their claim. *Held*, that the execution of

preference, not being a voluntary transfer. **BUTCHER v. STAD**, L. R. 7 E. & J. 4p. 539, followed. **BROWN v. FERGUSON** . I. L. R. 16 Mad. 499

**10.** ———— *Mortgage by trading partnership of all its assets when solvent for advances present and future—Change of partners with continuance of mortgage liability—Validity of mortgage security.* If a trader assigns all his property, except on some substantial contemporaneous payment or substantial undertaking to make a subsequent payment, that is an act of insolvency, and is void against the creditors on his insolvency, simply because nothing is left where—

advance to the firm, agreeing to make future advances. *Held*, that the mortgage would have covered such assets of the then firm as were in

not left by the assignment without means. Another question was raised upon the facts that, after the mortgage and before the insolvency, new partners entered the firm, and new stock-in-trade was brought in. The new partners were to be under the same liability to the secured creditors, the security continuing with respect to the new firm and the after-acquired stock, as it stood with respect to the old. *Held*, that this

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due incoming partners got the benefit of a suretyship which the mortgagees had entered into for the former firm. These were the considerations to the incoming partners at the time. As the original contract would have been, the new one was, valid against the Official Assignee. **KHOO KWAT SIEW v. WOOL TAIK HWAT**

I. L. R. 19 Cal. 223

L. R. 19 I. A. 15

**11.** ———— *Assignment of stock-in-trade—Equitable lien—Preferential credi-*

INSOLVENCY—*contd.*S. VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR—*concl.*

*tor—Insolvency, act of—Insolvent Act (II & 12 Vict., c. 21), s. 9. An insolvent in debt to a bank*

etc., and undertook at the time to execute, & whenever

enclosing a cheque for Rs 100, and requesting that it should be placed to the credit of the loan account. *Held*, that, as regards the amount of the debt

12. ———— *Attempted preference—Equitable mortgages by deposit of title deeds*

against a trader in Calcutta, a creditor brought this suit against him and the Official Assignee as co-defendants, the latter alone defending. The claim was for payment of a debt, and in default to obtain an order for the sale of land upon which the creditor averred that he held an equitable mortgage by deposit of title-deeds with him, before the adjudication, as security for the debt. *Held*, that the burden was upon the plaintiff of proving the deposit by way of equitable mortgage to have preceded the adjudication. The Courts below having differed as to whether this prior possession had or had not been proved, an examination of the evidence led to the conclusion that the plaintiff had failed to prove that the title-deeds had been deposited before the date of the adjudication as alleged by him. On the question whether the Courts below should, or should not, have received in evidence the testimony of a witness who had been informed by the plaintiff before the adjudication that documents relating to land had been deposited with him as security for the

testimony did not make it available as a ground of judgment. *MILNER v. MADHO DAS*

I. L. R. 19 All. 78  
L. R. 23 I. A. 108

INSOLVENCY—*contd.*

## 2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

1. ———— *Application of Civil Procedure Code*

party is vested in the Official Assignee, and cannot be handed over to the Court in the manner contemplated by those sections. *KISSOREMORUS CHATTERJEE v. KONNOY LOIL DUTT*

I Ind. Jur. N. S. 247

2. ———— *Civil Procedure Code, 1859, s. 273-280.* The sections of Act VIII of 1859 (273-280, etc.) which enabled a defendant, arrested or in prison in execution of a decree, to obtain his discharge on application to the Civil Court, and giving up all his property, had no application in cases in which the prisoner had become insolvent, and the Court for the Relief of

3. ———— *Small Cause Court debtors—Civil Procedure Code, 1877, s. 336, cl. 5; and Ch. XX, ss 344-360.* Cl. 5 of s. 336 of Act X of 1877 applies to Small Cause Court debtors: such persons can obtain the benefit of Ch. XX of that Act by applying to a Court which has jurisdiction under that chapter. *MOIDIN v. SUNDARAMURTHI*

I. L. R. 2 Mad. 9

4. ———— *Application to Collector's Court for adjudication—Civil Procedure Code, 1877, ss. 2 and 344—Bengal Civil Courts Act, 1871, s. 15—Bengal Act VII of 1868.* A Collector's Court, though having Civil Court powers in some cases, is not a Civil Court under s. 15, Bengal Civil Courts Act, 1871, nor is it subordinate to a District Court within the meaning of s. 2 of the Civil Procedure Code, 1877. An application under s. 344 of Act X of 1877 for a declaration of insolvency made by a person imprisoned by order of the Collector under the provisions of Bengal Act VII of 1868 cannot be entertained. *In the matter of BOORA ROMAN*

3 C. L. R. 508

5. ———— *Application to Munsif's Court for adjudication—Civil Procedure Code, 1882, ss 341, 360—Attachment of debtor's goods—Applications to Munsif's Court.* A District Munsif's Court invested with insolvency jurisdiction by the Local Government under s. 360 of the Code of Civil Procedure cannot entertain an application made by a judgment-debtor, whose property has been attached, to be declared an insolvent, except where such application is transferred to it by the District Court. *NARASAYAN v. NARASIMMA*

I. L. R. 7 Mad. 510

6. ———— *Application on insufficient grounds—Civil Procedure Code, 1882, s. 241—Fulfilment of requirements of section after application.* When an application to be declared an

INSOLVENCY—*contd*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd*

insolvent under s. 344 of the Civil Procedure Code, 1882, was preferred, the requirements had not been fulfilled, as the applicant had not been arrested or imprisoned in execution of a decree for money, nor had his property been attached in execution of such a decree. Eleven days after the application had been preferred, the applicant's property was attached in execution of such a decree. One of the creditors subsequently objected to the application on the ground that when it was preferred the requirements of s. 344 had not been fulfilled. *Held*, that the application should not on that ground have been dismissed. **MAHAN LAL v. GULZATI LAL** I. L. R. 8 All 289

7. — Application for adjudication after order for attachment of property—*Civil Procedure Code, 1877, ss. 344 to 360—Jurisdiction—Subordinate and District Courts.* The lower Court ordered the attachment of a house belonging to the judgment-debtor in execution of a money-decree passed against him by that Court. The judgment-debtor then applied to be declared an insolvent under s. 344 of the Civil Procedure Code (Act X of 1877). *Held*, that it could not entertain the application. **PURBHODAS VELJI v. CHITTOY BAICHAND** I. L. R. 8 Bom. 198

8. — Application to have judgment-debtor declared insolvent—*Jurisdiction—Deputy Commissioner—District Court—Insolvent judgment debtors—Civil Procedure Code, 1882, ss. 344, 360—Costs.* The Court of a Judicial Commissioner, and not that of a Deputy Commissioner, is the "District Court," in Chota Nagore under ss. 2 and 344 of the Civil Procedure Code. A Deputy Commissioner, therefore, invested by the Local Government with powers under s. 360 of the Code has no jurisdiction, apart from any transfer by the "District Court," to entertain an application by a judgment-creditor under s. 344 to have his judgment-debtor declared an insolvent. *In re Waller*, I. L. R. 6 Mad 430, and **PURBHODAS VELJI v. CHUGAN RAICHAND**, I. L. R. 8 Bom. 196, followed. The question of jurisdiction not having been raised in the lower Court, the order was set aside without costs. **JOYNARAIN SINGH v. MUDHOO SUDEN SINGH** I. L. R. 18 Cal. 13

9. — Application to be declared insolvent made to Court to which decree was transferred for execution—*Civil Procedure Code, ss. 228, 239, 344, 360.* Where a decree had been transferred for execution from the Court

INSOLVENCY—*contd*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd*

10. — Jurisdiction of original Court to make declaration of insolvency—*Civil Procedure Code, 1882, s. 344—Decree passed on appeal.* A suit for money was dismissed, but on appeal the High Court passed a decree for the plaintiff. The judgment-debtor made an application to the Court of first instance under Civil Procedure Code, s. 344, to be declared an insolvent. *Held*, that the Court had jurisdiction to make the declaration sought for. **JAMBUVAYYAN v. VENKATARAM** I. L. R. 19 Mad. 65

11. — Jurisdiction of second class Court to make declaration of insolvency—*Civil Procedure Code, 1882, s. 344—Decree passed on appeal.* A suit for money was dismissed, but on appeal the High Court passed a decree for the plaintiff. The judgment-debtor made an application to the Court of first instance under Civil Procedure Code, s. 344, to be declared an insolvent. *Held*, that the Court had jurisdiction to make the declaration sought for. **JAMBUVAYYAN v. VENKATARAM** I. L. R. 19 Mad. 65

Code, with the powers conferred on District Courts by ss. 344 to 359, makes an application to the Subordinate Judge's Court under s. 344, that Court has power to entertain it and to make the declarations referred to in ss. 344 to 359, and the fact that a debt due to a scheduled creditor exceeds Rs. 600 does not deprive it of jurisdiction. **SHANKAR RAGHUNATH v. VITHAL BABAJI** I. L. R. 21 Bom. 45

12. — Discharge, right of debtor to—*Civil Procedure Code, 1859, s. 273.* The only question was under this section whether the debtor was entitled to a discharge. If not. **ODEE GOPAL** I. L. R. 21 Bom. 45

13. — Civil Procedure Code, 1859, s. 273—Act XXIII of 1861, s. 8. **ODEE GOPAL** I. L. R. 21 Bom. 45

14. — Civil Procedure Code, 1859, s. 273—Act XXIII of 1861, s. 8. **ODEE GOPAL** I. L. R. 21 Bom. 45

15. — Civil Procedure Code, 1859, s. 273—Act XXIII of 1861, s. 8. **ODEE GOPAL** I. L. R. 21 Bom. 45

16. — Civil Procedure Code, 1859, s. 273—Act XXIII of 1861, s. 8. **ODEE GOPAL** I. L. R. 21 Bom. 45

17. — Civil Procedure Code, 1859, s. 273—Act XXIII of 1861, s. 8. **ODEE GOPAL** I. L. R. 21 Bom. 45

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

repairs would be paid for by a letter of credit which the owners had sent for that purpose. P applied the funds to the payment of other creditors. *C D*

*Held*, on appeal, that a person who gets work done on the representation that it is to be paid for out of certain specific funds, which funds he afterwards applies in paying sums due to other creditors, is guilty of *mala fides* and of giving undue preference, and is therefore not entitled to his discharge under s. 273 of Act VIII of 1859. *PASSMORE v CALVERTIA DOCKING COMPANY*. Bourke A. O. C. 74

16. — *Civil Procedure Code, 1859, s. 273—Circumstances entitling debtor to release.* Where the judgment-debtor applied for his discharge under s. 273 of Act VIII of 1859, and the Court, not being satisfied of his inability to pay and that he was honest and *bona fide* in dealing with his property, refused the application;—*Held*, that a prisoner for debt, if he be perfectly honest, without present means of payment, and has given every facility in his power to his creditors taking possession of his property, is entitled to release; that nothing short of this will entitle him to it. *CHIT BAX v RAUCHENBERG DUTT*. Bourke O. C. 101

17. — *Civil Procedure Code, 1859, s. 273; and Act XXIII of 1861, s. 5—Application of the Small Cause Courts.* A defendant, arrested in execution of a decree of a Small Cause Court, applied to that Court, under s. 273 of the Civil Procedure Code, averring that the only property which he had was immoveable property, and he was willing to place it at the disposal of the Court. *Held*, that the judgment-debtor was liable to be called upon to show cause for not proceeding against the property described in the application in execution of his decree. *SHAW v SETHABHAI*. 5 Mad. 108

18. — *Civil Procedure Code, 1859, s. 273—Insolvency—Order for discharge—Jurisdiction of District Judge.* Except under very special circumstances, a Judge ought not to make an order for the discharge of a defendant under Act VIII of 1859, s. 273. A party who voluntarily brings himself into the Insolvency Court in Calcutta was incapable of applying to a District Judge for a discharge under the above section, the property which he may be possessed of within the jurisdiction of the former Court not being subject to the latter. *KIRTO LALL GOSWAMI v JAY GOPAL BASAK*. 21 W. R. 165

19. — *Judgment-debtor—Application for discharge—Salary.* A judgment-debtor in receipt of a monthly stipend was not entitled to obtain a discharge under s. 273 of Act

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

VIII of 1859, unless he submitted to place that stipend at the disposal of the Court, that provision might be made for satisfaction of the debt. *ASOTTOWLAN BEHA HONSTEIN KHAN v HANISAPUTOWLAN ABEED KHAN*.

6 R. L. R. 575: 15 W. R. 204

*But see COOMBE v CAW*. 13 B. L. R. 268  
22 W. R. 257

20. — *Arrest in execution of decree—Ground for discharge—Act VIII of 1859, s. 273—Salary.* The fact that a judgment-debtor, who had been arrested in execution of a money-decree, was in receipt of a salary, was not sufficient cause to show against his discharge under s. 5 of Act XXIII of 1861. *COOMBE v CAW*. 13 B. L. R. 268: 22 W. R. 257

21. — *Civil Procedure Code, 1859, s. 280—Evidence.* Where a judgment-debtor applied for release from imprisonment under the provisions of s. 280, Act VIII of 1859, and the judgment-creditor adduced *prima facie* evidence that the applicant had wilfully concealed property, or rights and interests in property, which evidence was rebutted, the Judge was held to have done right in rejecting the application. When a party seeks the assistance of a Court in any case in which the best knowledge of the disputed facts is with himself, he is bound to place that knowledge before the Court with the sanction of an oath. *GENGA CHURN DUTT v KETTING PA SETEE*. 12 W. R. 423

22. — *Onus probandi—Civil Procedure Code, 1859, s. 280.* Where a judgment-debtor applied from jail for his own release, putting in an affidavit and afterwards a deposition on oath, to the effect that he had no property whatever to satisfy the decree against him;—*Held*, that it was incumbent on the decree-holder to prove that these statements were false, and that, in the absence of such evidence, the judgment-debtor was entitled to his discharge. *ABDOOL SETTEE v MAHEM KOOBE*. 25 W. R. 162

23. — *Civil Procedure Code, 1859, s. 273—Act XXIII of 1861, s. 5—Concealment of property.* Where a judgment-debtor arrested in execution of a decree applied for his discharge under s. 273, Act VIII of 1859, but while pretending to furnish a complete statement of his property was shown to have concealed a portion, the lower Court was held to have acted properly, under s. 5, Act XXIII of 1861, in ordering him to prison. *GENGA GOBEND MENDEL v BONOMALEE PAUL*. 14 W. R. 54

24. — *Act XXIII of 1861, s. 5—Order illegal for non-compliance with provisions of the law—Subsequent application for arrest.* *Held*, that an order discharging a judgment-debtor under s. 5, Act XXIII of 1861, being illegal on account of non-compliance with the procedure

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

HOW LESTER

25. — *Act XXIII of 1861, s. 8—Power of Judge to detain defendant in custody.* The discretionary power of a Judge to detain a defendant in custody otherwise than by committing him to prison in execution of a decree was confined to the case provided for in Act XXIII of 1861, s. 8. *SAMIR RAUTAN v. IBRAHIM RAUTAN* 1 Mad. 441

26. — *Act XXIII of 1861, s. 8—Application for discharge—Act VIII of 1859, ss. 273 and 280.* S. 8 of Act XXIII applied only to applications made under s. 273 of Act VIII of 1859, not to applications made under s. 280. *SMITH v. BOGGS* 5 B. L. R. Ap 21

27. — *Sufficiency of security.* The question of the sufficiency of the security tendered by the judgment-debtor is one entirely for the lower Court to determine. *In the matter of BHOOBEN MOHUN BOSE* 15 W. R. 571

28. — *Application to be declared insolvent—Civil Procedure Code, 1882, s. 341—*

*HOSSEIN v. BRIS MOHUN THAKOOR*

I. L. R. 4 Cal. 888

29. — *Civil Procedure Code, 1882, s. 351—Insolvent judgment debtor—"Unfair preference"* J., in pursuance of a previous agreement with B., and on being pressed by B., who had a pecuniary claim against him, which nearly equalled half the amount of all the pecuniary claims against him, assigned to B. the whole of his property by way of sale, in consideration in part of B.'s pecuniary claim against him. *Held*, that by such assignment J. did not give B. an "undue preference" to his other creditors within the meaning of s. 331 of Act X of 1877. *JOAKIM v. SECRETARY OF STATE FOR INDIA* I. L. R. 3 All. 530

30. — *Civil Procedure Code, 1882, s. 351—Insolvent judgment-debtor* A judgment-debtor applied to be declared an insolvent. Certain of the claims against him were claimed under decrees. The Court of first instance

Code, on the ground that the applicant had contracted the debts for which such decrees had been made dishonestly, and that section gave the Court in such a case a discretionary power to refuse the

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

application. *Held*, that the Court of first instance had taken an erroneous view of s. 351, and had assumed a wider discretion than the law conferred on it. If a person making an application to be declared an insolvent has not brought himself within cl. (a), (b), (c), or (d) of that section, then the Court has no discretion on other grounds to refuse the application. The bad faith, the reckless contracting of debts, the unfair preference of creditors, the transfer, removal, or concealment of property, the making of false statements in the application, are all dealt with in s. 351, and are not grounds for refusal of an application. *ALI* I. L. R. 4 All. 337

31. — *Civil Procedure Code, 1882, s. 351 (a)—Insolvent judgment-debtor—Accidental false statement in application.* Before rejecting an application by a judgment-debtor for a declaration of insolvency with reference to the provisions of s. 351 (a) of the Civil Procedure Code, it is necessary that the Court should be satisfied that the applicant has wilfully made false statements; unintentional inaccuracies are not sufficient grounds for rejection. *KARIM BAKSH v. MISIR LAL* I. L. R. 7 All. 295

32. — *Civil Procedure Code, s. 351 (b)—Insolvent judgment-debtor—"Property"—Fraudulent intent* S. 351 (b) of the Civil Procedure Code contemplates a case of active concealment, transfer, or removal of substantive property since the institution of the suit in which was passed the decree in execution of which the judgment debtor was arrested or imprisoned, with intent to deprive the creditor or creditors of available assets for division; and it does not cover an omission by the judgment-debtor, in his application for a declaration of insolvency of a statement as to his right to demand partition of ancestral estate in which he is a sharer, especially where there is no evidence of any intent to defraud. *SEKIT NARAIN LAL v. RAJCHUNATH SARAI* I. L. R. 7 All. 445

33. — *Plaintiff imprisoned for costs of unsuccessful action* A plaintiff imprisoned at the suit of the defendant for the costs of an unsuccessful action was not a proper object for the application of s. 231, Act VIII of 1859. *In the matter of BEXARUSSEE DOSS* Cor. 123

34. — *Application for discharge—Plaintiff—Imprisonment for costs of suit* S. 231 of Act VIII of 1859 did not apply to a plaintiff in custody for the costs of a suit. *In re EDULJEE RETTONJEE* 10 B. L. R. Ap. 27

35. — *Civil Procedure Code, 1882, ss. 250 and 251—Bad faith.* A person in custody who had been guilty of bad faith in

INSOLVENCY—*contd.*9 INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

the transactions relative to which he was detained, but not with regard to his application under s. 280 of Act VIII of 1859, was entitled to his discharge. *ANONYMOUS*. 1 Ind. Jur. N. S. 8

36. ———— *Civil Procedure Code, 1859, s. 281—Application for discharge—“Bad faith.”* When an insolvent was brought up for the purpose of obtaining his discharge—*Held*, that the “bad faith” mentioned in s. 281, Act VIII of 1859, must be in respect of the debt for which he was imprisoned, and with regard to which the application was made. *ORIENTAL BANK v. MANI-NADRAH SEY*. 3 B. L. R. Ap. 14

37. ———— *Application for discharge—“Bad faith.”—Civil Procedure Code, 1859, s. 281.* “Bad faith” in s. 281, Act VIII of 1859, meant bad faith not only in respect of the application, but included bad faith on previous occasions. *SMITH v. BOGGS* 5 B. L. R. Ap. 22

38. ———— *Application for discharge—“Bad faith.”—Civil Procedure Code, 1859, s. 281.* “Bad faith” in s. 281 of Act VIII of 1859 referred only to bad faith in respect of an application under that section. *In re GERUDAS BOSE*. 7 B. L. R. Ap. 23

39. ———— *Application for discharge—“Bad faith.”—Civil Procedure Code, 1859, s. 281.* In an application for discharge under s. 281, Act VIII of 1859, the “bad faith” must be bad faith in respect of the application. *BUTLER v. LLOYD*. 12 B. L. R. Ap. 12

40. ———— *Application for discharge—Omission to state in petition where property would be found.* In an application for discharge under ss. 280 and 281 of Act VIII of 1859, the properties entered in the defendant's schedule consisted entirely of moveables, and the petition did not state the place or places where such property would be found. *Held*, that it was a substantial defect in the application, which was refused. *WATKINS v. ROHENEZ BULLUR* 10 B. L. R. Ap. 11

41. ———— *Cost of deposition of defendant.* Where the plaintiff, in order to make the proof referred to in s. 281, Act VIII of 1859, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under s. 8, Act XXIII of 1861, in which case the fee is demandable from the applicant. *EDMOND v. NERSES* 8 B. L. R. Ap. 22 : 18 W. R. 84

42. ———— *Civil Procedure Code, 1859, ss. 275, 281—Application for discharge—“Bad faith.”* The acts of bad faith referred to in ss. 275 and 281 were not limited to acts of bad faith committed by the prisoner in his application for discharge, or for the purpose of

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

procuring his discharge, but included acts of bad faith in the manner of incurring his original liability. *In re SPOFFERS UD* 2 Ind. Jur. N. S. 91

*In re SIKHENDER KERNOKAN* 2 Ind. Jur. N. S. 93 note

43. ———— *Civil Procedure Code, 1877, s. 351—Acts of bad faith—“Matter of the application.”* The words used in cl (d) of s. 351, “the matter of the application” embrace the insolvency, and all the facts and circumstances material to explain the insolvency Acts of bad faith towards creditors just at the period at which the insolvent may be said to have become insolvent

case of persons who, although knowing that they had not the means of paying at the time the debt was contracted, yet honestly believed upon reasonable grounds that they would have the means of paying eventually. *BAVACHI v. PIERCE, LESLIE & Co.* 1 L. R. 2 Mad 219

44. ———— *Civil Procedure Code, 1882, s. 351—“Other act of bad faith.”—Act of bad faith committed by applicant for declaration of insolvency antecedently to his application.* The expression “any other act of bad faith” as used in s. 351, cl (d), of the Code of Civil Procedure, means any act of bad faith not before mentioned in s. 351 which bears directly upon the conduct of the debtor in the matters leading up to the declaration of insolvency and will not include

creditor whose decree is in execution and whether or not the bad faith is connected with the liability which has resulted in that decree. *BAVACHI v. PIERCE, LESLIE & Co.* 1 L. R. 2 Mad. 219, approved. *Salamat Ali v. Minaham*, 1 L. R. 4 All. 337, distinguished *GOPAL DAS v. BHARI LAL* 1 L. R. 17 All. 218

21—*Undue preference.* A judgment-debtor arrested in execution of a decree for money, who has not on his committal to jail, expressed his intention to be declared an insolvent under

the provisions of the Code, release him on his finding security to appear when called upon. In deciding whether or no a payment made to a particular creditor amounts to an unfair preference within the meaning of s. 351 of the Code, the Courts may fairly (where there is

INSOLVENCY—*contd.*3. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

no other reason for impeaching the transaction as an unfair preference apart from the provisions of the Insolvency Act) refer to, and be guided by, the provisions of the Insolvency Act, which treats a transaction as an unfair preference only when it has occurred within a limited time before the insolvency proceedings. *In the matter of HASTIE*—

I. L. R. 11 Cal. 451

46. ———— *Civil Procedure Code, ss. 331, 332—Omission of Court to follow proper procedure—Declaration of insolvency, effect of.* A judgment-debtor, having applied to be declared an insolvent under s. 344 of the Code of Civil Procedure, entered the name of A in the list of his creditors together with the amount of the debt. No creditors appearing to oppose the application or prove their debts, the Court, without framing a schedule as required by s. 332, declared the judgment-debtor an insolvent under s. 331. In a suit brought by A to recover the debt;—*Held*, that, as the provisions of s. 332 had not been followed, the declaration under s. 331 could not operate as a decree between the insolvent and A, and that A was entitled to a decree. *ARAVINDA R. ARYAVU*—

I. L. R. 7 Mad. 318

47. ———— *Surety-bond—Execution—Act VIII of 1859, s. 204.* A surety-bond taken by the Court under s. 8 of Act XXIII of 1861, after judgment has been pronounced, could be enforced under s. 204 of Act VIII of 1859. *ABDUL KARIM R. ABDUL HAQUE KAZI*

S B L. R. 205 : 15 W. R. 21

48. ———— *Court fees—Act VIII of 1859, s. 381.* In cases under s. 8, Act XXIII of 1861, the fee for the oath and the cost of reducing the deposition of the defendant to writing was payable by the defendant. *EDMOND R. NERSES*

S B L. R. Ap. 22 : 16 W. R. 84

49. ———— *Application by "unscheduled" creditor—Civil Procedure Code, ss. 332, 333—Creditor when to prove debt—Meaning of*

and prove their claims within a certain time. No creditor came forward for that purpose within such time, and in consequence the case was struck off the file, and the order appointing a receiver cancelled and no schedule was framed under s. 332. Subsequently a creditor applied to have his name entered in such schedule. *Held*, that the applicant, notwithstanding no schedule had been framed, was an "unscheduled" creditor, and was therefore entitled, under s. 333 of the Civil Procedure Code, to make the application. *MADHO PRASAD R. BHOLA NATH*—

I. L. R. 5 All 268

50. ———— *Application by creditor to prove claim—Limitation Act (XV of 1877), Sch.*

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

II, Art. 178—*Civil Procedure Code, ss. 332, 333.*

*ANDHU S. HENDU RAO HALLADU* THIS CREDITOR HAVING applied for the sale of property belonging to the

but must be regarded as in the nature of a tender of proof of debt under s. 332. *PARSHADI LAL R. CHUNNI LAL*—

I. L. R. 6 All 142

51. ———— *Effect of discharge—Mortgage—Secured creditor—Receiver—Code of Civil Procedure, 1877, ss. 332 to 335* A judgment-debtor

prepared under s. 332 of the Code of Civil Procedure. A receiver was appointed under s. 334; the whole of the property of the insolvent was made

even when the mortgagee has not sought to be placed in the schedule, the position of the mortgagee being essentially different from that of the unsecured creditor (case of *Chitaliya v. Nalawas*, *Printed Judgments, Bombay*, p. 53, distinguished). *SHRIDHAR NARAYAN R. ADHARAM GOVIND*

I. L. R. 7 Bom. 455

52. ———— *Declaration of insolvency ultra vires—Civil Procedure Code, 1877, ss. 344, 351, and 356—Jurisdiction, Want of—Execution of a decree—Sale—Completion of sale.* The plaintiff Gangadhar obtained a decree against the defendant. In execution of that decree, certain property was attached on 3th March 1881. Although the judgment-debtor was not arrested in execution of that decree, nevertheless he, on the 18th October 1882, applied to the Court of the Subordinate Judge to be declared an insolvent under s. 344 of the Code of Civil Procedure (Act XIV of 1882). He was declared an insolvent under that section and the Name of the Court was appointed a receiver on 22nd December 1883. The receiver proceeded under the direction of the Court to convert the property of the



INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

insolvent into money under s. 356 (a) of the Code. Certain immovable property was purchased by the petitioner Tukaram for Rs. 1,032 on 4th December 1884. Tukaram, after some time, presented an application, in which he stated that, inasmuch as the insolvent had not been arrested in execution of the decree obtained by Gangadhar, the Court had no jurisdiction; and he prayed that, if such was the case, the sale should be set aside, and the money returned to him. No appeal was

the insolvency of a judgment-debtor can direct the receiver to proceed under s. 356 of the Code

the declaration of insolvency was *ultra vires*, the

53. — Agreement to satisfy debts in full—Discharge from liability—Civil Procedure Code, s. 358. An insolvent who had procured, and taken, and acted on an insolvency order which had been granted to him, because of the with-

debts. *Held*, that, under the circumstances, his application had properly been refused. *DOWNS v. RICHMOND*. I. L. R. 5 All. 258

54. — Refusal to adjudicate debtor insolvent, grounds for—Civil Procedure Code (Act XIV of 1882), s. 351, Ch. XX. A Court

creditors. *Held*, that the District Judge was bound

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

to grant the application... brought 351, in the application... JOWALLA NATH. JOWALLA NATH v. PARBATTY BIBI. I. L. R. 14 Cal. 691

55. — Application for a declaration of insolvency showing that applicant has assets apparently in excess of his liabilities—Civil Procedure Code, 1882, s. 344 et seq.—Burden of proof. It does not follow that, because a person has assets of a nominal value in excess of his liabilities, he is not entitled to be declared an insolvent. But where a person applies to be declared an insolvent and shows in his statement that his assets exceed his liabilities, he must show also that by the sale of his interests or other realization of his assets a sum would not be secured which would enable him to pay his debts in full. *Jowalla Nath v. Parbatty Bibi*, I. L. R. 14 Cal. 691, discussed. *BALDEO DAS v. SURENDRO DAS*. I. L. R. 19 All. 125.

56. — Ex parte decree subsequent to insolvency—Execution of decree—Civil Procedure Code, Ch. XX, ss. 344-360—Attachment—Receiver in insolvency. An insolvent, to whose estate no receiver under Ch. XX of the Code of Civil Procedure had ever been appointed,

entitled to take out execution, and were not prevented from so doing by reason of the insolvency proceedings. In the matter of *BADAL SINGH v. BIRCH*. I. L. R. 15 Cal. 762

57. — Execution of decree—Civil Procedure Code, s. 351. A decree holder in respect of whose judgment-debtor an order declaring him insolvent has been passed, and judgment passed

with the process his decree in respect of the judgment-debtor. *Cal. 762*, and I. L. R. 10 All. v. SHANKAR L.

58. — Procedure on claim made by creditor—Civil Procedure Code, ss. 345, 352—Proof of debt. It is open to a creditor, at any time while the assets of an insolvent are undistributed, to produce evidence of his debt and to

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

apply to be admitted on the schedule under s. 352 of the Code of Civil Procedure. **LAKSHMANAN v. MUTTHA** . . . I. L. R. 11 Mad. 1

59. ———— **Judgment debtor**—*Civil Procedure Code, ss. 344, 348*—Notice to decree-holder. A debtor was arrested on civil process. He presented a petition to the Court from which process issued alleging that he was unable to pay the debt and praying to be declared insolvent and to be released. The Court passed an order on the same day, directing that he should be released, and that the creditor should proceed against his property. *Held*, that the order was bad for want of notice. **KOMARASAMI v. GOBINDU**

I. L. R. 11 Mad. 136

60. ———— **Unfair preference**—*Civil Procedure Code, 1882, s. 352*—A creditor who has

unfair preference to one creditor by giving him a large proportion of his property, so as to reduce the aliquot share of the other creditors, acts fraudulently, and no title is given to that particular creditor as against the assignees who represent the creditors generally. A filed a suit and obtained a decree against B. During the pendency of the suit, and only four days before the decree was passed B assigned by way of mortgage nearly the whole of his property to one of his creditors, C. The assignment was made not to secure a fresh advance, but in

that the assignment by B of nearly the whole of his property to C amounted, under the circumstances, to an unfair preference, within the meaning of s. 351, cl. (c), of the Code of Civil Procedure (XIV of 1882) B was therefore not entitled to be declared an insolvent. **DADAPA v. VISHNUDAS**

I. L. R. 12 Bom. 424

61. ———— **Judgment debtor declared insolvent pending suit**—*Civil Procedure Code, s. 352*—Suit to establish right to sell property in execution of decree enforcing hypothecation—Suit against purchasers not parties to decree—Decree-holder scheduling his decree under Civil Procedure Code, s. 352—Effect of schedule. A suit to establish a right to bring to sale certain moveable property in execution of a decree for enforcement of hypothecation was brought against persons who were not parties to that decree and had purchased in execution of a prior decree. Pending the suit, one of the judgment-debtors under the hypothecation-decree was declared an insolvent, and the plaintiff schedule his decree as a claim under s. 352 of the Civil Procedure Code. *Held*, that the scheduling of the decree had not the effect of superseding it or creating another decretal right in addition to

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

and independent of it, and did not make the suit, which was founded on a new and different cause of action against persons who were not parties to the decree, unsustainable. **ABDUL RAHMAN v. BEHARI PURI** . . . I. L. R. 10 All. 194

62. ———— **Debt not in schedule**—*Civil Procedure Code, 1882, ss. 336, 337—Act VI of 1888*—Execution of decree obtained against insolvent for such debt—Scheduled debt. A person who has taken the benefit of the insolvent sections of the Civil Procedure Code, and who is undischarged, but has not inserted in his schedule a debt for which a decree is subsequently obtained, is not protected from arrest in execution of such decree merely because his property is in the hands of the receiver in insolvency. Such a person is liable to arrest under the circumstances, and in accordance with the procedure provided for by the Civil Procedure Code, Amendment Act (VI of 1888). **PANNA LALL v. KANHAIYA LALL** . . . I. L. R. 16 Cal. 85

63. ———— **Civil Procedure Code, ss. 344, 348, 349, 352, 353**—

decree-holder was, among other creditors, called upon to prove her debt. She, however, omitted to attend, and her name was not included in the schedule of creditors. The insolvent was discharged under s. 355. The creditors who proved their debts were paid, and the residue of the property was paid out by the receiver to the insolvent. In an application by the decree-holder to execute her decree against the property of the insolvent; *Held*, that the discharge of the insolvent did not operate as a discharge of the debt under s. 357 of the Civil Procedure Code, and she was therefore entitled to proceed with execution of her decree against the insolvent's property. *Semle* Under s. 352, a creditor, by omitting to come in and prove his debt, would apparently prevent an insolvent obtaining the relief which the Code contemplates giving him, unless that section be read as allowing the insolvent to prove the debts of such creditors as omit to appear and prove them. **HARO PRA DABIA v. SHAMA CHARAN SEN** . . . I. L. R. 16 Cal. 562

64. ———— **Receiver selling a mortgaged property of insolvent**—*Civil Procedure Code, 1882, ss. 354, 355, and 356*—Purchaser at such sale—Right of mortgage unaffected by such sale. By an order, dated the 9th July 1879, A was declared an insolvent under s. 351 of the Civil Procedure Code (Act XIV of 1882), and his property vested in the receiver, who was ordered to convert it into money. Nine fields, which were part of A's property, had been mortgaged to the plaintiff, who was duly cited to appear and prove his debt. The plaintiff, however, failed to appear, and ha

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

was consequently omitted from the schedule of A's creditors. The receiver sold one of the fields which was purchased by A's undivided son, G. At the sale the plaintiff gave notice of his claim as mortgagee. After paying off the debts of the scheduled creditors, the receiver made over to A the residue of the purchase-money and the eight unsold fields. In 1881 the plaintiff sued A for possession of the mortgaged property, and on appeal obtained a decree. While that suit was pending, G sold to the defendant the field which he had purchased. In execution of his decree, the plaintiff recovered possession of the eight fields, but on attempting to get possession of the ninth field he was obstructed by the defendant, who was in possession, and he consequently brought this suit to recover it. *Held*, that the plaintiff was entitled to recover it from the defendant. The only interest the insolvent had in the mortgaged premises was the equity of redemption, and this having vested in the receiver under s. 354, he under s. 356 was directed to convert it into money. G therefore at the sale only purchased the equity of redemption in the one field; and the defendant, who now stood in G's shoes with notice of the plaintiff's claim, although he might possibly be entitled to redeem the whole nine fields comprised in the mortgage, was bound to deliver possession to the plaintiff (the mortgagee) until that was done. The mortgaged property could not be sold by the receiver without the consent of the plaintiff (the mortgagee) or paying him off. S. 356 of the Civil Procedure Code (Act XIV of 1852) no doubt contemplates the payment of debts secured by mortgage out of the proceeds of the conversion of the insolvent's property in priority to the general creditors; but this must be taken in connection with s. 354, and must be understood as referring to those cases in which the mortgaged premises have been sold after coming to an understanding with the mortgagee. *SHRIDHAR NARAYAN v. KRISHNAJI VITHOJI*

I. L. R. 13 Bom. 272

65. ——— Insolvent but undischarged judgment-debtor—*Civil Procedure Code, 1852, ss. 351, 353, 356, and 357—Application by scheduled creditors to sell subsequently-acquired property of the insolvent.* The provisions of s. 357 of the Code of Civil Procedure are not applicable until the insolvent has been discharged under s. 351 or s. 355 of the Code. Hence where some of the scheduled creditors of a judgment-debtor, who had been declared an insolvent, and in respect of whose property a receiver had been appointed, but who had not been discharged, presented an application to the Court, purporting to be made under s. 357 of the Code of Civil Procedure praying for the sale of certain property which had come by inheritance to the judgment-debtor, and the Court, also purporting to act under s. 357 of the Code, made an order on such application allowing the property in question to be released from attach-

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

ment on deposit by the insolvent of one-third of the scheduled debts; *Held*, that, although the Court might have acted under s. 356 of the Code yet, as its order purported to be under s. 357, it was *ultra vires* and must be set aside. *GANESHT LAL v. MCSARRAT ALI. GIRWAN LAL v. MCSARRAT ALI*  
I. L. R. 16 All. 234

66. ——— Application by judgment-debtor to be declared insolvent—*Civil Procedure Code, 1852, ss. 344, 351, and 354—Order for sale of mortgaged property in execution—Sale in execution pending application—Effect of subsequent declaration of insolvency.* An order for the sale of mortgaged property had been made on the application of the mortgagee, who had got a decree, and before the sale had taken place, the mortgagor (judgment-debtor) applied to be made insolvent under s. 344 of the Civil Procedure Code (Act XIV of 1852). Five months after the sale, he was duly declared an insolvent under s. 351. *Held*, that the subsequent declaration of the mortgagor's in-sol-

provided that such an order shall have any retrospective effect. *ISHWAR LAKSHMI v. HANUVAN RAOJI*  
I. L. R. 21 Bom. 681

67. ——— Holder of decree on mortgage not entered amongst the scheduled creditors—*Civil Procedure Code, 1852, ss. 344 et seq.—Decree holder not debarred from executing his decree.* *Held*, that a judgment-creditor holding a decree for sale upon a mortgage against an insolvent judgment-debtor will not, by reason of his debt not having been scheduled in the insolvency proceedings, lose his right to execute his decree. *HARO PRIA DABU v. SHAMA CHARAN SEN, I. L. R. 16 Cal. 592, and Shridhar Narayan v. Atmaran Gobind, I. L. R. 7 Bom. 455, referred to. SHEORAJ SINGH v. GURU SARAI*  
I. L. R. 21 All. 227

68. ——— Discharge of insolvent—*Civil Procedure Code (Act XIV of 1852) Ch. XX, ss. 344-350—Future earnings of insolvent, power*

granting of an order of discharge under s. 350 of the Code, is to a certain extent discretionary with the Court, and if the Court be of opinion that an insolvent may reasonably be expected to possess an income

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

accruing during the time of his insolvency and likely to continue, even if such income be from sources such that it could not be attached, it ought very seriously to consider whether under such circumstances it ought to exercise its power to dis-

charge the debt that he owes. A Gyawal, who was in receipt of a very considerable income derived from offerings made by pilgrims, applied to be declared an insolvent under the provisions of Ch. XX of the Code of Civil Procedure. He was opposed by a judgment-creditor, who, *inter alia*, contended that the insolvent should be compelled to contribute out of his income towards the payment of his debts. The Court, finding that there were no assets, and holding that such income was not properly capable of being attached, and that it had no power to order an insolvent to pay anything out of future earnings towards the discharge of his debts declared the applicant an insolvent and granted him his discharge. *Held*, that the Court had power to withhold the discharge until the insolvent had satisfied it, by payments on account of his debts, that he really desired to discharge his debts, and that, under the circumstances of the case, both having regard to the fact that the inquiry into the estate of the insolvent had been insufficient, and to the fact that he was in a position to contribute out of his income towards the payment of his debts, the order was wrong and should be set aside. POONA LAL v. KANHAYA LALL BHAI.

I. L. R. 19 Cal. 730

89. ——— Procedure in case of dishonest applicant—*Civil Procedure Code*, ss. 353, 359—*Powers of Court*. A Court is competent to take action under s. 359 of the Civil Procedure Code at the instance of a creditor, after the hearing under s. 350 has determined. When once any of the frauds referred to in cl (a), (b), or (c) of s. 359 have been proved at a hearing under s. 350, the Court must under s. 359 either itself pass sentence on the applicant who has committed such frauds, or must send him to a Magistrate to be dealt with according to law. The Court has no option to decline to adopt either of these courses. In acting under s. 359, the Court does not re-try the questions of fact decided by it at the hearing under s. 350, but has to proceed upon the findings come to at that

INSOLVENCY—*contd.*9 INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

dent to the granting of permission to withdraw. A Court acting under s. 359 of the Code of Civil Procedure may, on the motion of a creditor under certain circumstances, order the imprisonment of an applicant for a declaration of insolvency, or it

Where an application for a declaration of insolvency

by the applicant of the opposing creditor's costs a condition precedent to the granting of such

71. ——— Application for declaration of insolvency—*Civil Procedure Code*, s. 344—*Who may apply for declaration of insolvency—Judgment-debtor arrested or imprisoned*. *Held*, that s. 344 of the Code of Civil Procedure does not apply to the case of a judgment-debtor who had indeed been arrested in execution of a decree for money, but who had been released after a few hours' detention owing to the creditor's failure to pay subsistence money, and some twenty days after his release applied to the Court to be declared insolvent. It is only a person against whom proceedings under s. 344 are actually pending who is entitled to make the application permitted by that section. JUMAT v. MUHAMMAD KAZIM ALI (1902) I L R. 25 All. 204

72. ——— Arrest—*Civil Procedure Code* (Act XIV of 1852), ss. 336, 344—*Arrest of judgment debtor—Petition under s. 336—Release on furnishing security to apply to be declared insolvent within a month—Failure to apply within that time—Subsequent application under s. 344—Maintainability*. A judgment-debtor, who had been arrested,

tion. He was not arrested again, and, at a subsequent date, applied under s. 344 to be declared an insolvent. *Held*, that he was entitled to do so. ALAGAPPA CHETTI v. SARATHAMBAL (1902)

I. L. R. 25 Mad. 724

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

73. — Examination of insolvent—Civil Procedure Code (Act XIV of 1882), ss. 315, 316 and 350. The examination of an insolvent under s. 350, Civil Procedure Code, is only necessary where the judgment-debtor is declared an insolvent upon his own application, not where he is adjudicated an insolvent at the instance of the judgment-creditor *Gouri Kant Burman v. Damodar Das Burman* (1900)

5 C. W. N. 80

74. — Notice of insolvency—Civil Procedure Code (Act XIV of 1882), ss. 317, 350,

—Creditor, claim by a—Onus of proving claim when so required under s. 353, Civil Procedure Code—Receiver in insolvency, purchase by. The provision of s. 317 with regard to posting up the notice of insolvency in Court is, especially in the case of an application by the decree-holder, merely of a directory character and does not go to the jurisdiction of the Court to deal with the matter. *Resid v. Croft*, 5 Bing N C 68, and *Wight v. Maunder*, Beav. 512, referred to. Non-compliance with the above provision is a mere irregularity, which, in the absence of any proof of prejudice, is cured by s. 578, Civil Procedure Code. The provisions of ss. 330 and 351, Civil Procedure Code, relate to an application by the judgment-debtor for relief under Cl. XX, and not to an application by the judgment-creditor. An adjudication order can only be set aside on the ground that it has been obtained by a fraudulent representation of indebtedness in favour of the creditor, who has obtained the order when there is no debt whatsoever, or for want of jurisdiction. When charges of fraud are made, they must be made in a proper manner to the satisfaction of the Court. *Wallingford v. Wallingford*, 11 App. Cas. 697, and *Ganga Narain Gupta v. Tularam Choudry*, 1 L. R. 15 Cal. 533, referred to. Under s. 352, Civil Procedure Code, when any creditor requires any other creditor to prove his claim, the onus is upon the creditor who has to prove his claim to establish it. It is a matter to be dealt with by the Judge upon the evidence forthcoming in the case. The purchase by a Receiver in insolvency of property belonging to the

5 C. W. N. 81

75. — Schedule—Execution of decrees—Civil Procedure Code (Act XIV of 1882), s. 357—Debt not included in the Schedule—Insolvent debtor, discharge of—Right of creditor, not in the Schedule, against the discharged insolvent's property

INSOLVENCY—*contd.*9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

—Limitation Act (XV of 1877), Sch. II, Arts. 178, 179. A creditor whose debt has not been included in the scheduled debts, within the meaning of s. 357 of the Code of Civil Procedure, is entitled to proceed with the execution of his decree against the insolvent

Haro

R. 18 C

I. L. R. 21 All. 227, referred to. On an application for execution of a decree having been made by the decree-holder, the salary of the judgment-debtor was attached. The judgment-debtor having represented that, as all his property had vested in a Receiver, he having taken insolvency proceedings, the execution could not be carried on, the Court released from attachment the salary of the judgment-debtor.

application by reason of the insolvency proceedings having been brought to an end by the discharge of the Receiver, was not barred by limitation. Where a decree directed that the "plaintiff shall not be able to take out execution of decree until the disposal of petition for insolvency made by the defendants before the District Judge of Patna," and the application for execution was not made until after three years from the date of the order of the first Court in the insolvency proceedings; *Held*, that the limitation applicable to the execution of such decree was that provided for by Art. 176, Sch. II, of the Limitation Act (XV of 1877), and that the

the Civil Procedure Code, granting the petition for insolvency, when the right to make the application first accrued. *Muhammad Islam v. Muhammad Akbar*, 1 L. R. 16 All. 237, referred to. *Asrar-uddin Ahmed v. Bepin Behari Mulla* (1902) 1 L. R. 30 Cal. 407

76. — Insolvency order, setting aside of—Fraudulent misrepresentation of judgment debtor's residence—Court, inherent power of—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 108, Cl. XX. S. 108 of the Civil Procedure Code does not apply to the setting aside of an insolvency order. An insolvency order may be set aside, if it was ob.

## INSOLVENCY—*contd.*

### 9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

tained by fraud or in the absence of jurisdiction on the part of the Court making the order. *Ram Komal Saha v. Bank of Bengal of Alyab*, 5 C. W. N. 91 relied on. A Court has inherent power to set aside an insolvency order obtained from it by a

#### 77. ——— Order of Insolvency Court,

for costs

—Civil

—Interest

An order of the High Court in the exercise of its insolvency jurisdiction is a judgment of the High Court and a suit based upon such order is maintainable. *In the matter of Candas Narayanas (Narayana v. C. A. Turner)*, 1 L. R. 16 I. A. 156. s.c. 1 L. R. 13 Bom. 520; and *Attorney Dossee v. Hurry Dass Dutt*, 1 L. R. 7 Calc. 74 s.c. 9 C. L. R. 357, referred to. Such a suit is governed by Art. 122, Sch. II of the Limitation Act. The plaintiff sued to recover the amount of costs due under an allocatur issued by the Registrar of this Court on the 7th of September 1902 in respect of certain costs ordered by this Court in its insolvency jurisdiction on the 1st of June 1892. The order did not provide for payment of interest. *Held*, that the plaintiff was not entitled to interest on the amount. *ANNODA PRASAD BANERJEE v. NOBO KISSORE ROY* (1903). 9 C. W. N. 952

#### 78. ——— Arrest of insolvent—Insol-

ency of judgment-debtor—Receiver appointed, but no order of discharge—Application by creditor to execute decree by arrest of insolvent—Maintainability S applied to the Court of a District Munsif to be declared an insolvent. After notice to his creditors, amongst whom was the present petitioner, the holder of a decree against S, the District Munsif passed an order declaring S insolvent. A receiver was appointed to take charge of the insolvent's

either discharging or refusing to discharge the insolvent. The present petitioner then applied to the Court for the arrest of the insolvent in execution of his decree:—*Held*, that, in the circumstances,

case it might be open to creditors to apply to

## INSOLVENCY—*contd.*

### 9. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—*contd.*

execute their decrees PANANGUPALLI SEETHARA-MAYA & NANDURI RAMACHENDRU (1905)  
I. L. R. 28 Mad. 152

### 10. AD INTERIM PROTECTION—PRACTICE.

*Insolvency—Application for ad interim protection—Practice.* In applications for ad interim protection, the practice is to postpone the grounds of opposition until the hearing, unless the ground imputes fraud or bad faith in respect of the opposing creditor's particular claim. *In the matter of DIVENDRA NATH MULLICK* (1905) 8 C. W. N. 221

### INSOLVENCY ACT (9 Geo. IV c. 73, s. 38).

#### ——— Insolvency—Mutual credit—

*Suit by assignees to recover surplus in Bank—Set-off of promissory notes* P & Co., having borrowed a large sum of the Bank of Bengal, deposited Company's paper with the Bank to a greater amount as a collateral security, accompanied with a written agreement authorizing the Bank, in default of repayment of the loan by a given day, "to sell the Company's paper for the reimbursement of the Bank, rendering to Palmer & Co any surplus." Before default was made in the repayment of the loan, P & Co were declared insolvent under the Insolvency Act, 9 Geo. IV, c. 73, by the 30th section of which it was declared that where there had been mutual credit given by the insolvents and any other person, one debt or demand might be set off against the other; and that all such debts as might be proved under a commission of bankruptcy in England might be proved in the same manner under the Indian Insolvency Act. At the time of the adjudication of insolvency the Bank were also holders of two promissory notes of P & Co which they had discounted for them before the transaction of the loan and the agreement as to deposit of the Company's paper. The time for repayment of the loan having expired, the Bank sold the Company's paper, the proceeds of which, after satisfying the principal and interest due on the loan, produced a considerable surplus. In an action by the assignees of P & Co, against the Bank to recover the amount of the surplus:—*Held*, that the Bank could not set off the amount of the two promissory notes, and that the case did not come within the clause of mutual credit in the Insolvency Act. *YORNO v. BANK OF BENGA* 1 Moo. I. A. 87

### INSOLVENCY ACT (11 & 12 Vict. c. 21).

See CONTRACT. I. L. R. 34 Calc. 289

See DEBTOR AND CREDITOR.

I. L. R. 20 Bom. 838

See INSOLVENCY.

See INTEREST—MISCELLANEOUS CASES—  
INSOLVENCY PROCEEDINGS.

14 Moo. I. A. 209

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

See PARTIES — PARTIES TO SUITS — OFFICIAL ASSIGNEE. I. L. R. 18 Calc. 43

1. ——— Priority of Official Assignee—Decree, attachment in execution of—Vesting order—Official Assignee—Priority of claim—Civil Procedure Code (Act XIV of 1882), s. 244—Whether Official Assignee is the representative of the judgment-debtor. A vesting order made under the Insolvency Act (11 and 12 Vict., c. 21) has not the effect of giving the Official Assignee priority over the claim of a judgment-creditor in respect of property attached, at his instance, previous to the passing of such order. *Anund Chunder Pal v. Panchoo Lall Soobalah, Is W. R. F. B. 33*, followed. *Semble*: The Official Assignee is the representative of an insolvent judgment-debtor, within the meaning of s. 244 of the Civil Procedure Code. *MILLER v. LUKHIANI DPM (1901)*. I. L. R. 28 Calc. 419 s.c. 5 O. W. N. 781

2. ——— Second insolvency—Insolvency—Second insolvency where insolvent has not got final discharge under the first—Duty of serving notices when on the insolvent and when on the creditors—Practice—Procedure. A person may become insolvent a second time before he has received his final discharge under the first insolvency. *Morgan v. Knight, 33 L. J. (C.P.) 168*, followed. The appellant had been adjudicated an insolvent at the instance of a creditor, under s. 9 of the Indian Insolvency Act (11 and 12 Vict., c. 21), on the 21st January, 1893. On the 4th October, 1900, one of his creditors obtained a rule calling upon the insolvent to show cause why he should not forthwith proceed with the matter. The Commissioner made the rule absolute, and directed the insolvent forthwith to proceed with the matter of his insolvency. On appeal: *Held*, that the order of the lower Court should be reversed, and the rule discharged. When a person himself files a petition in insolvency, he has the carriage of it. He must serve notices on the creditors at his own expense, and bring the petition to a hearing. But when a person has been adjudicated an insolvent at the instance of a creditor, it is for the petitioning creditor to serve notices, but it is still the duty of the insolvent to attend when required, and point out the persons who are to be served. *DOSA GOPAL v. BHANJI DANJI (1901)*. I. L. R. 28 Bom. 171

3. ——— Indian Insolvency Act (11 and 12 Vict., c. 21)—Jurisdiction—Summary proceeding—Order for Ejectment of Insolvent Tenant, on application of Landlord, whether valid. On an application by the insolvent's landlord, who was an admitted creditor in respect of arrears of rent, for an order that the insolvent should make over possession of the premises to the Official Assignee:—*Held*, that there was nothing in the Insolvency Act, which enabled the Court, sitting in Insolvency, on a summary proceeding, to make at the instance of the landlord, what

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

was virtually an order for ejectment against the tenant. *MAUD ANDERSON, In re (1903)*

I. L. R. 38 Calc. 499

1. ——— s. 5—Jurisdiction—Residence—Where a person called for the benefit of

petition "that he is now residing at No. 19, Garden Reach, in the Suburbs of Calcutta, within the jurisdiction of the High Court:"—*Held*, that the petition was rightly dismissed for want of jurisdiction. *In re COCKBURN*. 2 Ind. Jur. N. S. 328

2. ——— Jurisdiction—British subject—Residence. The insolvent, who was born in England of English parents, was the widow of a surgeon and resided at Salem for some time before, and at the time of, the presentation of her petition to the Court. *Held*, that the 5th section of the Insolvent Debtors Act is as applicable to a "British subject" (in the sense in which that appellation is used in the Charter of the late Supreme Court) resident within the jurisdiction of the High Court of Madras as to an inhabitant within the local limits of the town of Madras. *In the matter of RICKS*. 3 Mad. 151

3. ——— Jurisdiction—Insolvent

Letters Patent the jurisdiction of the Insolvent Court was narrowed to the Bengal Division of the Presidency of Fort William, i.e., that portion of the Presidency over which the authority of the Lieutenant-Governor of Bengal extends. *Semble*: Under s. 5 of the Insolvency Act, the residence of the petitioner must be within the local limits of the ordinary original jurisdiction of the High Court. *In the matter of TETKINS*

1 B. L. R. O. C. 84

4. ——— Jurisdiction—Insolvent trader—"Reside" The word "reside" in s. 5 of the Insolvency Act, when applicable to the insolvency of traders, includes an occupation for the purpose of trading, whether or not accompanied by sleeping or dwelling. *In the matter of HOWARD BROTHERS*. 11 B. L. R. 254

5. ——— Jurisdiction—Bond fide residence. An insolvent who is not a European British subject must either be a bond fide resident in Calcutta at the time he presents his petition or a trader carrying on business in Calcutta otherwise he does not come within the jurisdiction of the Court under the Act. *In the matter of TANNIR CHURN GORO*. 11 B. L. R. Ap. 28

6. ——— Jurisdiction—European British subject out of jurisdiction of High

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 5—*contd.*

*Court—Residence.* A European British born subject, residing in the Bombay Presidency, but outside the local limits of the jurisdiction of the High Court, is entitled to come to Bombay and present a petition in the Court for the Relief of Insolvent Debtors and obtain the benefit of the Insolvent Act, as the original jurisdiction of the Supreme Court was in that respect continued in the High Court by cl. 18 of its Letters Patent. *In re BLACKWELL.* 9 Bom. 461

7. ————— *Jurisdiction—*

*Residence.* A's zamindari and dwelling house in the district of D having been sold, he came in Calcutta in May 1880, leaving his family with his relations, and filed his petition in the Court for the Relief of Insolvent Debtors in July. He remained in a hired house at Calcutta till September, when the Court rose for the vacation, and returned but before the end of the vacation, having in the

of the High Court within the meaning of s. 5 of the Insolvent Act. *In the matter of RAM PAUL SINGH* 8 C. L. R. 14

8. ————— *Jurisdiction—*

*Residence—Insolvency.* There is nothing to show that the residence contemplated by s. 5 of the Insolvent Act must necessarily be a permanent residence; the object of that section being to extend the benefit of the Act to those who could be said to

s. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

9. ————— *Letters Patent,*

*High Court, cls 18 and 44—Jurisdiction of High Court, Bombay—Stat 24 and 25 Vict., c 101 (High Court's Charter Act), s 11—Act V of 1872—Trader at Karachi presenting petition in Bombay—Relation of Insolvent Court to High Court—Effect of Acts limiting jurisdiction of High Court on jurisdiction of Insolvent Court.* J C, a European British subject residing at Karachi in Sind, failed in business in 1895, and on 11th June of that year he filed his petition in the Court for Relief of Insolvent Debtors in Bombay. *Held*, that, having regard to Act V of 1872, read with cl 18 of the Letters Patent, 1865, the Court had no jurisdiction to entertain the petition. By s. 5 of Stat 11 and Vict., c 21, the Insolvent Court was given jurisdiction over residents within the jurisdiction of the Supreme Court of Bombay. The jurisdiction of the Supreme Court extended over all inhabitants of the town and island of Bombay and over European British subjects in any of the factories subject to or dependent on the Government of Bombay. The jurisdiction of the Insolvent Court as defined by the above section remained unaffected by the establishment of the High Court in the place of the Supreme Court

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 5—*contd.*

except so far as it may be limited by cl. 18 of the Letters Patent, 1865. A European British subject residing within the Presidency of Bombay, though outside the town and island of Bombay, may petition the Insolvent Court of Bombay for relief. The powers and authority originally of the Supreme Court and now of the High Court given

sequent enactment. The power of the High Court and any Judge of it to exercise the jurisdiction of the Insolvent Court, whatever the jurisdiction may be, is locally limited by cl. 18 of the Letters Patent, 1865, to the Presidency of Bombay, and cannot be exercised outside that Presidency or outside any area within it to which it may by subsequent enactment be restricted. The effect of cl. 44 of the Letters Patent, 1865, which makes the provision of cl. 18 subject to the legislative powers of the Governor-General in Council, must be that any Act of the Governor-General in Council, still further limiting the jurisdiction of the High Court and excluding it from any place even within the Presidency, must also still further narrow the jurisdic-

alone he could act as Commissioner, had been abolished Act V of 1872 is such an Act. *In the matter of CURRIE* 11 C. L. R. 21 Bom. 405

1. ————— s. 6—*Verification of schedule by affidavit—Non-appearance of insolvent in an application for insolvents for their personal dis-*

schedule  
was examined  
discharge,  
former order  
health, and was therefore unable to verify the schedule. No opposition was entered, and the other insolvent, M, the partner of A, was in Court. *Held*, that it was sufficient for the schedule to be attested by M, but the Court directed that an affidavit of A should be obtained verifying the schedule, sworn before a notary public or the British Consul. Personal discharge was allowed. *In the matter of ANSTRETH* 11 B. L. R. Ap. 34

2. ————— s. 21 and 26—*Effect of death of insolvent after filing his petition, but before filing schedule.* On the 15th of March 1862, the petitioner brought an action in the Supreme Court against the insolvent to recover a sum of money, and on the 17th of that month the usual summons was served on the insolvent. On the last mentioned day the insolvent was committed to



## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*could*.ss. 8 and 21 and 26—*could*.

prison on a charge of murder, notwithstanding which, on the 21st March 1862, he filed his petition in the Insolvent Court. The usual order was then passed, vesting all the insolvent's estate and effects in the Official Assignee from the date of the filing of the petition. On the 20th March 1862, the present petitioner recovered judgment in his

carried into execution. *Held, that the order was carried into execution.*

TRY, 1 Ind. Jur. O. D. 13

s. 7.

See ATTACHMENT — ALIENATION DURING ATTACHMENT.

1 N. W. Pt. 8, p. 81; Ed 1673, 172

See CONTRACT ACT, s. 253 (10), 263.

[I. L. R. 32 Mad. 462

\* See INSOLVENCY — CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

6 C. W. N. 577

See INSOLVENCY — PROPERTY ACQUIRED AFTER VESTING ORDER

I. L. R. 17 Mad. 21

I. L. R. 16 Mad. 24

I. L. R. 16 Bom. 232

2 C. W. N. 372

1. — Vesting order—Vesting order, validity of—Signing vesting order—Rule 57 of High Court Rules in Insolvency *Held*, as to an objection taken, that the vesting orders relied upon by the Official Assignee were signed by himself and not by the clerk of the Insolvent Court (as directed by Rule 57); that in the face of an established practice of the office, that the clerk and the Official Assignee should in the absence of either, and in the transaction of official business, sign one for the other and no attempt having been made to set aside the vesting orders for irregularity, the District Court, as well as the High Court on appeal, was bound to regard such orders as in full force and effect. The High Court, however, considered the practice, so far as it permitted the Official Assignee to sign vesting orders, objectionable and requiring alteration. *GAMBLE v. BHOLAOR*

2 Bom. 160; 2nd Ed. 147

2. — Distress—Vesting order—Time of operation of—Priority of Official Assignee. A distress levied after the filing of the petition of insolvency, but before the vesting order is drawn up, is, under ss 7 and 22, invalid as against the Official Assignee. A vesting order

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*could*.s. 7—*could*.

is made when it is given by the Court, and not at the time it is drawn up, signed, and sealed. *In the matter of BODAY*. 5 B. L. R. 306

3.

Official Assignee—Vesting order—Suits against insolvent—Right of Official Assignee to be party. The rights of the Official Assignee of insolvents for the benefit of the general body of creditors over the property of an insolvent lawfully vested in him, wherever that property may be, are rights that must be respected and recognized by all Courts, wherever situated. Where property of an insolvent vested in the Official Assignee by order of the Insolvent Court is attached in execution At the suit of a creditor of the insolvent, the proper course for the Official Assignee to adopt is to apply to the Court, under ss. 216 and 247 of the Civil Procedure Code, to have the attachment removed, or, if too late to make such application, he may institute a suit to establish his right. *In re HUNT MOVNET & Co.* *Ex parte GAMBLE v. BHOLAOR MANOIR*

1 Bom. 251

4. — Effect of vesting order. Where an order has been made under s. 7 of the Insolvency Act vesting the property of a judgment-debtor in the Official Assignee, the judgment-debtor has no saleable interest in the property. *RAN SOONDUR DEY v. SHUSHI MOHUN PAL CHOW.* 11 C. L. R. 389

DHRY

5. — Right to sue—Vesting order. As soon as an order is made under s. 7 of the Insolvency Act (11 and 12 Vict., c. 21), any rights of property which an insolvent may have at the date of his petition in insolvency are transferred to the Official Assignee.

SARIN v. ...

6. — Vesting order—Civil Procedure Code, s. 276—Attachment before judgment—Official Assignee's title. Where a vesting order has been made under 11 and 12 Vict., c. 21, s. 7, after attachment and before decree, the title of the Official Assignee takes effect and prevents the attaching creditor from obtaining satisfaction of his decree by a sale. *Shib Kristo Shaha v. Miller, I. L. R. 10 Cal. 150, and Chowdhry v. Bhogiraj, 2 Bom. 150, followed.* *SAD. GAMBLE v. BHOLAOR* 1 I. L. R. 6 Mad. 554

ATAPPA v. PONNAMIA

7. — Personal estate of the insolvent—Expectant or contingent interest—Employment—Deduction from salary for a provident fund and mutual assurance fund—Right of Official Assignee. S, a clerk in the employment of the G. I. P. Railway Company, agreed with the Company that 5 per cent. of his salary should be deducted every month as his contribution or subscription to a fund called the Provident Fund, and further rate of 1 per cent. as his subscription to another fund called the Mutual Assurance Fund. By the rules of those funds he was entitled

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*S. 7—*contd.*

to receive back his subscriptions in the event of his dismissal for misconduct. S became insolvent, and omitted to mention in his schedule the sums standing to his credit in respect of the above two funds. *Held*, that these sums were personal estate of the insolvent held by the company in trust for him under s. 7 they should his estate.  
BURY

## 8. — Father's right over im-

moveable ancestral property—*Insolvency—Vesting order—Right of Official Assignee on death of insolvent.* Under the Mitakshara law, a father has the right to dispose of his son's interest in ancestral immoveable estate for the payment of his own debts not contracted for immoral purposes and a vesting order, made under s. 7 of the Insolvency Act, vests that right in the Official Assignee, who can therefore give a good and complete title to such ancestral immoveable estate to a purchaser. The death of the insolvent has no effect on the vested right in his assignee.

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the natural existence of the insolvent is, for the purpose of dealing with his estate, artificially continued in the Official Assignee, who can, after, the insolvent's death, deal with the estate as he could have dealt with it had the insolvent been still alive. *FAKIR CHAND MOTICHAND v. MOTICHAND HURBUCKCHAND* . . . I. L. R. 7 Bom. 438

8. — Dismissal of petition, effect of—*Authority to sue given by Official Assignee—*

*Payment to insolvent.* An authority (assuming it to be sufficient) given by the Official Assignee to settle the outstandings of one who has filed a petition of insolvency does not enure after the dismissal of the petition, and cannot entitle the person so authorized to sue at all. The mere fact that a payment was made to a person at a time when his petition was upon the file of the Insolvent Court, which petition was afterwards dismissed, does not invalidate the payment. *RAJAKRISHNA SINGH v. SEFATOOLLAH* . . . 7 W. R. 85

## 10. — Discharge—

*Dismissal of petition—Power to set aside order of dismissal when fraud is shown.* When an insolvent has obtained his discharge, a creditor who has no

one of the  
is petition,  
insolvent  
made over  
creditors.

The petition being dismissed, the property re-vested in the insolvents. The Court which passed the order dismissing the petition, upon finding such order had been obtained by fraud, has power

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*S. 7—*contd.*

to set aside the order. In the matter of the petition of RAM SEBAK MISSEER 6 B. L. R. 310

## 11. — Power of Court

*Application to withdraw petition—Consent of creditor.* The Insolvent Court has no power to allow an insolvent to withdraw his petition of insolvency, on the ground that he has made a compromise with his creditors. Where, however, the Court is satisfied that all parties concerned desire to take the matter out of the hands of the Court, it will dismiss the petition, even though there is no ground arising out of the facts of the case why the petition should be dismissed. In the matter of PYARI CHAND MITTER 8 B. L. R. 558

12. — Infant trader—*Withdrawal*

*of petition by infant—Rule 22, Rules and Orders, Bombay.* An infant who has traded, but has made no express representation that he is of full age, is not liable to become bankrupt; and

D. 109, followed In re HANSRAJ MALOI EX PARTE DEWAR & CO . . . I. L. R. 7 Bom. 411

## 13. — Infant trader

*Trading contract—Insolvency Act (11 and 12 Vict., c. 21)* A minor who has traded cannot be adjudicated an insolvent on the petition of the persons who have supplied him with funds for the purposes of his business. In the matter of NOBODEEP CHUNDER SHAW . . . I. L. R. 13 Calc. 88

## 14. — Application for attachment

and for rateable distribution of sale proceeds—*Vesting order in insolvency, effect of—Civil*

had already attached property of the insolvent and had obtained an order for sale in a District Court, and now another decree-holder applied to the same Court in execution of his decrees for the attachment of other property and for rateable distribution of the proceeds of the sale to be held in execution of the attachment already made. The District Judge

had power to set it aside on revision under Civil Procedure Code, s. 622. *VIRARAGHAVA v. PARASURAMA* . . . I. L. R. 15 Mad. 372

15. — Effect of vesting order—*Insolvency of managing member of a Hindu family—*

*Effect of vesting order—Official Assignee's power to convey land.* The managing member of a Hindu

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*B. 7—*contd.*

family was adjudicated on insolvent, and a vesting order was made. The Official Assignee conveyed a house forming part of the family property of the insolvent to the plaintiff, who now sued for possession. The second defendant was the younger brother of the insolvent; the other defendants were the insolvent's sons. *Held*, that the effect of the vesting order was to entitle the Official Assignee to the shares of the coparceners as well as that of the insolvent—*Fakerehand Motichand v Motichand Harruch Chand*, I. L. R. 7 Bom. 438—and he was entitled to transfer such shares, provided the debts for payment of which the property is disposed of were shown to have been incurred for purposes binding on such shares. The plaintiff did not prove that the debts which led to the adjudication were incurred for the necessary purposes of the family, and the insolvent's sons did not prove that they were incurred for immoral purposes. *Held*, therefore, that the Official Assignee could only convey the shares of the sons of the insolvent, and accordingly that the plaintiff was entitled to a moiety of the house only, and that the house should be sold and half the sale-proceeds paid to him. *RANGAYYA CHETTI v. THANIKACHALLA MUDALI*. I. L. R. 19 Mad. 74

## 16.

## Vesting order.

*Effect of—Interest of reversioner expectant on widow's death.* B and M were brothers, M was adopted by his cousin's widow, and as adopted son had succeeded to property. He died childless in 1870 or 1872, leaving his widow as his heir. His brother B was next reversionary heir after M's widow, and in 1880 he (B) became insolvent and his estate vested in the Official Assignee, who sold to the plaintiff his interest in certain mortgaged property which had belonged to M and was then in the possession of M's widow as his heir. M's widow died in 1886, and after her death the plaintiff sued to redeem the property from the mortgage. *Held*, that at the date of his insolvency, M's widow being then alive, the interest of B as reversionary heir in the said property was only a *spes successionis*, which could not vest in the Official Assignee. The plaintiff therefore took no interest in the property by his purchase from the Official Assignee. *ANAJI v. RATNOJI KRISHNABAY*. I. L. R. 21 Bom. 319

## 17.

## Vesting order—

*Subsequent attachment—Dismissal of insolvency petition and discharge of vesting order—Creditors' trustees, Right of, against attaching creditor and sale in execution of his decree.* A judgment-debtor was declared an insolvent by the Court for the Relief of Insolvent Debtors, Madras, and a vesting order was made. Part of his property was subsequently attached in execution of a decree. Afterwards, his petition in insolvency was dismissed and the vesting order discharged. On the same date a creditor's trust-deed was executed, of which the plaintiffs were the trustees. They now sued to set

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*B. 7—*contd.*

aside the proceedings in execution and to cancel the sale of the property which had been sold in execution after the date of the trust-deed. *Held*, that the suit was not maintainable. *RAMASAMI KOTTAIDAR v. MURDOOSA MUDALI*

I. L. R. 20 Mad. 452

## 18.

## Dismissal of

*petition after vesting order made—Composition deed made prior to dismissal—Validity.* Two persons applied at Madras to be declared insolvents and an order was made whereby all their properties vested in the Official Assignee. They then entered into a deed of composition for the benefit of their creditors, four persons being appointed trustees under the deed. The insolvents' petition was subsequently dismissed on its being represented to the

brought by one of the trustees under the deed of composition against the Official Assignee. *Held*, that the provision in s. 7 of the Insolvency Act, that, in case, after the making of any vesting order, the petition should be dismissed, the vesting order shall become null and void.

*Held*, that the effect of a vesting order in the property in the hands of the Official Assignee was not destroyed by the making of a composition deed.

R. 20 Mad.

R. V. MURU.

27 Mad. 7

## 19.

## Attachment under garni-

*shee order—Debt in hands of Sheriff—Rights of Official Assignee as against attaching creditor.* N, on an attachment under a garnishee order, handed over Rs. 1,200, a sum largely exceeding the amount due by him to the judgment-debtor,

was treated as equivalent to a payment to the creditor. It was really tantamount to a payment into Court. The fact that a larger sum was paid to the Sheriff, than was actually owing, showed that such payment was made for the purpose of getting rid of the attachment, and not in satisfaction of the debt. The

## INSOLVENCY ACT (11 &amp; 12 Viet., c 21)

—*contd.*s. 7—*contd.*

property in the hands of the Sheriff must still be considered as belonging to the insolvent, and therefore as being vested in the Official Assignee. *Fredrick Peacock v. Madan Oopai*, 1. L. R. 29 Cal. 425, and *Krisnasawmy Mudaliar v. Official Assignee of Madras*, 1. L. R. 25 Mad. 673, followed; *Ex parte Pillras*, *In re Curloys*, 17 Ch. D. 653, referred to. *JITMAD v. RANCHAND* (1905)

1. L. R. 28 Bom. 405

20. ——— Right of Official Assignee to bring suit—*Insolvent—Vesting order—Official Assignee—Withdrawal of petition for insolvency—Right of Official Assignee to continue suit after withdrawal of petition.* On the 14th October 1903 a petition in insolvency was filed and a vesting order was made by the Court. On the 15th June 1904 the insolvents took out a rule nisi to withdraw their petition, and the rule was made absolute on the 21st September 1904. But the orders were not drawn up till 27th February 1906. In the meanwhile the Official Assignee filed a suit on the 2nd March 1905 on behalf of the insolvents to recover a sum of money alleged to be due to the insolvents' firm in respect of certain mercantile transactions. It was objected on behalf of the defendant that the Official Assignee was not entitled (i) to bring the suit and (ii) to continue the suit after the withdrawal of the petition. *Held*, that at the date of the institution of the suit the insolvents' petition was still in force.

and it was clear that the Official Assignee was competent to bring the suit. He was also competent to continue it, for the order of withdrawal even after it became operative, was not effective to divest the Official Assignee and revert the property in the insolvents. A withdrawal of a petition, for which no provision is made in the Act, cannot be regarded as the legal equivalent to its dismissal by consent. *Haji Sajjan v. Macleod* (1907)

1. L. R. 32 Bom. 321

21. ——— Saleable interest of insolvent—*All property of insolvent at date of petition vests in Official Assignee.* Where prior to sale of a judgment-debtor's property in execution of a simple decree for money, this judgment-debtor becomes insolvent and the vesting order under s. 7 of the Insolvency Act is made, the purchaser at such sale acquires no interest in the property sold. When the vesting order under s. 7 of the Insolvency Act is made: *Held*, that the insolvent ceases to have any saleable interest in the property. *Sundarraiyar v. Arunachella Chettiar* (1903)

1. L. R. 31 Mad. 493

ss. 7, 11—Jurisdiction—*Adjudica-*

## INSOLVENCY ACT (11 &amp; 12 Viet., c. 21)

—*contd.*ss. 7 and 11—*contd.*

*ruptcy.* William Watson & Co. failed, and on the 30th of January 1904, a receiving order was made on their application by the English Bankruptcy Court. On the 1st of February at 11 A.M. they were, on their own petition adjudged bankrupts in England, and on the 16th February a Trustee in Bankruptcy

2nd of February on the application of a friendly

that the High Court had jurisdiction to make the vesting order of the 2nd of February and that the Official Assignee of Bengal had rightly taken possession of the insolvent's effects in Bengal. *In re Hurruck Chund Golicha*, 1. L. R. 5 Cal. 605, and *Kustur Chund v. Dhunput Singh*, 1. L. R. 28 Cal. 26, referred to. That the English Trustee in Bankruptcy had no *locus standi* in this Court to make an application to have the adjudicating and vesting orders of the 2nd February set aside. *In the matter of J. Bell*, (1890), Unreported case, dated 4th June, distinguished. The Insolvency Courts in India

is no valid reason to the contrary. The presence of large assets within the jurisdiction of those Courts is a strong circumstance in favour of making such an order. *Ex parte Robinson*, L. R. 22 Ch. D. 816, *Ex parte McCulloch*, L. R. 14 Ch. D. 718, and *In re Ariola Harmanos*, L. R. 34 Q. B. D. 640, referred to. The different High Courts in India exercising concurrent jurisdiction should also be guided by the abovementioned rule, but where there is a conflict, having regard to questions of convenience one Court should yield to another as it may not

WATSON AND ANOTHER (1904)

1. L. R. 31 Cal. 761

ss. 7, 28 and 38—*Insolvent's property at Shanghai—Property of insolvents at Shanghai vests in Official Assignee of the Insolvent Debtors' Court at Bombay—Court can order insolvent at Shanghai to hand over property to Official Assignee*

**INSOLVENCY ACT (11 & 12 Vict., c. 21)**—*contd.*ss. 7, 26 and 36—*concl.*

*in Bombay*—Court can order commission to examine insolvent at Shanghai. The firm of T. and Co. filed their petition to insolvency to Bombay on 29th April 1907 at which time one of the partners M was at Shanghai. M subsequently swore his petition at Shanghai on 16th October 1907. On 16th March 1907 certain creditors of the firm obtained an order directing M to appear before the Court of Insolvent Debtors at Bombay to be examined under section 36 of the Indian Insolvency Act. A Rule nisi was obtained on behalf of M calling upon the opposing creditors to show cause why the above order should not be set aside. These creditors also obtained a Rule nisi calling on M to show cause why he should not deliver up to the Official Assignee goods belonging to the insolvent firm in his possession at Shanghai. These two Rules were heard together. *Held*, that the property of the insolvent debtor's firm in Shanghai vested in the Official Assignee of the Insolvent Debtors' Court at Bombay, and that Court could order M to hand over such property to the Official Assignee in Bombay. *Held*, further, that the Insolvent Debtors' Court at Bombay can order the examination of a witness at Shanghai, but cannot direct a witness to come to Bombay to be examined, there being no machinery for that purpose. *In re NAOROJI SORABJI T. & CO. (1908)*

I. L. R. 33 Bom. 462

1. ss. 7 and 30—Ancestral trade carried on by brothers in undivided family—Insolvency and discharge of all the adult members—Minor son of one brother not a party to insolvency proceedings—Order vesting family property in Official Assignee—Sale by Official Assignee of land so vested—Subsequent suit against minor—Sale of his interest in the land—Validity. Seven brothers who carried on a business (which had previously been conducted by their family for very many years) applied to be adjudged insolvents in the Court for the relief of insolvent debtors in Madras. They comprised all the adult members of the family at the time when the

**INSOLVENCY ACT (11 & 12 Vict., c. 21)**—*contd.*ss. 7 and 30—*contd.*

*Held*, also, that, inasmuch as the trade was an ancestral one (and not one commenced by the managing members during the minority of A), and as the schedule debts were incurred in the course of such trade, and all the adult members had applied for the benefit of the Insolvency Act, the debts were, at least, *prima facie* binding on the whole family, including the minor. It was not therefore necessary for plaintiff to prove the character of each debt or the existence of family necessity. In cases in which s. 7 of the Indian Insolvent Debtors Act applies, the vesting order vests in the Official Assignee only the real and personal estate and effects of the insolvent. And, where the insolvent is a member of an undivided Hindu family, his undivided interest in the joint family property, and it alone, vests in the Official Assignee, whether he be the father or other member of the family.

sons) will continue vested in them. The effect of s. 30 of the Insolvent Debtors Act, and the analogous provision contained in s. 366 of the Code of Civil Procedure, considered. *NUNNA BRAHMYA SETHU CHIDARABOYINA VENKATASWAMY (1902)*

I. L. R. 26 Mad. 214

2. *Provident Funds Act (IX of 1890), s. 4—Insolvent Debtors' Act (11 & 12 Vict., c. 21), s. 7, 80—Vesting order—Sum due to an insolvent from a provident institution—Right of Official Assignee to claim—Construction of statutes—Distinction between enactments affecting vested rights and those regulating procedure. A member of a Railway Provident Institution, who had made compulsory deposits therein, became insolvent, and the usual vesting order was made under s. 7 of the Act for the Relief of Insolvent Debtors. By the*

Act, 1897, came into force, s. 4 of which provides that the Act of 1890 shall apply to insolvent debtors who become insolvent after the 1st day of January 1897.

*Held*, that the Official Assignee was entitled to claim the sum due to the insolvent from the Provident Institution on the ground that when the Act came into force the interest of the insolvent in the Fund had become vested in the Official Assignee. *Held*, that, by s. 4 of the Provident Funds Act, all the right and title of the Official Assignee was determined as from the coming into operation of the Act, and that its operation was not limited to cases where the vesting order had been made after its commencement. The distinction between the construction of enactments affecting vested rights, and those which merely affect procedure, recognised. *Jaganmal Jitmal v. Mulabai, I. L. R. 14 Bom. 516*, referred to. Under s. 7 of the Insolvent

*Held*, that plaintiffs were entitled to the declaration.

**INSOLVENCY ACT (11 & 12 Vict., c. 21)**—*contd.*ss. 7 and 30—*contd.*

Debtors Act, the right of the insolvent to be paid the sum standing to his credit in the Fund, on his retirement from service, vested in the Official Assignee. **OFFICIAL ASSIGNEE OF MADRAS v. DALGAIRNS** (1902) . I. L. R. 26 Mad. 440

1. — s. 8—Annulment of fiat of bankruptcy. The annulling of the fiat contemplated by the proviso of 11 & 12 Vict., c. 21, s. 8, applies only to cases in which the original judgment has been the result of mistake of fact, misapprehension, or fraud. *In re SREENARAIN BYSACK*. 2 Hyde 180

2. — Adjudication—Effect of imprisonment under Civil Procedure Code, 1859, as satisfaction of decree. Held, that a judgment-debtor who had been in prison for two years under the Code of Civil Procedure was liable to be adjudicated an insolvent in respect of the same

3. — Adjudication of insolvency—Who is entitled to apply for order of adjudication—Condition necessary for adjudication under s. 8—Practice—Procedure. The only person who can obtain an order adjudicating another person insolvent under s. 8 of the Indian Insolvency Act (11 and 12 Vict., c. 21), on the ground of his

insolvency Act (11 and 12 Vict., c. 21) on the ground of his lying in prison for twenty-one days, unless he is in prison at the time the petition for adjudication is presented or at the time it is heard. *In re AHMED ISMAIL MUHAMMAD*

I. L. R. 26 Bom. 649

s. 9.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

I. L. R. 14 Bom. 169

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . I. L. R. 23 Calc. 592

1. — Revocation of adjudication—Notice to creditors—Practice. Certain persons had been adjudged insolvents under s. 9 of the Insolvency Act, but no schedule had been filed and no claim proved. To an application on behalf of the insolvents after notice to the Official Assignee and to the attorney for the petitioning creditors for an order setting aside the adjudication on the ground that they had come to an agreement with their creditors, it was objected that notice must be

**INSOLVENCY ACT (11 & 12 Vict., c. 21)**—*contd.*s. 9—*contd.*

set aside: if proper, a schedule must be filed in the usual way. *In the matter of RAJNARAYAN PAL*

13 B. L. R. Ap. 25

2. — Order of adjudi-

Insolvency Act (11 and 12 Vict., c. 21), the ninth section of which empowers and the effect of

business as carried on by a gomastah, can be adjudicated an insolvent under s. 9 of 11 and 12 Vict., c. 21, if his gomastah stops payment and closes and leaves his usual place of business, or does any act which, if done by the trader himself, would have rendered him liable to be adjudicated an insolvent. *In re HERBERT CHAND GOLCHA*

I. L. R. 6 Calc. 605 ; 8 O. L. R. 392

4. — Trader beyond jurisdiction carrying on business by gomastah within jurisdiction—"Departure"—"Intent." D, resident in Azimgunge, carried on business as a banker and money-lender in (amongst other places)

having gone away on pilgrimage, the Calcutta

with his creditors. Held, that such stoppage of payment was not an act of insolvency within the meaning of the Insolvency Act, and that the retirement of D to his rooms on the third storey was not a departure with the intention to defeat and delay the creditors of D. Held, further, that a departure such as is made an act of insolvency by s. 9 of



## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*ss. 9, 92.—*contd.*

business in Bombay, Madras, and other places. In a suit brought in the High Court of Bombay, against him as manager of the said joint family, a decree was passed on the 11th April 1896, which was in terms against the defendant alone. On the same day certain property in Bombay, in which (as found

petition in the Madras Insolvent Court disclosed no act of insolvency which could legally justify an adjudication under s. 9 of the Indian Insolvency Act (11 & 12 Vict., c. 21), and that the adjudication order was therefore made by a court not competent to make it within the meaning of s. 44 of the Indian Evidence Act (I of 1872), and that consequently both it and the vesting order were nullities, and the Official Assignee of Madras had no title to the attached property. *Held*, that the order, although

Madras  
that  
in the

L. L. R. 21 Bom. 297

9. ———— *Adjudication of insolvency—Concurrent proceedings in two Insolvent Courts in India—High Court, Jurisdiction of—Discretion of Court to which second application for adjudication order is made—Act of insolvency—Departure from jurisdiction with intent to delay creditors—Stay of proceedings* On the 23rd April 1896, A was adjudged insolvent under s. 9 of the Indian Insolvency Act (Stat. 11 and 12 Vict., c. 21) by the Court for the Relief of Insolvent Debtors at Bombay at the instance of certain creditors resident in Bombay. He subsequently took out a rule to annul the order of adjudication on the ground that at the date of the said order he had already (viz., on the 9th April 1896) been adjudged an insolvent by the Insolvency Court at Madras. *Held*, discharging the rule, that the prior adjudication of the Madras Court did not deprive the Court at Bombay of jurisdiction to adjudicate him an insolvent at the instance of a Bombay creditor. The latter Court, however, was not bound under s. 9 to make such order, but had a discretion to refuse it if, having regard to all the circumstances of the case, it considered that

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*ss. 9, 92.—*contd.*

adjourned meeting he submitted a statement showing that he had a sum of Rs. 11,000 in cash in his hands. Two of his creditors asked him to give inspection of his Bombay books of accounts, but he refused to do so. A further meeting was summoned for the 8th April. On the 31st March or 1st April two of his Bombay creditors served him with a summons in an action of debt. On the 2nd April he left Bombay for Bellary taking the said sum of Rs. 11,000 with him, in order (as he admitted) to

SAHEPATHTY. *Ex parte* KARANALLI JOOSUN  
L. L. R. 21 Bom. 297

9. ———— *Trust deed for benefit of creditors—Act of insolvency.* An assignment by a debtor of all his property for the benefit of all his creditors is an act of insolvency within s. 9 of the Indian Insolvency Act (11 and 12 Vict., c. 21), and justifies an application for adjudication under that section. KARSANDAS RANDAS & MAGANLAL KAKKUCHAND (1902) L. L. R. 28 Bom. 478

10. ———— *Procedure—Adjudication of insolvency, application for—By petition or by a rule—Rule obtained pro inurium.* The usual pro-

ss. 9 and 24.—*Assignment of all property for benefit of creditors—Insolvency—Composition deed—Act of insolvency—Assignment void against Official Assignee.* By a composition deed dated the 7th October 1901, A and B assigned the whole of their property to trustees, for the benefit of such of their creditors as should accept and sign the said deed within two months from the date thereof. This assignment



## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 9.—*contd.*

the Act is a departure by the debtor personally, and cannot be committed by any other person on

dissented from. *Per PIGOT, J.*—Under the circumstances, no special powers or position ought to be attributed to P, who was merely an ordinary managing gomastah. *In re DHUNPAT SINGH*

I. L. R. 20 Cal. 771

*Held*, in the same case on appeal to the Privy

having departed from the usual practice of business with intent to defeat or delay the firm's creditors. Not every gomastah stands in this respect in the same relation to his employer, there being a difference in the degree of control exercised by different owners. The gomastah may be only an ordinary manager or he may represent the firm entirely. It is a question of fact in each case whether the gomastah

had been suspended by the gomastah. But under the Indian Statute, that is not an act of insolvency. The gomastah had withdrawn to his own apartment in the house occupied by the firm, but how this would defeat or delay creditors, some of whom visited him there, was not shown. Other acts before the arrival of the principal were done, by none amounted to departure with intent or to departure at all. *Held*, that the gomastah, even if he had departed from the place of business with the intent to defeat or delay creditors, was not in such a position as that he had authority rendering his principal liable to be adjudged insolvent. The principle in the decision of *In re Hurruck Chand Golcha*, I. L. R.

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 9.—*contd.*

gomastah's) personal conduct. *KASTER CHAND & DHANPAT SINGH* . . . I. L. R. 23 Cal. 28  
I. R. 22 I. A. 182

5. ——— Intent to defeat and delay creditors—*Stat. 6 Geo. VI, c. 16, s. 4—Stat. 12 & 13 Vict., c. 106, ss. 61 and 63—“Fraudulent” assignment—Moral and legal fraud.* Where a trader assigned by deed all his property for the benefit of his creditors to trustees in trust to pay and satisfy the debts and liabilities of the debtor, and most of the creditors assented to the trust and it appeared that the debtor really intended that all the creditors should be finally satisfied and the assets seemed to be sufficient for the purpose: *Held*, since the deed, in effect, provided for deferred payment and creditors were not bound to wait, such an assignment amounted to delaying and defeating creditors within the meaning of s. 9 of the Indian Insolvency Act and was, as such, an act of insolvency, and it was competent for any of the creditors to adjudicate the settler and insolvent. *Stewart v. Moody*, I. C. M. & R. 777, followed. *Gisbon's*

DORAY . . .

2 C. W. N. 355

2 C. W. N. 355

joint  
to A  
in the  
joint names of two merchants, trading together as members of an undivided Hindu family, on

joint Hindu family carrying on business are not partners in trade within s. 9, cl. 2. *Ex parte RAGAVALOO CHETTI*. *In re RANGIAH CHETTI*  
I. L. R. 15 Mad. 356

7. ——— Jurisdiction of Insolvent Court—Act of insolvency—Evidence Act (1 of 1872), s. . .  
*Partnership carried on manager himself*

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*ss. 9, 92—*contd.*

terms against the defendant alone. On the same day certain property in Bombay, in which (as found

Madras  
that  
in the

creditor and the insolvent in obtaining the order of adjudication as would bring that order within s. 44 of the Indian Evidence Act (I of 1872) **SARDAR MAL JAGONATH v. ARANYATL SABBAPATHY.**

I. L. R. 21 Bom. 305

**S.** — *Adjudication of insolvency—Concurrent proceedings in two Insolvent Courts in India—High Court, Jurisdiction of—Discretion of Court to which second application for adjudication order is made—Act of insolvency—Departure from jurisdiction with intent to delay creditors—Stay of proceedings.* On the 23rd April 1896,

bay. He subsequently took out a rule to annul the

not bound under s. 9 to make such order, but had a

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*ss. 9, 92—*contd.*

that, there being no longer any ground for apprehending that the proceedings in the Madras Court would be discontinued, the proceedings in the Court at Bombay should be stayed, leaving the

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

ss. 9 and 24—*contd.*

was held in *Karsandas v. Maganlal, I. L. R. 26 Bom. 476*, to be an act of insolvency under s. 9 of the Indian Insolvency Act (11 and 12 Vict., c. 21, and, on the 11th December, 1901, A and B were adjudged insolvents on the application of certain creditors who had not signed the said deed. *Held*, that, even assuming that the deed of assignment was not voluntary within the meaning of s. 24 of the Indian Insolvency Act, nevertheless the assignment to the trustees was void as against the Official Assignee. *MANMOHANDAS RAMJI v. MACLEOD (1902)* . . . I. L. R. 28 Bom. 765

s. 13—

See ARREST—CIVIL ARREST.

I. L. R. 28 Bom. 652

Arrears of maintenance—"Debt or liability"—Protection order—Exemption from arrest Arrears of maintenance, included in the schedule filed by an insolvent, are a debt or liability within the meaning of s. 13 of the Insolvency Act, 11 and 12 Vict., c. 21; and an insolvent who has obtained a protection order is not liable for arrest or imprisonment in respect of such arrears. *Quare*: Whether the protection order protects the insolvent from proceedings in respect of any maintenance accruing subsequently to the filing of the schedule. *In the matter of TOKEE BISEE v. ABDUL KHAM*

I. L. R. 5 Calc. 536; 5 C. L. R. 458

1. — s. 19—Right of Official Assignee to commission—Rule 14 of Insolvent Court. The right of the Official Assignee to commission under 11 and 12 Vict., c. 21, s. 19, does not arise until there are in his hands funds realized and available for distribution among the creditors. If at such time the adjudication is annulled, the right to commission subsists. *OFFICIAL ASSIGNEE v. RAMALINGA I. L. R. 8 Mad. 79*

2. — Interest on scheduled debts—Official Assignee's commission on interest. Where an insolvent's estate is sufficient to pay of his creditors in full, leaving a balance in the hands of the Official Assignee, the Court will direct interest at 6 per cent. to be paid on such proved or admitted contract debts as expressly or impliedly carry interest as from the date of the filing of the petition in insolvency, and will allow the Official Assignee to retain his commission on such sum so paid as interest, directing any balance that may then remain in his hands to be made over to the insolvent. *In re MAHOMED MAHMUD SHAH I. L. R. 13 Calc. 68*

ss. 19, 21, 31—

See OFFICIAL ASSIGNEE

I. L. R. 38 Calc. 990

1. — s. 23—Reputed ownership—Insolvency—Property subject to mortgage in posses-

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

s. 23—*contd.*

sion of insolvent at date of insolvency—Fixtures—Goods and chattels—Registration of mortgage—Registration Act (III of 1877), s. 17. On the 23rd June, 1893, one Viahram Meghji, the owner of a flour mill, mortgaged all the machinery

Assessee. The plaintiff . . . intended that it (11 and property owner was on of the e property tiff brought this the evidence it the mortgaged to various parts therein. *Held*, plaintiff was hey were not ssed to the fixed articles, the posses- lrent as the not in his The plaintiff ch portion of ar value. It ust either be perty, and, if ected by the , and that the mortgage-deed as it was charge in favour of the plaintiff was therefore invalid. *Held*, that the question of registration . . . Registration Act (III of 1877), . . . of

the Registration Act . . . Fixtures are not goods and chattels within the meaning of reputed ownership laid down in s. 23 of the Indian Insolvency Act (11 and 12 Vict. c. 21). The fact of such fixtures being removable by a tenant makes no difference. They are still fixtures to which the doctrine does not apply. *MACLEOD v. KIRABHOY KHUSHAL (1901)* . . . I. L. R. 25 Bom. 659

2. — Where a debtor has assigned a debt, notice by the assignee to the person owing the debt will take it out of the order or disposition of the debtor. *Per Sir ARNOLD WHITE, C.J.*—A chose in action, if it is a debt due to the insolvent in his trade or business, comes within the words "goods and chattels" as con-

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 23—*concl'd.*

tained in s. 23 of the Indian Insolvent Debtors Act. *Per BHASIRAM AYYANGAR, J.*—The instrument only created a charge or hypothecation in plaintiff's favour, but a charged-holder is as much the substantial owner of, and has as substantial an interest in, the goods and chattels as a mortgagee thereof, and if either allows the mortgagor or the person creating the charge to remain in possession, under circumstances which will lead to his being the reputed owner and to his being enabled to command credit thereby, he will be estopped from asserting his substantial interest or ownership in the property as against the Official Assignee. A debt is taken out of the order and disposition of an insolvent if a suit be brought to enforce a charge upon the debt prior to his adjudication. *PUSHTRAVEL MUDALIAR v. BHASIRAM AYYANGAR (1901)*

I. L. R. 25 Mad. 408

## ss. 23 and 24.

See INSOLVENCY—ORDER AND DISPOSITION.

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

## s. 24—

See *ante*, ss. 9 AND 24.

1. — s. 26—Debts. The terms debts "admitted" or "established," in s. 26 of the Indian Insolvency Act, mean admitted in the schedule or established on proof, and not that it has been alleged and not denied. *In the matter of BUCKWAR CHAND*, 1 C. W. N. 328

2. — Right of owner to sue Assignee—*Per PEACOCK, C. J., and MARKBY, J.*—An order under s. 26 of the Insolvency Act does not prevent the owner of the property which is the subject of the order from suing the Assignee to establish his right to it. *BARLOW v. COCHRANE*

2 B. L. R. O. C. 58

3. — Order to deliver property to the Official Assignee—*Jurisdiction of Insolvent Court.* The insolvent Court has a discretionary power under s. 26 of the Insolvency Act, to order any person who has the possession of or has under his power or control, any property of the insolvent, to deliver over such property to the Official Assignee. *In re DWARKANATH MITTAL*. *RATANMAN DAS v. MILLER* 4 B. L. R. O. C. 63  
15 W. R. O. C. 18 note

4. — *Jurisdiction.* *Per NORMAN, J. (PAUL, J., dissenting).*—The insolvent Court has power under s. 26 of 11 and 12 Vict., c. 21, to order any person who is in possession of, or has under his control, any property alleged to belong to the insolvent, to deliver such property to the Official Assignee. *In the matter of ARJUNDA PRASAD*. *JAIR M GUR v. MILLER*

7 B. L. R. 74; 15 W. R. O. C. 16

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 28—*concl'd.*

5. — *Question of disputed title—Voluntary conveyances—Stat. 13 Eliz., c. 5.* Where an order had been made under s. 28 of the Insolvency Act calling on a certain person to show cause why she should not hand over to the Official Assignee money which it was alleged the insolvent had paid to her shortly before his insolvency under circumstances which might make the transaction void against the creditors: *Held*, in the Court below, that the transaction was a gift, and, under the circumstances, void as against the creditors within the Stat. 13 Eliz., c. 5. *Held*, also, that the word "property" in s. 26 of the Insolvency Act includes money. *Held*, on appeal, that the matter was not one which could properly be dealt with under the 26th section of the Insolvency Act, as it involved difficult questions of title. *In the matter of UMMA NUNDEN BIRWAY*

I. L. R. 3 Cal. 434; 1 C. L. R. 561

ss. 26, 27—*Jurisdiction of the Insolvent Court outside the Bombay Presidency.*—Person in possession of Insolvent's property can be directed to hand it over to the Official Assignee. The Court for the relief of insolvent debtors sitting in Bombay has jurisdiction to make an order under s. 26 of the Indian Insolvency Act against a person residing outside the Bombay Presidency. *In re GANESHIDAS FANALAL (1908)*

I. L. R. 32 Bom. 168

ss. 26 and 38—*Construction.* The words "and it shall be also lawful for the Court, on those or any other occasions," in s. 38 of the Insolvent Debtors Act (11 and 12 Vict., c. 21), are intended to receive a very wide application, and the Court has power to proceed under this section as soon as there is an insolvent. Under s. 26 of the same Act, no rule should be granted except on the application of the assignee or an admitted creditor. *In the matter of Buckwar Chand*, 1 C. W. N. 328, followed. No one can be regarded as a creditor until his name is admitted to the schedule, or until he establishes it there. *In the matter of CHUN LAL OSWAL (1902)*

I. L. R. 29 Cal. 503

## s. 27.

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.

I. L. R. 19 Bom. 232

## ss. 28 and 29.

See RIGHT OF SUTI—OFFICIAL ASSIGNEE.

I. L. R. 11 Bom. 620

I. L. R. 14 I. A. 111

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—FRAUD.

I. L. R. 11 Bom. 620

I. L. R. 14 I. A. 111

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

ss. 9 and 24—*contd.*

was held in *Karandas v. Maganlal, I. L. R. 26 Bom. 476*, to be an act of insolvency under s. 9 of the Indian Insolvency Act (11 and 12 Vict., c. 21, and, on the 11th December, 1901, A and B were adjudged insolvents on the application of certain creditors who had not signed the said deed. *Held*, that, even assuming that the deed of assignment was not voluntary within the meaning of s. 24 of the

a. 13—

See ARREST—CIVIL ARREST.

I. L. R. 26 Bom. 652

Arrears of maintenance—"Debt or liability"—Protection order—Exemption from arrest. Arrears of maintenance, included in the schedule filed by an insolvent, are a debt or liability within the meaning of s. 13 of the Insolvency Act, 11 and 12 Vict., c. 21; and an insolvent who has obtained a protection order is not liable for arrest or imprisonment in respect of such arrears. *Quare*: Whether the protection order protects the insolvent from proceedings in respect of any maintenance accruing subsequently to the filing of the schedule. *In the matter of TOORIE BIEER v. ABDOL KHAH*

I. L. R. 5 Cal. 536; 5 C. L. R. 458

s. 19—Right of Official Assignee to commission—Rule 14 of Insolvent Court. The right of the Official Assignee to commission under 11 and 12 Vict., c. 21, s. 19, does not arise until there are in his hands funds realized and available for distribution among the creditors. If at such time the adjudication is annulled, the right to commission subsists. *OFFICIAL ASSIGNEE v. RAMALINGA I. L. R. 8 Mad. 79*

2. Interest on scheduled debts—Official Assignee's commission on interest. Where an insolvent's estate is sufficient

impliedly carry interest as from the date of the filing of the petition in insolvency, and will allow the Official Assignee to retain his commission on such sum so paid as interest, directing any balance that may then remain in his hands to be made over to the insolvent. *In re MARQUEZ MAHMOUD SHAH I. L. R. 13 Cal. 68*

ss. 19, 21, 31—

See OFFICIAL ASSIGNEE

I. L. R. 38 Cal. 990

s. 23—Reputed ownership—Insolvency—Property subject to mortgage in pos-

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

s. 23—*contd.*

sion of insolvent at date of insolvency—Fixtures—Goods and chattels—Registration of mortgage—Registration Act (III of 1877), s. 17. On the 23rd June, 1893, one Vishram Meghji, the owner of a flour mill, mortgaged all the machinery engines, plant, stock, implements, utensils, trade fixtures, chattels and effects specified in schedule annexed to the deed of mortgage, to the plaintiff, for Rs. 9,000 then advanced, and power was given to the plaintiff to sell the same in default of payment. In March, 1893, Vishram Meghji became insolvent, and his estate thereupon vested in the Official Assignee. The plaintiff claimed the mortgaged property, but the Official Assignee contended that under s. 23 of the Indian Insolvency Act (11 and 12 Vict., c. 21), he was entitled to it as property which with the consent of the true owner was in the possession, order or disposition of the insolvent at the date of insolvency. The property was sold by consent, and the plaintiff brought this suit to recover the proceeds. *From the evidence it*

reputed owner, and that they were not in his reputed ownership within the section. The plaintiff

mortgage deed as it was not registered, and that the charge in favour of the plaintiff was therefore invalid. *Held*, that the question of registration depended on the Registration Act (III of 1877),

2. Where a debtor has assigned a debt, notice by the assignee to the person owing the debt will take it out of the order or disposition of the debtor. *Per SIR ARNOLD WHITE, C.J.*—A chose in action, if it is a debt due to the insolvent in his trade or business, comes within the words "goods and chattels" as con-

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*concl.*s. 23—*concl.*

tained in s. 23 of the Indian Insolvent Debtors Act. *Per BHASHYAM AYYANGAR, J.*—The instrument only created a charge or hypothecation in plaintiff's

and if either allows the mortgagor or the person

a suit be brought to enforce a charge upon the debt prior to his adjudication. *PUNITHAVELU MUDALIAR v. BHASHYAM AYYANGAR (1901)*

I. L. R. 25 Mad. 406

ss. 23 and 24.

See INSOLVENCY—ORDER AND DISPOSITION.

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

s. 24—

See *ante*, ss. 9 AND 24.

1. s. 26—Debts. The terms debts "admitted" or "established," in s. 26 of the Indian Insolvency Act, mean admitted in the schedule or established on proof, and not that it has been alleged and not denied. *In the matter of BUCKSWAN CHAND* . . . 1 C. W. N. 326

2. Right of owner to sue Assignee—*Per PEACOCK, O. J.*, and *MARKBY, J.*—An order under s. 26 of the Insolvency Act does not prevent the owner of the property which is the subject of the order from suing the Assignee to establish his right to it. *BARLOW v. COCHRANE*

2 B. L. R. O. C. 56

3. Order to deliver property to the Official Assignee—*Jurisdiction of Insolvent Court.* The Insolvent Court has a discretionary power under s. 26 of the Insolvency Act, to order any person who has the possession of or has under his power or control, any property of

4. *Jurisdiction.* *Per NORMAN, J. (PAUL, J., dissenting)*—The Insolvent Court has power under s. 26 of 11 and 12 Vict., c. 21, to order any person who is in possession of, or

7 B. L. R. 74: 15 W. R. O. C. 18

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*concl.*s. 26—*concl.*

5. *Question of disputed title—Voluntary conveyances—Stat. 13 Edw., c. 5.* Where an order had been made under s. 26

with under the 26th section of the Insolvency Act, as it involved difficult questions of title. *In the matter of UMBICA NUNDEN BISWAS*

I. L. R. 3 Calc. 434; 1 C. L. R. 561

ss. 26, 27—*Jurisdiction of the Insolvent Court outside the Bombay Presidency—Person in possession of Insolvent's property can be directed to hand it over to the Official Assignee. The Court for the relief of insolvent debtors sitting*

I. L. R. 32 Bom. 193

ss. 26 and 36—*Construction.* The words "and it shall be also lawful for the Court, on these or any other occasions," in s. 36 of the Insolvent Debtors Act (11 and 12 Vict., c. 21), are intended to receive a very wide application, and the Court has power to proceed under this section as soon as there is an insolvent. Under s. 26 of the same Act, no rule should be granted except on the application of the

s. 27.

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.

I. L. R. 19 Bom. 232

ss. 28 and 29.

See RIGHT OF SUIT—OFFICIAL ASSIGNEE.

I. L. R. 11 Bom. 620

I. L. R. 14 I. A. 111

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASE—*Fact.*

I. L. R. 11 Bom. 620

I. L. R. 12 I. A. 111

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

1. — s. 29—Suit by Official Assignee—Leave of Court to sue—Leave nunc pro tunc—Costs—Practice. *To* . . . . .

2. — Suit by Official Assignee—Leave to sue—Practice. It is not necessary for the Assignee to obtain the leave of the Court before commencing an action; the absence of such permission is matter of objection only between the Assignee and the Court of Bankruptcy, and not between the Assignee and the other party to the suit. *In re LATAPIE* . . . . . Cor. 4

s. 30—

See ante, ss. 7 AND 30.

Liability for costs of unsuccessful motion—Bankruptcy Rules of 1848, Rule XXV—"Person interested"—Deponent of an affidavit. A sale of property forming portion of the estate of certain insolvent debtors having been authorized by the Court, the Official Assignee moved to set it aside, relying in support of his application on affidavits which had been filed in Court and in which the deponents alleged that the property was worth a great deal more than the price at which the sale had been authorized. The Court having dismissed the motion, and ordered the deponents to pay the costs of the Official Assignee and the purchasers; *Held*, that the deponents could not be made liable for costs, and that Rule XXV of the Bankruptcy Rules of December 1848 did not apply to such a case. The deponents were not "persons interested in the insolvent's estate," nor could they be said to have "appeared" or appeared on an application. The Official Assignee should be made liable for the costs of such an unsuccessful application, he being left to take such steps as might be necessary to indemnify himself. *RAMANNA NAIDU v. BRAHMAYYA CHETTI* I. L. R. 23 Mad. 28

1. — s. 31—Sale by Official Assignee—Sanction of the Court—Power of Court to . . . . .

1. — s. 31—Sale by Official Assignee—Sanction of the Court—Power of Court to . . . . . *MOONWALLA v. MACLEOD* (1906) . . . . . I. L. R. 30 Bom. 515

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*s. 31—*concl.*

2. — Proceedings "in aid of"—English Court—Public examination—Procedure. Where some of the partners of a firm had filed their petition in insolvency in Calcutta and others had been adjudicated bankrupt in England, and in the insolvency proceedings in Calcutta an order had been made that such proceedings should be "in aid of and auxiliary to" the bankruptcy proceedings. *Held*, that the Trustees in Bankruptcy and Official Receiver had no jurisdiction to . . . . .

3. — Special and ordinary jurisdiction of High Court in insolvency—Order of Insolvent Court—Suit—Limitation Act (XV of 1877) s. 11 . . . . .

Insolvency Court is a judgment of the High Court and a suit based upon such judgment is maintainable. *Attermoney Dosse v. Hurry Dass Dutt, I. L. R. 7 Cal. 74*, followed. *ANNODA PRASAD BANERJEE v. NOBO KISHORE ROY* (1905)

I. L. R. 33 Cal. 560

s. 32—Arrangement for cultivation of indigo and management of factories for benefit of creditors. T & Co, a firm in Calcutta, the mortgagees of certain indigo factories and crops, mortgaged them to the A Bank, the Bank stipulating to make advances for the cultivation and manufacture of the indigo in consideration of the mortgage. T & Co, became insolvent, and the Bank went into liquidation, and a provisional liquidator was . . . . .

notice, and allow the Official Assignee to make such an arrangement as being one by which the interest of the creditors would be best consulted; the right to hold the produce of the factories to be to such extent only as the interest in them which belonged to the insolvents, and was vested in the Official Assignee, enabled him to give. *In the matter of THOMAS & Co.* . . . . . 1 Ind. Jur. N. B. 352

s. 36—

See ante, ss. 26 AND 36.

See PRACTICE—CIVIL CASES—COUNSEL. I. L. R. 29 Cal. 50

# INSOLVENCY ACT (11 & 12 Vict., c. 21) —contd.

1. **s. 30—Practice—Counsel.** A person from whom property is sought to be taken under s. 30 of 11 and 12 Vict., c. 21, is entitled to be represented by counsel. *In the matter of NOLLMONT'S ESTATE*. 11 B. L. R. Ap. 33

2. **Practice—Right of witness summoned under s. 35 to appear by counsel.** A witness summoned for examination under s. 35 of the Insolvency Act is not entitled, as of right, to be represented by counsel. The attendance of counsel on his behalf is a matter of practice to be settled by the Judge at his discretion. *In the matter of the petition of NURSEY KESKOWJI*. I. L. R. 3 Bom. 370

3. **Summons to insolvent and creditors—Practice.** An application for a summons to insolvent and the petitioning creditors to be examined with reference to the debt on which the insolvency had been adjudicated should be made to the Commissioner. *In re KUONA BEX*. Ind. Jur. N. S. 42

4. **Fresh petition—Practice—Rule 14 of Insolvent Rules, Bombay.** *Hild*, that Rule 14 of the Insolvent Court at Bombay, requiring a special application on affidavit and notice to opposing creditors before a fresh petition can be filed, has reference to a dismissal upon hearing, and not to the case of a petition dismissed under Rule 10. *In re MANEKJI PRAMJI*. 3 Bom. O. C. 167

5. **Adjournment—Illness of insolvent—Protection order.** An adjournment on the ground that the insolvent is unable to attend the Court by reason of ill-health will only be granted when the insolvent enjoys the benefit of the Court's order granting him personal protection. *In re ONORROO CHURN ROY*. Bourke, Ins. 3

6. **Death of insolvent—Abatement—Effect of death on vesting order.** The death of an insolvent before obtaining this

7. **Abatement of suit—Death of party instituting proceedings—Representative.** Proceedings in the Insolvent Court do not necessarily abate by the death of the party

JANKI PRASAD. RAMZAN ALI v. JANKI PRASAD  
6 B. L. R. 119

8. **Rules of Insolvent Court—Rule 25—Leave to defend suit without**

# INSOLVENCY ACT (11 & 12 Vict., c. 21) —contd.

**s. 30—contd.**  
**Leave granted to the Official Assignee under Rule 25 of the Rules of the Insolvent Court to defend a suit without paying Court-fee.** HIRALAL NEAL v. SCHILLER. 7 B. L. R. Ap. 61

9. **Final discharge where insolvent is not personally present in Court—Affidavit explaining absence—Opposition to final discharge.** An insolvent who has obtained a rule nisi for his final discharge, but who is not personally present in Court on the return of the rule, is entitled, where no one appears to oppose the rule, to have the rule made absolute on his putting in a sufficient affidavit explaining his absence. *In re FOX*. I. L. R. 13 Cal. 67

10. **Order to examine witnesses under s. 35—Discovery of insolvent's property—Bond fide creditor—Practice—Conduct of**

benefit to the creditors or estate, and is not merely

property of the insolvent which might be made

applicant not being a creditor, and the Official

ORDER, under s. 30, 11 & 12 VICT. 21. AND THE INCL



# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

1. — s. 29—Suit by Official Assignee—Leave of Court to sue—Leave *nunc pro*

from the Court Should, however, the Official Assignee bring prosecute, or defend any such action without leave first obtained from the Court, he will

2. — s. 29—Suit by Official Assignee—Leave to sue—Practice. It is not necessary for the Assignee to obtain the leave of the Court before commencing an action; the absence of such permission is matter of objection only between the Assignee and the Court of Bankruptcy, and not between the Assignee and the other party to the suit. *In re LATAPIE* . . . Cor. 4

— s. 30—

See ante, ss. 7 AND 30.

— Liability for costs of unsuccessful motion—Bankruptcy Rules of 1848, Rule

and in which the deponents alleged that the property was worth a great deal more than the price at which the sale had been authorized. The Court having dismissed the motion, and ordered the deponents to pay the costs of the Official Assignee and the purchasers: *Held*, that the deponents could not be made liable for costs, and that Rule XXV of the Bankruptcy Rules of December 1848 did not apply to such a case. The deponents were not persons interested in the insolvent's

1. — s. 31—Sale by Official As.

convenient speed. The sanction of the Court to the sale is not necessary. S. 31 of the Indian Insolvency Act does not vest the Court with power to set aside a completed sale. *WOONWALLA v. MACLEOD* (1906) . . . I. L. R. 30 Bom. 615

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*

— s. 31—*contd.*

2. — Proceedings "in aid of"—English Court—Public examination—Procedure. Where some of the partners of a firm had filed their petition in insolvency in Calcutta and others had been adjudicated bankrupt in England, and in the insolvency proceedings in Calcutta an order had been made that such proceedings should be "in aid of and auxiliary to" the bankruptcy proceedings. *Held*, that the Trustee in Bankruptcy

3. — Special and ordinary jurisdiction of High Court in insolvency—Order of Insolvent Court—Suit—Limitation Act (XV of 1877), Sec. 11, Art. 122. The High Court exercises the powers of an Insolvent Court under a special

I. L. R. 13 Bom. 510, followed. An order of the

I. L. R. 33 Calo. 500

— s. 32—Arrangement for cultivation of indigo and management of factories for benefit of creditors. T & Co., a firm in Calcutta, the mortgagees of certain indigo factories and crops, mort-

given by s. 32 of the Act such interest right such indigo official or of

Assignee, enquired him to . . . 1 Ind. Jur. N. S. 353

— s. 36—

See ante, ss. 26 AND 36.

See PRACTICE—CIVIL CASES—COUNSEL  
I. L. R. 29 Calo. 60

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

1. **s. 36.—Practice—Counsel.** A person from whom property is sought to be taken under s. 36 of 11 and 12 Vict., c. 21, is entitled to be represented by counsel. *In the matter of NOLLMONT'S DEBT* . . . 11 B. L. R. Ap. 33

2. **Practice—Right of witness summoned under s. 35 to appear by counsel.** A witness summoned for examination under s. 36 of the Insolvency Act is not entitled, as of right, to be represented by counsel. The attendance of counsel on his behalf is a matter of practice to be settled by the Judge at his discretion. *In the matter of the petition of NEMET KENYON* . . .

I. L. R. 3 Bom. 270

3. **Summons to insolvent and creditors—Practice.** An application for a summons to insolvent and the petitioning

4. **Fresh petition—Practice—Rule 14 of Insolvent Rules, Bombay.** *Hill*, that Rule 14 of the Insolvent Court at Bombay, requiring a special application on affidavit and notice to opposing creditors before a fresh petition can be filed, has reference to a dismissal upon hearing, and not to the case of a petition dismissed under Rule 10. *In re MANEKJI FRANK* . . .

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Bourke, Ins. 3

6. **Death of insolvent—Abatement—Effect of death on vesting order.** The death of an insolvent before obtaining this discharge does not affect the right of the Official Assignee to deal with the property of such insolvent, nor does it cause the proceedings in such insolvency, so far as the Official Assignee and the creditors are concerned, to abate. *In re SITARAM ABAJJI* . . .

Ex parte SUNDARAS MULJI . . . 10 Bom. 58

7. **Abatement of suit—Death of party instituting proceedings—Representative.** Proceedings in the Insolvent Court do not necessarily abate by the death of the

of such deceased party, he being interested in them. *In the matter of RAM SEBAK MISSEER, PALTU v. JANKI PRASAD, RAMZAN ALI v. JANKI PRASAD* . . .

6 B. L. R. 116

8. **Rules of Insolvent Court—Rule 25—Leave to defend suit without**

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

**s. 36—contd.**  
 **fees.** Leave granted to the Official Assignee under Rule 25 of the Rules of the Insolvent Court to defend a suit without paying Court fees. *MURALAL SEAL v. SCHILLER* . . . 7 B. L. R. Ap. 61

9. **Final discharge where insolvent is not personally present in Court—Affidavit explaining absence—Opposition to final discharge.** An insolvent who has obtained a rule nisi for his final discharge, but who is not personally present in Court on the return of the rule, is entitled, where no one appears to propose the rule, to have the rule made absolute on his putting in a sufficient affidavit explaining his absence. *In re Fox* . . .

I. L. R. 13 Calc. 67

10. **Order to examine witnesses under s. 35—Discovery of insolvent's property—Fiduciary creditor—Practice—Conduct of**

benefit to the creditors or estate, and is not merely made to harass and annoy the persons proposed to be examined. *In re ODOOROO CHURN ROY* . . .

order, under s. 30, if it stood alone. But the fact

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 38—*contd.*

conduct the examination, and ordered that the Chartered Mercantile Bank should apply to the Official Assignee to conduct the inquiry, and if he declined to do so, the Bank should do it. *In re ALLADINBOY HUBIRBOY. Ex parte RAMDUBBOY HUBIRBOY*. I. L. R. 11 Bom. 61

11. — *Order for examination of witnesses where witnesses are defendants in a suit brought by insolvent prior to his insolvency—Practice.* One B filed a suit against the three appellants C, D, and I, praying for a declaration that he was their partner in a certain business, etc. C and D filed their written statements, and affidavits

a creditor of the insolvent, obtained an order from the Insolvent Court under s. 36 of the Insolvency

## s. 39.

See SET-OFF—GENERAL CASES.

6 C. L. R. 294

*Mutual credit—Debt.* A "mutual credit" within the meaning of s. 39 of the Insolvency Act must in its nature terminate in a debt. *MILLER v. NATIONAL BANK OF INDIA*

I. L. R. 19 Calc. 140

1. — s. 40—*Assignment to trustees for benefit of creditors—Notice to creditors to register claims—Refusal of trustees to register claim preferred after time—Cause of action.* The creditor of

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 40—*contd.*

for its registration within the time notified by them and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to

inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it. *ARUNDIA NATH v. ANANT DAS*  
I. L. R. 3 All. 799

2. — *Agreement of commission—Cesser of interest on filing of petition.*

interest, and was fixed at a high rate, because the debtor was expected to obtain the lease of a forest and to derive large profits therefrom. The debtor filed his petition in the Insolvency Court on 1st September 1894. *Held*, that the creditor was not entitled to a dividend in respect of commission claimed to have accrued due after that date. *SUBBARAYALU v. ROWLANDSON*

I. L. R. 14 Mad. 133

3. — *Proof of claim—Giving up security—Realization of security.* In 1870 the firm of S M & Co., of Calcutta, authorized A, of the firm of C N & Co., also of Calcutta, to indent for them for iron from England. In pursuance of such authority, C N & Co., ordered through their

Co., in favour of C N & Co., and after-  
tion were duly accepted by S M & Co., and after-

quently both S M & Co. and C N & Co. were adjudicated insolvents. In the schedule of S M & Co. the Bank was inserted as a creditor in respect of this

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

## s. 40—contd.

transaction for Rs. 1,484-10. When the bills of exchange became due, they were duly presented for payment to the acceptors but were dishonoured and protested by the Bank for non-payment, and on such non-payment the Bank sold the shipment of iron for which it held the bills of lading, and realized the sum of Rs. 10,973-12-6. The Bank claimed to prove for the whole amount in the schedule against the estate of *S. M. & Co. Ltd.*, that the Bank was only entitled to prove for so much as was due to it on the bills of exchange after deducting the amount realized by the sale of the iron. In the circumstances of the case, *C. N. & Co.* were interested in the shipment of iron as well as *S. M. & Co.*, and therefore there was no obligation on the Bank to give up the security before proving its claim, but it might have proved for the whole amount of the debt and retained the security. *In the matter of SHIR CHANDRA MULLICK*

8 B. L. R. 30

## 4. ————— Proof of claim

—*Dividend already declared.* A claim was made against the estate of an insolvent in respect of certain bills of exchange on which dividends had been declared in favour of the present claimant by the Official Assignee on the estates of two other insolvents but which bills of exchange were also included in the present claim. *Held*, that the dividends declared on the two other insolvencies must be deducted from the amount of the claim, though no payment in respect of the dividends declared had been actually made. *In the matter of PABKE PITTAR*

8 B. L. R. 118

## 5. ————— 32 and 33 Vict.

c. 71 (*Bankruptcy Act, 1869*)—Proof of claim—*Breach of contract—Unliquidated damages.* A claim for unliquidated damages arising out of a breach of contract

## 6. ————— Proof of debts—

does not form part. *In the matter of VARDALACA CHARRI*

I. L. R. 2 Mad. 15

## 7. ————— Proof of claim.

On the 25th June 1874, A, the father of B, having mortgaged the factory X to S & Co, to secure re-

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

## s. 40—contd.

payment of Rs. 12,000 advanced, died on the 7th September 1874, leaving a will whereby he appointed his wife C sole executrix and devised to her factory X. On the 16th September 1876 another mortgage was executed whereby C further charged factory X with the repayment of further advances, and B mortgaged factory Y as a further security, the mortgage containing a stipulation for repayment, within one month after notice of the balance due in excess of Rs. 12,000. B became insolvent in July 1882. No demand was made. On the 5th January 1877 a balance of Rs. 27,552 remained due, which, with interest up to July 1882 was increased to Rs. 22,564. The liquidators of S & Co, who had in the meantime dissolved

after standing of giving credit for the value of the first security. *In the matter of AGAR*

12 C. L. R. 165

8. ————— Insolvency—Proof of claim by creditor against insolvent—Time within which such proof to be made—English rules not applicable—*English Bankruptcy Act, 1853* (16 and 17 Vict., c. 52). One Kalidas Keshowji became insolvent, and filed his schedule on the 22nd July, 1896. In the schedule one Jehangir Hormasji Mody was entered as a creditor for Rs. 500. He

declared and paid, but no claim on behalf of the deceased Jehangir Hormasji Mody was sent in by his executors. Subsequently the executors put in

was too late, that under s. 50 of the Indian Insolvency Act the rules framed under the English Bankruptcy Act of 1853 were applicable to India and that under these rules (Rule No. 230) the applicants should have appealed, against his order disallowing the claim, within twenty-one

the Commissioner in Insolvency. *In re KALIDAS KESHOWJI* (1902)

I. L. R. 26 Bom. 623

9. ————— Sale of mortgaged property—32 and 33 Vict., c. 71 (*Bankruptcy Act, 1869*)—Rules 78 to 81. The insolvents filed their petition on 17th March 1873, and obtained their final dis-

# INSOLVENCY ACT (11 & 12 Vict., c. 21) —*contd.*

## s. 40—*contd.*

charge on 2nd September 1873. After their discharge, a creditor, to whom they had mortgaged certain property, made an application for the sale of the mortgaged properties, and the petitioner prayed for an order for an account of what was due on the mortgage, and for a sale under the conduct of the Official Assignee; that he should be at liberty to bid and set off the amount of the

remaining balance. The Court ordered the sale to be made as prayed in the petition, the Official Assignee to reserve a price on the property, and duly advertise it for sale; if not sold by public auction, application should be made to the Court by the Official Assignee for leave to sell by private contract. *In the matter of HOWARD BROTHERS*

13 B. L. R. Ap. 9

10. — Distribution of assets—Creditor taking benefit of property which does not pass to Assignee. The principle that one creditor shall not take a part of the fund which otherwise would have been available for the payment of all the creditors, and at the same time be allowed to come *in pari passu* with the other creditors for satisfaction

2 Moo. I. R. 503

11. — Surplus after paying creditors in full—Interest on debts—Nature of debts on which interest is payable. If the estate is more than sufficient to pay the creditors twenty

bear interest by the contract of the parties, either express or implied; not upon judgments or any other debts with respect to which interest could only be recovered *qua* damages. *In the matter of MACLEAN*

1 Mad. 220 note

s. 42—Preferential claims—Costs—European assistants and native workmen of insolvent firm. The application for payment under s. 42 of the Insolvency Act must be taken to imply consent to a dissolution of the contract of service by the filing of the petition. Claims, therefore, by servants of an insolvent firm only allowed up to date of insolvency, not to the end of the month. Claim of servant who had left insolvent's service before date of insolvency allowed, but only for so much as accrued due to him within the six months previous to insolvency. Sum agreed to be paid to an assistant at extra salary or remuneration for mak-

# INSOLVENCY ACT (11 & 12 Vict., c. 21) —*contd.*

## s. 42—*contd.*

ing up insolvent's statement to be laid before the creditors, disallowed. Costs of the applications allowed out of the estate. One claimant was manager of the insolvent's business at Simla on a salary of Rs350 per month, up to 11th April 1867, when one of the partners wrote to him promising him commission to make his salary up to Rs500. During the six months previous to the insolvency he had received Rs3,100, being more than the salary claimed for six months. Claim disallowed. *In the matter of PARKE PITTAR & Co.*

6 B. L. R. Ap. 144

s. 44—Expunging names of creditors from schedule—Omission to claim dividend—Official Assignee a trustee for creditors admitted in schedule. The applicant was a creditor of the insolvents, who filed their schedule in Bombay in July 1863. The schedule contained the names of twenty-six creditors, twenty of whom were residents in Karachi and six in Multan. The debts amounted in the aggregate to Rs1,819-13, and were all

obtained their personal discharge in March 1866. Since the date of the insolvency, one dividend had been declared, viz, dividend of one per cent. in 1870. Only one creditor had applied for and received that dividend. On the 5th July 1866, the applicant for the first time applied for a dividend on his claim. He was then, after so long a time unable to adduce any proof in his own possession

to show why they or, in  
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Assignee holds the assets of an insolvent  
for all the creditors admitted on the insolvent's  
schedule, whether or not they have actually proved  
their claims. *In re DEWURN JEWRAJ*

I. L. R. 12 Bom. 342

s. 46—Winding up of company—  
Payment of servants' salaries—Companies Act

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 40—*contd.*

the matter of the COMPANIES ACT, 1860, and of the  
AGRA AND MATHURAN BANK

1 Ind. Jur. N. S. 350, 352

But see in the matter of the CALCUTTA STRAM TUG  
ASSOCIATION . . . 2 Ind. Jur. N. S. 17

## 1. — s. 47—Personal discharge—

Liability of insolvent to pay subsequent calls—  
Winding up of company—(Companies Act, 1860,  
ss. 95, 100. An insolvent a holder of shares in a  
joint-stock company on the 21st of May 1860,  
obtained his personal discharge under s. 47 of the  
Insolvent Debtors Act, but his name still continued  
on the register of the company, the Official Assignee  
not having elected to take the shares. The com-  
pany was subsequently (on the 13th of April 1867)  
ordered to be wound up. *Held*, that the insolvent's  
liability to pay calls on the shares still continued,  
notwithstanding his personal discharge. *In re*  
MERCANTILE CREDIT AND FINANCIAL ASSOCIATION  
DAMASKAN'S CASE . . . 8 Bom. C. C. 117

## 2. — ss. 47, 50 and 73—Order

of personal discharge—Finality of order—Proce-  
dure. An order under s. 47 of the Indian Insol-  
vency Act (Stat. 11 and 12 Vict., c. 21) for the  
final discharge of an insolvent once granted cannot  
be set aside except upon the grounds specified in  
s. 50 of that Act. The only course open to an  
opposing creditor is to appeal against the order  
under s. 73. *In re* DAYANATH SARUPCHAND. *Ex*  
*parte* SORANJI BYRAMJI COYAH

I. L. R. 23 Bom. 474

ss. 47 and 50—Offence under s.  
50 a criminal offence—Charge, etc., must be  
framed to sustain conviction and sentence—Opposing  
creditor—Grounds of opposition should be stated  
in clear terms—Practice—Procedure. Insolvents  
were found guilty, under s. 50 of the Indian  
Insolvency Act, of wilfully preventing or purposely  
withholding the production of certain papers  
relating to their affairs, and sentenced to three  
months' imprisonment. *Held*, that the proceedings,  
so far as they resulted in imprisonment, amounted  
to a criminal case. *Held*, further, following  
*Ex parte* Van Sandau, 1 Phillips 445, 447, that  
"in all criminal cases it is necessary that there  
should be a charge, a finding and a conviction, as a  
qualification for the sentence"; and that, as there  
was no charge, the order for imprisonment was  
wrongly made. S. 47 of the Insolvent Act provides  
the machinery by which the grounds of opposition  
to a debtor's discharge may be inquired into and  
precisely defined before the hearing. *In re* VAL-  
LABHIDAS JATRAM (1903) I. L. R. 27 Bom. 394

## —s. 49.

See CIVIL PROCEDURE CODE, 1882, s. 244

—PARTIES TO SUIT

I. L. R. 7 All. 752

Right of Official

Assignee to be made party to, or apply in, a suit

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 49—*contd.*

against insolvent pending vesting order—Letters  
Patent, cl. 17. The Official Assignee has no legal  
right under the Insolvency Act to apply to be made  
a party to suits against the insolvent pending at the  
time of a vesting order being made, nor has he the  
power, after judgment and decree have been  
pronounced in a suit against the insolvent prior to  
his vesting order, to get himself made a party to  
such suit with a view of setting aside the judgment  
or appealing therefrom. By s. 17 of the Letters  
Patent constituting the High Court, the practice of  
the Insolvent Court (where any such practice is spe-  
cifically pointed out by the Insolvency Act or the  
rules framed under it) is not affected by the amalga-  
mation of the Courts; and under s. 49 of the  
Insolvency Act, the Official Assignee, after schedule  
filed and before the discharge of the insolvent, may  
apply to any Court in which a suit is brought against  
the insolvent for any debt or demand admitted in  
the schedule, or disputed as to amount only, for a  
stay of process or execution; but where no schedule  
has been filed the Official Assignee cannot adopt  
that course. *In re* HUNT, MOWSET & Co. *Ex*  
*parte* GAMBLE v. BOLOGNINI MANOIR, 1 Bom. 251

## —s. 50.

See BAIL . . . I. L. R. 17 Bom. 334

1. — Fraudulent practice in trade  
—Power of Court to punish criminally. Certificate  
refused where insolvent had been guilty of fraudu-  
lent practices in trade. Certificate suspended in  
the case of a partner at home who, though innocent  
of the fraudulent practices, omitted to give notice  
to the parties intended to be defrauded. The In-  
solvent Court has no power to punish criminally  
for fraudulent practices in trade. This is left to  
the action of creditors through the channel of the  
criminal law. *In re* JANSSEN v. REUSS, Cor. 13

2. — Punishment—Imprisonment of  
insolvent on criminal side—False entries in books—  
Fraudulent preference—Fraudulent transfers—War-  
rant, illegality of—Concealment of property. S. 50  
of the Insolvency Act provides a punishment by  
way of penalty and before an insolvent can be

of which is to punish should be administered as  
the criminal law is administered, that is to say,  
specific offences should be charged not technically  
specific in the sense of a specific form of indictment,  
but the Court and the insolvent and all concerned  
should know what offence the insolvent is being  
tried for; and the evidence should be directed to  
the proof of that offence, so that the accused may  
be in a position to produce evidence to rebut the  
charge of that offence; and the Judge should speci-  
fically find what offence the insolvent has been  
guilty of; and in his judgment and order and in the

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*concl.*s. 50—*concl.*

warrant it should appear what the insolvent has done. A warrant committing an insolvent to jail for offences under s. 50 of the Insolvent Act, including, amongst the offences for which he is committed an offence not contained in that section, is invalid. *In the matter of RASH BEHARY ROY v. BHUGWAN CHUNDER ROY*. I. L. R. 17 Cal. 209

3. — *Lower Burma Courts Act (XI of 1889), ss. 50 and 69, cl. (b) and (c)*—*Criminal case.* A petition presented to the Special Court under s. 50, cl. (5), of the Lower Burma Courts Act, by a person considering himself aggrieved by an order of the Recorder, sitting as Insolvency Commissioner, made under s. 50 of the Insolvency Act, comes, before the Special Court as a criminal case, and is therefore to be dealt with, in case of difference of opinion between the members of the Special Court, under s. 69, cl. (c), of the Lower Burma Courts Act. The punishment which can be awarded under s. 50 of the Insolvency Act is a punishment for something which the person to be punished has done, and is not inflicted in order to compel him to do something in the future, and the case in which it is inflicted is therefore a criminal case. *Rash Behary Roy v. Bhugwan Chunder Roy*, I. L. R. 17 Cal., 209, followed. *YEO SWEE CHOON v. CHARTERED BANK OF INDIA, AUSTRALIA, AND CHINA* I. L. R. 19 Cal. 605

4. — ss. 50, 47—*Power of Commission—Adjournment of petition till expiration of imprisonment.* A Commissioner setting in Insolvency, while sentencing an insolvent to imprisonment on the criminal side, under s. 50 of the Insolvent Debtors Act, has power in addition to order that the further hearing of the insolvent's petition be adjourned, with or without protection, under s. 47, beyond the expiration of such term of imprisonment. *In re MANIKJI SHAPURJI KAKA*  
5 Bom. O. C. 61

5. — ss. 50, 51—*Conduct of insolvent amounting to offences within ss. 50, 51—Conduct of insolvent considered with reference to the following charges filed against him by opposing creditors, viz., reckless speculation; contracting debts without reasonable expectation of paying them; misconduct in contracting debts; concealment of property; obtaining forbearance by false representations; contracting debts by false pretences; undue preference.* The insolvent had for many years carried on business in Bombay as a merchant. His firm (Messrs. B. and A. Hormarji) had been established in 1830 by his uncle and father. On the death of the latter in 1882, the insolvent was left the sole surviving partner, and from that time until his failure he carried on the business alone. The failure took place in April 1891 and on the 1st May 1891 he was adjudicated an insolvent. His liabilities were stated to be Rs 47,98,591; his good assets Rs 13,003, and his doubtful assets Rs 60,014. His discharge was opposed by six Banks in

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*concl.*ss. 50, 51—*concl.*

Bombay with which he had had dealings. The grounds of opposition were as follows:—(i) Reckless speculation; (ii) contracting debts without any reasonable expectation, at the time when the same were contracted, of paying the same; (iii) gross misconduct in contracting debts; (iv) conceal-

creditors or of giving an undue preference to creditors, having discharged a debt due by the insolvent. It appeared that down to the end of 1889 there was nothing in the dealings of the firm to which objection could be taken. In the first half of the year 1890 the insolvent must have sustained heavy loss, as his mercantile assets over liabilities, which on the 31st December 1889 were Rs 50,794, were on the 30th June 1890 reduced to Rs 2,29,612. The charges, however, against the in-

of gross misconduct in contracting debts, having no reasonable or probable expectation, at the time when they were contracted of paying them, and

16 lakhs, and had on hand large forward contracts which then showed a further probable loss. In that position he entered into further large speculative sales of exchange. He had then no assets with which to meet any loss. (iii) As to the fourth

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21) · INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—concll

—concll.

ss. 50, 51—concll.

ss. 50, 51—concll.

should examine the insolvent's position, etc. It was understood and arranged that in the meantime no steps should be taken against the insolvent, and that he should keep his affairs *in statu quo*. The insolvent, however, swore that he understood he was to make no large payments, but that he was to keep the firm going. During that week the insolvent paid Rs. 1,191 due on a bill to one of the Banks and Rs. 472 on re-draft account, a few insignificant current expenses and Rs. 1,000 to his solicitors, who were preparing a trust-deed to be earned before the creditors. The Court was of opinion that the conduct of the insolvent in making these payments did not amount to the offence charged in the fifth ground of opposition, viz., obtaining preference from the opposing creditors by making false representations to them. (v) As to the sixth ground, that it was not established. On the 14th March the insolvent in answer to enquiries, had assured the manager of the Chartered Bank that his firm was quite sound and solvent, it being then to his knowledge hopelessly insolvent. On that day the manager accepted the insolvent's bills for £50,000 for which security was given, and subsequently the insolvent sold one of his own bills for £10,000 to the Bank. This, however, was in pursuance of a previous contract. The evidence of the manager showed that it was because of this contract, and not because of the false representation of the insolvent, that he purchased the draft for £10,000. The Court was of opinion that the transaction did not come within s. 50. (vi) As to the seventh ground (undue preference) that it was not proved. On the 16th April 1891, the day but one before the insolvent held a meeting of his creditors, he sent Rs. 5,000 to Messrs. Elliott & Sons in England. That firm had accepted bills of the insolvent which he was bound to take up, but the earliest did not fall due until the 20th May 1891. His practice had been to remit money a day or two before bills became due. The Court was of opinion that the transaction was not an undue preference within s. 50. It was, no doubt, a voluntary payment, but it was not shown to be a fraudulent discharge of a debt within the section. A mere voluntary payment of a debt is not within the purview of the

mere fact of a voluntary payment, fraud of a penal nature cannot be inferred. Here nothing more was proved than a voluntary payment by a man in in-

intent of giving an undue preference. Where an undue preference is made penal, the Court must be satisfied that the guilty intention necessary to

constitute the offence existed in the mind of the insolvent, and ought not to assume it unless the circumstances point to no other probable conclusion. The release by an insolvent of a debt due to him without receiving payment would undoubtedly fall within the scope of s. 50 of the Insolvent Act. *In the matter of HORMAN ANDRAN HORMAN*  
I. L. R. 17 Bom. 313

s. 51.

See ARREST—CIVIL ARREST.

I. L. R. 13 Mad. 160

1. ——— Ground for deferring personal discharge—Expectation of paying debts. The words in s. 51 of the Insolvent Act relating to debts contracted—"without having any reasonable or probable expectation at the time when contracted of paying them"—are pointed, not at the case of a man who incurs a debt knowing that he cannot pay his debts generally, but at that of a man who incurs a debt knowing that he cannot repay that debt. The words in the same section—"if it shall appear that the insolvent's whole debts so

all the debts contracted for some years past; and under the circumstances of the case afford ground not for excepting any specified debt under s. 51, but for deferring the discharge under s. 47. *In the matter of the petition of COWIE*  
I. L. R. 6 Cal. 70; 7 C. L. R. 19

against the insolvent. *In re MANCHABJI HIRJI READYMONEY*  
5 Bom. O. C. 55

4. ——— ss. 51, 47—Discharge except as to one debt—Committal on one debt to prison. By an order made under the provisions of 11 & 12



# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*ss. 51, 47—*contd.*

Vict., c. 21, it was directed that an insolvent debtor was entitled to his discharge as to all the debts mentioned in his schedule, save and except the debt due to a certain creditor, and as to such debt that the insolvent should be entitled to be discharged as soon as he had been in custody at the suit of the creditor for six months, and it was further ordered that the insolvent be committed to custody in respect of this debt for six months. *Held*, that the order of commitment was within the power given to the Court by ss. 47 and 51 of 11 & 12 Vict. c. 21. *NIXON v. CHARTERED MERCANTILE BANK*. I. L. R. 8 Mad. 87

5. — Personal discharge—*Application for personal discharge—Discharge except as to debts due to a particular creditor—Prospective order under s. 51.* Application by insolvent for personal discharge. One creditor opposed. It appeared that that creditor lent money to the insolvent on a mortgage on false representations made by the insolvent to him. No decree had been obtained by the creditor on his mortgage. The opposing creditor applied that the insolvent be dealt with under s. 51 of the Insolvent Act. The insolvent contended that an order under s. 51 could only be made when the creditor had obtained a decree, and was in a position to apply at once for the arrest of the insolvent, which was not the case here. *Held*, that the insolvent was entitled to his personal discharge as regards all creditors except the opposing creditor; that the Court had no power under s. 51 to order immediate commitment of the insolvent, inasmuch as the opposing creditor had not placed himself in a position to issue execution against the insolvent, but that the Court could make a prospective order that, with regard to the debt due to the opposing creditor, the insolvent should be committed to custody until he had paid the debt. *In the matter of SARAT KUMAR SEN*

I. L. R. 26 Calc. 873  
4 C. W. N. 32

6. — Commitment to jail—*Commissioner in Insolvency, power of.* The Commissioner in Insolvency committed an insolvent to jail by an order under s. 51 of the Insolvent Act. *Held* by the Full Bench, that an order made under s. 51 of the Insolvent Act is a final order and a Commissioner in Insolvency has no power under that section to commit an insolvent to jail but must leave the excepted judgment-creditors (if any) to their ordinary remedies for the time mentioned in the order. *Nixon*

# INSOLVENCY ACT (11 & 12 Vict., c. 21)

—*contd.*ss. 51, 47—*contd.*

*v. Chartered Mercantile Bank, I. L. R. 8 Mad. 97, overruled. SAMARAPURI v. PARRY & Co.*  
I. L. R. 13 Mad. 150

s. 58—*Jurisdiction—Practice—Order to person to attend for examination.* The insolvent filed his petition in December 1865, and in January 1866, on his application for his personal discharge under s. 47 he was ordered to be imprisoned. He never applied for his discharge under s. 59 or 60 of the Indian Insolvency Act (Stat. 21 & 22 Vict. c. 21). When he had completed the term of his imprisonment, he left Bombay, and went to Morar and ultimately settled at Aligarh in the North-West Provinces. In August 1886, the Official Assignee was informed that the insolvent was possessed of landed property at Aligarh, and also considerable moveable property. On the 25th August 1886, the Official Assignee obtained a rule nisi calling on the insolvent to show cause why he should not hand over all this property to the Official Assignee for the payment of creditors. On the 10th August 1887, an order was made by the Insolvent Court under s. 58 of the Insolvency Act (Stat. 11 & 12 Vict. c. 21) directing the insolvent to appear before the Court on the 10th September 1887.

*It was contended that the Court had no greater powers than those possessed by the High Court, and consequently could not order the attendance of any person resident more than two hundred miles from Bombay. Held*, that the Insolvent Court had jurisdiction to make the order. *In re COWASJI DOKERJI*

I. L. R. 13 Bom. 114

ss. 59 and 17—*Order of discharge, Effect of—Interest received after order of discharge by Official Assignee.* Under a vesting order, an insolvent's estate became vested in the Official Assignee, who paid the scheduled creditors the principal of their debts. A discharging order was then made under s. 59 of the Insolvent Debtors Act (11 Vict., c. 21). At the date of such order the Official Assignee had R143-1-8 to the credit of the insolvent's estate. He subsequently received the interest on certain securities which had been bequeathed to the insolvent for his life before the date of the vesting order. *Held*, that the discharging order did not make the vesting order void, nor as regarded the state vested in the Official Assignee did it re-vest immediately the right of property in the insolvent; that creditors are entitled to interest carrying debts out of a surplus remaining in the Official Assignee's hands after payment of the scheduled amount of debts; that, notwithstanding the discharging order, the Court might direct the R143-1-8 and the interest subsequently received, to be paid to the insolvent's creditors rateably in respect of interest on their debts calculated down

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*ss. 59 and 7—*contd.*

to the date of the discharging order, and that the balance should be paid to the insolvent or his representative, that the interest subsequently received by the Official Assignee was "either after acquired property" within the meaning of s. 59 nor "a debt growing due to the insolvent before the Court shall have made its order" within the meaning of s. 7 of 11 Vict., c. 21. *In the matter of FREIRA*

1 Mad. 217

*In the matter of MacCLEAN.* 1 Mad. 220 note

1. — a. 00—Trader—Discharge—Subsequent suit for debt not entered in schedule. Defendant, who had taken the benefit of the Insolvent Act, was sued by plaintiff for a debt contracted previously to his insolvency, the debt not having been entered in the insolvent's schedule at the time of his final discharge. *Held*, insolvent being a trader, that under the provisions of s. 60 of the Insolvency Act, taken in connection with s. 6 & 6 Vict., c. 122, the discharge was good and valid, and that subsequently-acquired property could not be attached for any debt discharged under the insolvency. *BRETT v. SCHONERTS* 2 Hyde 1

2. — Mukadam. A Mukadam is not a trader within the meaning of the Insolvent Act, 11 & 12 Vict., c. 21, and is not therefore entitled to obtain a discharge, in the nature of a certificate, under s. 60 of that Act. *In the matter of COWASSI EDALJI*

I. L. R. 5 Bom. 1

3. — Agent of company paid by commission—Trader—Broker. The agent of a company or private individual who procures and receives parcels for transmission by his employers, or who by his personal exertions obtains passengers for their dak, although he may be entrusted with the receipt or price of carriage, and is paid by commission, is not a broker or trader within the meaning of the Insolvent Act. *In re CAMPBELL*

2 Hyde 177

4. — Trader—Indigo planter—Stat. 12 and 13 Vict., c. 106, s. 65—Workmanship of goods or commodities. An indigo planter is a "trader" within the meaning of s. 60 of the Insolvency Act. *In the matter of DE MOKET*

I. L. R. 21 Calc. 1018

5. — Order of discharge on debts not in schedule. The order of discharge of an insolvent trader, under s. 60 of the Insolvent Debtors Act, operates to discharge such trader from all debts that could be proved in the matter of his insolvency, whether they are specified in his schedule or not. *DADABHAI NASARVANJI v. MANEJI SHAFURJI KAKA*

7 Bom. O. C. 22

6. — Effect of final discharge—Bankruptcy Act, 1861—Premium on policy of insurance. An insolvent obtained his final discharge in April 1863. *Held*, that he was not still liable,

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—*contd.*s. 00—*contd.*

under the provisions of the English Bankrupt Act, 1801, s. 151, for the ascertained value of certain premia on a policy of insurance which he had undertaken. *GRAY v. CHICK*

Cor. 130

7. — Plea of discharge in insolvency—Company—Winding up—Suit against contributory on the B list—Notice—Foreign judgment—Motion in suit on a foreign judgment—Balance order—English Companies Act, 1862. The plaintiff, who were an English joint stock company registered under the English Companies Act of 1862, sued the defendant as a past member of the Bank, upon a balance order of the High Court of Justice in England dated 24th February 1881, to recover the sum of £678 3. The balance order recited that it was made upon the application of the official liquidator of the Bank, and that there had been no appearance on behalf of the contributory. The defendant pleaded that he had not received notice that his name was about to be placed on the list of contributory, or notice of the application of the official liquidator recited in the balance order, and he contended that he was not bound by, or liable under, that order. He further pleaded (and it was admitted) that the order for winding up the plaintiffs' Bank was in July 1860, that he had filed his petition in insolvency on

and, if pleaded in the Court in England, might have prevented his being placed on the list of

See LONDON, BOMBAY AND MEDITERRANEAN BANK v. HORMASJI PESTANJI . 8 Bom. O. O. 200

8. — ss. 60, 47—Final discharge—Rights of opposing creditor—Grounds of opposition where personal discharge has been without granted opposition. An opposing creditor who has not filed grounds of opposition to or opposed the personal discharge (under s. 47 of the Insolvent Debtors Act) of an insolvent trader can nevertheless come in and oppose the insolvent trader's application for his final discharge under s. 60 of the Act. The grounds of such opposition may in

# INSOLVENCY ACT (11 & 12 Viet., c. 21)

—contd.

ss. 60, 47—*concl'd.*

at, or that have occurred since, the time of the personal discharge being granted. The Court, in con-

duct with reference to the opposing creditor merely. *In re PESTANJI SHAPURJI KAKA*

8 Bom. O. C. 37

9 — ss. 60, 47 and 50—*Personal discharge—Subsequent enquiry before final discharge.* An insolvent, whose personal discharge has been opposed under s. 47 of the Insolvent Act, can be again opposed by the same creditor, and on the same grounds, when he applies for an absolute discharge under s. 60. The order made on the hearing of the petition under s. 47 of the Act can be used as evidence against the insolvent when applying for his discharge under s. 60, provided that such order clearly states the offences established against the insolvent. An insolvent, by being punished under s. 50 of the Act, does not thereby cease to be liable in respect of such offences when he applies for his discharge under the 60th section. The discharge under s. 60 of an insolvent who has already obtained his discharge under s. 47 is not as of course, but will depend upon the general conduct of the insolvent both before and subsequent to his obtaining his discharge under s. 47. *In re COORLAWALLA*

9 Bom. 1

ss. 60 and 61.

See COMPANY—WINDING UP—GENERAL CASES. I. L. R. 10 Bom. 582

s. 62—*Crown debt—Judgment-debt in name of Secretary of State for India in Council.* A judgment-debt due to the Secretary of State for India in Council, arising out of transactions at a public sale of opium held by the Secretary of State for India in Council, is a debt in respect of Crown property, and therefore a "debt due to our

into the coffers of the State. Principle in *Secretary of State for India in Council v. Bombay Landing and Shipping Company*, 5 Bom. O. C. 23, followed. JUDAH V. SECRETARY OF STATE FOR INDIA IN COUNCIL. I. L. R. 12 Calc. 445

s. 63.

See MARRIED WOMEN'S PROPERTY ACT, s. 8. I. L. R. 16 Mad. 19

# INSOLVENCY ACT (11 & 12 Viet., c. 21)

—contd.

1. — ss. 72, 73—*Evidence—Evidence not in writing—Appeal.* Where the evidence has not been taken down in writing as provided by s. 72 of the Insolvent Act, the evidence cannot be gone into on appeal under s. 73. *In the matter of ADJUNTA PRASAN JAIRAM GIR v. MILLER*

7 B. L. R. 74 : 15 W. R. O. C. 16

2. — *Appeal—Mode of computation of time for appeal—Vacation.* In order to enable an insolvent to appeal from an order passed in the matter of his petition, notes of the evidence must be taken at the hearing by an officer of the Court. In the time allowed for appealing the vacation is to be computed, unless such time expire during the vacation, in which case the petition of appeal must be presented to the Court or a Judge on the first day after the vacation. *In re LAKHIDAS HANSRAJ*

5 Bom. O. C. 63

3. — *Appeal—Evidence—Mode of recording.* In order to enable the High

notes of all the evidence at the hearing, should be recorded by an officer of the Insolvent Court. *In re Lakhmidas Hansraj*, 5 Bom. O. C. 63, in substance followed. KALLIANDAS KIRPARAM v. TRIKAMAL GOLABHAI. 9 Bom. 307

4. — *Appeal—Limitation—Evidence.* Certain creditors of an insolvent

re-opened. During the vacation, the evidence was not recorded under s. 72, and the appellant sought on appeal to use the commissioner's notes of evidence. Held (i) that the appeal was not barred by limitation; (ii) that it was not competent to the Court to refer to the commissioner's notes. *ABDOOL v. MAHAMED*

I. L. R. 14 Mad. 404

s. 73.

See COURT-FEES I. L. R. 24 Mad. 160  
See INSOLVENCY I. L. R. 38 Calc. 513

1. — s. 73—*Appeal—Power of commissioner.* A commissioner has no power, under s. 73 of the Insolvent Act to extend the time for presenting a petition of appeal from an order of the Insolvent Court. *In re GHOLAM RASUL KNAY*

1 B. L. R. O. C. 130

2. — *Power of Commissioner—Attachment of Property, Application for.* The gomastah of an insolvent claimed to retain

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

## s. 73—contd.

him. Before such order was made absolute, the gomastah and another person had obtained a money decree against one *R. Hild*, that the Commissioner had no powers except those conferred by the Act, and therefore could not grant an application by the Official Assignee that half the amount of the decree still in the hands of *R* should be attached and brought into Court. *In re KURRIEY DASS* . . . 3 B. L. R. Ap. 14

## 3. — Civil Procedure

Code, s. 34.—*Appeal from Commissioner of Insolvent Court—Security for costs*. S. 312 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. The right of appeal is given by s. 73 of the Insolvency Act and the Court cannot impose on the appellant a condition that he shall give security for the costs of such an appeal. *In the matter of RAM SEERAMISER* . . . 5 B. L. R. 179

## 4. — Security for costs

—*Non-appearance of insolvent*. On an application for deposit of security for costs in an appeal by an insolvent under s. 73 of the Insolvency Act, in a case where the insolvent had been sentenced to imprisonment under s. 50 of the Act, and it was shown that he had absconded, the Court declined to make any order for security for costs, but refused to hear the appeal unless the insolvent was present. *In the matter of GHASSEERAM* 15 B. L. R. Ap. 10

## 5. — Opposing credi-

tor taken by surprise.—*Discharge—Power of Commissioner, to set aside discharge*. Where an opposing creditor, being, without any default on his part, misled as to the time when an insolvent's petition was to come on for hearing, failed to appear when the petition was called on, and the insolvent obtained his discharge *ex parte*, the Appellate Court, on the ground that the opposing creditor had been taken by surprise, set aside the order of discharge and restored the case to the board. *Sentibis*. That under the circumstances the Commissioner sitting in insolvency had no jurisdiction to set aside the order of discharge. *DWARAKADAS LALUNHAI R BLACKWELL* . . . 9 Bom. 319

## 6. — Appeal—Proce-

—*Form of petition of appeal—Civil Procedure Code, s. 590*. The procedure Code, as to appeals from orders under the Civil Procedure Code, 1882, is not made applicable by s. 590 to appeals from orders under the Insolvency Act. No particular form is prescribed for petitions of appeal under the latter Act. In this case the so-called memorandum of appeal was held to be a good petition of appeal under the Act. *In the matter of BHOW* . . . I. L. R. 12 Calc. 629

## 7. — Appeal by insol-

vent.—*Insolvent convicted and sentenced to imprisonment under s. 50 of the Insolvency Act—Power of High Court to admit insolvent to bail pending appeal*.

## INSOLVENCY ACT (11 &amp; 12 Vict., c. 21)

—contd.

## s. 73—contd.

An insolvent was convicted by the Insolvent Court of an offence under s. 50 of the Insolvency Act (Stat. 11 & 12 Vict. c. 21), and sentenced to imprisonment. Under s. 73 of the Act, he appealed against the decision of the Insolvent Court and applied to be admitted to bail pending the hearing of his appeal. . . . but the . . . bail. *In* . . .

. . . 11 B. L. R. 334

## 8. — Practice—Appeal

from an order of adjudication.—*Responded on record withdrawing from appeal—Other creditors allowed to appear in appeal as respondents, although not named on the record—Costs of Official Assignee*. An order was made by the Insolvent Court adjudging *an insolvent* on the petition of certain of his creditors. *He* appealed against the order the petitioning creditors being the respondents named on the record. When the appeal came on for hearing, the said respondents did not appear, and it was alleged that the appellant had settled with them, in order to induce them to withdraw from the appeal. Another creditor, whose name was in the insolvent's schedule, thereupon applied to be heard in the appeal in support of the order of adjudication, and if necessary that his name should be entered on the record as respondent. The Court granted the application. The Official Assignee is entitled to his costs of appearing in an appeal against an order of adjudication. *In the matter of HAROON MAHOMED* . . . I. L. R. 14 Bom. 189

## 9. — Order of personal

discharge.—*Finality of order*. An order under s. 47 of the Indian Insolvency Act (Stat. 11 & 12 Vict. c. 21) for the final discharge of an insolvent once granted cannot be set aside except upon the grounds specified in s. 56 of that Act. The only course open to an opposing creditor is to appeal against the order under s. 73. *In re DAYABHAI SREFFCHAND. Ex parte SORABJI BIRAJI TATAH* . . . I. L. R. 23 Bom. 474

## 10. — Practice—Appeal

by petition.—*Petition by creditor not included in Schedule—Jurisdiction of High Court in its Appellate Jurisdiction—Distributions of Dividends*. On an application for relief under s. 73 of the Insolvent Act to the High Court in its appellate jurisdiction by a creditor whose claim at the time of the final discharge was by some inadvertence not entered in the schedule, the insolvent, however, having notice of and acknowledging the claim and knowing of the omission.—*Held*, that the High Court, in its appellate jurisdiction, had jurisdiction to intervene and to order that the



INSPECTION OF DOCUMENTS—*contd.*1. CIVIL CASES—*contd.*

not order a defendant to furnish the plaintiff with a list of documents till after the plaintiff shall have filed his written statement. *CHIEF v. KUNAY*

3 Hyd 270

2. — Practice—Affidavit of documents—Insufficiency of affidavit—Alteration by letter of terms of notice already served—Civil Procedure Code (Act XIV of 1852), ss. 131 and 133. Before the Court will make an order under s. 133 of

3. — Production of documents—Discovery—Civil Procedure Code, 1852, ss. 131, 134. If a notice under s. 131 of the Civil Procedure Code be not answered as provided by s. 132 the party seeking the inspection of documents may apply for an order under s. 133, and his application must be supported by an affidavit. The Court has no jurisdiction to pass an order under s. 136, unless the provisions of s. 131 are strictly complied with. *DHANI v. RAM PERSHAD*

L. L. R. 14 Cal. 768

4. — Discovery—Civil Procedure Code, ss. 129, 136—Discovery of documents—Pardanashin women. In a suit brought by two Mahomedan pardanashin ladies for recovery of immovable property by right of inheritance an order was passed, under s. 129 of the Civil Procedure

Code, and mooktear, with a list of their documentary evidence, but the affidavit and list were considered defective upon several grounds, one of which was that the affidavit ought to have been made by the plaintiffs personally. Further time was then given to the plaintiffs to amend these defects, and ultimately they filed an affidavit purporting to be made by them personally, praying that the Court would have it verified in any manner thought proper, provided that their pardanashini were not interfered with. The Court, under s. 136 of the Code, dismissed the suit for want of prosecution, in consequence of the orders under s. 129 not having been complied with, though ample opportunity had been given to the plaintiffs and no sufficient ground for non-compliance had been shown. *Held*, without going into the question of the efficiency or non-sufficiency of the action of

INSPECTION OF DOCUMENTS—*contd.*1. CIVIL CASES—*contd.*

have exposed themselves under the peculiar provisions of s. 136. *KALIAN BHAI v. SYEDAR HUSAIN KHAN*

L. L. R. 8 All 285

5. — Civil Procedure Code, 1877, s. 135—Trial of issue before inspection granted. The intention of s. 135 of the Civil Procedure Code (Act X of 1877) is to give the Court the power of raising and determining an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, and therefore, from the nature of the case, before the hearing of the cause. It should be a rule of practice that when an order is made under s. 135 of the Civil Procedure Code (Act X of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge. *ANUSONHOY HUSAINOY v. VULLEARNOR CANNANHOY*

L. L. R. 8 Bom. 572

6. — Inspection of accounts—Suit for wrongful dismissal. In a suit for wrongful dis-

been checked by himself while in the company's

7. — Right of mortgagee to withhold production of mortgage deed or title deeds for inspection—suit to avoid lien.

barrained and assigned all his immovable estate to trustees for his creditors. The trustees sued J D for a declaration that the immovable property other than the mortgaged premises was vested in them free from any lien of the defendant; and J D in the written statement claimed a lien on all the title deeds and submitted that he was not bound (until his claim was satisfied) to hand them

to produce his deed of mortgage. *BRATTLE v. JETHA DUNGHANI*

5 Bom. O. C. 152

8. — Inspection of will of Hindu—Application by next of kin. The Court, with the application of one who is next of kin of a deceased Hindu, order a person who is in possession of an al-

INSPECTION OF DOCUMENTS—*contd.*1. CIVIL CASES—*contd.*

based on all of the documents to be inspected.

1 Bom. 114

9. — Partnership books—*Partnership—Production of documents.* One partner of a firm represents the other partners for the purposes of production of documents. Therefore, where the plaintiff, alleging that he had been a partner with the defendant and others in the firm of Ibrahim Kadu & Co., and that, on the dissolution of that firm, the amount then standing to his credit in the

that the other partners in the firm of Ibrahim Kadu & Co. had an interest in those books, and were not parties to the present application, or showing to have consented to it. *Held*, that the plaintiff was entitled to the order. *JAKARIA v. KASIM*

I. L. R. 1 Bom. 496

10. — Privileged communications—*Principal and agent—Suit for injunction to restrain use of trade marks—Civil Procedure Code (Act X of 1877), s. 130.* Under s. 130 of the Civil Procedure Code (Act X of 1877) a Judge has no discretion to refuse to allow inspection of documents relating to matters in question in a suit, provided they are not privileged. Confidential communications between principal and agent relating to matters in a suit, are not necessarily privileged. *Held* in a suit for an injunction to restrain the defendant from using certain trade marks, that telegrams and letters between the plaintiff's firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged. *WALLACE v. JEFFERSON*

I. L. R. 2 Bom. 453

11. — *Discovery—Production of documents—Privilege—Solicitor and client—Act XIV of 1882, s. 133.* Letters written

12. — *Discovery—Affidavit of documents—Sufficiency of affidavit—Further affidavit—Inspection of documents—Practice.* Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions, and confidential communications from the client (the plaintiff) to his solicitor, it must

INSPECTION OF DOCUMENTS—*contd.*1. CIVIL CASES—*contd.*

appear not merely that the correspondence generally contains instructions, etc., but that each letter contains instructions or confidential communications.

13. — Documents alleged not to be material—*Code of Civil Procedure (Act XIV of 1882), s. 135—Affidavit of documents—Production of documents—Specific performance of contract to purchase—Refusal to allow inspection.*

of the property, all of which representations the defendant charged were false and fraudulent to the knowledge of the plaintiff. The plaintiff in his affidavit of documents set out a list of title-deeds evidencing his title to and the books of accounts and other papers and documents relating to the property agreed to be purchased, and these he claimed to withhold from the defendant's inspection, on the ground that they were not sufficiently material at that stage of the suit. *Held*, that the documents were not protected. *SUTHERLAND v. SINGH*

CHURN DUTT I. L. R. 10 Cal. 608

14. — Telegraphic messages—*Sanction of Government to production.* Where parties require the inspection or production of telegraphic messages, it is for them, and not the Court, to obtain the necessary sanction of Government to the disposal of such messages. *LECKRAJ v. PALER RAM*

2 N. W. 210

15. — Defendant's right to inspection of documents referred to in plaint before filing written statement—*Practice.* A defendant is entitled to have inspection of documents referred to in the plaint although he has not filed his written statement. *RAN DAYAL SALIGRAM v. NURNURNY BALKRISHNA*

I. L. R. 18 Bom. 368

16. — Document referred to in written statement and omitted in list—*Practice—Rules of High Court of 6th June 1874.*

INSPECTION OF DOCUMENTS—*contd.*I. CIVIL CASES—*contd.*

the schedule, if inspection was needed. *KYRRELY v. WYMAN*. I. L. R. 1 Calc. 178

17. — Practice where portion of document is protected from inspection—*Practice—Sealing up immaterial parts.* Practice to be followed where a party producing documents wishes to have a certain portion of them sealed up. *HEERALALL PUNBIT v. HAN SRIY LALI*

I. L. R. 4 Calc. 835

18. — Discovery—*Affidavit of documents when there are several plaintiffs, some of whom are in England—Practice—Privilege—Grounds of privilege.* Where there are several plaintiffs, all of them must join in making the affidavit of documents unless some specific reasons to the contrary are shown. The fact that some of the plaintiffs reside in England is no reason why they should be excused from making such affidavit. Documents which contain the purport of interviews with and of advice received from, the plaintiffs' solicitors and counsel as to the plaintiffs' position in regard to their said claim and as to the steps to be taken thereto, are privileged. Documents which record the steps taken by the plaintiffs from time to time in prosecuting their claim against the defendant are not privileged. Opinions upon, or steps taken in reference to, a suit in which plaintiffs and defendants are putting forward opposing contentions cannot be said to relate solely to the case of the plaintiff and are not privileged. *RANIE v. SUNDHAKAR GOPALI*. I. L. R. 15 Bom. 7

19. — Co-defendants—*Inspection granted to defendant against co-defendant.* A defendant may obtain discovery or inspection

further alleged that he had received none of the money, and that no money had been paid by defendants Nos. 1 and 2 to the third defendant in his presence. Defendants Nos. 1 and 2 took out a summons against the third defendant for inspection of certain account books and documents. It was objected that no question was raised in the suit between the third defendant and defendants Nos. 1 and 2, and that consequently, under s. 131 of the Civil Procedure Code (Act XIV of 1882), the latter were not entitled to inspection. *Held*, that inspec-

INSPECTION OF DOCUMENTS—*contd.*1. CIVIL CASES—*contd.*

to make any order between him and them. *ANANDRAO VITHAL v. BUDRA MALLA*

I. L. R. 17 Bom. 384

20. — Affidavit of documents, sufficiency of—*Practice—Right to put in further affidavit in support of claim of privilege where original affidavit is not sufficient—Documents referred to in pleadings as stating facts on which party setting them up relies.* Where an affidavit of documents stated, with regard to certain documents of which the plaintiffs asked for inspection, that the defendants objected to produce them for inspection "because such documents were obtained after dispute arose, and for purposes of litigation that might arise between them and the plaintiffs,"—*Held*, in an application for their production and inspection, that the affidavit was not sufficient to support the defendant's claim to privilege. *Held*, also, in such an application the party claiming privilege is entitled to put in and use a further affidavit in support of the claim of privilege and is not confined to the grounds made in the affidavit in which the claim is first set up. *McCorquodale v. Bell*, L. R. 1 C P. D. 471, referred to. Where, however, the party comes into Court relying on the original affidavit as sufficient to support his claim of privilege but asks the Court, if it should think otherwise, for leave to put in a further affidavit in support of his claim, *quære*, whether he should be allowed to do so. In a suit, brought in January 1881 to recover money for work done and material supplied in the erection of certain mills for the defendants, in which the defence was that the quality of the work was inferior to that contracted for and the defendants stated in their written statement that "in consequence of the information which they had received with regard to the quality of the work done by the plaintiffs they caused the same to be inspected by two independent engineers in the month of July 1893, and they at once discovered such extensive defects therein that the costs of making good such defects will far exceed any possible sum due to the plaintiffs"—*Held*, that the defendants could not set up a claim of privilege for the reports of the two engineers. *Anderson v. Bank of British Columbia*, L. R. 2 Ch D 611, referred to. Where a party expressly refers to documents in the pleadings as the source of his own information and knowledge of facts relevant to the suit and then sets up those facts by way of answer to the plaintiff's claim he cannot afterwards attempt to make the case that the docu-

21. — Minor—Code of Civil Proce-



## INSPECTION OF DOCUMENTS—contd.

## 1. CIVIL CASES—contd.

relating to the suit. To admit the practice lately introduced in England would be objectionable mainly on three grounds: (i) because it is not contemplated by the Code of Civil Procedure; (ii) because it is inconsistent with existing rules of practice; (iii) because there is no method of enforcing an order for discovery against an infant. *Waghji Thackersey v. Khatau Baji*, 1. L.R. 10 Bom. 167, referred to. *Nathmull Narsing Das v. Malharrao Holkar*, 1. L.R. 19 Bom. 350, distinguished. *DECCAN S. BHOYRO PRISAD* . . . 1. L.R. 23 Calc. 881

22. ——— Affidavit of documents—Minor—Practice—Civil Procedure Code, 1882, s. 129. An affidavit of documents may be required from a minor defendant. *NATHMULL NARSINGDAS v. MALHARRAO HOLKAR*

1. L.R. 19 Bom. 350

23. ——— Refusal to produce documents of title—Suit for ejectment. The plaintiff sued to eject the defendant from certain pieces of land belonging to him, being portions of a passage upon which the defendant had encroached. In his written statement the defendant denied the plaintiff's title, and stated that he would rely on certain deeds set forth in a schedule annexed thereto. In his affidavit of documents subsequently filed he objected to produce the deeds for the plaintiff's inspection on the ground that they related solely to his own title to the land in dispute, and did not in any way tend to prove or support the title of the plaintiff thereto. *Held*, that the defendant was entitled to refuse production of the deeds. The Court could not go behind the defendant's affidavit of documents. *VINAYAKRAO DUTADILAS v. NAROTAM ANANDJI* . . . 1. L.R. 17 Bom. 581

24. ——— Place for inspection—Account books of business—Place where business is carried on—Contract made in Bombay to be performed up-country. *Civil Procedure Code, 1877, s. 132.* Defendant was owner of certain cotton-ginning factories at and near A in the mofussil, and had also a place of business in Bombay. He entered into a contract in Bombay with the plaintiff to gin certain cotton of the plaintiff's at the said factories of the defendant in the mofussil. Plaintiff brought a suit for damages for the breach of this contract, and demanded inspection in Bombay of all defendant's books relating to the business of the said ginning factories belonging to the defendant. The defendant was willing to give the inspection asked for, but contended that it should be had at A, where all the books in question were kept, and objected to bringing the books down to Bombay as demanded by the plaintiff. *Held*, that the contract, though made in Bombay, having been intended to be performed at a considerable distance from Bombay, at and near A, where the

## INSPECTION OF DOCUMENTS—contd.

## 1. CIVIL CASES—contd.

25. ——— Disobedience of order for 1865, s. 14—render a person under s. 15 of necessary that the documents required for inspection should be therein specified. Disobedience of an order to produce evidence under s. 14 of Bombay Act I of 1865, Cl. 2 does not render a person liable to criminal prosecution, but simply to an adjudication in the absence. *REG v. MANIKRAM DEBJIRAM*

11 Bom. 231

26. ——— Inspection by agent of a party.—When under an order giving liberty to a party to a suit, his attorneys and agents, to inspect and peruse the documents produced by the opposite party, inspection by an agent is contemplated, the order should be read in such a way as would give the Court some control over the persons to be appointed to inspect the documents. Such an order contemplates that the agent will be a person standing in the position of the party for the purposes of the suit. *Held*, therefore, that the Court ought not to permit a person formerly in the

27. ——— Refusal to allow inspection—*Civil Procedure Code, s. 130*—Discretionary power of Court under s. 130 not interfered with on revision—Such power should be exercised with caution. The High Court will not in revision interfere where a lower Court, in the exercise of its discretionary power, refuses inspection of documents produced before it under a

caution; and the opposite party should be allowed to inspect and take copies of the documents when they relate to matters in issue, unless they are privileged in law, relate exclusively to the case of the party producing them and contain nothing supporting or tending to support the other side. *BALAMONEY v. RAMASANI CHETTIAR* (1906)

1. L.R. 30 Mad. 230

## 2. CRIMINAL CASES.

L. ——— Discovery—Power of Court to order inspection—*Criminal Procedure Code, 1882, s. 94-99*—Search-warrant, form and validity of whom was the book-keeper in he coming dis- on sum- having he said ut by T omitting to make entries in the account books of

INSPECTION OF DOCUMENTS—*contd.*2. CRIMINAL CASES—*contd.*

summons by J. to the firm, and by making false entries therein of payments by J. Whilst the charge was pending, the Presidency Magistrate, before whom the charge had been made, granted a search-warrant in the following terms: "To Inspector M.—Whereas J. and another have been charged before me with the commission or suspected commission of the offence of cheating, and it has been made to appear to me that the production of khatta books for the years 1882 to 1887 is essential to the enquiry now being made, or about to be made, into the said offence or suspected offence, this is to authorize and require you to search for the said property in the house of J., No. 11 Pollock Street, and if found to produce the same forthwith before this Court." In execution of the warrant, certain books and papers found in the house of J. were seized and taken possession of by the police, and of those books and papers the Magistrate on the application of the prosecution, made an order for inspection. On a rule granted by the High Court to show cause why the order for inspection should not be set aside, it was contended that the search-warrant had been granted without proper judicial inquiry and upon insufficient materials, that it was bad on the face of it as it did not "specify clearly," as directed in Form VIII, sch. V of the Criminal Procedure Code, whose khatta books were to be produced; and that there was nothing in the criminal law to enable a Court to make an order for inspection of documents by the prosecution in a criminal case. *Hall, per Nunnis, J.*, that, assuming the contention as to the search warrant arose on the rule as granted, the warrant must be

quary and the objects of the directed search; nor was there anything to show that the warrant was issued otherwise than regularly and in due course. *Per Nunnis, J.*—Though the Courts in England have constantly refused to compel discovery in criminal cases, on the ground that no man should be compelled to produce evidence to criminate him

INSPECTION OF DOCUMENTS—*contd.*2 CRIMINAL CASES—*contd.*

in a person justly or reasonably believed to be guilty of a crime being brought to justice and in a prosecution once commenced being determined in due course of law," a right to inspect such property must exist, as well as a right to seize and detain it and the proper persons to inspect it are those conducting the prosecution. It would, moreover, be unreasonable that the police or those conducting the prosecution should not have an opportunity of inspecting and examining documents, etc., found on a prisoner when arrested, or on his premises at the time of, or subsequent to, his arrest, before tendering them in evidence. *Per Gossz, J.*—The contention as to the validity of the search-warrant did not arise on the rule as granted, but *semble* that the search-warrant was bad in law, no summons under s. 91 of the Criminal Procedure Code having been, in the first instance, issued for the production of the documents, and there being no evidence to show that they would not be produced on summons, only, that although the warrant was not specific still, inasmuch as no objection was raised to the form of the warrant before the Magistrate, and the accused had not been prejudiced by reason of the specification of the documents being somewhat indistinct, and it was clear what was really meant, the objection as to the form of the warrant should be disallowed. *Per Gossz, J.*—There is no doubt that by the criminal law of this country, as laid down in the Criminal Procedure Code since 1861, an accused person may be compelled to furnish evidence, the production of which might have the effect of criminating him. The Magistrate has to determine at the time when he makes an order under s. 91 of the Criminal Procedure Code, or issues a search warrant under s. 90, whether the documents are necessary for the inquiry; but when they are brought into Court, the inspection should not rest with the Magistrate who does not prosecute and has no interest one way or the other in the result of the prosecution. It is reasonable that those who conduct the prosecution should have such inspection, for the production of such documents is for the purpose of using them in evidence, and this could not be done unless the prosecution had an opportunity of inspecting them. In the

any document or thing is seized and brought before the Court, it seems that the Legislature, while providing for the seizure and production in Court of documents, etc., intended by implication that the prosecution should, under the order of the Court, have the power to inspect them, and determine whether they should go in as evidence.

300, the right to seize and detain property of any description in the possession of a person lawfully arrested for treason, felony or misdemeanor, rests "upon the interest which the State has

INSPECTION OF DOCUMENTS—*concl'd.*2. CRIMINAL CASES—*concl'd.*

*Held, per Curiam*—for the reasons above given—that the Magistrate had power to allow the inspection, but such inspection must be limited to the books named in the search-warrant. *In the matter of the petition of AHMED MAHOMED MAHOMED JACKARIAH & Co. v. AHMED MAHOMED*  
I. L. R. 15 Calc. 109

2. ——— Summons to produce document or thing—*Criminal Procedure Code (Act X of 1882), s. 94.* A complaint having been preferred against an accused for criminal breach of trust with reference (amongst other items) to a sum of Rs. 1,77,131-1-2, which sum was, in an enquiry held by the Chief Presidency Magistrate, proved to have been paid to the accused in seventeen notes of rupees ten thousand each (the numbers of which were identified) and the remainder in small notes and cash, the accused in cross-examination, for his own purposes, proved that fifteen of these notes were still in his possession, whereupon an application was made, under s. 94 of the Code, for a summons on the accused, directing the production of these notes. This application was refused. Subsequently, the accused, through a third person, cashed five of these notes, whereupon a second application was made under s. 94 by the prosecution for the production of the notes or their proceeds as against accused and such third person. The Magistrate granted summonses on the accused and on such third person for the production of ten notes, but declined to grant a summons for such third person for the proceeds of the five notes cashed. The accused produced five of these notes which were in his possession or power; the third person, however, stating that he had in his power five of the notes mentioned in the summons, claimed a lien on the same, and the Magistrate refused to make an order for the production of the same.

inasmuch as a lien had been claimed on them, and that he was of opinion that the proceeds of the notes cashed, not being specific objects, did not come within the purview of s. 94. *Held*, that the Magistrate's order must be set aside. *In the matter of the Nizam of Hyderabad v. JACOB*  
I. L. R. 18 Cal. 53

## INSPECTION OF PROPERTY.

Form of order for inspection—  
*Order No. 1 of 1882, s. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*

INSPECTION OF PROPERTY—*concl'd.*

thereof and to dig excavations for the purpose of exposing the foundations, it was objected by the plaintiff that the Court had no jurisdiction to make the order, as the house of which inspection was sought was not the "subject of the suit" within s. 499 of the Civil Procedure Code, and that, if the order could be made for inspection of the house, it could not be made for inspection of the house, including the zenana apartments, and further that no order could be made for the excavation of the foundations. *Held*, that the house and premises of the plaintiff formed the "subject of the suit" within the meaning of s. 499, and under that section the Court had power to make the order applied for. *Held*, also, that this was a case in which the order should be made. *DHORONEY DEUR GHOSE v. RADHA GOBIN KUR*  
I. L. R. 24 Calc. 117  
1 C. W. 89N

## INSPECTOR (MUNICIPAL).

See PUBLIC SERVANT

I. L. R. 13 Mad. 181

## INSTALMENTS.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 257 A.

I. L. R. 35 Calc. 870

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 15 B.

I. L. R. 32 Bom. 445.

See INSTALMENT BOND.

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES

I. L. R. 27 Bom. 21

See LIMITATION—QUESTION OF LIMITATION

8 C. W. N. 348

I. L. R. 31 Calc. 297

See LIMITATION ACT, 1877, SEC. II, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES

I. L. R. 27 Bom. 1

See MORTGAGE

I. L. R. 31 Calc. 83

See WAIVER

I. L. R. 31 Calc. 83; 8 C. W. N. 66

decree or money payable by—

See BOND

See CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 200)

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

2 Hay, 68, 85

4 Bom. A. C. 77

I. L. R. 2 All. 130; 320

I. L. R. 11 Cal. 143

I. L. R. 14 Calc. 348

See DECREE—CONSTRUCTION OF DECREE—INSTALMENTS

INSTALMENTS—*contd.*

— decree or money payable by—  
*contd.*

See DEKKAN AGRICULTURISTS' RELIEF ACT  
1879, s. 15B. I. L. R. 7 Bom. 533  
I. L. R. 16 Bom. 318  
I. L. R. 31 Bom. 120

See DEKKAN AGRICULTURISTS' RELIEF  
ACT, 1879, s. 20

I. L. R. 5 Bom. 604  
I. L. R. 12 Bom. 326

See EXECUTION OF DECREE—

MODE OF EXECUTION—INSTAL-  
MENTS;

EXECUTION OF DECREE ON OR  
AFTER AGREEMENTS OR COM-  
PROMISES.

I. L. R. 26 Calc. 810

See LIMITATION ACT, 1877, SCH. II, ARTS  
74 AND 75

See LIMITATION ACT, 1877, ART. 178  
I. L. R. 15 Calc. 502

See LIMITATION ACT, 1877, s. 179 (1871,  
ART. 161; 1859; s. 20)—ORDER FOR  
PAYMENT AT SPECIFIED DATES.

See NEGOTIABLE INSTRUMENTS. SUMMARY  
PROCEDURE ON I. L. R. 1 Calc. 130

See RELINQUISHMENT OF, OR OMISSION  
TO SEE FOR, PORTION OF CLAIM

12 B. L. R. 37  
7 W. R. 300  
I. L. R. 3 ALL 717

See WAIVER.

— repayment of loan by—

See TRANSFER OF PROPERTY ACT, s. 83  
I. L. R. 24 ALL 401

1. ——— Civil Procedure  
Code (Act XIV of 1883), s. 210—Power of High Court  
to make its money decrees payable by instalments  
Under s. 210 of the Civil Procedure Code this Court  
has the power to make its money decrees payable  
by instalments. *Per CURRIE*. The general impres-  
sion prevailing in the minds of money lenders in  
Bombay, as echoed in the plaintiff's affidavit, that  
in all cases they can defeat the provisions of the  
Code as to payment by instalments and get a  
decree for immediate payment by avoiding the  
Small Causes Court and coming to this Court, is  
erroneous and needs to be corrected. *POMA  
DONORA & WILLIAM GILLESPIE* (1907).

I. L. R. 31 Bom. 348

2. ——— Decree payable by  
instalments—Bengal Tenancy Act (VIII of 1885)—

— Code not applying to such a decree Where

INSTALMENTS—*contd.*

a Munsif made an order for the payment of the  
amount of rent decreed by instalments, he commit-  
ted an error of law only and not an error in the  
exercise of his jurisdiction, within s. 622, Civil  
Procedure Code. *SUBH NARAIN MOOKERJEE v.  
BAIKUNTHA NATH INAR* (1907) 11 C. W. N. 857

## INSTALMENT BOND.

See INSTALMENTS.

See LIMITATION I. L. R. 31 Calc. 297

See LIMITATION ACT, 1877, SCH. II, ART.  
75 . . . 13 C. W. N. 1004, 1010

See WAIVER I. L. R. 36 Calc. 394

## INSTRUMENT OF PARTITION.

See STAMP ACT (II of 1893).

I. L. R. 32 Bom. 509

## INSULT.

See MISCHIEF. I. L. R. 24 ALL 155

— Intent to provoke a breach of  
the peace—*Penal Code*, s. 504. *A* abused *B* to  
such an extent as to reduce *B* to a state of abject  
terror. *Held* that *A*, having given to *B* such provo-  
cation as would, under ordinary circumstances, have  
caused a breach of the peace, was guilty of an  
offence under s. 504 of the Penal Code. *QUEEN-EM-  
PRESS v. JOGAYYA* . . . I. L. R. 10 Mad. 353

## INSURANCE.

- |                               |      |
|-------------------------------|------|
| 1. LIFE INSURANCE . . . . .   | 5763 |
| 2. MARINE INSURANCE . . . . . | 5770 |
| 3. FIRE INSURANCE . . . . .   | 5777 |

See CARRIERS

I. L. R. 18 Calc. 427; 820  
I. L. R. 18 I. A. 121  
I. L. R. 18 Calc. 538

See MARINE INSURANCE

I. L. R. 29 Bom. 360.

life—

See STAMP ACT (II of 1893), SCH. I, ART.  
47, CL. D I. L. R. 25 Bom. 376

marine—

See BILL OF LADING.

I. L. R. 30 Calc. 585

See CONTRACT ACT, ss. 20, 30 AND 65.

I. L. R. 25 Mad. 561

— policy of—

See INSOLVENCY—PROPERTY ACQUIRED  
AFTER VESTING ORDER.

I. L. R. 18 Mad. 24

See STAMP ACT, 1869, s. 34.

I. L. R. 3 Calc. 347

See STAMP ACT, 1879, s. 3, CL. 15.

I. L. R. 19 Calc. 488

I. L. R. 19 Bom. 130

**INSURANCE—contd.****1. LIFE INSURANCE.**

1. ——— Assignment of policy—Death of assignee—Death of assured—Notice by assignee to company—Payment of premium by executors of assignee—Absence of legal personal representative of assured—Refusal to pay over. *A*, having insured his life in a certain Life Insurance Com-

The company, however, refused payment unless *C* and *D* first obtained the concurrence of the legal representative of *A* to the payment. *Held*, that the company were justified in refusing to pay the money in the absence of the legal representative of *A*. **RAJNARAIN BOSE v. UNIVERSAL LIFE ASSURANCE COMPANY**

**I. L. R. 7 Cal. 594; 10 C. L. R. 561**

2. ——— Premiums on policy—Condition of pre-payment of premium—Warranty—Sterling premiums—Case stated under Ch XXXVIII, Code of Civil Procedure. An insurance company, in order to carry out an agreement with the assured to convert a rupee policy into a policy of sterling value, made an endorsement of the conversion on

ment of the first sterling premium. Subsequently, and before the first sterling premium became due, the assured died. *Held*, that the pre payment of sterling premium as a condition precedent to the right to the sterling assurance had been waived, and that the representatives of the assured were entitled to payment of the full amount of the sterling policy. **Canning v. Farquhar, L. R. 16 Q. B. D. 721**, distinguished. *In the matter of an Agreement between the UNIVERSAL LIFE ASSURANCE SOCIETY and SIFRINDALE*

**I. L. R. 23 Cal. 320**

3. ——— Insurance effected by one person on the life of another in whose life he has no interest—Wager—Contract Act (IX of 1872), s. 30—Stat. 14 Geo. III, c. 48—Stat

**INSURANCE—contd.****1. LIFE INSURANCE—contd.**

or on her account, but by the said *N F B* for his own use and benefit, and that the had no interest in the life of *M*, and that therefore the policy was

(ii) That in India an insurance for a term of years on the life of a person in which the insurer has no interest is void as a wagering contract under s. 30 of the Contract Act (IX of 1872), and that therefore

ANCE Co . . . I. L. R. 23 Bom. 191

4. ——— Truth of answers to queries of Life Insurance Company—Warranty—Declaration by assured to Medical Examiner of Company—Admissibility of evidence to show declarations not made by assured—Verbal representations not made by assured—*G* applied to

with the company was that the statements and representations contained in his application, together with those made to the medical examiner by him, should be the basis of the contract between him and the company. He warranted them to be full, complete, and true, whether written by his own hand or not, and that the warranty was to be a

or information made or given by or . . . soliciting or taking the application for the policy, or by or to any other person, should be binding on the company, or in any way affect its rights unless such statements, representations, or information be reduced to writing and presented to the officers of the said company at their home office in the city of New York on the application. On *G*'s death, the plaintiff sued the company for the amounts due

medical examiner must be imputed to  
*Held*, reversing the decision of the Court below.

INSURANCE—*contd.*1. LIFE INSURANCE—*contd.*

that the plaintiff was bound by the terms of the contract between G and the company. That it was not open to the plaintiff to show that G did not state what under his own signature he declared to be true, and yet to hold the company liable on the policy blushing aside and treating as of no import whatever the statements and representations which form the basis of the contract. That the misstatements and misrepresentations made by G were amply sufficient to warrant the company in avoiding the policy. *New York Life Insurance Co. v. Gampel*; 11 L. R. 27 Cal. 593

5. — Age of assured—Proof of age—Onus of proof—Mistake in statement of age—Fraud. A insured his life with the defendant company. By the terms of the policy the declaration of the assured as to his age was made the basis of the contract, and the policy was issued, subject to the express condition that, in case any statement contained in the declaration were untrue, the policy should be void. The assurance was also expressly made, subject to the regulations and conditions contained in the prospectus of the company. The prospectus contained the following provision with regard to the age of parties insured: "Age admitted in the company's policies in all cases where proof is given satisfactory to the directors. Proof of age can be furnished at any time, if not furnished, it will be necessary on settlement of claim," and after stating the nature of the "evidence as to age," which the company would accept, the prospectus continued: "The directors recommend applicants to furnish any of the above as soon as possible and get the age admitted in the policy, as it is required by all soundly conducted companies on settlement of claim if not previously produced." A died, and his administrators claimed the amount of the policy. *Held*, that the above condition contained in the prospectus was not intended to require the insured to furnish proof of age at the time of the contract.

age was attached to the policy, no further proof would be needed, and the onus of disputing the age would be thrown on the company, but in the absence of such evidence and of such admission, it

their own lives are indisputable on any ground whatever except fraud." *Held*, that this provision

assured from the legal effect which an innocent misrepresentation as to age would otherwise have had under the strict terms of the contract. The result therefore was that the plaintiffs should give proof of the age of the assured, but, if such proof

INSURANCE—*contd.*1. LIFE INSURANCE—*contd.*

disclosed nothing more than an innocent mistake as to age on the part of the assured, the policy would not be vitiated. Subject to the above terms of the prospectus, any untruth in the declaration as to the age of the assured would vitiate the contract. The statement as to the age of the assured amounts to a warranty, and the warranty being broken, the risk under the policy would not attach. *ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO. v. SARAT CHANDRA CHATTERJI*

I. L. R. 20 Bom. 89

6. — Warranty—Age of assured—Misstatement of age—Onus of proof—Contract Act (IX of 1872), s. 65—Return of premium paid on policy subsequently held void—Evidence Act (I of 1872), s. 32 (5)—Statement as to age of a member of a family by another member since deceased—Admissibility. In August 1898, I signed a proposal form, addressed to the

answering numerous questions, concluded with the following declaration—"I do solemnly declare that, according to the best of my knowledge and belief, I am now in good health . . . and that my age does not exceed fifty-eight years . . . and that I have fully and faithfully answered all such questions, as have been put to me in the form of proposal and by the medical referee relative to my habits, constitution and general state of health, without concealment or reservation of any kind, . . . and I hereby covenant and agree that this declaration shall be the basis of the contract between myself and the company, and if any untrue averment be contained herein, or if any of the facts required to be set forth in the proposal

null, and void." In September, 1898, the defendant company issued a policy for the sum proposed for, which recited that I had delivered a statement in writing declaring, *inter alia*, that his age on his next birthday would not exceed fifty-eight years, and contained the proviso that the policy was issued upon the express condition that in case any statement or allegation contained in that declaration should be untrue, or if the assurance thereby made should have been made through any misrepresentation or concealment, the policy should be void. In September, 1899, I died, and plaintiff, his nephew, claimed from defendants the amount due under the policy. Defendants refused to pay, on the ground, *inter alia*, that the policy had been obtained by fraudulent misrepresentations

INSURANCE—*contd.*I. LIFE INSURANCE—*contd.*

as to the age, means and circumstances of the assured. The evidence showed that the age of the assured was from three to four years greater than he had declared it to be: *Held*, that the defendants were not liable on the policy. *Held*, also, that the plaintiff was not entitled, under s. 65 of the Contract Act, to a refund of premium paid on the policy during the lifetime of the assured. In the "personal statement" referred to, the assured had omitted to disclose the fact that two sisters had predeceased him. In reply to a question as to whether any brother or sister had died, and if so of what diseases and at what ages the assured had stated that he had had two sisters who had predeceased him.

omission. *Per* SIR ARNOLD WHITE, C.J.—The declaration contained in the "personal statement" being ambiguous, should be construed in favour of the assured, and amounted only to a warranty that the age of the assured was fifty-eight to the best of his knowledge and belief.

formed part of the contract, and in consequence plaintiff was not entitled to recover on the policy. *Per* BHASHYAM AYYANGAR, J.—The assured had

for the Court to consider was not the materiality or otherwise of that statement, but its truth. The clause in the personal statement relating to the "knowledge and belief" of the assured did not qualify the warranty there given; there was no real ambiguity, and, in consequence, the warranty as to age was an absolute one and not merely a warranty of his belief as to his age. Also, that a statement as to plaintiff's age, made by his sister, was admissible in evidence after her decease, under s. 32 (5) of the Evidence Act, the date of birth being the commencement of a relationship by blood, and therefore relating to the existence of such relationship, within the meaning of the section. *Ram Chandra Dutt v. Jogeswar Narain Deo*, I. L. R. 20 Cal. 758, followed. The defendant company's prospectus contained a condition that evidence of age of an assured would be required to be furnished in every case before a claim under a policy would be paid; and recommended assurers to provide evidence of age as soon as possible, as it was required on settlement of claim if not previously produced. *Semle*. That the effect of the condition was to throw upon the assured or his representatives the onus of proving the correctness of the age as warranted by the assured. Also, that it was unnecessary to prove that the company's prospectus had been read by or specially brought to the notice of the assured, apart

INSURANCE—*contd.*I. LIFE INSURANCE—*contd.*

from the reference made to it in the policy (which was expressed to be issued subject to the regulations and conditions comprised in the prospectus). *Watkins v. Rymil*, L. R. 10 Q. B. D. 178, followed. *The Oriental Government Security Life Assurance Company, Limited v. Sarat Chandra Chatterji*, I. L. R. 20 Bom. 99, referred to. *ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY v. NARASIMHA CHARI* (1901)

I. L. R. 25 Mad. 183

## 2. MARINE INSURANCE.

1. ——— Open cover—Proposal to issue a policy—Acceptance—Refusal to issue policy in terms of open cover. An open cover to an amount stated for insurance on cargo to be shipped for a voyage in a ship (afterwards lost on that voyage) was given by the agent of the defendant company to the owner of the ship in order that he might give it to the charterer, and it was a proposal to insure. The owner transferred the open cover to the plaintiff, who, under charter with him, shipped rice and applied for policies to the amount stated in the open cover. The defendants' agent then refused to issue any policy on the rice so shipped. *Held*, that the open cover, as given to the owner, constituted a subsisting proposal to insure, and as soon as application for the policy under it was made to the defendants' agent by the shipper, to whom the open cover had

## FIRE INSURANCE COMPANY OF BATAVIA

I. L. R. 16 Cal. 584

L. R. 16 I. A. 80

2. ——— Construction of policy—*Onus probandi*—Exceptions in policy—*A sued*

soundings between the 15th October and the 16th December inclusive, are hereby excepted, which

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## INSURANCE—contd.

## 2. MARINE INSURANCE—contd.

pleased, but that the insurers were not liable for any loss arising from perils of the sea in which the three following events were combined: first, that she was at the time touching or trailing on the coast of Ceylon; secondly, that she was at the time within soundings; thirdly, that the loss happened between the 15th October and 15th December. *Held*, thirdly, upon the facts, that the loss was within the policy, notwithstanding the exception. *Ada Sree Sankar v. Jackariah Hanomed*. . . . 3 Ind. Jur. N. S. 303

3. — Goods partly in bales and partly in cases—Insurance for gross amount. A policy was effected upon a quantity of piece-goods, part in bales and part in cases. The bales and cases were separately enumerated and separately valued in the body of the policy, but the gross total was made up. *Held*, that the words "free from particular average," following directly upon the gross total must be taken to apply to the whole value of both lots and not separately to the bales and separately to the cases. *Bernardine Setty v. Hurswell Ranchand*. . . . 3 Hyde 74

4. — Particular average loss—Liability of underwriters. In a policy of insurance effected in Bombay upon goods shipped from Calcutta to Jeddah, two clauses were inserted in writing, the rest of the policy being in the ordinary English printed form. The first written clause was in English as follows: "warranted free of particular average, unless stranded, sunk, or

*Held*, that the underwriters of such a policy are liable to the insurer for a particular average loss where the vessel in which the insured goods are shipped is stranded, sunk, or burnt. *Usail v. Shanjee Poonjani*. . . . I. L. R. 3 Bom. 550

5. — Notice of claim by insured—Action brought before expiration of six months from date of notice—Constructive total loss—Meaning of the words "sunk," "stranded." Where insurers on receiving notice of a claim made against them under a policy of insurance distinctly repudiate and deny that any claim exists against them or that the vessel concerned is lost, they are not bound to pay the claim. *Notice of claim by insured—Action brought before expiration of six months from date of notice—Constructive total loss—Meaning of the words "sunk," "stranded."*

taking proceedings to enforce his claim. Where it appeared upon evidence that goods on board a ship that was wrecked on a voyage from Karachi to Bombay, although much damaged by sea-water, were nevertheless of such merchantable value as to make it worth while to sent them on to their port of destination:—*Held*, in an action against the insurers of the goods, that to claim for constructive total loss was maintainable. In an

## INSURANCE—contd.

## 2. MARINE INSURANCE—contd.

action upon a policy of marine insurance the evidence given with respect to the loss of the ship was as follows: "The vessel grounded near Barks. After the vessel struck, the water constantly broke right over all. . . . The cargo was all under water. The labourers were only able to work at ebb tide, and at high tide they could only see the top of the vessel's masts. . . . The vessel lay where she stranded seven days, and was then raised with ease." Some of the goods on board were insured by a policy which contained the clause "warranted free of particular average, unless sunk or burnt." It was contended for the plaintiffs that the ship had "sunk," and that the damage to the goods was therefore covered by the policy. *Held*, that where a vessel runs aground and lists over, and is in consequence covered by the high tide, which causes damage to goods on board, it cannot be said that she has "sunk," within the meaning of the word as used in a policy of insurance, and therefore that a claim for particular average cannot be sustained under a clause in the policy—"warranted free of particular average, unless sunk or burnt." *Latham v. Hunsbeck and Sonnet*. . . . I. L. R. 4 Bom. 314

6. — Insurable interest—"Interest or no interest," effect of these words in a policy—*Stat. 19 Geo II, c. 37—Loan on "avang"*—Insurance effected after loss of subject-matter of insurance—Meaning and effect of the words "lost or not lost" in a policy. Policies of insurance between natives of India (those, at least, which do not contain the words "Interest or no interest") are to be construed in the same way as such instruments have been uniformly construed by the general law merchant in Western Europe, viz., as contracts of indemnity. A certain trade is carried on between native merchants in Western India with the coasts of Africa and Madagascar by means of native vessels which leave the Indian ports early in the year, and after remaining in the ports of Africa and Madagascar for four or five months, leave on the return voyage about August or September. This trade consists in shipping goods at the Indian ports, to be disposed of at the African and Madagascar ports and purchasing with the proceeds fresh goods to be similarly disposed of in the home ports. To enable traders to embark in this venture, it is their practice to borrow money of merchants on what is termed "avang," that is, money borrowed on the condition that it is not to be repaid except in case of the success of the voyage. *Insurable interest—Meaning of the words "lost or not lost" in a policy.*

insurable interest. *Meaning of the words "lost or not lost" in a policy.* *Held*, that a policy of marine insurance on goods is not invalid by reason of its having been effected



INSURANCE—*contd.*2. MARINE INSURANCE—*contd.*

subsequently to the loss of the goods, although the policy does not state—  
lost."

7. ————— *Separate insurance of different species of article.* Where a policy has been effected on a gross quantity of sugar, the fact that that sugar has been described in the margin of the policy as being in different lots containing different species of sugar, and being separately priced does not raise any presumption that a separate insurance upon each separate species of sugar was intended by a policy-holder. *Joosoor v. VARDON* 1 Hyde 188

8. ————— *Covering note—Concealment of material fact.* On the 15th March 1897, the plaintiff, who was a shipper of salt, applied for and obtained from the defendants' company in Bombay a preliminary covering note for Rs1,000 for salt to be shipped by him from Bombay to Calcutta. The policy in complete receipt of salt from said shipper was at Ura in native

insurance (lost or not lost) at and from Bombay to Calcutta upon any kind of goods and merchandise and freight of or on the ship or vessel called the *Nairang*, including all risk of craft and boat to or from the ship or vessel." Upon this policy the plaintiff sued to recover the value of the lost salt, viz., Rs4,360. The defendants pleaded that the covering note of 15th March 1897 did not establish a completed agreement for the insurance of the salt; and as to the policy they pleaded that it was void, inasmuch as the loss had occurred

contract, binding upon the defendants, whatever events may subsequently happen. *Held*, affirming *CANDY, J.*, that the plaintiff was not entitled to recover. *KASAM HAJI MITHA v. BRITISH AND FOREIGN MARINE INSURANCE CO.*

I. L. R. 23 Bom. 737

INSURANCE—*contd.*2. MARINE INSURANCE—*contd.*

9. ————— *Evidence of loss—Jettison—Protest of nacoia.* In an action on a policy of insurance to recover the value of a portion of the goods insured lost by jettison, the protest of the nacoia and the Custom House vouchers showing that on the

are not sufficient as even *prima facie* proof of the loss. *RAMABHAI GIRDARBHAI v. ALI AKBAR KAJRANI* 1 Bom. 6

10. ————— *Evidence of average loss—Usage of Mangrove—Certificate of mahajans.* In the

the account sales, is to be held sufficient evidence of an average loss and of the amount of such loss, though the underwriter may answer a claim supported on such evidence by showing fraud on the part of the shippers, the master of the vessel, or the mahajans. An alleged usage that the mahajans' certificate is deemed to be conclusive evidence against the underwriter without production of manifest and account sales, and that on proof of the certificate alone and of the policy the owner is entitled to recover his average loss, cannot be upheld, such not being a reasonable usage. *RAN-SORDASS BHOGILAL v. KESRISING MORANLAL* 1 Bom. 229

11. ————— *Repairs to ship—Deduction of one-third new for old.* It appeared on evidence that a ship was not by the repairs done to her put in a better condition than she had been in before sustaining the damage which constituted the partial loss. *Held*, that the rule, by which a deduction of one-third new for old is calculated in favour of the insurers who pay for the repairs, did not apply. *SEEDICH GHOSAL v. ARCAR* Bourke 418

On appeal in same case:—*Held*, the rule allowing one-third "new for old" in cases of insurances on ships is not inflexible; therefore, where the ship insured was not worth repairing, and was not in fact repaired, it was held that one-third "new for old" ought not to be allowed. *ARCAR v. HOWAR BIE* 1 Ind. Jur. N. S. 237

12. ————— *Unseaworthiness of ship—Liability of insurer.* An insurer relying on the certificate of a competent surveyor that the ship is seaworthy is entitled to recover in the event of the ship's loss, notwithstanding it be shown that she was unseaworthy at the time the policy attached. *HOSSEIN INRAHIM BIN JOURE v. MERRI LOLL* Cor. 5; 2 Hyde 107

13. ————— *Time policy—Warranty of seaworthiness—Implied warranty.* The warranty of seaworthiness in a time policy at the commencement of the risk is not a continuing obli-

INSURANCE—*contd.*2. MARINE INSURANCE—*contd.*

gation cast upon the assured while the risk is running. So held by the Judicial Committee (affirming the judgment of the Supreme Court of Calcutta) in an action brought for a total loss, by stranding, within the time of the running of the policy, after leaving an intermediate port, the defence being that at the time of the loss the vessel was unseaworthy by reason of an insufficient crew, she having sailed from the intermediate port without sufficient hands to work the vessel, although she had a sufficient crew at the time she started for the voyage. *See* *Simble*. There is no implied warranty of seaworthiness in a time policy. *JENKINS v. HIRACOCK*

5 Moo L. A. 361

14. — *Goods overvalued—Reason for evaluation failing—Liability of underwriters.* Where, in a valued policy of insurance, the goods insured were valued at an amount grossly in excess of their real value, which amount was intended to include the amount in which the insured was liable to Government on account of bonds executed by him in respect of the goods insured, and after loss of the goods Government elected not to enforce the bonds; *Held*, that the underwriters were entitled to be subrogated in the amount of the bonds, and were liable to the insured only for the real value of the goods together with a fair profit. *HARRIS v. PERSHOTT & GAMBLE*

12 Bom. 23

15. — *Abandonment—Notice of abandonment.* Where an insurance office is sued on a constructive total loss there must be a distinct and decided abandonment of all right on the part of the insured. The notice of abandonment should be immediate. The question always is whether the delay in giving notice is reasonable, with reference to the particular circumstances and the owners' means of ascertaining the position of the ship, where the suit is for a total loss, the judgment may be as for an average loss. *SERDICK v. GOSWAL & ALAN*

Bourke O. C. 391

16. — *Abandonment of ship and cargo—Sale—Right of purchaser.* The ship *Maharance* was wrecked and abandoned with her cargo to the underwriters. Nine cases, part of the cargo which with two others were separately insured, were recovered in good condition from the wreck. Of this all parties had notice. The wreck and cargo were subsequently sold by the ship's agents, who were also agents for the underwriters, for the benefit of all concerned, the cargo being described generally. *Held*, that the nine cases did

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more than what was ceded to the underwriters by the abandonment. *MITCHELL v. GLADSTONE*

1 Ind Jur. N. S. 406

17. — *Constructive total loss.* In a suit on a policy of insurance as for a total loss where goods were shipped for the voyage from

INSURANCE—*contd.*2. MARINE INSURANCE—*contd.*

Surat to Kurrachee, and the vessel having sprung a leak was forced to put into Dwarka, at which place the goods (with exception of some iron thrown overboard during the voyage) were landed and placed in a warehouse, from which a portion (some castor oil and jagan) was carried off by robbers; and the residue of the cargo, consisting principally of cotton seeds which were dried and cleaned, was sold; and the proceeds, after deducting freight expenses remained in the hands of mahajans, to be paid to whomsoever might be entitled to them:—*Held*, first, that the loss by robbers, although not expressly mentioned in the policy was one of the perils insured against; secondly, that the Judge below being erroneously of opinion that when the goods were once landed damaged there was nothing to do but to sell everything for the benefit of underwriters, and having consequently recorded no finding on the material question whether the whole or any part of the cargo was practically capable of being sent in a marketable state to the port of destination, the suit must be remanded, in order that the Judge might determine whether there was a constructive total

loss in the cotton seeds and other articles, as the sum insured by the defendant bore to the whole sum, taking into account also in that case what proportion the sum insured bore to the actual value of the goods. *DWARAKADAS LAIUSHAJI v. ADAM ALI SULTAN ALI*

3 Bom. A. C. 1

18. — *Value of ship when repaired.* In a suit to recover the amount of insurance on a ship which had been abandoned on an alleged constructive total loss, it appeared that the ship had sustained severe injury from foul weather, but that her value, after being repaired, would exceed the cost of repairing her by about 3,000 dollars. *Held*, therefore, that there was not a constructive total loss, and that, in order to establish a constructive total loss, there must have been a threatened destruction, or absolute temporary privation, of the insurer's ownership, or an alienation of his property in the thing insured. *GAIHAN v. OWEN*

Bourke O. C. 17: Cor. 149

*Held*, no constructive total loss in *MACKINSON v. DUNDAS*

Bourke O. C. 228

18. — *Notice of abandonment.* A cargo, consisting of railway sleepers, was insured by the plaintiffs in the ship *Hemdal* from Geography Bay to Calcutta, and expressed in the policy to be warranted from all risks, except total loss. In proceeding up the river Hooghly, in charge of a pilot on the 30th April, the vessel grounded on the Rungtulla Sand, heeled over, and lay imbedded in the sand. Endeavours were made unsuccessfully to get her off. On 5th May, Lloyd's

## INSURANCE—cont'd.

## 2. MARINE INSURANCE—concl'd.

surveyor inspected the vessel, and reported that considering her position, the state of the tide at that season, and the expense of getting her off, it was unadvisable to go to further expense in doing so; and that the cost of repairs would, in all probability, amount to much more than the value of the ship when repaired. Some of the sleepers had been then jettisoned, and the surveyor recommended that the vessel and cargo should be abandoned and sold by public auction to the highest bidder. Attempts were made, but unsuccessfully, to get some of the cargo off, and the sleepers were of such a quality that they would not float. The consignees accordingly caused the ship and cargo to be sold by public auction in Calcutta on 12th May. No notice of abandonment was given. The sleepers realized the sum of Rs 450. The purchaser hired boats and began unloading the ship; he unloaded 78 sleepers in all. On 14th May the ship floated off and came up the river, with the rest of the cargo, in safety, proving not to be so much damaged as was supposed. In an action on the policy of insurance:—*Held*, that there was not such a total loss of the cargo as entitled the plaintiffs to recover as for a total loss without giving notice of abandonment. *Held*, on appeal, *per PHAR and MACPHERSON, JJ.*—The plaintiffs failed to prove any necessity for the sale of the ship, or that it was impracticable to convey the sleepers, or a material portion of them, to their destination. But if the insured were legally justified in abandoning and claiming as for a total loss, notice of abandonment ought to have been given. The condition and behaviour of the ship when she got off the shoal should be looked at as indicating her real state and strength while she was on it. *Per PHAR, J.*—Considering upon the evidence of the circumstances at the time of the sale, that the ship was not worth repairing, and that she was expected to sink at any time, the sale of her was justifiable. The sale of the cargo was also justifiable; it could not have been carried, in a mercantile sense, on shore, much less to its destination. The sale caused a total loss, and there was no need for notice of abandonment. **EAST INDIAN RAILWAY COMPANY v. AUSTRALASIAN INSURANCE COMPANY**

8 B. L. R. 218

S.C. on appeal . . . 7 B. L. R. 347

## 3. FIRE INSURANCE.

1. ——— Insurable interest—Property in goods, passing of—Contract Act (IX of 1872), s. 75.—Ascertained goods—Postponement of passing of property by agreement. If the parties to a contract for the sale of ascertained goods agree that the payment for and delivery of the goods are to be postponed, the property in the goods passes to the buyer as soon as the proposal for sale is accepted and such passing of property cannot be put off by any agreement between the parties. *Per MACLEAN,*

## INSURANCE—concl'd.

## 3. FIRE INSURANCE—concl'd.

*C.J.*—If in a contract there appear certain terms from which, when they exist, the Legislature says that certain consequences shall ensue, these consequences must ensue. In the present case all the elements necessary for a completed sale, such as to pass the property to the buyer exist, and there is no manifestation of any intention to postpone the passing of the property. The buyer has therefore an insurable interest in the goods. But where the sale is of unascertained goods and there has been no subsequent ascertainment or appropriation, then there has been no effective sale so as to pass the property in the goods to the buyer and he has no insurable interest. **BRJ COOMAR v. SALAMANNER FIRE INSURANCE COMPANY (1905)**

I. L. R. 32 Calc. 816

## INSURANCE COMPANY.

See INSURANCE.

——— liability of, to pay license tax—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s 87 . I. L. R. 22 Calc. 561

## INSURRECTION,

See SEDITION . I. L. R. 35 Calc. 945

## INTENTION.

See CRIMINAL TRESPASS  
I. L. R. 23 All. 82  
I. L. R. 28 Bom. 558

See INTENTION OF PARTIES.

See KIDNAPPING . 8 C. W. N. 208

See PENAL CODE (ACT XLV of 1860), ss  
22, 231 . I. L. R. 30 All. 90

See PENAL CODE, s 292  
I. L. R. 26 All. 100

See PENAL CODE, ss 304 AND 325.  
I. L. R. 29 All. 282

See PENAL CODE, s 456.  
I. L. R. 29 All. 48

——— absence of—

See CULPABLE HOMICIDE.

See MURDER.

——— dishonest—

See CRIMINAL MISAPPROPRIATION.  
6 C. W. N. 34

See FORGERY . 5 C. W. N. 897  
6 C. W. N. 382  
I. L. R. 25 Mad. 728

See THEFT.

——— malicious—

See DIFFAMATION I. L. R. 30 Calc. 493

INTENTION—*concl'd.*

## — of joint or several ownership—

See HINDU LAW—JOINT FAMILY—PRE-  
SENTATION AND ONUS OF PROOF AS TO  
JOINT FAMILY.

See HINDU LAW—PARTITION—REQUISITES  
FOR PARTITION.

## — to defeat or delay creditors.

See MORTGAGE.

I. L. R. 35 Calc. 1051

## — to defraud—

See CHITTING . . . 5 C. W. N. 255

## — to evade Stamp laws—

See DECLARATORY DECRET. SUIT FOR—  
DECLARATION OF TITLE

I. L. R. 1 Mad. 40

I. L. R. 3 Bom. 230

See STAMP ACT, 1862, s. 17

3 B. L. R. A. C. 320

3 Bom. C. C. 183

13 W. R. 103

See STAMP ACT, 1869, ss. 24, 29.

24 W. R. Cr. 1

6 Mad. Ap. 6

See STAMP ACT, 1879, ss. 37, 61, 63, 67.

I. L. R. 8 Calc. 250

I. L. R. 7 Mad. 537

I. L. R. 13 Mad. 231

I. L. R. 23 Mad. 155

## — to get innocent person punished—

See STOLEN PROPERTY—OFFENCES  
RELATIVE TO . . . I. L. R. 1 All. 370

## INTENTION OF PARTIES.

See ESTOPPEL—ESTOPPEL BY CONDUCT

4 B. L. R. P. C. 18

I. L. R. 18 Calc. 34

I. L. R. 18 I. A. 8

See EVIDENCE—PAROL EVIDENCE—EX-  
PLAINING WRITTEN INSTRUMENTS AND  
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See GRANT—RESUMPTION OR REVOCATION  
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See HINDU LAW—JOINT FAMILY—POWER  
OF ALIENATION BY MEMBERS—MANA-  
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See LIFE ESTATE . . . 5 C. W. N. 588

See MORTGAGE—FORM OF MORTGAGES.

2 Agra 124

1 N. W. 181

I. L. R. 21 Calc. 882

I. L. R. 21 I. A. 88

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I. L. R. 22 All. 149

INTENTION OF PARTIES—*concl'd.*

See MORTGAGE—SALE OF MORTGAGED  
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I. L. R. 2 All. 828.

I. L. R. 0 Calc. 991

I. L. R. 8 Bom. 501

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I. L. R. 8 Mad. 248

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I. L. R. 20 Mad. 488

I. L. R. 10 Calc. 1035

I. L. R. 11 I. A. 128

I. L. R. 18 Bom. 80

I. L. R. 21 Bom. 587

3 C. W. N. 153

4 C. W. N. 780

See REGISTRATION ACT, 1877, s. 49 (1864,  
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25 W. R. 376

See VENDOR AND PURCHASER—COMPLE-  
TION OF TRANSFER.

I. L. R. 23 Calc. 170

I. L. R. 27 Calc. 7

2 C. W. N. 207

Intention as to futura action,  
expressed between parties, not amounting  
to a contract—Expressed intention to make par-  
ticular person an heir—Effect in succession of  
reversionary heirs A mutual expression of inten-  
tion between parties caused expectation on either  
side that the intention would be carried out, but  
no contract was made. A childless person, since  
deceased, expressed to the father of the minor son  
of his sister his intention to make the boy his  
heir, and that if he, the intending donor, should  
have children of his own, he would give the  
boy a share of his property. The father assented  
and made over charge of the boy. The widows  
and mother of the deceased taking his estate  
for their lives, admitted the boy to joint pos-  
session with them, and, on being sued by the rever-  
sioners of the family estate expectant upon  
their deaths, defendant, as co-defendants with  
the boy on the ground that had, in obedience to the  
known wishes of the deceased, recognized the boy  
as heir to him *Held*, that the reversioners could  
only be deprived of the inheritance after the  
death of the widows, who could not transfer any  
estate to last beyond their own lives, by the act of  
the deceased in contracting with the father of the  
boy to make the boy the heir, if such contract had  
been made. And that the substantial question  
was whether the representations made between the  
two had amounted to a contract to that effect. On  
evidence wholly oral, it was found that no such  
contract had been made. Only enough had been  
said between the two to give rise to the expectation  
on either side that the boy would, the then inten-  
ded course being followed, get the inheritance.  
NARAIN DAS v. RAMANUJ DAYAL

I. L. R. 20 All. 208.

LALA NARAIN DAS v. LALA RAMANUJ DAYAL

2 C. W. N. 193.

## INTEREST.

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- compound interest—  
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*See* BENGAL TENANCY ACT, s. 67.  
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*See* MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEE.  
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*See* VALUATION OF SCIT.  
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*See* PRINCIPAL AND SURETY—DISCHARGE OF SURETY . 9 B. L. R. 261  
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## I. MISCELLANEOUS CASES.

1. — Accounts—Suit for balance of accounts—Absence of contract for interest. In a suit relating to balance of accounts, probabilities are not sufficient to support a decree for interest in the

INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

absence of a contract for interest. JOY NARAIN BHAGGAT v. KAMHEE CHOWDHY . 10 W. R. 148

2. — Execution of decree. Where, in the course of executing a decree, accounts in which interest was entered and charged

where it appeared that the District Judge had found that the rate ruling in the district was 12 per cent, and had allowed that rate accordingly. GORAL SAINI DEO v. JOYRAM TEWARY

I. L. R. 7 Calc. 620  
 9 C. L. R. 402

3. — Arrears of rent—Act X of 1859, s. 20—Direction of Court. The enactment of s. 30 of Act X of 1859, that arrears of rent, unless otherwise provided by written agreement, shall be liable to interest at 12 per cent. per annum, does not make it imperative on the Court to award interest in a decree for arrears of rent, but the Court has a discretion in awarding interest in such a case. In an ordinary suit for rent, the question whether the rent is fixed or variable is not involved. DECKWITH v. KISHTO JEEBUN BUCKSHEE  
 Marsh. 278; 2 Hay 298

KASHEENATH ROY CHOWDHRY v. MYNODDEEN CHOWDHRY . 1 W. R. 154

4. — Prolongation of rent suit by tenant. In a suit for seven years' arrears of rent it appeared that the plaintiff had previously sued and been non-suited, and that the tenant had protracted the proceedings. Held, that the Court ought to award interest on the arrears. RAMJEEBUX BOSE v. TRIPPOORA DOSSES  
 Marsh. 398; 2 Hay 449

5. — Withholding rents. Where rents are withheld, interest may be given whether it is provided for in the pottah or not. LALLA SHEO SAHAY SINGH v. KUMHONUSSA BEGUM . 2 W. R., Act X, 68

6. — Bengal Act VI of 1862—Discretion of Court. Bengal Act VI of 1862 did not alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears of rent. BISSEONATH DEB v. HERRON PERSHAD CHOWDHRY . 2 W. R., Act X, 68

7. — Agreed instalments of rent. Interest may be decreed with arrears of rent, but it should not be decreed upon instalments of rent as from dates during the currency of the year, unless the parties had agreed that the rent should be paid by instalments at those dates. BHARUTH CHANDER ROY v. BEPIN BEHAREE CHUCKERBUTTY . 9 W. R. 495

8. — Pendency of suit for enhancement. While a suit for enhancement of

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

rent is pending, defendant is not liable for interest inasmuch as his rent is undetermined; but after the rent is determined, he is liable to interest for all arrears from, and for all instalments after, that date **RAJMOHUN NEOGEE v. ANUND CHUNDER CHOWDHRY** 10 W. R. 166

9. ———— *Discretion of Court.*

It is in the discretion of the Court to allow interest on arrears of rent. **SATTYANAND GHOSAL v. ZAHIR SIKDAR** 6 B. L. R. Ap. 119

**RADHIKA PROSUNNO CHUNDER v. URJOON MAJHE** 20 W. R. 128

10. ———— *Enhancement of rent.*

In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time the rent became due. **ANUSOOLLAH v. KAJEE AFTABOODDEEN** 1 L. R. 4 Calc. 594 3 C. L. R. 382

11. ———— *Discretion of Court.*

Every arrear of rent, unless it is otherwise provided by an agreement in writing, is liable to bear interest at 12 per cent from the time when it, or each instalment of it, became due. The discretion which a Court has to refuse interest can only be exercised upon very clear grounds. The mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent does not amount to a waiver of such right. **JOHNOBY LALL v. BULLAR LALL** 1 L. R. 5 Calc. 102 4 C. L. R. 346

12. ———— *Waiver—Omission*

to claim rent for some years at the stipulated rate, whether amounts to a waiver. The mere omission to claim interest for some years from a tenant at

13. ———— *Bengal Act VIII*

of 1869, s. 21—*Rate of interest* Under Bengal Act VIII of 1869, s. 21, it is discretionary with the Judge to give interest at 12 per cent.; he is not obliged to award interest to that extent. **DHIRAJ MAHTAB CHAND v. DEBEUNAH DEBI** 7 B. L. R. Ap. 26

14. ———— *Bengal Act VIII*

of 1869, s. 21—*Discretion of Court* In suits for arrears of rent, a Court of Justice is not bound in every instance to award interest at 12 per cent, the rate specified in Bengal Act VIII of 1869, s. 21, but has discretion either to disallow interest altogether, or to reduce the rate according to the circumstances of each case. Where a plaintiff sought to recover more than what was actually due, and it did not appear that defendant would have refused payment if the sum actually due had been demanded, the Court reduced the rate of

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

interest [to 6 per cent **FUSSEEBUN v. ASHRUTOON-NISSA** 26 W. R. 463]

15. ———— *Erroneous dismissal of suit by lower Appellate Court after admission of sum due.* A suit for arrears of rent at enhanced rates where plaintiff fails to add

In such a case where the first Court had decreed rent at the rates admitted with some enhancement, and the lower Appellate Court, seeing no grounds for enhancement, dismissed the suit, the High Court granted the amount admitted with interest from the date of the first Court's decree. **AKASHBUTTY KOOZER v. HERRA RAM MONDUR** 24 W. R. 82

16. ———— *Bengal Act VIII* of 1869, s. 21. Where a pottah stipulates that, in case of default of punctual payment of rent, all arrears shall bear the customary and legal interest, 12 per cent. per annum will be allowed in analogy to Bengal Act, VIII of 1869, s. 21. **ANUSOOLLAH v. DEN ROY v. MUDDUN MOHUN MOZOOMDAR** 1 C. L. R. 147

17. ———— *Mesne profits—Interest—Rent in kind* Where rents were collected in kind instead of in money, and the Judge, in awarding mesne profits, allowed a much larger rate of interest than was usually allowed on rents paid in

18. ———— *Place of payment of rent—Office of landlord—Bengal Tenancy Act, s. 67.* Where defendants, residents of Calcutta, held a village in Midnapur under the plaintiff who had no office there for collecting rent, and the tenants refused to continue paying the rent at the plaintiff's residence at Burdwan, but offered to pay it at Calcutta which was not agreed to by the plaintiff who did not appoint any convenient place for payment and the rent got into arrears.—*Held*, that the defendants were bound to pay the rent notwithstanding the plaintiff had no village office, and did

ment  
ants were  
there re  
under the above circumstances was held to interest under s. 67 of the Bengal Tenancy Act. **FAKIR LAL GOSWAMI v. BONNERJI** 4 C. W. N. 324

19. ———— *Right to interest.* In March 1884 the rent payable by an occupancy-tenant was fixed by the Settlement Officer under s. 72 of the N. W. P. Land Revenue Act (XIX of 1873). In 1885 the landholder brought a suit to

INTEREST—*cont.*1. MISCELLANEOUS CASES—*cont.*

recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the Settlement Officer's order as well as for the period subsequent thereto. The lower Appellate Court dismissed the claim for rent prior to 1st July 1881, and decreed such as was due subsequently to that date, but without interest. *Held*, upholding the decision as to the rent, that the plaintiff was entitled to interest at 1 per cent. on the sum decreed from the date of the institution of the suit. **RADHA PRASAD SINGH v. JAGAL DAS**

I. L. R. 9 AIR 185

20. *N. W. P. Rent Act (XII of 1881), s. 34, cl. (a)—Contract Act (IX of 1872), s. 125—Liability of defaulting thikdar to pay interest.* The non-application of cl. (a) of s. 34 of Act XII of 1881 to a thikdar does not exempt the thikdar from his liability under s. 73 of Act IX of 1872. Hence where a thikdar makes default in payment of his rent, he is liable to be charged with interest on the sums due up to the date of payment. **GHANSHAM SINGH v. DATTA SINGH**

I. L. R. 18 AIR 210

21. *Bengal Tenancy Act (VIII of 1883), ss. 67 and 115—Rule of interest specified in kabuliat—Sale for arrears of rent of right of defaulting tenant who has held over—Purchaser of tenure, rights of.* In execution of a decree for arrears of rent against a tenant whose term under a kabuliat had expired, but who had held over, the plaintiff put up the tenure for sale, and the defendant purchased it. The plaintiff afterwards sued the defendant for interest at the rate and according to the instalments specified in the kabuliat. *Held*, reversing the decision of the Subordinate Judge, that the defendant was liable only for interest at the rate specified in s. 67 of the Bengal Tenancy Act. **IBAN CHANDRA CHOWDHURY v. CHANDER KANT ROY**, 13 C. L. R. 55, distinguished. **ALIM v. SATIS CHANDRA CHATURDHURI**

I. L. R. 24 Calc. 37

22. *Bengal Tenancy Act (VIII of 1883), ss. 67, 115—Tenant holding over.* A tenant executed a kabuliat before the passing of the Bengal Tenancy Act for a period of nine years and agreed to pay interest at 75 per cent. per annum on arrears of rent due from him; the term of the lease expired after the Bengal Tenancy Act came into force, and after the expiration of the term the tenant continued to hold over without any fresh kabuliat or settlement. *Held*, that the landlord was not entitled to recover interest as stipulated in

BABI DEBTA CHOWDHURANI . 3 C. W. N. 525

23. *Bengal Tenancy Act (VIII of 1883), ss. 67, 115, sub-s. 3, cl. (A), and*

INTEREST—*cont.*1. MISCELLANEOUS CASES—*cont.*

112—Contract to pay interest at higher rate than allowed by s. 67 of the Act. A contract by a tenant holding under a permanent mukarnai lease to pay interest on the arrears of rent at a higher rate than 12 per cent. per annum is not enforceable in law. **BARANTA KUMAR ROY CHOWDHURY v. PROMODH NATH BHUTTACHARJEE**

I. L. R. 26 Calc. 130

**BARANTA KUMAR ROY CHOWDHURY v. BAKSU MOLLAH** . . . . . 3 C. W. N. 37

24. *Bengal Tenancy Act (VIII of 1883), ss. 67, 115—Suit for arrears of rent and interest at an exorbitant rate—Rule relating to hard and unconscionable bargain—Liability of a purchaser of a tenure at a sale for arrears of rent to pay interest.* A stipulation for the payment of interest at an unusual and an exorbitant rate cannot be supposed to be an incident of a tenancy which would attach to it even after a sale for arrears of rent. In execution of a decree for rent against a tenant who held under a kabuliat, dated March 1880, the plaintiff put up the tenure for sale and the defendant purchased it on the 20th November 1891. Subsequently, a suit for rent with interest at 225 per cent. per annum specified in the kabuliat executed by the former tenant was brought by the plaintiff against the defendant. The defence was that the plaintiff was not entitled to interest at such a high rate. *Held*, that the plaintiff was not entitled to recover interest at the rate claimed, it being an exorbitant one and not an ordinary incident of a tenancy. *Held*, also, that in such a case the rule relating to hard and unconscionable bargains should apply. **KARINA SANDHU CHAUDHARI v. KALYANMOHAN GHOSH**, I. L. R. 12 Calc. 235; I. L. R. 11 A. 115—and the plaintiff would be entitled to interest at 12 per cent. per annum, being the ordinary rate of interest for arrears of rent. *Per RAMSINGH, J.*—By the sale of an ordinary rayati tenancy for arrears of rent, a new contract is created between the auction-purchaser and the landlord at the date of the sale; therefore, in a case where the tenure was sold after the Bengal Tenancy Act came into operation and a suit was brought by the landlord for rent with interest against the auction-purchaser, the provisions of s. 67, read with s. 115, sub-s. (3), cl. (A), of the Bengal Tenancy Act, would apply. **KALI NATH SEN v. TARBHAKHA NATH ROY** . . . . . I. L. R. 26 Calc. 315  
3 C. W. N. 194

25. *Right to interest on rent from transferee—Oudh Rent Act (XXII of 1856), s. 111.* Under the Oudh Land Revenue Act, 1876, ss. 121, 123, the shares of defaulting under-proprietors were transferred to three of them who offered to pay. In a suit brought by the superior proprietor, the talukdar, in whose estate the mehal was comprised, against the whole body of under-proprietors for arrears of rent accrued while the term of the above transfer was running, interest was also claimed. *Held*, as to the interest, that under-pro-



INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

prietors were not tenants within the meaning of the Oudh Rent Act, 1886, s. 141, providing for payment of interest on rents due from tenants. **MUHAMMAD MEHEDI ALI KHAN v. MUHAMMAD YASIN KHAN**

I. L. R. 28 Calc. 523

26. — *Bengal Tenancy Act (VIII of 1855), s. 67, 178. 179—Contract as to interest.* S. 179 of the Bengal Tenancy Act controls s. 178; so a darpatni taluk created, after the Act came into force, by a permanent tenure-holder in a permanently-settled area comes within the scope of s. 179, and is not affected by the provisions of s. 178 (h) regarding interest. **ATULYA CHURN BOSE v. TULSI DAS SARKAR**

2 C. W. N. 543

27. — *Bengal Tenancy Act (VIII of 1855), s. 61, 67—Tender.* Where rent was tendered to plaintiff's am-kutkar, but plaintiff refused to accept the same: *Held*, that defendant was liable to pay interest on the arrears. In spite of such tender, as he omitted to follow the procedure prescribed by s. 61 of the Bengal Tenancy Act. **RANGSHI SINGHA v. BHAGABUTTY CHARAN RAY (1900)**

7 C. W. N. 720

28. — *Bengal Tenancy Act (VIII of 1855), s. 67, 178 (3) (h)—Landlord and tenant—Interest on arrears—Rate of interest specified in lease—Ordinary incidents of holding—Holding over after expiry of lease.* An agricultural tenant held under a lease for six years, the term of which expired in 1881, and had been holding ever since. The rate of interest specified in the lease was 75 per cent. per annum. The landlord sued for rent for the years 1893 to 1895 and part of 1896, with interest at the rate specified in the lease. *Held*, that under the provisions of the Bengal Tenancy Act, the plaintiff could not recover interest at a rate higher than 12 per cent. per annum. **ADMINISTRATOR-GENERAL OF BENGAL v. ASRAF ALI (1900)**

I. L. R. 28 Calc. 227

29. — *Landlord and tenant—Bengal Tenancy Act (VIII of 1855), s. 67, 178 (3) (h), 179—Rate of interest—Permanent tenure—Interpretation of statute.* *Held* by the majority of the Full Bench (**AMEER ALI, J.**, dissenting), that s. 67 of the Bengal Tenancy Act does not control the provisions of s. 179 of that Act, and that therefore a contract for the payment of interest on arrears of rent, entered into by a landlord and a permanent tenure-holder under him, is enforceable by law, although it may contravene the provisions of s. 67 of the Bengal Tenancy Act. **Basanta Kumar Roy Chowdhury v. Promatha Nath Bhattacharyya, I. L. R. 26 Calc. 150, overruled.** **MATANGINI DEBI v. MOHARRA BIRI (1901)**

I. L. R. 29 Calc. 674

B.C. 5 C. W. N. 438

30. — *Landlord and tenant—Purchaser, liable to pay interest stipulated in the kalyat of the original tenant—Incident of tenancy—Bengal Tenancy Act (VIII of 1855), s. 67.*

INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

A stipulation for payment of interest upon arrears of rent is an ordinary incident of tenancy in this country, unless there is something unusual in the stipulation; and as a rule it attaches to the tenancy, so that a purchaser of the tenancy will also be bound by the stipulation. When a tenure is advertised for sale in execution of a decree for arrears of rent it is not necessary for the decree-holder to specify the rate of interest in the sale proclamation. Where in a lease the stipulation was that the lessee should pay a sum of ten rupees in default of delivery to the landlord of a certain quantity of molasses: *Held*, that it was merely a personal covenant by the lessee. Also that, the rent mentioned in the sale proclamation not having included this sum, the auction-purchaser was not bound to pay it. **RAJ-NARAIN MITRA v. PANDA CHAND SINGH (1902)**

I. L. R. 30 Calc. 213

B.C. 7 C. W. N. 203

31. — *Bengal Tenancy Act (VIII of 1855), s. 67—Kalyat, rate of interest mentioned in—Purchaser at auction sale, liability of, to pay interest.* A purchased at an auction sale in execution of a rent decree a tenure covered by a *kalyat*, which stipulated for interest at a specified rate: *Held*, that the tenure being subtenant, A bought the tenure subject to the terms and conditions of the lease, and was liable for interest at the rate mentioned in the *kalyat*, and not at the rate mentioned in s. 67 of the Bengal Tenancy Act. **LAL GORAI DUTT CHOWDHURY v. MAXMATHI LAL DUTT CHOWDHURY (1905)**

I. L. R. 32 Calc. 258

32. — *Bengal Tenancy Act (VIII of 1855), s. 169—Rent—Interest—Pleading.* Where a landlord applied under s. 169, cl. (c) of the Bengal Tenancy Act for getting the rent and interest due to him between the date of the institution of the suit and the date of the sale from

decree-holder was entitled to s. 169 does not exclude interest. **BEJOY CHAND MOHANTAR v. S. C. MOOKERJEE (1906)**

11 C. W. N. 1106

33. — *Bengal Tenancy Act, s. 67.* Interest was claimed in the suit at a rate of more than 12 per cent. per annum on the basis of a *kalyat* executed before the passing of the Bengal Tenancy Act, the tenant being proved to have acquired the holding by private purchase. *Held*, that the stipulation as to interest must be given effect to. **TILKE CHUNDRA RAY v. JASODA KUMAR RAY (1906)**

11 C. W. N. 215

34. — *Arrears of rent—Tender—Effect of valid tender kept good, but improper demand in Court, omission to make* *rent* *to the plaintiff; that on his refusal to accept*

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

it, they sent him by money order, instalment by instalment, all the rents as they fell due, but the plaintiff systematically declined to accept the money; that, when the suit was about to be instituted, their pleader again tendered the rents, first to the plaintiff's pleader and then to his wife, and on their declining to accept the money, it was deposited in Court before the suit was instituted:—*Held*, by the Full Bench (RAMPRASAD, A. C. J. and MITTAL, J., dissenting), that there was a valid tender, which was kept good, and that it was not necessary for the defendants to follow up the tender by a deposit of the rent under a 16 of the Bengal Tenancy Act, in order to stop interest from running under s. 67 of the Act; that rent, which had been tendered with the intention of paying it to the person to whom it was due at the time when it was due, but which was without good cause not received by the person, to whom it was due and to whom it was tendered, could not be

debtor, he had under the general law by which a valid tender which is kept good, stops the running of interest from the date when the tender is made *Jagat Tarini Devi v. Naba Gopal Chaki*, 1 L. R. 31 Cal. 303, approved *KRISHA SIVENDR MUKERJEE v. ANKADA SENCARI DEBI* (1907)

I. L. R. 35 Cal. 34  
11 C. W. N. 983

35. — *Arrears of Revenue—Assignment of Government revenue—Interest on arrears—Act XII of 1881 (N.-W. P. Rent Act), s. 93 (1), Act XVIII of 1873 (N.-W. P. Land-revenue Act), s. 145* *Held* by BAKSHI and AITMAN, JJ., that an assignment of Government revenue cannot sue for interest on arrears. *Bithal Das v. Harphul*, 1 L. R. 6 All. 503, referred to *CHANDI PRASAD v. MAHENDRA SINGH* (1900)

I. L. R. 23 All. 5

36. — *Award—Power of Court to give interest.* A Court has no discretion to deal judicially with the merits of a case determined by arbitrators, but is bound to pass judgment according to their award. Accordingly, it cannot decree interest which the arbitrators have not awarded. *MOHUN LAL SHAHA v. JOY NABAIN SHAHA CHOWDHRY*

23 W. R. 105

37. — *Bill of exchange—Deduction of interest as discount from bill of exchange—Interest according to rules published by loan company* It is not illegal to deduct interest in the shape of discount from the amount advanced on a

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

1864, has published and caused to be registered rules regarding the payment of interest on loans, does not bind a borrower to pay the interest as required by those rules unless he has contracted to do so. *TIPPERAH LOAN OFFICE v. GOUN CHUNDER BARMAN*

2 C. L. R. 349

38. — *Agreement to pay interest—Evidence, admissibility of—Promissory note—Civil Procedure Code (Act XIV of 1882), Ch. XXXIX, s. 532.* In a suit instituted under Ch. XXXIX of the Civil Procedure Code (Act XIV of 1882), the plaintiff is not entitled to recover any interest unless such interest is specified in the promissory note itself, or to give evidence regarding any agreement to pay interest. *Rempfy v. Shillingford*, 1 L. R. 1 Cal. 130, referred to, *BRUPATI RAM v. SOURENDRA MOHUN TAGORE* (1903)

I. L. R. 30 Cal. 446  
a.c. 7 C. W. N. 412

39. — *Bond—Construction of bond—Calculation of interest.* On the adjustment of an account of the principal and interest due on a bond, a karnamah or deed of agreement was entered into by the parties, in which, besides the original sum, a further sum for interest accrued thereon was declared due and agreed to be paid off by instalments before a given time. Payments were made at irregular periods which payments the bondholder claimed to appropriate to keeping down the interest upon the whole sum composed of both the original principal sum as well as the sum mentioned in the karnamah as accrued thereon for interest. *Held*, upon the construction of the instrument, that the principal sum alone carried interest, and that all payments made in pursuance of the stipulations were to be applied in the first instance to satisfy such interest, the excess of the payments only being appropriated towards the liquidation of the principal sum due. *BANUNDOS MOOKERJEE v. ONEISH CHUNDER RAE*

6 Moo. I. A. 289

40. — *Payments on bond—Mode of calculating interest* Where payment was made upon a bond, the amount paid being less than the interest due:—*Held*, that the payment ought to go to reduce the amount of interest due, and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. *LUCHMESWAR SINGH v. LUTF ALI KHAN*

8 B. L. R. P. C. 110

41. — *Compound interest—Unconscionable bargain* One Sami-ud-din Ahmal Khan, on the 10th of November, 1892, borrowed from Kirpa Ram and Ghani Ram

drunkard On the 13th of June, 1900, the mortgagees sued on the bond to recover Rs. 380-9-0

INTEREST—*contd.*]I. MISCELLANEOUS CASES—*contd.*

from the surplus proceeds of the sale of the mortgaged share which had taken place in execution of a decree on a prior mortgage. The Court of first instance gave the plaintiff a decree, but allowed

*App 391; Kamini Sundari Choudhary v. Anand Prasanoo Ghose, I. L. R. 12 Calc. 225; Lal v. Ram Prasad, I. L. R. 9 All. 71; and Madho Singh v. Kahi Ram, I. L. R. 9 All. 228, referred to. KIRPA RAM v. SAMUD-DIN AHMAD KHAN (1903) I. L. R. 25 All. 284*

42. ————— Compound interest—Interest per mensem. Interest at the rate of one per cent. per annum. Interest at the rate of one per cent. per annum. Interest at the rate of one per cent. per annum.

calculated per mensem, but payable per annum. RAJENDER NARAIN RAY v. BIJAI GOVIND SINGH. 2 Moo. I. A. 253

43. ————— Decree of Privy Council, construction of—Order *pro tunc*. On a question of construction of an order of Her Majesty in Council, the words "the plaintiff is to

plaintiff the money claimed by him on the sum which he alleged to be due for principal and arrears of interest (at 12 per cent.) equal to the principal

from the date of the decree of the Court of first instance. GOPER KISSAN GOSSAWE v. BRINDABAN CHANDER SIRCAR. 19 W. R. P. C. 41

44. ————— Illegal contract—Sonthal Pergunnahs Settlement Regulation (III of 1872), s. 6—Sonthal Pergunnahs Justice Regulation (V of 1893), s. 24—"Unlawful" consideration, meaning of. There is no law or regulation laying down that an agreement between any two per-

INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

III of 1872 and s. 24 of Regulation V of 1893: *Held*, in respect of an agreement to pay interest on an amount composed partly of the principal and interest due on a former debt, that such agreement is not void under s. 24 of the Contract Act, and that

I. L. R. 26 Calc. 238

45. ————— Interest Act (XXI of 1855), s. 2—Interest—Compound

46. ————— Compound interest—Unconscionable bargain—Unfair dealing—Delay in suit—Urgent necessity—Pardanashin lady. A bargain as to compound interest in a

*Madho Singh v. Kashi Ram, I. L. R. 8 All. 228, dissented from. When the interest charged in a mortgage bond is very high and the debtor is of full capacity, the general rule is that the Court will not grant relief without proof of unfair dealing or undue pressure or influence on the part of the creditor or that the creditor has taken unfair*

nature of the transaction. debtor in fiduciary relation to the creditor and of an expectant heir are exceptions to the general rule. *Zebunnissa v. Brojendra Choudhary, 21 W. R. 352; Hockintash v. Wargrove, I. L. R. 3 Calc. 1901*

*Kanai Lal Jowhre v. Kamini Devi, s. 24, note (O. C.) 31 note; Sudhist Lal v. Sheobarat Koer, I. L. R. 7 Calc. 245; L. R. 8 I. A. 39; Nistaran, s. 24, note*

took unfair advantage of his necessity.

INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

CHANDRA KRISHNAN v. GOBAL LAL MURTHY  
(1934) . . . I. L. R. 31 Cal. 233

47. *Interest on instalment in default—Mortgage—Transfer of Property Act (II of 1925), ss. 55, 61 and 56.* The Courts do not lean towards compound interest, they do not award it in the absence of stipulation, but where there is a clear agreement for its payment, it is in the absence of disentitling circumstances allowed. *HARI C. HANU* (1934)  
. . . I. L. R. 28 Bom. 371

48. *Costs—Costs not mentioned in decree.* *Hell*, that the principle of the Full Bench ruling, *Mosadun Lal v. Bhikhar Singh*, B. L. R. Sup. Vol. 602; 6 W. R. No. 109, is as much applicable to interest upon costs as it is to interest upon mesne profits not awarded by the decree, and must be applied to all decrees passed either before or after the date of that judgment. *LEELANAND SINGH v. RAM NARAIN SINGH*, 16 W. R. 415

49. *Interest on costs where decree does not specially give it.* Costs in the suit carry interest unless the contrary is distinctly stated in the decree. *BHARAT CHANDER SINGH v. GOPIYESH PARNASH ROY* . . . 18 W. R. 34

*HARADHUN SANDYAL v. BASH MOHAR DASSIA*  
2 W. R. Misa. 21

50. *Interest not mentioned in decree—Execution of decree—Procedure.* The Court in executing a decree has no power to allow interest on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. *ULFETENISSA v. MOHIN LAL SEKEL* . . . 6 B. L. R. Ap. 33

*BROJO SOONDEREE DEBIA v. ANAND MOYEE DEBIA* . . . 18 W. R. 362

51. *Interest not mentioned in decree.* Where the decree gives an interest upon the principal sum recovered only, but not upon costs, the plaintiff is not entitled to such interest. *AMEROONISSA KHATOON v. MOHAMED MOZUFFUR HOSSEIN CROWDHRY* . . . 18 W. R. 193

52. *Interest not mentioned in decree.* Where a decree gives interest upon the principal sum recovered only, and no

53. *Interest not mentioned in decree—Decree of Privy Council—Mesne profits.* In a suit to recover certain property, the plaintiff obtained a decree for a portion thereof, but on appeal the High Court reversed the decree and declared him entitled to the whole. On appeal to the Privy Council, the decree was that the decision of the High Court be "reversed with costs," and the

INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

decree of the first Court "affirmed with costs." On this the first Court ordered the restitution of the property with mesne profits, and also that the defendant should obtain interest on the costs both of the first Court and of the Privy Council; but he disallowed the costs of the High Court as not being expressly awarded by the Privy Council decree. *Hell*, that the defendant was entitled to mesne profits. Interest on the costs of the Privy Council should not be given, the decree being silent on the point; but the costs of the first Court would carry interest. The words "with costs" in the portion of the decree of the Privy Council affirming the decree of the first Court mean the costs of the proceedings in the High Court. *GERALD PATE STEPHENS*  
13 B. L. R. Ap. 44; 21 W. R. 195

*BHOJA DEGBHUB SINGH v. BHOJA RAJ SINGH*  
3 N. W. 319

54. *Execution of decree of Privy Council—Costs of translation and printing.* Where, on appeal to the Privy Council, it was ordered that the decree of the High Court be reversed with £378 12s. 2d costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree, it was held that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon those costs, but not to interest upon the said £378 12s. 2d. *MADAN THAKUR v. LOPEZ* . . . 9 B. L. R. Ap. 22

*s c MADDEN THAKUR v. MORRISON*  
18 W. R. 353

*UMATUL FATIMA v. AZHAR ALI*  
9 B. L. R. Ap. 23 note

*s c OOMATUL FATIMA v. AZHAR ALI*  
16 W. R. 356

*ASGAR ALI v. NOBENDER CHUNDER GHOSE*  
23 W. R. 463

*SARODA PRASAD MULLICK v. LUCHMIPAT SINGH DUGAR* (where, however, MARKAY, J., dissented from the practice).  
9 B. L. R. Ap. 23 note; 18 W. R. 89

55. *Execution of decree of Privy Council—Costs of translation and printing.* Where an order of Council in England awarded costs incurred in this country, including charges for translation and printing: *Hell*, that the costs should carry interest at 6 per cent. *MIR MADHUK DOSS v. BISSUNBHUR DOSS* 21 W. R. 411

56. *Privy Council order awarding costs—Execution of decree—Act XXIII of 1861, ss. 10 and 11—Interest not given by decree.* Where an order passed by Her Majesty in Council on report of the Judicial Committee awards costs, but is silent as to interest on the cost so awarded, it is not competent to the Court which has to execute the order to direct payment of the costs with interest. The principle of the decisions

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

in cases arising under ss. 10 and 11 of Act XXIII of 1861, which have established a similar rule of practice in executing decrees passed by the Courts in India approved. Interest not provided for in the order of the Privy Council may, however, be allowed in execution where the parties have agreed to submit the matter to the discretion of the Court executing the order. **FORESTER v. SECRETARY OF STATE** I. L. R. 3 Calc. 161 : L. R. 4 I.A. 137

**LEKRAJ ROY v. MANTAB CHAND** [21 W. R. 147

57. ————— *Interest on cost*  
not given in decree of Privy Council. Where interest on costs is not allowed in the order of Her Majesty in Council, such interest cannot be given by any Court in this country. **FORESTER v. SECRETARY OF STATE for India**, I. L. R. 3 Calc. 161 : L. R. 4 I. A. 137, referred to. **DAKHINA MOHAN ROY CHOWDHURY v. SARODA MOHAN ROY CHOWDHURY** I. L. R. 23 Calc. 357

58. ————— *Calculation of interest—Set-off.* Where a plaintiff obtains a decree with costs and interest upon the costs, the defendant being declared entitled to the set-off on account of costs, the interest should be calculated on the amount due to plaintiff after deduction of the set-off. **AMANTU v. BINDHOO** 13 W. R. 136

59. ————— *Interest on costs refunded.* Interest is awardable on costs refunded on the reversal of a decree on which costs were recovered. **KEDAR NATH PAKRASEE v. DOVA MOYEE DEBIA** 20 W. R. 49

60. ————— *Damages.* The Court may, in a proper case, award interest by way of damages. **LALA CHHAYMAL DAS v. BIRJ BHULAN LAUL**, L. R. 22 I. A. 199, referred to. **JOGESHOR BHAGAT v. GHANASHAM DASS** (1901) 5 C. W. N. 356

61. ————— *Debt or law-suit purchased—Outstanding claim.* Where a debt or law-suit has

much below the amount of the principal. **UNAKODA SOONDUREE DOSSEE v. OODHUB NATH ROY** 11 W. R. 125

62. ————— *Debtor and creditor—Power of Court to give interest or any sum overdue.* Where a sum of money becomes due and payable at a specified time, the Court may award interest in the shape of damages for such period thereafter as the money remains unpaid. **TARA CHAND BISWAS v. NAFAR ALI BISWAS** 1 C. L. R. 236

63. ————— *Suit on bond—*

from the date of such offer. **GUOT JANAKAYTA GARY v. GARUDA REDDI** **GARUDA REDDI v. GUOT JANAKAYTA GARY** 1 Mad. 124

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

64. ————— *Right to interest*

**KUNHTA SINGH v. TOODDUX SINGH** 7 W. R. 20

65. ————— *Delay in suing.* A creditor is not bound to bring his action to suit the convenience of the debtor, and may, where two parties are jointly and severally liable on a bond as principal and surety, defer bringing his suit to the last moment the law allows, and he is not entitled to a less sum for interest if he does so. **MAHOMED ROHEEMMOODDEFN v. INDOOR CHUNDER JOWHUREE** 12 W. R. 192

66. ————— *Decree on mortgage—Leave to pay at once to avoid high rate of interest.* In giving the plaintiff a decree on a mortgage which provided interest at 2½ per cent., it was directed that the defendants, in order to avoid the payment of further interest at that high rate, might be at liberty to pay the amount of the decree at

67. ————— *Principle of deducting payments on account of decree.* The rule as to making up an account of interest in mortgage cases,—viz., that when a payment is made, it is to be

68. ————— *Interest on sum wrongly credited.* The obligee of a bond for Rs7,000 gave the obligor an assignment of Rs5,319 on account of rent due to the latter by the former,

appeal claimed interest on the Rs350 for six years

paid as Government revenue was intended to be stipulated for nor contemplated by the parties, and because it was open to the respondent to take measures to realize the sum so paid instead of letting it lie over and double itself by interest. **SURESHCHAND DEBIA v. LADLY** 17 W. R. 71

69. ————— *Mortgagee in possession—Suit for redemption.* The principle of

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

construction, that when a creditor sues for his principal and interest (the latter being equal or more than equal at the time of the commencement of the

which a mortgagee in possession is not a party suing for the money, but the party retaining by every means in his power a claim to redemption and the final settlement of the account. *AMINUT ALI KHAN v. JOWAHIR SINGH* . . . 14 W. R. P. C. 17

S.C. AMINUT ALI KHAN v. JOWAHIR SINGH  
13 Moo. I. A. 404

70. ———— *Delay of decree.*  
holder to take out execution. The fact of a decree-holder having delayed for a considerable time to take out execution of his decree is no ground for the Court refusing to allow him interest at the rate directed by such decree, to be paid upon the principal sum recovered, from the date of decree until realization. *BABY MAHAB TRISTOL v. RAY GOPAL SINGH* . . . 3 C. L. R. 523

71. ———— *Selling up ad. rerse title.* In a suit to recover title-deeds and other property, the defendant claimed a certain sum as being due to him, and in the plaint the plaintiff offered to pay the defendant all that was due up to that date, provided the deeds and property were given up. The defendant, however, claimed a right to hold them under an adverse title. *Held*, that the defendant was only entitled to interest up to the date of the plaint and not up to the date when the money due was actually paid. *JUGERNATH DASS v. BRINATH DASS*

I. L. R. 4 Calc. 322; 3 C. L. R. 375

72. ———— *Goods sold.—Suit for price of goods.—Interest before suit.* Where there was no time fixed or agreed for payment of the price of goods bought nor was any demand of price made

73. ———— *Interest on price and charges not legally demandable in absence of special contract.* The defendant made an offer in writing to the plaintiffs for the purchase of 200 bales of pepperill drill at Rs. 2d. A few days later the plaintiffs' salesman tendered for signature to the defendant an indent containing certain terms not contained in the original offer, and in particular containing the words, "Free Bombay Harbour and in-

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

It be demanded on the incidental charges in the invoice. *MAHOMED HAJI JIVA v. SPINVER*

I. L. R. 24 Bom. 510

74. ———— *Government promissory notes.—Interest on interest of Government paper withheld.* Interest may be claimed on the interest of Government promissory notes withheld by another. *TARUCKNATH MOOKERJEE v. GOUREECHERY MOOKERJEE* . . . 3 W. R. 147

75. ———— *Insolvency proceedings.—Power of High Court.—Proceedings under Insolvency Act, 11 & 12 Vict., c. 21.* Proceedings were taken under the Insolvent Act, 11 & 12 Vict., c. 21, and the proceeds of assets were claimed in

Assignee. *MILLER v. BARLOW*

14 Moo. I. A. 209

76. ———— *Civil Procedure Code (Act XIV of 1882), ss. 351 and 352. Rule of Damdupat, when applicable.—Damdupat, if applicable in insolvency proceedings.—Practice.* The rule of damdupat exists only so long as the contractual relation of debtor and creditor exists, but not when the contractual relation has come to an end by reason of a decree. Proof of a claim in insolvency amounts to a decree and the rule of damdupat would not apply to a claim so proved. Moreover the uniform practice of this Court has been not to apply the rule of damdupat in insolvency proceedings. *HARI LALL MALLICK, In re* (1906)

I. L. R. 33 Calc. 1269  
a.c. 10 C. W. N. 884

77. ———— *Meane profits.—Decree for meane profits.—Judgment-debt.* According to the practice of the native Courts in Bombay, a sum found due for meane profits was a judgment-debt and earned interest by its own force. On petition in the native Court after decree upon appeal in

3 Moo. I. A. 220

78. ———— *Suit for meane profits.* In a suit for meane profits (not being a suit for land and its meane profits) interest on meane profits cannot be recovered. *CHAKU MODAN TOHANA v. DULABH DWARKA* . . . 9 Bom. 7

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

79. ————— *Interest previous to suit.* Although interest as such cannot strictly be allowed upon mesne profits previously to the institution of the suit, the Court, in estimating what loss has been sustained by the plaintiff in being kept out of possession, may take it into account. *Hurro persaud Roy v. Shamapersaud Roy*, 1 L. R. 3 Calc. 654, followed. *MUDUN MOHUN SINGH v. RAM DAS CHUCKERBUTTY* 8 C. L. R. 357

awarded. *PROTAP CHUNDER BOROOAH v. SURNOMOYEZ* 14 W. R. 151

80. ————— *Discretion of Court.* There being no rule of law obliging the Court to award interest on mesne profits, it is a matter of discretion. *ABDUL GHAFUR v. RAJA RAM* I. L. R. 22 All. 262

81. ————— *Calculation of interest.* Interest on mesne profits may be allowed year by year during the period of dispossession. *MUNEERAM ACHARJEE v. TURUNGO* 7 W. R. 173

82. ————— *Interest withheld until date of decree.* Interest on a sum awarded for mesne profits may properly be withheld until the date of the decree, since the amount is not ascertained before that time. *BENGAL COAL COMPANY v. DAREENSAH DABEA*, Marsh. 105; 1 Hay, 181  
*MOBARUK ALI v. BOISTUB CHURN CHOWDERY* 11 W. R. 25

83. ————— *Date of assessment of mesne profits.* Although the common practice is to make interest payable from the date on which the mesne profits are assessed, interest was given in a suit for mesne profits which ought to have been paid by the defendants, but which plaintiffs had been made to pay, from the date when they ought to have been paid by the defendants. *SOKHEE MONEE DEBIA v. BRIJRAJ MOOKERJEE* 17 W. R. 228

84. ————— *Right to interest.* The plaintiffs were held entitled to interest on mesne profits. *LULEET SINGH v. ALI REZA* 8 W. R. 322

85. ————— *Act XXXII of 1839—Interest from institution of suit.* By the law and practice in India, independently of the provisions of Act XXXII of 1839, a decree might award interest as of course on mesne profits from the date of the institution of the suit in which they were claimed. Such interest is not forbidden by the terms of the Act referred to. *HURROPERSAUD ROY v. SHAMAPERSAUD ROY* I. L. R. 3 Calc. 654; 1 C. L. R. 499  
L. R. 5 I. A. 31

86. ————— *Interest from commencement of suit.* Interest on mesne profits

INTEREST—*contd.*1. MISCELLANEOUS CASES—*contd.*

may be allowed from the commencement of the suit at the annual rate allowed by the Court. *Hurro persaud Roy v. Shamapersaud Roy*, 1 L. R. 3 Calc. 654, followed. *MUDUN MOHUN SINGH v. RAM DAS CHUCKERBUTTY* 8 C. L. R. 357

87. ————— *Jurisdiction of Court of Revenue—Act XVIII of 1873, s. 93, cl. (h)*

I. L. R. 1 All. 261

88. ————— *Interest up to decree—Rate of interest.* Held, on the sum ascertained as the assets, less the collection charges, derived each year from the estate, that interest at six per cent. per annum should be allowed, to be calculated on each year's mesne profits up to the date of the decree of the lower Court. *HURRODROA CHOWDHRAIN v. SHARAT SOONDERY DABIA* I. L. R. 4 Calc. 674; 3 C. L. R. 517

89. ————— *Mesne profits, interest on—Civil Procedure Code (Act XIV of 1882), s. 171*

year, on the amount found to be due. *HURRO PERSAUD ROY v. SHAMAPERSAUD ROY*, I. L. R. 3 Calc. 654, followed. *MAN MUNDHI* 1 Calc. 506  
W. N. 437

90. ————— *Execution of decree—Interest on mesne profits—Date from which such interest accrues.* Held, that the term "mesne profits" includes interest on such mesne profits, and that the interest accrues from the date upon which each instalment of the mesne profits may become due. *Grish Chander Lahiri v. Shashi Shikharwar Roy*, I. L. R. 27 Calc. 951, followed. *NARFAT SINGH v. HAR GYAN* (1903)  
I. L. R. 25 All. 275

91. ————— *Money lent—Interest on money lent according to contract.* Interest on money lent was contracted to be payable, "even if a suit should be instituted," at the rate fixed for the period for which the money was lent. Held, that interest must be decreed at this rate, according to the contract, down to the institution of the suit. *BALGOBIND DAS v. NARAIN LAL* I. L. R. 15 All. 339  
L. R. 20 I. A. 116

92. ————— *Interest Act (XXVIII of 1855), s. 2—Exorbitant rate of interest.* B borrowed money from A on a promissory note at an exorbitant rate of interest. Upon a suit brought on the said note at the rate agreed upon the defence was that, the bargain being an unconscionable one, interest was not recoverable at that

INTEREST—*contl.*I. MISCELLANEOUS CASES—*contd.*

high rate. *Held*, that, there being no fiduciary relation between the parties, and there being no finding that the terms of the contract were such that the reasonable inference must be that the defendant either did not understand what he was about or was the victim of some imposition, the plaintiff was entitled to a decree at the rate agreed upon. *SATISH CHANDER GILL v. HEM CHANDER MOOKHOPADHYA* (1902). I. L. R. 29 Cal. 823

93. — *Barred item*—Interest not allowed on barred item of account. In an account, interest cannot be allowed on items that are barred by limitation. Interest is but an accessory, and when the principal is barred the accessory falls along with it. *DHONDIRAM BIK LAXMON v. TARA SAVADAN* (1902). I. L. R. 27 Bom. 330

94. — *Mortgage*—Agreement to take profits of property under deed of usufructuary mortgage in lieu of interest—Interest until possession. Where a deed of usufructuary mortgage provided that the mortgagee should take the profits of the property mortgaged in lieu of interest, and was silent as to any interest should the mortgagee not obtain possession, it was held that the mortgagee, who had remained in possession of the property for the stipulated term, was not entitled to retain possession in order to recoup himself for the loss of interest during the time in which he did not obtain possession. *DULLI v. BANADER*, 7 N. W. 57

95. — *Mortgage-decree*, construction of—Date of payment, meaning of. There is nothing in the law to prevent interest at the rate stipulated on a bond being decreed up to the date of actual payment. Where a mortgage-decree provided for interest to be recovered from the date of the decree till the date of payment. *Held*, that the words "date of payment" meant the date of actual payment, and not the last day fixed for payment in the decree. *MAVDO LAL v. DURGA PRASAD SINGH* (1901). 5 C. W. N. 653

96. — *Interest up to date of payment*—Interest at stipulated rate—Redemption—Subsequent interest—Transfer of Property Act (IV of 1882), ss. 88, 89—Civil Procedure Code (Act XIV of 1882), s. 209, and Sch. IV, Form 109—Belchambers' Rules and Orders, 476, 477 and 605—Force of the rules—*Ultra vires*—Practice. Where a mortgage-deed provides for interest up to the date of payment, interest will be allowed at the stipulated rate for the six months allowed for redemption, and at the Court rate from that date up to the date of payment. The decree for interest after the time allowed for redemption in accordance with Rule 605 (Belchambers' Rules and Orders) is a decree for payment of money. Rule 605 (Belchambers' Rules and Orders) is not *ultra vires*. *Bakar Sajad v. Udit Narain Singh*, I. L. R. 21 All. 361; *Amola Ram v. Lachmi Narain*, I. L. R. 19 All. 174; *Rameswar Koer v. Mahomed Mehdi Hossein Khan*, I. L. R. 26 Cal. 39; *Maharaja of*

INTEREST—*contl.*I. MISCELLANEOUS CASES—*contd.*

*Bharatpur v. Rani Kanno Dei*, 5 C. W. N. 137; *Manoo Lal v. Durga Prasad Singh*, 5 C. W. N. 653; *Surpi Narnia Singh v. Jogendra Narain Roy Chowdhury*, I. L. R. 20 Cal. 360, referred to. *Achalabhai Bosc v. Surendra Nath Dey*, 1 C. W. N. 550, followed. *Jogendra Nath Mckerjee v. Methana Abraham* (1902). 6 C. W. N. 769

97. — *Mortgage-decree*—Construction of decree—Date of realization. A mortgage-decree which states "interest from the date of the decree till the date of realization" is to be construed as meaning interest from the date of the decree till the date of realization.

referred to. *MEGRAS MARWARI v. NEESING MOHAN THAKUR* (1906). I. L. R. 33 Cal. 846

98. — *Transfer of Property Act* (IV of 1882), ss. 85, 88—Decree for sale on a mortgage—Rate of interest after date fixed for payment. Where a decree for sale on a mortgage gives interest after the date fixed by the decree for payments of the mortgage-debt, it is not necessary that such interest should be at the contractual rate. *Rameswar Koer v. Mahomed Mehdi Hossein Khan*, I. L. R. 26 Cal. 39, and *Sundar Koer v. Rai Sham Krishna*, I. L. R. 34 Cal. 359, referred to. *LACHMI NARAIN v. UMAN DAT* (1907) I. L. R. 29 All. 322

99. — *Payment into Court*—Payment into Court—*Pay*

ment-creditor can have no right to claim interest upon the whole amount of his decree. The Court executing the decree has a discretion in allowing interest which will not be interfered with in special appeal. *FAREYNATH MUKHOPADHYA v. KISTO MOHUN SAHA*

3 B. L. R. Ap. 105; 12 W. R. 50

100. — *Interest on decretal money in Court*. Whether interest on decretal money is payable up to the date that it was deposited in Court by the judgment-debtor or up to the date on which the decree-holder applied to get it from the Court will depend on whether the decree-holder had any notice of the money being so deposited to his credit. *KALEE DISS GHOSE v. PURAN KOUMAREE BIRRE*. 16 W. R. 304

101. — *Refusal to deposit money in Court*. The defendant was invited, by an injunction issued upon him in another suit, to deposit in Court the money admittedly due under the bonds now sued upon, but having refused to do so, was held liable to pay interest from the date of that injunction. *RAM DAS v. GOSSAMEE v. PROSUNNO MOYEE DOSSEE*. 16 W. R. 297

102. — *Payment in satisfaction of decree*—Payment subject to objection. A judgment-debtor who wants to be released from the claim of his creditor must pay the money



INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

covered by the decree into Court to the credit of the decree-holder unconditionally. If he chooses to make a protest, the creditor is not bound to take the money out, subject to any liability which may arise as the consequence of such protest. *A* got a decree against *B* for a sum of money, the balance of an account. *B* deposited the amount of the decree in Court objecting that Rs. 9,000, part of that sum, should not be paid out to *A* on the ground that he had appealed as to three items of the account which covered that amount. The lower Court paid

owing to *B*'s act that *A* had been deprived of the money during the period for which he claimed interest. *RAJENDRA KRISHORE SING v. PERSHAD SEN*  
2 C. L. R. 183

103. — Principal and agent—Agent retaining money until required to pay—Fraud. An

104. — Profits of business—Rate of interest on decree for profits of business. In the absence of accounts or other evidence to show the profits of business in a suit where a share of money

105. — Profits of watan—Decree for arrears of profits of share in a watan. Where the plaintiff sued to establish a right to share in a watan and to recover a portion of the profits thereof for seven years, and obtained a decree for the arrears, it was held that there was no law by which interest on such arrears could be awarded also. *GUNDO ANANDRAI v. KRISHNARAY GOVIND*

4 Bom. A. C. 55

106. — Refund of excess payments—Interest on refund of excess amount under decree. While a special appeal was pending, the decree-holder took out execution and realized a sum in satisfaction of his whole decree. The decree having been modified and the amount decreed reduced, the judgment-debtor applied for a refund of the excess payment, and this was awarded to him with interest. *Held*, that interest was rightly awarded. *WOONA SONDUREE DEBNONIA v. GOOROO PERSHAD ROY*

15 W. R. 74

107. — Suit for refund of excess rents. Where rent at an enhanced rate was decreed by the High Court in 1863, but the decree, as far as the enhanced rate was concerned, was re-

INTEREST—*contd.*I. MISCELLANEOUS CASES—*contd.*

versed by the Privy Council in 1873, and between the two dates other decrees at the enhanced rate had been obtained based on the original one of 1863:—*Held*, in a suit for a refund of the excess rents, that, under the circumstances, no interest would be given. *KALICHURN DUTT v. JOSEPH CHUNDER DUTT*

2 C. L. R. 354

108. — Enforcing payment of rent after agreement to allow deduction. Where a lessor who has agreed to deduct rents in case of his special appeal being unsuccessful compels payments of such rents, notwithstanding a decree of

109. — Refund of amount wrongfully levied in execution of decree—Civil Procedure Code, s. 244, 533. The Court has power to award to a successful appellant interest upon an amount found on appeal to have been improperly levied in execution of a decree. *AYYAVAYAR v. SHASTRAN AYYAR*

I. L. R. 9 Mad. 506

PHUL CHAND v. SHANKAR SARTI

I. L. R. 20 All. 430

110. — Costs—Reversal of decree—Refund of costs recovered by execution—Interest. A successful appellant in an appeal to the High Court applied, in execution of his decree, for a refund of a sum of money which he had paid

*J. L. R. 161, reversed in 1880*  
*BENGOAL* I. L. R. 8 All. 262

111. — Unliquidated damages—Right to interest. Interest should not be awarded on unliquidated damages. *FRANZI HARNASHI v. COMMISSIONER OF CUSTOMS* 7 Bom. A. C. 89  
And see *CHAKU MODAN ISANA v. DULLABH DWARKA* 9 Bom. 7

## 2. CASES UNDER ACT XXXII OF 1879.

1. — Act XXXII of 1879—Bond—Interest not specified—Stat. 3 & 4 Will. IV, c. 42, s. 23. By Act XXXII of 1879, extending the provisions of the Stat. 3 and 4 Will. IV, "That upon all the sums due to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such debts or sums be pay-

INTEREST—*contd.*2. CASES UNDER ACT XXXII OF 1839—*contd.*

able by virtue of some written instrument at a certain time." An instrument in the nature of, though not strictly, a bond was executed in 1833, which provided for the liquidation of the amount therein specified by instalments, but no provision was made for the allowance of interest. The condition for payment not having been performed:—*Held*, in an action brought in 1849 to recover principal and interest upon the bond, that the Act XXXII of 1839 was retrospective in its operation and authorized the allowance of interest, although it was not provided for in the bond. **BOMMARATZE BHADUR v. RANGASAMY MUDALI**

6 Moo. I. A. 232

2. — *Notice—Previous suit between the parties* Where, in order to entitle the plaintiff to charge interest, a notice by law is required to be served upon the defendant, the existence of a previous litigation upon the same subject-matter is a sufficient notice. **MOTOKHERL MOOLK MESSEERD DOWLA SIED SYDOR ALLY KHAN v. MACKINTOSH**

2 May 123

3. — *Effect of Act—Payments of revenue by one co-sharer.* Act XXXII of 1839 provided that the Court may allow interest on sums of money payable by virtue of a written instrument, at a certain time, or, "if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed." *Held*, that the statute had not the effect of restraining the power of the Court to allow interest in other cases, in which interest was allowed before the Act. Therefore interest may be allowed on payments of revenue made by one co-sharer on behalf of others, notwithstanding no demand of interest may have been made before suit. **GOLAM AHMED SHAH v. BEHARY I AL**

Marsh, 239: 1 May, 500

4. — *Interest prior to suit.* Interest cannot legally be awarded prior to suit in cases governed by the provisions of Act XXXII of 1839. **ABDOOL KREEN v. MEA JAN**

6 W. R. 298

5. — *Suit for contribution.* Interest may be allowed in a suit for contribution, although no demand for interest may have been made before suit. **NULLIT BISWAS v. PROSENNO MOYEE DOSSEE**

17 W. R. 179

6. — *Interest prior to suit—Demand.* In the absence of a demand in writing, interest up to the date of suit cannot be awarded on sums not payable under a written instrument of which the payment has been illegally delayed. **KISARA RUKUNNA RAU v. CHIPATI VIYAKNA DIESHATULU**

1 Mad. 369

7. — *Promissory note payable on demand.* In an action for the balance due on a promissory note payable on demand, the Court refused to allow interest, there being no

INTEREST—*contd.*2. CASES UNDER ACT XXXII OF 1839—*contd.*

proof of a demand in writing. **BANK OF HINDUSTAN, CHINA AND JAPAN v. WILSON**

1 B. L. R. O. C. 41

8. — *Interest from demand of payment.* In a suit to recover (with interest) money which had been advanced as part of the consideration for the purchase of land under a contract which defendant broke, the Court, in decreeing the claim, awarded interest from the time when the demand of payment was made, *i. e.*, from the date the suit was instituted. **PATSABEE DOBAIN v. HURDEO NARAIN SAROO**

24 W. R. 457

9. — *Damages—Wrongful refusal to pay.* Interest is given under Act XXXII of 1839 by way of damages on the ground that a debtor has wrongfully refused to pay, but where there is no hand to receive payment and to give a complete discharge, there can be no wrongful refusal. **RAJAKRISHN BOSE v. UNIVERSAL LIFE ASSURANCE COMPANY**

I. L. R. 7 Cal. 594; 10 C. L. R. 561

10. — *Wagering contract in opium—Discretion of Court.* Act XXXII of 1839 (authorizing the allowance of interest in certain cases) does not affect debts contingent in

in allowing or refusing to allow interest in cases within that Act is liable to review or appeal. **JEN-CONOMON GHOSH v. MANICK CHAND**

4 W. R. P. C. 9: 7 Moo. I. A. 283

11. — *Decree of Privy Council, interest on—Interest on costs.* Where a decree of the Privy Council gives interest, but does not clearly specify the rate, the Court should ascertain, if possible, from the other parts of the decree itself or from other documents which may be read in conjunction with the decree, what rate was intended to be given. **AMEERODONNIS KHATOON v. MAHOMED MOZAFFER HOSEIN**

19 W. R. 103

12. — *Notice of intention to claim interest—Demand of interest already due.* A letter demanding interest on an outstanding debt, from which the intention of the creditor to claim interest up to date of payment is made clear, is a sufficient notice, within the meaning of the Interest Act, 1839, to entitle the creditor to claim interest prospectively from the date of the letter, though the demand be made retrospectively in respect of interest alleged to be then already due. **KUPPUSAMI PILLAI v. MADRAS ELECTRIC TRAMWAY CO.**

I. L. R. 23 Mad. 41

13. — *Interest, power of Court to allow—Actionable right to interest—Compound interest.* Act XXXII of 1839 enables the Court to allow interest in certain cases, but does not create a right to interest which could be

INTEREST—*contd.*2. CASES UNDER ACT XXXII OF 1839—*contd.*

made the subject-matter of a suit. It is doubtful whether the Act gives power to allow compound interest on a debt, but even if there is such jurisdiction, the Court, in the exercise of its discretion, will not allow compound interest except where it is expressly provided for by the agreement. *MARSHALL v. BENGAL SPINNING AND WEAVING CO.*

1 C. W. N. 219

14. ————— Whether a Court is to allow interest from the date of the debt where there is no contract to pay, and no demand made for payment of interest. In a suit for money lent without any written instrument, where it was found that there was no express contract to pay interest, but it was not found that any demand of payment was made in writing and that there was any demand giving notice to the debtor that interest would be claimed from the date of the demand, it was held that the creditor was not entitled to any interest before suit. *SURENDRA KUMAR BASU v. KUNJA BEHARY SINGH*. I. L. R. 27 Calc. 814

4 C. W. N. 818

## 3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

## (a) SUITS.

1. ————— No rate of interest proved—*Discretion of Court.* Where no rate of interest is proved, the rate is in the discretion of the Court. After date of decree, the Court rate is six per cent. *GREGORY v. DULBOCK ROY*. Cor. 9

2. ————— Rate of interest—*Interest up to date of filing of plaint.* Interest at the stipulated rate should only be allowed up to the date of the filing of the plaint; afterwards at the Court rate of six per cent. *ANDERSON v. SREENUNTO. ANDERSON v. RAJAKARAI DOSS*. Cor. 3

3. ————— Interest before and after decree—*Suit for arrears of maintenance.* A, on behalf of her infant son B, contracted with C that he should be allowed, for the maintenance of her daughter whom he was about to marry, land situate at X that should yield annually Rs 900. B, after coming of age, contracted at Y to pay C the annual allowance, and ratified the contract which had been made by his mother. Held, in a suit for recovery of certain of the yearly payments, that the Court might decline to allow interest on the arrears found to be due prior to the commencement of the suit, there being no stipulation in the contract for interest, and might award interest on the amount decreed from the commencement of the suit to the date of the decree and interest upon the aggregate amount and upon the costs, from the date of the decree until payment. *KISHENKISHOR GHOSH v. BORADAKANTH ROY*

Marsh. 533; 2 May 658

4. ————— *Discretion of Court.* Interest at the stipulated rate, no matter

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(a) SUITS—*contd.*

how usurious, will be awarded down to decree. The rate at which subsequent interest is to be awarded is entirely in the discretion of the Court. If a plaintiff has contracted to pay an interest at a higher rate

DOORGA E. GOLAN HADEE. 2 Hyde 106; Cor. 12

5. ————— *Interest not mentioned in decree.* A plaintiff cannot recover more than is clearly given to him by the decree, either in express terms or by necessary inference. When the plaintiff prayed for interest up to the date of the suit together with subsequent interest and the decree purported to be an award in accordance with the prayer of the plaintiff—*Hell*, that the plaintiff was not entitled to interest subsequent to the date of the decree. *PRABHULANADHO PILLAY v. POONU-SWAMY CHETTY*. 6 Mad. Ap. 1

6. ————— *Interest between date of filing of plaint and decree—Date of mailing and date of satisfaction of decree.* The compensation due to a plaintiff for the delay which must ensue between the date when the plaint is filed and the date when the decree can be reasonably expected to be satisfied is, as a general rule, best and most simply estimated by a uniform rate of interest upon the total amount decreed, reckoned from the date of the decree. *DOORGA DUTT SINGH v. BUNWARRE LALL SAROO*. 19 W. R. 34

7. ————— *Interest where no rate is agreed on after certain time—Reasonable rate—Discretion of Court.* In a suit to recover a sum of money due on an agreement under the term of which interest for fifteen days only was payable at the rate of one rupee per diem: Held, that, as no

8. ————— *Rate of interest after suit*

9. ————— *Interest from decree to date of realization—Decree under s. 53, Act XX of 1856.* Interest from the date of decree to date of realization cannot be awarded by a decree under

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(a) *SCISS—contd.*

53, Act XX of 1860. *MARU CHUND v. MANTAR* . . . . . 8 Agri 318

10. ————— *Further interest ordered by Court under Act XXIII of 1861.* When the Court orders further interest under Act XXIII of 1861, s. 10, it is to be from the date of the decree to the date of the payment of the principal sum adjudged, and not for a limited period. *RAMA SWAMI AYYAN v. APPAYAYAN* . . . . . 1 Mad. 211

11. ————— *Interest—Hindu law—Debtor wrongfully withholding payment—Demand by creditor—Interest Act [XXXII of 1839]—Indian Contract Act (IX of 1872).* The plaintiff sued to recover a sum of money with interest from the date of demand from the defendant, who held the money in deposit for her. There was no agreement between the parties to pay interest. The first Court dismissed the claim as to interest; but the lower Appellate Court allowed interest on the amount of the deposit from the date of the demand by plaintiff to the date of payment. The parties to the suit were Hindus governed by the law of Mitakshara. *Held*, under special circumstances, that interest may be awarded by Courts in India, by way of damages. *Held*, further, that under Hindu law as it is to be found in the Mitakshara there is annexed to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor, if he wrongfully withholds payment after demand; and that this incident was annexed to every such contract at the date when the Interest Act (No XXXII of 1839) came into force. *Held* further, that the plaintiff's claim was

I. L. R. 31 Bom. 354

(b) *DECREES*

12. ————— *Decree not giving interest—Decree for mesne profits.* Interest on mesne profits cannot be awarded for the period previous to the ascertainment where the decree does not give interest on mesne profits. *HURO GOBIND BRUKUT v. DEGUMBEREE DEBIA* . . . . . 9 W. R. 217

13. ————— *Decree for mesne profits—Act XXIII of 1861, s. 10.* Where a decree of the District Court ordered payment of such sum

XXIII of 1861 on the aggregate sum adjudged, and costs from the date of decree to date of payment. *AMMED REZA v. KHUJOORUNNESSA* 15 W. R. 469

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(b) *DECREES—contd.*

14. ————— *Decree for mesne profits—Execution of decree—Act XXIII of 1861, s. 11.* When a decree is silent as to interest, the Court executing the decree has no power to award interest. Act XXIII of 1861, s. 11, refers only to questions of amount of interest or mesne profits which are left open and not determined by the decree. *MOJOOONDY LALL v. BEKAPEE SINGH*

B. L. R. Sup. Vol. 602; 8 W. R. Mis. 109

ARDEL ALI v. AHMUTTAN

7 B. L. R. Ap. 30 note; 14 W. R. 82

JARDINE, SKINNER & Co. v. SHAM SOONDREE DEBIA . . . . . 10 W. R. 60

JOYKISSEN BONE & WISE W. R. 1864, Mis. 37

BECHARAM DOSS v. BROJONATH PAL CHOWDHRY 9 W. R. 389

15. ————— *Power of Court executing decree.* When a decree does not provide for the payment of interest it is not competent to the Court executing the decree to add to it by giving interest. *KUPPA AYTAR v. VENKATARAMANA AYTAR* . . . . . 3 Mad. 421

LEELANAND SINGH v. JOY MUNGAL SINGH 15 W. R. 335

LEELANAND SINGH v. RAM NARAIN SINGH 15 W. R. 415

NERO KISHORE MOJOOONDAR v. AUNUND MOHUN MOJOOONDAR . . . . . 17 W. R. 19

JEWAN LALL MAHATAB v. DOORGA DUTT SINGH 20 W. R. 477

MAHOMED YAKOUB v. MAHOMED ZHOORUL HAQ 22 W. R. 533

ENAYET ALI v. MAHOMED ZHOORUL HAQ 22 W. R. 534

(*Contra*), LUCHMEE NARAIN v. SHUDASREE SINGH 5 W. R. Mis. 12

where it was *held* that interest runs on sums decreed as a matter of course, unless a specific order is recorded to the contrary

This case must be considered, however, as now overruled.

16. ————— *Interest allowable by Court executing decree.* A Court executing a decree can award interest from date of decree to date of payment, on the amount decreed to be paid by the judgment-debtor to the decree-holder, if the Court which passed the decree made no order on that point. *BEER CHUNDER JOORNAI v. RAM KOOMAR DEUR* . . . . . 8 W. R. Mis. 26

17. ————— *Court executing*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(b) DECREES—*contd.*

though on particular occasions interest has been claimed and allowed. Where interest is objected to in such a case and the decree-holder is subjected to serious loss by delay in satisfying his claim, he is entitled to proceed at once against any property which may be liable under the decree to attachment and sale on default of payment of any of the instalments *SURNO MOYEE DOSSEE v. KISHEN KOOMAREE*

14 W. R. 324

18. ———— *Execution of decree—Suit for damages.* Where a decree is silent as to future interest, interest cannot be recovered by proceedings in execution of the decree, but it

NILAMBUR SEIN v PITAMBUR SEIN

5 W. R. Mis. 28

19. ———— *Verbal promise to pay interest—Execution of decree.* A judgment-debtor, in consideration of time being allowed him, promised in open Court, through his vakeel, to pay interest to his creditor, although the decree did not specifically award interest. *Held*, by the majority of the Court, that the debtor was bound by that promise, and that execution could issue as well for the sum decreed as for the interest promised. *SREESH-TEEDHUR SHAHA v. WOOMESHNATH ROY*

5 W. R. Mis. 1

20. ———— *Postponement of sale by consent on condition of payment of interest not decreed—Condition enforced.* A judgment-debtor having applied to the Court to postpone the sale of his property, so as to enable him to raise money by sale or mortgage to satisfy the decree, the creditor consented to the adjournment, on the debtor undertaking to pay interest from the date of suit, which was not provided for by the decree, and the Court by order postponed the sale accordingly. *Held*, that, under the circumstances, it was to be inferred that the Court approved of and sanctioned the condition, and that the condition could be enforced in execution of the decree. *LAKSHMANA v. SURIYA BAI*

I. L. R. 7 Mad. 400

21. ———— *Decree not specifying rate of interest.* Where a decree did not specify the rate of interest, *Held*, that the Court ought not to have allowed a higher than the usual Court rate, namely, 12 per cent. *SOORUBA BEEBE v. SHFO CHURN LALL*

7 W. R. 375

22. ———— *A decree directed that from the original cause of action to date of suit, and from date of suit to date of decision, interest should be given at 12 per cent., and from date of decision to date of liquidation, interest should be given without specifying the rate. The*

INTEREST—*contd.*. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(b) DECREES—*contd.*

Judge gave 12 per cent for this period, and an appeal from his order, on which it was contended that no rate being specified no interest could be given, was dismissed. *LALUN MANI v. BEHARI LAL MOOKERJEE*

7 B. L. R. Ap. 30

23. ———— *Although the decree in this case did not specify the rate of interest before or after the decree, yet as it appeared that, in calculating the amount then due, the Court gave 12 per cent., and that that was the usual rate:—Held*, that the intention of the Court, when it passed the decree, was to give the same rate. *ABDOLAH v. REASUT HOSSEIN*

17 W. R. 414

24. ———— *Alteration of rate of interest given by decree—Rate where no rate*

the circumstances of the case, it thought reasonable. *RUHMOONUNDUN SINGH v. ARCOOT*

19 W. R. 46

25. ———— *Court rate.* Where a decree was given for a certain amount with

making of the decree. *MADHUB LAL KHAN v. NOYAN GHOSE*

6 C. L. R. 231

26. ———— *Decree in suit on mortgage—Civil Procedure Code (Act XII of 1882), s. 209—Discretion of Court—Rate of damdupat.* In a suit brought by a mortgagee against his mortgagor (both parties being Hindus) the decree ordered

the rate of damdupat power as to Courts by s. 20 XIV of 1882 to the law of

27. ———— *Decree for sale in suit by puisne mortgagee—Rate agreed on in mortgage—Act XXIII of 1861, s. 10—Civil Procedure Code, s. 209.* Upon a claim by a puisne mortgagee to redeem prior incumbrances and in the alternative for a decree ordering the sale of the property mortgaged, *Held*, that the Court should give interest at 12 per cent. to the prior mortgagee who was to have an option to

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(b) DECREES—*contd.*

date of the decree from the rate stipulated, to the Court rate, an order to that effect could only be made for the benefit of the judgment-debtor as a party to the suit. The plaintiff, seeking to redeem a mortgage prior to the suit, must pay the interest at the rate agreed upon in the mortgage; there

28. — Suit to declare property attached not liable in execution—*Injunction against sale of property pending decision of suit on plaintiff giving security for interest on the sum representing value of attached property—Subsequent dismissal of suit with costs—Application by defendant in execution of decree for the interest for which security ordered by injunction—Civil Procedure Code (Act XII of 1852), ss 492, 497.* K, having obtained a decree against P, attached a house in execution. P intervened under s. 278 of the Civil Procedure Code (Act XIV of 1882), and applied that the house, if sold, should be sold subject to his mortgage. His application was dismissed, and he thereupon brought a suit (No 648 of 1887) for a declaration that the house was not liable in execution of K's decree. That suit was dismissed by the lower Court, and P appealed. Pending the hearing of the appeal, he applied for and obtained under s. 492 of the Civil Procedure Code an injunction restraining the sale until the result of the appeal on his giving security for interest at six per cent. on Rs. 2,000, the acknowledged value of the house. The appeal was heard in due course and was dismissed with costs, and thereupon K, in execution of the decree in this last-mentioned suit (No 648 of 1887), applied to recover the interest for which security was ordered to be given by the District Court. *Held*, that he was not entitled to recover it. A Court of execution cannot award interest when the decree is silent. The respondent K had his remedy under s. 497 of the Civil Procedure Code, and that remedy was obtainable on application, not to the Court of execution, but to the Court which issued the injunction. *VABAJAL MULCHAND v. KASTUR DHARAMCHAND* I. L. R. 22 Bom. 42

29. — Mortgage decree—*Interest of contract rate up to the date fixed by Court for payment of mortgage money—Subsequent interest at rate to be fixed by Court.* In a mortgage-decree, interest at the contract rate should be allowed up to the date fixed by the decree for the repayment of the money due, and after that date at such rate as the Court

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(b) DECREES—*contd.*

may fix. *Rameswar Koer v. Mahomed Mehdi Hossein Khan*, I. L. R. 26 Calc. 39; *Maharaja of Bharatpur v. Ram Kanno Dei*, L. R. 28 I. A. 35; *Bakar Sajjad v. Udit Narain Singh*, I. L. R. 21 All. 361, referred to. *RAMESWAR PROSAD SINGH v. RAI SHAM KISHEN* (1901) I. L. R. 29 Calc. 43

## (c) CONTRACTS.

30. — Wagering contract—*Contract without stipulation as to interest—Mercantile usage—Act XXI of 1848.* Neither by the English nor the Hindu law, unless there be mercantile usage, can interest be imported into a contract which contains no stipulation to that effect. In an action on contracts known as *tajee munde* chitties—opium wager contracts (before the passing of Act XXI of 1848, which prohibited such gambling contracts)—the plaintiff claimed interest on the sum recovered. *Held*, that, as there was no stipulation as to interest in the contract or satisfactory evidence of mercantile usage at Calcutta to import interest into the contract, the interest claimed could not be allowed. *JUGMOONEN GHOSE v. KAISRECHUND* 9 Moo. I. A. 258

See *JUGMOONEN GHOSE v. MANICK CHUND* 4 W. R. P. C. 8; 7 Mod. L. A. 263

31. — Contract rate of interest—*Power of Court to withhold interest.* When by the terms of a contract money is to bear interest, interest is as much payable by virtue of the contract as the principal, and the Court has no power in such a case to withhold interest. *BUNWARR LALL SARKAR v. MOHESHUR SINGH*

Marsh. 544; 2 Hay 644

*KOTOO v. KO PAY YAH* 8 W. R. 255

32. — *Obligation of Court to award such rate.* A Court is bound to enforce an agreement between the parties as re-

2 W. R. S. C. C. Ref. 1

33. — *Act XXVIII of 1855—Inequitable contracts.* The provision con-

cerning into the character of agreements between parties holding relations to each other which enables one to take advantage of the other and from declining to enforce such agreement when unfair and extortionate. *VINAYAK SADASHIV VOSE v. RAGHU* 4 Bom. A. C. 202

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

34. ———— *Rate of interest on bond up to decree—Act XXVIII of 1855, s. 2—Civil Procedure Code, 1877, s. 209.* The contract rate of interest must be allowed up to date of decree in accordance with Act XXVIII of 1855, s. 2. The Civil Procedure Code, s. 209, does not expressly refer to suits in which interest has been contracted for, and does not repeal the former Act. *BANDARU SWAMI NAIDU v. ATCHAYAMMA*

I. L. R. 3 Mad. 125

35. ———— *Setting aside transaction by guardian of minor—Interest on*

interest was allowed on a sum of Rs26,000 which had been actually advanced, at the contract rate of six per cent. in lieu of five per cent. awarded by the Sudder Court, and in preference to the current Court rate of twelve per cent. *LALLA BOMSEEDHUR v. BINDSEREE DUTT SINGH* 10 Moo. I. A. 454

36. ———— *Subsequent interest.* Where a Civil Court awards interest under an admitted contract, it is bound to award it at the stipulated rate up to the date of decree; but for any time after that date it has power to exercise its own discretion as to the rate of interest to be awarded. *BUGGWA DASS v. TEEAIT TRAN NARAIN DEO*

23 W. R. 309

37. ———— *Interest after due date of bond—Date of refusal of payment.* In a suit upon a bond, when the genuineness of the bond and the defendant's liability under it are clearly established, the plaintiff is entitled to interest from the time the defendant declined payment of the sum due upon the bond. *GUNGA RISHUN TEWARRY v. ROY MOHUN LALL MITTER* W. R. 1864, 291

38. ———— *Discretion of Court.* When a bond is silent as to any interest to be allowed after the due date of the bond, it is in the discretion of the Court to fix the amount of interest, if any, to be paid from the due date of the bond to the date of the commencement of suit. *BITANATH BOSE v. MATHURA NATH ROY*

2 D. L. R. Ap. 10; 11 W. R. 68

*JOYRAN GOSSAMEE v. NOBIN CHUNDER DOSS*

25 W. R. 318

39. ———— *Bond under s. 52, Act XX of 1866.* When a bond under s. 52, Act XX of 1866, is enforced on a decree, no interest is to be allowed on it, if the bond does not provide for interest after the date on which the debt was payable. *KALLORAM BABOO v. DOORGANATH TALUKIDAR*

10 W. R. 175

40. ———— *Interest after filing of plaint—Interest at rate stated in bond—*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

*Discretion of the Court—Civil Procedure Code (Act XIV of 1882), s. 109.* Interest after date of

I. L. R. 12 Cal. 569

41. ———— *Provision for interest between due date and date of enforcement.* Where a registered bond provided for payment of interest between the date upon which the bond fell due and the date upon which enforcement was applied for, the bond was construed strictly against the debtor. *RAM DASS GOSSAMEE v. PROSONOMOYE DOSSEE*

16 W. R. 297

42. ———— *Discretion of Court.* In a suit brought to recover the principal and interest due upon a written security given for the payment of the principal money on a day specified, with interest at a stipulated rate up to such day, the Court may, in its discretion, award interest on the principal sum from due date at such rate as it thinks fit, and is not bound to award such interest at the stipulated rate. The principle laid down in *Cooke v. Fowler*, L. R. 7 H. L. 27, followed. *DEEN DOYAL LALL v. HET NARAYAN SINGH*

I. L. R. 2 Cal. 41

S. C. DEEN DOYAL LALL v. CHOJA SINGH

25 W. R. 189

43. ———— *Failure of former suit on bond for want of jurisdiction.* Where in a previous suit on a bond, which suit was lost on account of want of jurisdiction, the plaintiff sued

S. C. LALLA NARAIN DOSS v. ESTATE OF EX-KING OF DELHI

11 Moo. I. A. 277

44. ———— *Limitation in suit on bond.* On mortgage-bonds, dated 1832, the Court allowed interest only for six years, following *Fital Mohde v. Dawd elad Muhammad Husen*, 6 Bom. A. C. 90, and *Narayan v. Satgaj*, 9 Bom.

53. *NARAYAN DESHPANDE v. RANGUBAI*

I. L. R. 5 Bom. 127

45. ———— *Mortgage-bond—Agreed rate of interest.* In a suit on a mortgage-bond the plaintiffs are entitled to recover the agreed

ages. A suit was brought in 1884, upon a mortgage-

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

cation-bond executed in April 1875, in which the obligors agreed to repay the amount borrowed with interest at Rs 8 per cent. per mensem in June of the same year. There was no provision as to payment of interest after due date. The bond specified certain property as belonging to the obligors and contained the following provision: "Our rights and property in the aforesaid talukh Rajapur shall

Judge might refuse to give a plaintiff any interest, i.e., damages, *post diem*, at all, the circumstances would have to be of a very exceptional character as, for example, where the interest contracted to be paid before due date was exorbitant and extortionate. *Coole v. Fowler*, L. R. 7 H. L. 27, referred to. *Held*, that, in determining the amount of damages, the question whether the plaintiff has unnecessarily delayed bringing his suit, and so

*Singh*, I. L. R. 2 All. 617, referred to. The principle upon which the obligee of the bond may recover interest after due date does not rest upon any implied contract by the obligor to pay such interest, but proceeds upon the breach of contract which has taken place by reason of the non-payment on due date, and the reasonable amount to which the obligee is entitled for such breach. The decision of the question by what standard the damages should be measured must depend in each case upon its special circumstances. *BISHEN DAYAL v. UDAY NARAIN*. I. L. R. 8 All. 486

47. — *Interest otherwise than at contract rate* Where a debtor by his bond stipulated to pay interest at 12 per cent. per annum up to the time fixed for payment, but the money remained unpaid for a long time, the High Court refused to interfere with the decree of the lower Court awarding plaintiff interest at the rate stipulated for up to the time fixed for payment, and a lower rate afterwards. *Gossain Luchmez NARAIN POOREE v. TEKAIT HET NARAIN SINGH*. 18 W. R. 322

48. — *Power of Court to alter contract as regards interest—Bond payable*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

being presently due... instalments, creditor may... whole balance... liered against inequity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner.

first instalment, but made default in paying the second, which fell due on the 3rd August 1878. On the 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the bond, but pleaded tender of the amount of the second instalment soon after the due date, and prayed for payment by instalments without any interest. The first Court passed a decree in the plaintiff's favour for the amount claimed with costs, but ordered defendant to pay Rs 100 and the costs at once, and the balance by yearly instalments of Rs 100 each, with interest at 6 per cent. till payment. The District Judge on appeal affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on overdue instalments only. *Held*, by the High Court, on second appeal, that neither of the lower Courts had jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court proffered. *RAOHO GOVIND PARANJPE v. DITCHAND*. I. L. R. 4 Bom. 98

49. — *Power of Court to alter rate of interest—Civil Procedure Code Act (1859), s. 194* In exercise of the discretion given by s. 194 of the Code of Civil Procedure (Act VIII of 1859), the Court of first instance in a suit on a mortgage-bond gave a decree to the plaintiff making the amount awarded payable by instalments, but gave no interest after the institution of the suit. The Appellate Court amended the decree by awarding interest from the institution of the suit at six per cent. per annum, the rate originally contracted for being twenty-four per cent. per annum. *Held*, that, although the stipulated rate was properly awardable, the award of the lower rate was not illegal or beyond the competence of the Court below, with whose discretion the High Court will not interfere. *CARVALHO v. NURBINI*. I. L. R. 3 Bom. 202

But see *JAFREE BEGUM v. AHMED HOSSEIN KHAN*. 1 Agri 270

50. — *Exorbitant rate—Discretion of Court to give or not the contract*



INTEREST—*contd.*3 OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

for repayment, a Court need not assume that the parties are bound by contract to that rate after such period. *MAHOMED HOSSEIN v TUQUEEROODEEY*, 15 W. R. 284

51. ————— Discretion of Court to give or not the contract rate. Where a party borrowing money entered into a bond stipulating to pay Rs 24 per cent. per annum as interest until the whole debt, principal and interest, was paid off, and if the whole was not paid within the time mentioned, that the bond should be enforced as a registered deed:—*Held*, that the rate of interest was not a question of discretion, but must be paid at the rate stipulated. *REASUT HOSSEIN v JUSMUT ROY*, 15 W. R. 306

52. ————— Compound interest—Contract rate—Penalty Where a stipulation for compound interest is included in a contract, the compound interest is not a penalty, but a matter of contract, and a Court enforcing the contract in a decree should give the compound interest also. *LAND MORTGAGE BANK OF INDIA v RADHA KRISHNA DUTT*, 25 W. R. 323

53. ————— Mortgage-bond—Compound interest from co-sharer enforcing pre-emption. B stipulated in the instrument of mort-

respect of a share in the property. *Held*, per *STUART, C.J.*, *SPANKIE, J.*, and *STRAIGHT, J.*, that,

*ALU PRASAD v SUKHAH*, I. L. R. 3 All. 610

54. ————— Discretion of Court—Reasonable rate of interest G gave B a

money and interest. *Held*, that the bond contained an express contract for the payment of interest after due date at the rate of 1½ per cent. per mensem, and that such contract was enforceable. *Simble*. That, where there is no express agreement fixing the rate of interest to be paid after the date a bond becomes due, an agreement to pay at the rate of interest agreed to be paid before such date cannot be implied, but the Court must determine what would be a reasonable rate to allow. In such a case the rate agreed to be paid before such date

INTEREST—*contd.*3 OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive. *BALDEO PANDAY v GOKUL RAI*, I. L. R. 1 All. 603

55. ————— Damages. *Held*, where a bond for the payment of certain money within a certain time did not contain any agreement fixing the rate of interest to be paid after the date it became due, that the question as to the amount of interest to be allowed after that date should be treated as one of damages, and that, having regard to the length of time that had elapsed since the bond ran out (February 1870) to the date on which the suit thereon was instituted (20th November 1878), interest at the rate of 8 annas per cent. per mensem was an equitable rate to allow after the date the bond became due. *Held*, also, that but for the plaintiff's laches the rate agreed by the defendant to be paid under the bond (one rupee per cent. per mensem) was a reasonable basis on which to estimate the subsequent damages. *JYALA PRASAD v KHUMAN SINGH*, I. L. R. 2 All. 617

56. ————— Excessive interest Upon a contract for the payment, on a day certain, of money borrowed with interest at a certain rate down to that day, further contract for the continuance of the same rate of interest after that day until actual payment is not to be implied. When, therefore, the agreed rate of interest is excessive and extraordinary, the Court will reduce the rate to a reasonable amount. *NANCHUND HANSRAJ v BAPU RUSTAMBHAI*, I. L. R. 3 Bom. 131

57. ————— Covenant to pay at a certain rate—Obligation of Court to give stipulated interest In a deed of mortgage, dated 10 July 1870, the mortgagors covenanted, among

interest at Rs 2 per cent. per mensem . . . . . that, in the event of non-payment of the principal and interest on the expiration of the appointed time, the mortgagee shall be at liberty to recover from us the whole amount due to him with interest by means of a law-suit. *Held*, that the term of the bond amounted to a covenant to pay interest at the stipulated rate after the period of . . . . . are, so long as the principal remained due; (1) . . . . . bond containing an . . . . . covenant for (2) . . . . . of interest at . . . . . the interest (3) . . . . . acted by the court . . . . . of the rea- (4) . . . . . or otherwise of . . . . . ; and that the

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

mortgage was therefore entitled to interest up to the date of the decree at the rate of 12-2 per mensem. *Buldeo Pandey v. Gokal Rai*, 1 L. R. 1 All. 603, referred to. *CHHAN NATH v. KANTA PRASAD*, I L. R. 7 All. 333

58. ———— *Bond—Interest post diem—Non-payment of principal and interest at agreed date. Interest as interest cannot be*

appears, interest can be given only by way of damages. *Cool v. Fowler*, L. R. 7 H. L. 27 referred to. *MANSAB ALI v. GULAR CHAN*, I L. R. 10 All. 85

59. ———— *Civil Procedure Code, s. 209—Stipulated interest—Interest after filing plaint. A creditor having stipulated for interest at a certain rate is entitled to a decree for interest at that rate up to the date of decree* *Mangunram Marwari v. Dhawal Roy*, 1 L. R. 12 Cal. 569, dissented from *RAMACHANDRA DEVU*, I L. R. 12 Mad. 485

60. ———— *Bond—Interest post diem—Damages for non-payment on due date*

the written contract does in clear terms provide for the payment of interest and compound interest during the term of the mortgage. *Narain Lal v. Chajmal Das*, unreported, followed. *Chhab Nath v. Kanta Prasad*, 1 L. R. 7 All. 333, *Buldeo Pandey v. Gokal Rai*, 1 L. R. 1 All. 673, referred to; and *Cool v. Fowler*, L. R. 7 H. L. 27. *BHAGWANT SINGH v. DARYAO SINGH*, I L. R. 11 All. 416

61. ———— *Mortgage bond—Interest post diem—Damages—Bond. Interest post diem on a mortgage-bond for a term certain and containing no express provision as to the payment of post diem interest is nothing else than damages for the breach of a contract. Such*

perty, though nominally damages. In respect of post diem interest given by way of damages,

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

*v. Fowler*, L. R. 7 H. L. 27; *Bishen Dayal v. Udai Narain*, 1 L. R. 8 All. 456; and *Rajpal Singh v. Kesh Narain Singh*, All. Weekly Notes (1890), 149, referred to. *NIWAS RAM PANDE v. UNIR NARAY MISHR*, I L. R. 13 All. 330

62. ———— *Mortgage-bond—Interest at rate stated in bond—Discretion of the Court—Civil Procedure Code (Act XIV of 1852), s. 209—Transfer of Property Act, s. 86. The terms of s. 86 of the Transfer of Property Act exclude the discretion conferred on the Court by s. 209 of the Civil Procedure Code in cases coming under the Transfer of Property Act. *Mangunram Marwari v. Dhawal Roy*, 1 L. R. 12 Cal. 569, distinguished *Mangunram Marwari v. Rajpal**

computed down to the day fixed by the Court, according to the terms of the second paragraph of the section, that is the day being one within six months from declaring in Court the amount due. The amount to be declared due is the amount due for principal and interest on the mortgage, including interest at the rate provided by the mortgage-deed, up to the day so fixed; it is the same whether it be

*MANGUNRAM MARWARI v. RAJPAL KOERI*  
I L. R. 20 Cal. 366 note

63. ———— *Transfer of Property Act (IV of 1882), s. 86—Mortgage decree—Contract rate—Subsequent interest—Civil Procedure Code (Act XIV of 1852), s. 209. When a decree for sale is passed in a mortgage suit, interest at the contract rate should be decreed for the period allowed for payment by the mortgagor, and subsequent interest should be decreed at six per cent only. *SUBBARAYA RAVUTHANANDA NAINAR v. PONNUSAMI NADAR*, I L. R. 21 Mad. 364*

64. ———— *Interest Act (XXXII of 1839)—Interest on mortgage-money—Transfer of Property Act (IV of 1882), s. 88—Charge on mortgaged property. The Court has power under the Interest Act (XXXII of 1839) to give interest on mortgage-money, as it is money payable at a certain time and under a written instrument; and the terms of s. 88 of the Transfer of Property Act make such interest recoverable or payable out of the mortgaged property. The interest on the mortgage is not necessarily only the interest which the parties stipulated by the mortgage-deed should be paid, but would also*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contl.*(c) CONTRACTS—*contd.*

for repayment, a Court need not assume that the parties are bound by contract to that rate after such period. **MAHOMED HOSSEIN v. TUQUEERROODREY**, 15 W. R. 284

51. ————— *Discretion of Court to give or not the contract rate.* Where a party borrowing money entered into a bond stipulating to pay  $\text{Rs } 14$  per cent. per annum as interest until the whole debt, principal and interest, was paid off, and if the whole was not paid within the time mentioned, that the bond should be enforced as a registered deed;—*Held*, that the rate of interest was not a question of discretion, but must be paid at the rate stipulated. **REASUT HOSSEIN v. JESUMUNT ROR**, 15 W. R. 396

52. ————— *Compound interest—Contract rate—Penalty.* Where a stipulation for compound interest is included in a contract, the compound interest is not a penalty, but a matter of contract, and a Court enforcing the contract in a decree should give the compound interest also. **LAND MORTGAGE BANK OF INDIA v. RADHA KRISHNA DUTT**, 25 W. R. 323

53. ————— *Mortgage-bond—Compound interest from co-sharer enforcing pre-emption.* B stipulated in the instrument of mortgage to pay the interest annually, and in case of default to pay compound interest. The mortgage was afterwards foreclosed, and A, the mortgagee, sued for and obtained possession. S, a co-sharer, sued for and was held entitled to pre-emption in respect of a share in the property. *Held*, per **STUART, G. J., SPANKIE, J., and STRAIGHT, J.**, that, inasmuch as B would have been obliged to pay compound interest had he desired to redeem the mortgaged property, A was entitled to receive from S compound interest up to the date of foreclosure. **ALU PRASAD v. SUKHAN**, I. L. R. 3 All. 610

54. ————— *Direction of Court—Reasonable rate of interest.* G gave B a bond for the payment of certain money within a certain time, with interest at the rate of  $1\frac{1}{2}$  per cent.

money and interest. *Held*, that the bond contained an express contract for the payment of interest after due date at the rate of  $1\frac{1}{2}$  per cent. per mensem, and that such contract was enforceable. *Semle*: That, where there is no express agreement fixing the rate of interest to be paid after the date

INTEREST—*contd.*3 OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive. **BALDEO PANDAY v. GOKUL RAI**, I. L. R. 1 All. 603

55. ————— *Damages. Held*, where a bond for the payment of certain money within a certain time did not contain any agreement fixing the rate of interest to be paid after the date it became due, that the question as to the amount of interest to be allowed after that date should be treated as one of damages, and that, having regard to the length of time that had elapsed since the bond ran out (February 1870) to the date on which the suit thereon was instituted (26th November 1878), interest at the rate of 8 annas per cent. per mensem was an equitable rate to allow after the date the bond became due. *Held*, also, that but for the plaintiff's laches the rate agreed by the defendant to be paid under the bond (one rupee per cent. per mensem) was a reasonable basis on which to estimate the subsequent damages. **JUALA PRASAD v. KHRUMAN SINGH**, I. L. R. 2 All. 617

56. ————— *Excessive interest.* Upon a contract for the payment, on a day certain, of money borrowed with interest at a certain rate down to that day, further contract for the continuance of the same rate of interest after that day until actual payment is not to be implied. When, therefore, the agreed rate of interest is excessive and extraordinary, the Court will reduce the rate to a reasonable amount. **NANCUNO HANSRAJ v. BART RUSTANDEHAI**, I. L. R. 3 Bom. 131

57. ————— *Covenant to pay at a certain rate—Obligation of Court to give stipulated interest.* In a deed of mortgage, dated in July 1870, the mortgagors covenanted, among

other things, to pay the principal and interest at the rate of  $\text{Rs } 1\frac{1}{2}$  per cent. per mensem; that should we in any year fail to pay the amount of interest, it shall, at the close of the year, be consolidated with the principal amount, and we shall pay compound interest at  $\text{Rs } 1\frac{1}{2}$  per cent. per mensem . . . . .

interest by means of a law-suit. *Held*, that the terms of the bond amounted to a covenant to pay interest at the stipulated rate after the period of three years, so long as the principal remained due; . . . . .  
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INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

mortgagee was therefore entitled to interest up to the date of the decree at the rate of 11-2 per mensem. *Baldeo Ponday v. Gokal Rai*, I. L. R. 1 All. 603, referred to *CHHAN NATH v. KANTA PRASAD*, I. L. R. 7 All. 333

58. ———— *Bond—Interest post diem—Non-payment of principal and interest at agreed date. Interest as interest cannot be*

appears, interest can be given only by way of damages. *Cook v. Fowler*, L. R. 7 H. L. 27 referred to, *MANSHAR ALI v. GULAB CHAND*, I. L. R. 10 All. 85

59. ———— *Civil Procedure Code, s. 209—Stipulated interest—Interest after filing plaint. A creditor having stipulated for interest at a certain rate is entitled to a decree*

60. ———— *Bond—Interest post diem—Damages for non-payment on due date*

the written contract does in clear terms provide for the payment of interest and compound interest during the term of the mortgage. *Narain Lal v. Chajmal Das*, unreported, followed. *Chhab Nath v. Kanta Prasad*, I. L. R. 7 All. 333, *Baldeo Ponday v. Gokal Rai*, I. L. R. 1 All. 673, referred to; and *Cook v. Fowler*, L. R. 7 H. L. 27. *BHAGWANT SINGH v. DARYAO SINGH*

I. L. R. 11 All. 416

61. ———— *Mortgage bond—Interest post diem—Damages—Bond. Interest post diem on a mortgage-bond for a term certain and containing no express provision as to the payment of post diem interest is nothing else than damages for the breach of a contract. Such*

perty, though nominally damages. In respect of post diem interest given by way of damages,

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

*v. Fowler*, L. R. 7 H. L. 27; *Bishen Dayal v. Udit Narain*, I. L. R. 8 All. 456; and *Rajpati Singh v. Kesh Narain Singh*, All. Weekly Notes (1890), 149, referred to. *NIWAS RAM PANDE v. UDIT NARAIN MISH*, I. L. R. 13 All. 330

62. ———— *Mortgage-bond—Interest at rate stated in bond—Discretion of the Court—Civil Procedure Code (Act XIV of 1852), s. 209—Transfer of Property Act, s. 86. The terms of s. 86 of the Transfer of Property Act exclude the discretion conferred on the Court by s. 209 of the Civil Procedure Code in cases coming under the Transfer of Property Act. *Mangniram Marwari v. Dhawol Roy*, I. L. R. 12 Cole. 659,*

computed down to the day fixed by the Court, according to the terms of the second paragraph of the section, that is the day being one within six months from declaring in Court the amount due. The amount to be declared due is the amount due for principal and interest on the mortgage, including interest at the rate provided by the mortgage-deed, up to the day so fixed; it is the same whether it be

*MANGNIRAM MARWARI v. RAJPATI KOERI*  
I. L. R. 20 Cal. 366 note

63. ———— *Transfer of Property Act (IV of 1882), s. 86—Mortgage decree—Contract rate—Subsequent interest—Civil Procedure Code (Act XIV of 1852), s. 209. When a decree for sale is passed in a mortgage suit, interest at the contract rate should be decreed for the period allowed for payment by the mortgagor, and subsequent interest should be decreed at six per cent only. *SUBBARAYA RAVUTHANANDA NAINAR v. PONNUSAMI NADAR**

I. L. R. 21 Mad. 364

64. ———— *Interest Act (XXXII of 1839)—Interest on mortgage-money—Transfer of Property Act (IV of 1882), s. 83—Charge on mortgaged property. The Court has power under the Interest Act (XXXII of 1839) to give interest on mortgage-money, as it is money payable at a certain time and under a written instrument; and the terms of s. 83 of the Transfer of Property Act make such interest recoverable or payable out of the mortgaged property. The interest on the mortgage is not necessarily only the interest which the parties stipulated by the mortgage-deed should be paid, but would also*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

include interest which under the law is payable, e.g., interest after the due date of the mortgage, where there is no stipulation for interest after the due date. **BIKRAMJI TEWARI v DURGA DYAL TEWARI** . . . I. L. R. 21 Calc. 274

65. ———— *Construction of mortgage—Compound interest—Relative rights of first and second mortgagees of the same property—Mortgage-decree giving terms of redemption of the first by the second.* There being a first and a second mortgage of the same property, a mortgage-decree (that upon the first by consent) was obtained by each mortgagee respectively, neither of them being a party to the decree obtained by the other. In the first mortgage it was agreed that, on default by the mortgagor, interest at 12 per cent. should be paid on the principal and interest taken together, the latter being calculated with annual rests. At a judicial sale under the decree obtained by the first mortgagee, he became the purchaser of the greater part of the property. In this suit, which was

Appellate Court, referring to the consent decree having given simple interest only, made this the basis of an interference that compound interest must now be disallowed. *Held*, that this was not the right inference, and compound interest was allowed according to the terms of the mortgage. **GANGA PERSHAD SAHU v LAND MORTGAGE BANK** . . . I. L. R. 21 Calc. 360  
I. L. R. 21 I. A.

66. ———— *Interest Act (XXXII of 1839)—Mortgage—Interest post diem—Transfer of Property Act (IV of 1882), s. 88—Charge.* The plaintiff sued in December 1891 upon a registered mortgage, dated 1875, in which it was provided that interest should be paid at the rate therein mentioned, and that the principal should be repaid on 10th April 1890, but in which there was no provision for payment of interest *post diem*. *Held*, that interest *post diem* should be awarded under the Interest Act, 1839, at a reasonable rate. *Semle*: The amount so awarded would constitute . . . REDDI . . . Mad. 248  
I. L. R. 10 Muz. 538 note

67. ———— *Mortgage—Interest post diem—Transfer of Property Act, s. 88.* Where the instrument sued on a mortgage hypothecating an interest in land did not provide for interest *post diem*; *Held*, that any claim in the nature of a claim for such interest could be allowed by way of damages only, and was not a

INTEREST—*contd.*3 OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

charge on the land. In the present case the claim was barred by lapse of time. **BADI BIRI SAHIBAL v. SAMI PILLAI** . . . I. L. R. 18 Mad. 257

**THAYAR ANIMAL v. LAKSHMI ANIMAL** . . . I. L. R. 18 Mad. 331

68. ———— *Interest post diem—Mortgage.* A mortgagee is entitled to interest *post diem*, if there is nothing in the document to indicate that the parties did not intend that interest should be paid after the due date. **NITYANANDA PATNAYUDH v. RADHA CHERANA DEO** . . . I. L. R. 20 Mad. 371

69. ———— *Interest Act (XXXII of 1839)—Suit for money payable under an oral contract—Contract Act (IX of 1872), s. 73.* The plaintiff sued to recover a sum of money due to her on an oral contract together with interest.

I. L. R. 20 Maa. 461

70. ———— *Interest post diem—Interest Act (XXXII of 1839)—Transfer of Property Act (IV of 1882), ss. 88 and 89—Interest on mortgage-money—Charge on mortgaged*

71. ———— *Suit by mortgagee on mortgage—Rate of interest up to decree—Transfer of Property Act (IV of 1882), ss. 86 and 88.* In a suit by a mortgagee to recover the

72. ———— *Interest post diem—Damages—Charge on the property—Trans-*

to pay a *post diem* interest, there being an agreement to repay the mortgage-debt, principal and interest, in seven years. Where in a suit upon a mortgage-bond *post diem* interest is decreed as damages, the payment of such damages does not

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

constitute a charge upon the mortgaged property. *Narindra Bahadur Pal v. Khadim Husain, I. L. R. 17 All. 551*, referred to. *Rishi Ram v. Sri Parshwan Ram, I. L. R. 18 All. 316*

73. — *Suit on mortgage—Covenant to pay interest—Interest post diem.* In a suit on a mortgage it appeared that the instrument sued on was executed to secure a sum of money arrived at by calculating interest on sums previously due by the mortgagors, and it was expressed to be for securing the payment of that principal together with interest as it might accrue annually. There was also a provision for compound interest. The principal was payable on the 14th July 1886, and there was no express stipulation to pay interest after that date. *Held*, that the mortgagors were entitled to interest for the subsequent period. *PEDDA SUBBARAYA CHETTI v. GANGA RAJULUCHARU, I. L. R. 20 Mad. 149*

74. — *Post diem interest—Damages—Continuing breach of contract.*

amount due for principal and interest, and that any money paid should be first credited to the latter.

for the period after that date; and that limitation barred recovery of money by way of damages for a breach of the contract. *Held*, that the Courts below had erred as to the effect of the contract, and that there had been a failure to regard the intention shown by the conditions in the mortgage-deed above mentioned, the High Court appearing to have acted on a fixed rule of construction, laid down for transactions of this kind, instead of arriving at the meaning of the deed by an examination of its terms. By the true construction of the contract when the whole of it was considered, the creditor was entitled to payment of the principal with interest at the rate stated in the deed for the entire period of non-payment. This should be down to the date of the decree of the first Court. In the decree should be added interest from its date till payment at six per cent. per annum. Even supposing the construction put by the Courts below to have been correct, the creditor still might have recovered six years' arrears of interest by way of damages notwithstanding limitation. There had been a breach of contract daily while the principal remained unpaid and unbarred by time. The judgment of the Full Bench in *Narindra Bahadur Pal v. Khadim*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

*Husain, I. L. R. 17 All. 551*, was not approved; as it disregarded conditions in the mortgage-deed (which in that case resembled the present deed) indicating the intention of the parties to it. *MATHURA DAS v. NARINDAR BAHADUR*

I. L. R. 19 All. 39  
I. L. R. 24 I. A. 138  
1 C. W. N. 52

75. — *Construction of a Contract in a mortgage-deed as to interest.* A deed of mortgage stipulated in general terms that interest was to run upon the principal sums advanced, without any limitation as to the period of its currency, and also stipulated that in default of punctual payment at the end of each year, the mortgagors were to be at liberty to treat unpaid interest as principal, and to recover it from the mortgaged property. According to the tenor of the deed, when all its provisions and conditions were considered, it was not the true construction that the capital sum was to cease to bear interest at the contract rate upon the arrival of the time stipulated for payment. *Mathura Das v. Raja Narindar Bahadur Pal, I. L. R. 19 All. 39; I. L. R. 23, I. A. 133*, referred to and followed. *BINDSRI NAIK v. GANGA SARAN SAHU, I. L. R. 20 All. 171; I. L. R. 25 I. A. 9; 2 C. W. N. 129*

76. — *Provision in bond for annual payments of interest and repayment of principal sum on day fixed.* A bond, which had been executed in December 1831, contained a stipulation that interest should be paid on 11th April every year, and that the principal sum borrowed should be repaid in December 1831. Repayment not having been so made, a suit was brought in December 1836 to recover the principal sum together with interest up to the date of plaint. *Held*, that, inasmuch as the bond contained a stipulation for the payment of interest annually and there was nothing in it to suggest that the liability should cease on the day upon which the principal was repayable, interest could be recovered. *JIVANNA PANDITHAR v. APPALU, I. L. R. 22 Mad. 339*

77. — *Transfer of Property Act (IV of 1882), ss. 86, 88 and 89—Decree for sale on a mortgage—Interest after date fixed for payment—Civil Procedure Code, 1882, ss. 203 and 222.* In a suit upon a mortgage for the



INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contl.*(c) CONTRACTS—*contl.*

83. ————— *Decree for sale on a mortgage—Interest allowable after date fixed by decree for payment of the mortgage-money.* In construing a decree for sale upon a mortgage, the terms which are susceptible of being construed either as allowing interest only up to the date fixed by the decree for payment of the mortgage-debt or as allowing interest also after that date until realization the proper construction, to make the decree in accordance with law, is that interest is allowed up to the date of realization and not merely up to the date fixed by the decree for payment of the mortgage-debt. *Amalal Ram v. Lachmi Narain, I. L. R. 19 All. 174; Nain Dat v. Harihar Das, Weekly Notes, All. (1895) 57, and Maharaja of Bharatpur v. Kanna Das, Weekly Notes, All. (1895) 161, as to this point overruled. Achalabala Dose v. Surendra Nath Day, I. L. R. 24 Cal. 766, and Subbaraya Karuthaminda Neinar v. Porunammi Nadar, I. L. R. 21 Mad. 361, referred to. Rameswar Koer v. Mahomed Mehdi Hossain Khan, I. L. R. 26 Cal. 39, followed. BAKAR SAJJAD v. UDDI NARAIN SINGH. I. L. R. 21 All. 381*

84. ————— *Enforcement of mortgage made before Transfer of Property Act—Rate of interest from date of suit to date fixed for realization—Civil Procedure Code (Act XIV of 1882), s. 209—Transfer of Property Act (IV of 1882), s. 86.* One of two mortgages bore interest at 12 per cent. on the mortgage-debt payable with costs, and the other carried simple interest. Payments made by the debtor had been appropriated by the creditor to payment of the interest on the bond bearing simple interest, while the compound interest, on the other hand, had been left to accumulate. The creditor sued the representative of the debtor, after his decease, to enforce the mortgage bearing compound interest. The Transfer of Property Act, 1882, was in force when the suit was instituted, but not when the relation of debtor and creditor between the parties commenced. *Held*, assuming that a discretionary power to a Court remained under a 209, Civil Procedure Code, to decree interest to run, at less than the contract rate, in a suit commenced before Act IV of 1882 became law, still the best guide to discretion in this case was to be found in s. 86 of that Act, which required the Courts to decree mortgage-debts with interest at the rate provided by the mortgagee (if to that rate no valid legal objection could be taken) down to the date fixed for realization. *RAMESWAR KOER v. MAHOMED MEHDI HOSSAIN KHAN*

I. L. R. 26 Cal. 39  
L. R. 25 I. A. 179  
2 C. W. N. 633

85. ————— *Negotiable Instruments Act (XXVI of 1881), ss. 79, 80—Interest on promissory note—No mention of interest or rate*

INTEREST—*contd.*3. OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—*contd.*(c) CONTRACTS—*contd.*

of interest in instrument. Certain promissory notes, on which a suit was brought, were in the following terms: "On demand we promise to pay ———— or order the sum of Rs. ———— for value received." Plaintiffs claimed interest. On its being contended

would have enabled the Court to award interest on such an instrument prior to the passing of the Negotiable Instruments Act, 1881, has not been abrogated by that Act, though the interest that can now be awarded is limited by s. 80 to six per cent. S. 80 governs alike the case in which interest, but no rate of interest, is mentioned in the instrument, and that in which interest is not mentioned. In the case of a note payable on demand, the date of the demand, and not that of making the note, is the date from which interest must be taken to run. *BEST v. MAHAMMAD SAIT*

I. L. R. 23 Mad. 18

86. ————— *Acknowledgment to prevent debt being barred—Rate of interest from date of acknowledgment.* In reference to a debt carrying interest at a certain rate, the debtor gave to the creditor, on the approach of the date when the debt would have been barred by limitation, an acknowledgment to prevent that from occurring. *Held*, that the acknowledgment, being intended

87. ————— *Negotiable Instrument Act (XXVI of 1881), s. 80—Act No. XXVIII of 1855 (Usury Laws Repeal Act)—Interest—Rate of interest—Hundis silent as to interest—Collateral contemporaneous agreement fixing rate.*



**INTEREST--contd.**

3. OMISSION TO STIPULATE FOR, OR STIP-  
ULATED TIME HAS EXPIRED—*concl.*

(c) CONTRACTS—concl'd.

to deprive a plaintiff of a right to interest which he has acquired by contract. CHANSHIAM LAJJI v. RAM NARAIN (1906) I. L. R. 29 All. 33 L. R. 34 I. A. 6

4. STIPULATIONS AMOUNTING OR NOT  
TO PENALTIES.

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rate of  $1\frac{1}{2}$  per cent per mensem within a certain period interest the 12 12 12

so high that it would not be equitable to enforce the penalty, and therefore decreed the principal amount claimed with interest at the rate of 12 per cent. per mensem. LACHMAN SINGH v. PIRKHU LALL. G N. W. 358

3. Default in payment—Act XXVIII of 1855—Penalty Where a promissory note stipulated that, in default of payment of principal within three months after date, interest should run at the rate of 75 per cent per annum, the increased rate was held to be a penalty and relieved against on payment of interest at 9 per cent. per annum, notwithstanding Act XXVIII of 1855. *Motaji Bataji v. Husen*, 6 Bom. A. C. 3, followed, and *Arulu Masry v. Warkuthu*, 2 Mad. 205, and *Brojo Kissors Roy v. Madhub*, 17 W. R. 373, dissented from. *PAYA NAQASHI v. GOVIND RAMJI* . . . . . 10 Bom. 382

3. Usury-Act  
XXV of 1855, & Amendment Act 2.

On the money lent, half of the remaining three-fourth to go towards payment of the principal and the other half to the defendants. If at the end of the term any balance remained due to the plaintiff, the defendants were to pay it with interest

**INTEREST--contd.**

4. STIPULATIONS AMOUNTING OR NOT TO  
PENALTIES—contd.

at 18 per cent. . . If the defendants find it difficult to pay

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legal restriction on the rate of interest; that the stipulation for interest at 75 per cent. was not a penalty, but an alternative stipulation for interest at a higher rate on the happening of events under which the lender incurred a greater risk, and that the contract should be enforced. *Held* (on appeal under s. 15 of the Interest Act) that the

and on appeal, ZEBONNISSA v. BROJENDRO  
COOMAR ROY CHOWDERY . . . 21 W. R. 352

GRISH CHUNDER GUHA v. GOUR CHUNDER DASS  
12 C. L. R. 161

2. Penalty—Liquidated damages. Defendant agreed to supply 100 kaulams of jaggery by a specified rate at Rs4 per kaulam, and received Rs100 advance. Defendant further agreed that in default he would pay interest at one per cent. per mensem and *nisa* at Rs7 per kaulam. No delivery was made by defendant. In a suit by the plaintiff to recover Rs7 per kaulam

5. Condition for  
payment in nature of interest on mortgage—

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

*Unreasonable condition—Penalty.* A mortgage-deed contained a condition that, if the principal were not repaid by a certain day, the mortgage should only be redeemed by payment of one mura of rice for each rupee of the mortgage-money. The mortgagee was in possession under a prior *Madarawa* mortgage, and rice rose in the market. *Held*, that the condition was unreasonable, and such as should not be enforced in equity. *MAILARAYA v. SERRARAYA BURT* . . . . . 1 Mad. 81

6. *Penalty.* A bond stipulated for payment of principal and interest at one per cent. per mensem within six months from the date of the bond, and in default that the rate of interest should be raised to six and a quarter per cent. per mensem. *Held*, that the higher rate of interest was not in the nature of a penalty, and that the plaintiff had a right to enforce payment thereof. *ARULU MASTRY v. WAKUTHU CHINNAYEN* . . . . . 2 Mad. 205

7. *Promissory note payable by instalments—Penalty.* Where a promissory note payable by instalments stipulated for interest at two per cent. per mensem, and in default of punctual payment, that interest be charged at one anna per rupee per mensem from the date of the note, it was held that this increased rate of interest was a penalty which might be relieved from on payment of the lower rate. *RAJAJI BIN DAYLJI v. SATANA BIN SAGDU* 6 Bom. A. C. 7

*MOTOJI BIN RATNAJI v. HUSEN* 6 Bom. A. C. 6

8. *Penalty.* A promissory note, payable two months after date, given for money lent and interest in advance at the rate of 12½ per cent. per mensem, contained an agreement to continue to pay that rate of interest after the due date if the money was not then repaid. *Held*, that the high rate of interest so agreed to be paid did not constitute a penalty against which the Courts would relieve. *HAHEMA MAJI v. MEWAS AYAN HAJI* . . . . . 7 Bom. O. C. 19

9. *Instalments—Penalty—Liquidated damages.* A executed an instalment-bond for Rs. 1,000 in favour of B, in which he stipulated that from the year 1271 (1864) to 1275 (1868), both inclusive, Rs. 200 should be paid in the month of Jaishta (May 13th to June 12th) in each year, and that "in the event of any instalment being then due, all the remaining instalments should be deemed lapsed, and the principal should be paid with interest at the rate of 10 per cent. per mensem, from the date of the instalment-bond." The first instal-

B accepted payment of these instalments as part payment of the principal and due to him and never made any demand for interest under the terms

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

of the bond. The further instalment due in Jaishta 1274 and 1275 (May 13th to June 12th, 1867 and 1868) were never paid. On 13th Kartick 1275 (30th October 1868) B sold the bond and all his interest thereunder to C for Rs. 800. On 2nd Jaishta 1276 (11th May 1868) C brought a suit against A for the whole amount of the bond with interest thereon at 10 per cent. per mensem, from the date thereof till the date of suit, namely, Rs. 6,093, less the amount Rs. 600, which had been realized by B in the three instalments for 1271, 1272, and 1273 (1864, 1865, and 1866). The Judge awarded him only the amounts of the unpaid instalments for 1274 and 1275 (1867 and 1868), namely, Rs. 400 with interest from the date of the instalments till date of suit at one per cent. per mensem, in all Rs. 488 odd, proportionate costs and interest on all at one per cent. per mensem till date of realization. On appeal to the High Court by C—*Held*, that the clause in the bond relied on was a mere penalty clause. The original obligor of the bond having waived the exaction of any penalty, C was not entitled to more than the Judge had awarded him. *BOLEY DOBERY v. SIDESWAR RAO BABOO ROY KUR*

4 B. L. R. Ap. 92

14 W. R. 47 note

10. *Bond payable by instalments—Penalty—Usury—Liquidated damages.* The defendant executed a bond in favour

"should I fail to pay the principal and interest as agreed upon, I shall pay interest at 4 per cent. per mensem from the date of this bond to that of liquidation." The defendant made default in payment. *Held*, in a suit brought on the bond, that the stipulation in the bond, for the payment of interest at 4 per cent. per mensem was in the nature of a penalty, and the plaintiff was only entitled to recover interest at a reasonable rate. In this case one per cent. per mensem was given. *BICHROO NATH PANDAY v. RAM LOCHUN SINGH*

11 B. L. R. 135; 19 W. R. 271

*HURREENATH DOSS v. KALEE PERSHAD ROY*

22 W. R. 474

11. *Penalty.* The

be at 1 per cent. a month. In a suit after the four years had elapsed to recover the loan with interest, the Courts below held that the stipulation as to the higher percentage was a penalty, and refused to give interest at that rate. On special appeal the High Court reversed their decisions and allowed interest at 1 per cent. per mensem. *PREETAMBUR CHATTERJEE v. KALEESCHURN ROY*

11 B. L. R. 137 note; 14 W. R. 43



**INTEREST—*contd.*****4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.***

date of the bond to the date of suit at the rate of 3 per cent. per mensem being claimed, subject to the deduction of the interest paid. Regarding the rate of interest stipulated in default as a penal rate, the Court, seeing that the debt was secured by a mortgage of property and that the rate of interest ordinarily payable was somewhat high, considered it sufficient to award the plaintiff 20 per cent. per annum to commence from the expiry of eight months from the date of the bond. **BHARAT LAL v. JETI** . . . . . **7 N. W. 108**

**19. —** *Promissory note*  
*Stipulation to pay interest at high rate on default in payment of note—Penalty—Contract Act, s. 74*  
 The defendant and one D, on the 6th April 1875, gave to the plaintiff, a money-lender, a promissory note, by which they jointly and severally promised to pay the plaintiff on the 6th September R400 "for value received in cash in hand paid on signing and delivering this bond; should we neglect or fail to pay this amount on due date, then only shall it carry interest from and on due date to date of payment at the defaulting rate of 10 per cent. per mensem." At the date of the note, the defendant and D were in the plaintiff's debt in respect of other promissory notes and a sum of R100 was deducted from the amount of the note of the 6th April in respect of one of these which was given up and in respect of interest on three others. A further sum of R125 was deducted as interest in advance for the five months previous to the due date of the note, and the balance (R175) was paid by cheque to D. D died before the note became due. In a suit

Act did not apply. The stipulation to pay interest at the "defaulting rate" was not in the nature of a penalty. *Held*, that, looking at the nature

action, the rate of interest being exorbitant and the consideration inadequate, the transaction was not one which ought to be enforced by a Court of equity. **MACKINTOSH v. HUNT** . . . . . **I. L. R. 2 Cal. 202**

See **MACKINTOSH v. WINGROVE**  
**I. L. R. 4 Cal. 137 ; 2 C. L. R. 433**

**20. —** *Compound interest—Penalty.* *Held*, that a stipulation in a bond that the interest on the principal sum lent should be paid six-monthly, and, if not paid, should be added to the principal and bear interest at the same rate, was not one of a penal nature. **TEJPAL v. KESKI SINGH** . . . . . **I. L. R. 2 All. 621**

**21. —** *Compound interest.*—D gave M a bond for the payment of certain

**INTEREST—*contd.*****4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.***

moneys on a certain date and for the payment of interest on such moneys at R1-12 per cent. per mensem, stipulating to pay the interest six-monthly and in default "to pay compound interest in future." *Held*, (i) that the stipulation to pay compound interest could not be regarded as a penal one, and (ii) that the bond contained an agreement to pay interest after the due date at the rate payable before that date, and that, if it had been otherwise, the obligee was entitled to interest after that date at that rate, such rate not being unreasonable. **MATHURA PRASAD v. DEBJAN SINGH**

**I. L. R. 2 All. 639**

**22. —** *High rate of interest—Penalty.* The obligors of a bond agreed to pay the principal amount by instalments without interest, and in case of default to pay interest at the rate of R3-2 per cent. per mensem, and hypothecated immovable property as security for the payment of the bond-debt, sufficient for the discharge of the debt, and furnished a surety. *Held* by STUART C.J., in a suit on the bond, that the principal amount being payable in the first instance without interest, the stipulation to pay interest at the rate of R3-2 per cent. per mensem in case of default was a penal one, and reasonable interest should only be allowed. *Held* by SPANKIE, J., that, looking at all the circumstances of the case, the very high rate of interest imposed in case of default should be regarded as penal, and should be reduced. The Court under the circumstances allowed interest at the rate of 1 rupee per cent. per mensem. **CHUGHAN MAL v. MIN** . . . . . **I. L. R. 2 All. 715**

**23. —** *Penalty.* The defendants, on the 8th May 1869, gave the plaintiff a bond for the payment of R2,000 on the 16th February 1870. This amount consisted of two items, viz., R1,650 principal and R350 interest in advance at the rate of two per cent. per mensem for the period between the date of the bond and its due date. The bond provided that, in default of payment on the due date, interest on the whole amount of R2,000 should be paid at the rate of two per cent. per mensem from the date of the bond. *Held*, in a suit on the bond in which interest was claimed at the rate of two per cent. per mensem from the date of the bond, that this provision was penal, and the penalty ought not to be enforced. **MAZHAR ALI KHAN v. SARDAR MAL** . . . . . **I. L. R. 2 All. 769**

**24. —** *Penalty.* The defendant, having borrowed R50 from the plaintiff, gave him, on the 9th November 1878, an instrument which was in effect as follows: B (defendant) writes this rukla in favour of A (plaintiff) for R50, cash received, to be repaid on the 13th November 1878. In the event of default, he shall pay interest at R1 per diem. *Held*, that, looking to the whole instrument, it was equitable to hold that the term "interest" was not intended to mean interest in the strict sense of that term, but a penalty,

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

the amount of interest should be so treated, and a reasonable amount only be allowed. The observations of *POTTER, J.*, in *Richard Nath Panday v. Ram Lochan Singh*, 11 B. L. R. 133, concurred in. *HANSIDHAR v. BU ALI KHAN*

I. L. R. 3 ALL 200

25. ————— *Penalty.* A bond for the repayment of money lent provided that such money should be repaid on a certain date; that interest at the rate of 17-8-0 per cent. per annum should be paid at the end of every year; and that, if

term security. In a suit on the bond the obligee, the obligor having failed to pay any interest, claimed interest from the date the bond became due to the date of institution of the suit at 17-8-0, the defaulting rate. *Held*, following the principle laid down in *Hansidhar v. Bu Ali Khan*, I. L. R. 3 All. 200, that the provisions of the bond, as regards the rate of interest payable on default of the payment of interest, were in their nature penal and excessive; that, as a matter of equity, they should not be enforced. *Held*, also, with reference to the question what was a reasonable amount of compensation for the obligor to pay for breach of contract, that unpaid interest should bear interest at the rate of 11-1-0 per cent. per annum from the date of default to the date of the High Court's decree. *KUTUBHAR SINGH v. BHAWANT DAS*

I. L. R. 3 ALL 440

26. ————— *Penalty—Equity relief.* By a registered bond for Rs. 500, dated the 4th October 1875, in which immovable property was hypothecated as collateral security, it was provided that the obligor should pay interest at the rate of 11-4-0 per cent. per mensem at the end of every six months, and upon default in the payment of such interest, that he should pay interest at the rate of 12 per cent. per mensem from the date of the bond. The bond also contained a stipulation against alienation, and declared that the principal sum was payable on demand. The obligee sued the obligor upon the bond, claiming to recover the principal sum and interest from the date of the bond for three years eleven months and twenty days, less different sums amounting to Rs. 500 paid

only to the interest due on and subsequent to the default, but retrospectively to the date of the bond itself, and should not be awarded, but that reasonable compensation only should be awarded by the obligor's breach of contract in respect of interest.

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

Accordingly the Court made a decree, giving the obligee interest on the principal sum from the date of the bond to the date of the decree at 11-4-0 per cent. per mensem and compound interest from the date of default in the payment of interest to the date of the decree at the rate of four annas per cent. per mensem by way of damages for such default. *Hansidhar v. Bu Ali Khan*, I. L. R. 3 All. 200, followed. *Mackintosh v. Wingrove*, I. L. R. 4 Cal. 157, dissented from. *KUTUBHAR SINGH v. BHAWANT DAS* I. L. R. 4 ALL 8

27. ————— *Penalty.* By a deed of mortgage the defendant agreed to pay interest at the rate of one pie per rupee per mensem, and it was provided that the mortgage was to remain in possession for a period of 25 years in lieu of principal and interest, and that the mortgagor was not to claim the property back unless he paid the principal and interest that might accrue due in 25 years from the date of the bond. *Held*, that the clause in the mortgage-deed as to payment of 25 years' interest was not a penalty. *DARSHI RAJAL v. SATYABHANA RAI* I. L. R. 6 Bom. 400

28. ————— *Penalty.* The obligor of a bond agreed that, if the principal amount were not paid at the end of 12 months with the interest thereon, such interest should be added to the principal, which together should represent the principal sum, until a further year's interest at the original rate had accrued, when the same process should be followed of adding unpaid interest to the principal, and so on until the debt was liquidated. *Held*, that the stipulation as to the annual capitalization of principal and interest, for the purpose of carrying interest, could not be regarded as removing the transaction from the region of an ordinary contract on a bond under which an obligor was bound by the terms to which he had agreed. *SARAY PRASAD v. BINA MAHON* I. L. R. 6 ALL 6

29. ————— *Penalty.* The obligor of bond promised therein to pay the amount on a certain day without interest, and if he made default, to pay the amount with interest at the rate of 12 per cent. per mensem. *Held*, in a suit on the bond, that such interest was not penal in its character, but contract interest, the liability to pay which was not made contingent on any breach of any part of the contract, and therefore should not have been reduced. *KUPJERAM LAL v. LALJI BIKRAMJI* I. L. R. 6 ALL 63

30. ————— *Solemnity payable by instalments—Penalty.* A decree was passed

instalments should be due at the same time, the whole debt should be recoverable forthwith, with

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

interest calculated at 12 per cent. instead of 6 per cent. otherwise payable. *Held*, that the condition whereby the amount of interest payable should be increased in default in due payment as above being made must be looked upon as part of the decree of the Court, and not as a penalty. *Eichool Nath Panday v. Ram Lochun Singh*, 11 B. L. R. 137, cited and distinguished. *Rex Bahadon Singh v. Roy Narain Dass* . . . 7 C. L. R. 82

31. ————— Compensation for breach of contract—*Contract Act, s. 74*. V lent Rs. 500 to C and the members of his family under a bond, by which it was agreed that C's family should demise certain land on kanoori to V and receive a further sum. It was also stipulated in the bond that C and the members of his family should pay interest at 6 per cent. upon Rs. 500 until the execution of the kanoori deed, and interest at 24 per cent. from the date of the loan in the event of their not making the demise. The demise was not made. *Held*, that the stipulation for the enhanced rate of interest did not create an independent obligation, and that the proper course was to determine what would be a sufficient compensation for the breach of contract. *Vengideswara Puttur v. Chato Achary*

I. L. R. 3 Mad. 224

32. ————— Penalty—*Act IX of 1872, s. 74*. The obligor of a bond promised to pay the amount on demand with interest at the rate of Rs. 4 per cent. per mensem, to pay the interest

the contract rate of interest stipulated to be paid could not be interfered with. *Bhola Nath v. Pater Singh* . . . I. L. R. 6 All. 63

33. ————— *Act IX of 1872, s. 74*—Penalty. The obligor of a bond for the payment of money agreed therein in respect of interest as follows: "I will pay the money with interest at one

at the rate of one rupee eight annas per mensem from the date of the execution of the bond." *Held*, by STUART, C.J., that the stipulation to pay the higher rate of interest in case of non-payment of interest at the lower rate was a stipulation in the nature of a penalty, and should be so treated in the accounts to be taken. *Dichool Nath Panday v. Ram Lochun Singh*, 11 B. L. R. 135, referred to. *Kharay Singh v. Bhola Nath*, I. L. R. 4 All.

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

8, observed on. *Held*, by TYRRELL, J., that the non payment of interest at the lower rate

34. ————— Penalty—Promise to pay interest at unusual rate to secure prompt payment—*Contract Act, s. 74*. A promise to pay interest if the principal sum is not repaid within fifteen days at the rate of one anna per rupee per diem from the date of the promise (intended to secure prompt payment) cannot be enforced, but interest at the current rate may be allowed. *Per INNES, J. Quære*: Whether s. 74 of the Contract Act is applicable to such a case? *Vythilinga Mudali v. Ravana Sundarappayar*

I. L. R. 6 Mad. 167

35. ————— Penal clause in contract—Increased interest on default of payment—*Contract Act (IX of 1872), s. 74*. A mortgage-bond contained a proviso that in case of default in payment of the principal sum, with interest at the rate of one per cent. per mensem on a certain day, interest should be paid at the rate of two per cent. per mensem from the date of the bond. *Held*, that the stipulation to pay increased interest must be construed as a penal clause. *Mathura Persad Singh v. Lugun Koor* . . . I. L. R. 6 Cal. 615

36. ————— Promissory note—Failure to pay on due date—Enhanced rate of interest—Penalty—Breach of contract. Where money is borrowed under a contract for repayment with interest on a certain day, and the contract stipulates that if the money is not paid at the due date it shall thenceforth carry interest at an enhanced

Crow. MACKINTOSH v. GORE  
I. L. R. 6 Cal. 689; 13 C. L. R. 102

37. ————— Penalty—Contract Act, s. 74. In consideration of an advance of Rs. 118, the defendants executed in favour of the

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

of the bond, and not only from the breach of the contract, must be taken to be in the nature of a penalty, and only to be taken into consideration as a basis upon which damages for the breach of contract were to be estimated. The principle on this subject laid down in the case of *Mackintosh v. Crow*, 1. L. R. 9 Calc. 689, approved of. *SUNOUT LAL v. BALNATH ROY*, 1. L. R. 13 Calc. 184

38. — *Bond—Penalty—Contract Act, s. 74—Act XXVIII of 1855, s. 2.*  
The stipulation in a bond was in these terms: "I two that the per month." *Held*, that the stipulation was one for the payment of interest within the meaning of s. 2, Act XXVIII of 1855, and did not fall under s. 74 of the Contract Act. *Mackintosh v. Crow*, 1. L. R. 9 Calc. 689, approved. *Balkishen Das v. Run Bahadur Singh*, 1. L. R. 10 Calc. 305, considered. *ARJAN BIBI v. ASGAR ALI CHOWDHURI*

1. L. R. 13 Calc. 200

39. — *Instalment-bond—Agreement to pay enhanced rate of interest on default.* An agreement to pay the principal of a debt by instalments with interest and on default of payment of each instalment to pay an enhanced rate of interest thereon from the date of default of payment, is not an agreement which should be relieved against. *Dictum of Wilson, J.*, in *Mackintosh v. Crow*, 1. L. R. 9 Calc. 689, approved. *JAGANNATHAM v. RAOHUNATHA* 1. L. R. 9 Mad. 276

40. — *Penalty—Bond.*

contract to pay the interest when due, entered by a stipulation that in case of such breach he shall be entitled to recover compound interest or by

for a sum of money payable in June 1882, it was provided that interest should be paid at the rate of 319 per cent. per annum on the puranmashi of every Jaith, and that, if the interest were not duly paid, the rate should be increased to 115 per cent. per annum, and compound interest should be payable. There was no provision for payment of interest from the time when the principal became due. In December 1891, the obligee brought a suit on the bond against the obligor, claiming interest from the date of the bond to the date of the institution of the suit at 315 per annum,

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

and compound interest for the same period at the same rate. *Held*, that the stipulations contained in the bond must be regarded as penal, and it was therefore the Court's duty to limit the penalty to what was the real amount of damage sustained by the plaintiff in consequence of the defendant's breach of the contract to pay the interest at the due date. *Held*, that for this purpose the proper course was to reduce the interest to 19 per cent. per annum, reckoned at compound interest, with yearly rests, to the due date of the bond; and that, inasmuch as the plaintiff was to blame for not having enforced his remedy at an earlier date, he should only recover simple interest at 19 per cent. from the due date of payment, upon the entire sum which was due when the bond became due, i.e., the principal added to the compound interest calculated up to that date. *The same principle held in*

per annum. *Held*, that the stipulations contained in the bond might fairly be considered as representing the dam-

41. — *Penalty—Higher rate of interest upon default in payment of instalment.* A decree, of which the terms had been arranged by a solenamah between the parties, for payment of money by instalments with interest at

occurrence of (c), execution might issue for that instalment, with interest at twelve per cent. from the date of the decree. *Held*, that these provisions for double interest were but a reasonable substitution of a higher rate of interest for a lower in a given

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

state of circumstances, and were not in the nature of a penalty which equitable relief might be claimed. *Balkishen Das v. Run Bahadur Singh*. I. L. R. 10 Cal. 305; 13 C. L. R. 302  
I. L. R. 10 I. A. 162

42. ————— *Penalty—Liquidated damages.* Where a document contains covenants for the performance of several things, and then one large sum is stated to be payable in the event of a breach, such sum must be considered a penalty, but when it is agreed that if a party do, or refrain from doing, any particular thing, a certain sum shall be paid by him, then the sum stated may be treated as liquidated damages. A bond for

as principal, and thereon interest shall run also at the rate of Rs. 4 per cent. per month." *Held*, that the clause was not penal, but in the nature of an agreement to pay liquidated damages, and that the plaintiff was entitled to a decree for the amount due on the bond with interest as agreed upon. *Bhary Lal Das v. Tej Narain*  
I. L. R. 10 Cal. 764

43. ————— *Agreement for higher rate for default in payment on certain date.* A stipulation in a bond that if the sum secured is not

44. ————— *Penal clause in contract—Enhanced rate of interest on default of payment of principal on due date—Penalty—Contract Act (IX of 1872), s. 74—Act XXVIII of 1855, s. 2.* In a suit on a bond, wherein it was stipulated that the loan was to be repaid on a certain date and to bear interest at the rate of 2 per cent. per mensem, but that, if the loan were not repaid on the date named, the principal was to bear interest at the rate of 4 per mensem from the date of the loan;—*Held*, on the authority of the decision in *Balkishen Das v. Run Bahadur Singh*, I. L. R. 10 Cal. 305, that the stipulation as to the payment of interest at the higher rate was not in the nature of a penalty, and that the plaintiff was entitled to a decree for the amount due on the bond with interest at the increased rate from the date of the bond; and that, whether the interest at the increased rate, in case of non-payment on the date fixed in the contract, was payable from the commencement of the loan or from the date fixed for the repayment of the loan, s. 74 of the Contract Act was not applicable. *Mackintosh v. Crow*, I. L. R. 9 Cal. 639, upon this point, dissented from. The decision in the

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

In the contract, from the commencement of the loan, is in the nature of a penalty. *Bau Nath Singh v. Sheah Ali Hosain*  
I. L. R. 14 Cal. 248

45. ————— *Contract Act s. 74—Penalty—Enhanced rate of interest and compound interest.* A mortgagor agreed that, if any instalment of interest accruing due on the mortgage was not paid, he should pay compound interest

46. ————— *Contract Act, s. 74—Penalty—Payment of higher rate of interest from date of bond on breach.* Where a mortgagee provided for repayment of the debt in four instalments with interest at 6 per cent. and in default of payment of any instalment on the due date, for interest at 12 per cent. from the date of the bond;—*Held*, following *Balkishen Das v. Run Bahadur Singh*, I. L. R. 10 Cal. 305, that the stipulation being reasonable, the plaintiff was entitled on default to recover the higher rate of interest from the date of the bond. *Basavayya v. Subbarazu*  
I. L. R. 11 Mad. 204

47. ————— *Bond—Stipulation to pay double the amount of debt on default of payment of any instalment.* A stipulation by which, on default of payment of one instalment, double the entire, amount of the debt due under an instalment bond was to become at once payable;—*Held* to be in the nature of a penalty. *Joshi Kalidas v. Dada Abhesang*  
I. L. R. 12 Bom. 555

48. ————— *Contract Act, s. 63, 74—Penalty—Interest on decree amount up to date of payment—Remission of part performance of contract—Sum accepted on account of interest.* A hypothecation-bond provided for payment of interest on the principal sum at the rate of 9 per cent. and contained a further provision that, on default

After the second payment had become due, the creditor accepted payment on account of interest of a sum a little more than the arrears calculated at 9 per cent. In a suit by the creditor.—*Held*, (i) that the plaintiff had not waived any right under the bond by accepting the payment on account of





INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

state of circumstances, and were not in the nature of a penalty against which equitable relief might be claimed. *BALKISHEN DAS v. RUN BAHADUR SINGH* I. L. R. 10 Calc. 305; 13 C. L. R. 392

I. L. R. 10 I. A. 163

42. ————— Penalty—Liquidated damages. Where a document contains

be treated as liquidated damages. A bond for

as principal, and thereon interest shall run also at the rate of 11-4 per cent. per month." *Held*,

43. ————— Agreement for higher rate for default in payment on certain date. A stipulation in a bond that if the sum secured is not

44. ————— Penal clause in contract—Enhanced rate of interest on default of payment of principal on due date—Penalty—Contract Act (IX of 1872), s. 74—Act XXVIII of 1855, s. 2. In a suit on a bond, wherein it was stipulated that the loan was to be repaid on a certain

of interest at the higher rate was not in the nature of a penalty, and that the plaintiff was entitled to a decree for the amount due on the bond with interest at the increased rate from the date of the bond; and that, whether the interest at the increased rate, in case of non-payment on the date fixed in the contract, was payable from the commencement of the loan or from the date fixed for the repayment of the loan, s. 74 of the Contract Act was not applicable. *Macintosh v. Crow*, I. L. R. 9 Calc. 639, upon this point, dissected from. The decision in the

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

Case of *Balishen Das v. Run Bahadur Singh*, I. L. R. 10 Calc. 305, overrules the decision in the case of *Mathura Persad Singh v. Luggun Koer*, I. L. R. 9 Calc. 615, and all similar cases cited, in *Macintosh v. Crow*, which held that the stipulation for the payment of a higher rate of interest in the event of the non-payment of the debt on the date fixed in the contract, from the commencement of the loan, is in the nature of a penalty. *BAIJ NATH SINGH v. SHAH ALI HOSAIN*

I. L. R. 14 Calc. 248

45. ————— Contract Act s. 74—Penalty—Enhanced rate of interest and compound interest. A mortgagee agreed that, if any instalment of interest accruing due on the mortgage was not paid, he should pay compound interest and discharge the principal in one year, and further that, if the principal was not so discharged, he should pay interest at an enhanced rate. *Held*, that the mortgagee could enforce the agreement. *APPA RAU v. SURYANARAYANA* I. L. R. 10 Mad. 203

46. ————— Contract Act, s. 74—Penalty—Payment of higher rate of interest from date of bond on breach. Where a mortgage-deed provided for repayment of the debt in four instalments with interest at 6 per cent. and in default of payment of any instalment on the due date, for interest at 12 per cent. from the date of the bonds—*Held*, following *Balishen Das v. Run Bahadur Singh*, I. L. R. 10 Calc. 305, that the stipulation being reasonable, the plaintiff was entitled on default to recover the higher rate of interest from the date of the bond. *BASAVAYYA v. SUBBARAO* I. L. R. 11 Mad. 294

47. ————— Bond—Stipulation to pay double the amount of debt on default of payment of any instalment. A stipulation by which, on default of payment of one instalment, double the entire amount of the debt due under an instalment bond was to become at once payable:—*Held* to be in the nature of a penalty. *JOSHI KALIDAS v. DADA ABHESANO* I. L. R. 12 Bom. 555

48. ————— Contract Act, ss. 63, 74—Penalty—Interest on decret amount up to date of payment—Remission of part performance of contract—Sum accepted on account of interest. A hypothecation-bond provided for payment of interest on the principal sum at the rate of 9 per cent. and contained a further provision that, on default being made in payment of interest accruing due, interest should be paid from the date of the bond at the rate of 15 per cent. Default was made when the first and second payment of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum a little more than the arrears calculated at 9 per cent. In a suit by the creditor.—*Held*, (i) that the plaintiff had not waived any right under the bond by accepting the payment on account of

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

interest; (ii) that the provision for enhanced interest calculated from the date of the bond on default was of the nature of a penalty under s. 74 of the Contract Act; (iii) that the plaintiff was entitled to interest on decree amount from date of decree to date of payment at 6 per cent. *Dalishen Das v. Run Bahadur Singh, I. L. R. 10 Calc. 305*, discussed and distinguished. *Darj Nath Singh v. Shah Ali Hossain, I. L. R. 14 Calc. 243*, dissented from. *NANJAPPA v. NANJAPPA*  
I. L. R. 12 Mad. 161

49. ———— *Contract Act, s. 74—Bond—Breach of contract—Penalty* A bond by which immovable property was hypothecated provided for interest at 13½ per cent. and contained a condition that, if the principal with interest were not paid within one year, 27 per cent. should be paid as interest as from the date of the bond. *Held*, that the question to be determined with reference to this condition was whether the parties intended to contract that, on failure by the mortgagor to pay within the stipulated time, 27 per cent. should be payable *qua* interest from the date of the bond or whether they intended that the condition should be regarded merely as providing for a penalty, leaving the amount of compensation for non-payment at the stipulated time to be determined, in case of dispute, by the Court. *Held*, that the condition would not in itself be an unreasonable one under the circumstances, that the parties contracted that the 27 per cent. should be payable *qua* interest, and that interest at that rate must therefore be allowed. *Wallis v. Smith, L. R. 21 Ch. D. 243* referred to. *BAHWARI DAS v. MUTHASIMAD MASHIAT*  
I. L. R. 9 All. 690

50. ———— *Unconscionable bargain—Bond—Compound interest* In a suit for the recovery of a principal sum of Rs 99 due upon a bond, with compound interest at two per cent. per mensem, it was found that advantage was taken by the plaintiff of the fact that the defendant was being pressed in the tahsil for immediate payment of revenue due, to induce him to execute the bond

plaintiff had power to enforce the same at any time

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

*Ram Prasad, I. L. R. 9 All. 74*, referred to. The Court decreed the principal sum of Rs 99 with simple interest at 9½ per cent. per annum up to the date of institution of the suit. *MADHO SINGH v. KASHI RAM*  
I. L. R. 9 All. 228

51. ———— *Bond—Failure to pay on due date—Enhanced rate of interest from date of bond till date of realization—Penalty—Contract Act (IX of 1872), s. 74.* *Held* by the Full Bench (BANKERJEE, J., dissenting as to part), that a provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond up to the date of realization, amounts to a provision for a penalty, and s. 74 of the Contract Act applies to the money claimed at the increased rate of interest from the date of the bond until realization. *MacIntosh v. Crow, I. L. R. 9 Calc. 689*; *Nanjappa v. Nanjappa, I. L. R. 12 Mad. 161*; and *Sajaji Panhaji v. Maruti, I. L. R. 14 Bom. 274*, approved. *Darj Nath Singh v. Shah Ali Hossain, I. L. R. 14 Calc. 243*, overruled so far as dissents from *MacIntosh v. Crow*. *Balishen Das v. Run Bahadur Singh, I. L. R. 10 Calc. 305*, distinguished. *BANKERJEE, J.*—The decision in *MacIntosh v. Crow*, which regards the interest at the increased rate as a penalty, is correct as to the claim of interest up to the stipulated day of repayment, and *Darj Nath Singh v. Shah Ali Hossain* was wrongly decided

date of realization. This view is in accordance with the decision in *MacIntosh v. Crow*. *KALACHAND KYAL v. SHIB CHUNDER ROY*  
I. L. R. 19 Calc. 392

52. ———— *Bond—Default in payment on due date—Contract Act (XI of 1872), s. 74—Breach of contract.* A mortgage-bond provided that interest for the loan should be paid at

penalty and might be enforced. *DULLABHDAS DEV-CHANDSET v. LAKSHMIAN DAS SWAROCHAND*  
I. L. R. 14 Bom. 200

53. ———— *Stipulation in a mortgage-bond for enhanced interest in default of payment on a certain day—Contract Act (IX of 1872), s. 74.* A mortgage-bond provided for re-

that, under the circumstances, compound interest should not be allowed. *Kamini Sundari Chaudhary v. Kali Prosunno Ghose, I. L. R. 12 Calc. 225*; *Beynon v. Cook, L. R. 10 Ch. Ap. 389*; and *Lall v.*

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

interest was a penalty, and not to be enforced. *Sajan Panthar Maruti*. I. L. R. 14 Bom. 274

54. — *Liquidated damages*—Contract Act (IX of 1872), s. 74. A provision for retrospective enhancement of interest, in default of payment of the interest at a due date, is generally a penalty which should be relieved against; but a provision for enhanced interest in the future cannot be considered as a penalty unless the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the primary contract between the parties. *Umaswamy Mahanadras Deshpande v. Balakrishna*. I. L. R. 17 Bom. 108

55. — *Contract Act*, s. 74—*Penalty*. Where in a contract under which interest is payable it is agreed between the parties that if such interest be not paid punctually, the defaulter shall be liable to pay interest at an enhanced rate (whether from the time of default or from the time when interest first became payable under the contract) such agreement does not come within s. 74 of the Contract Act, and is to be construed according to the intentions of the parties as expressed therein, and not as a stipulation for a penalty. Such agreement is to be enforced according to its terms, unless it be shown to have been wholly made unconscionable or fraudulent. The English doctrine of penal stipulations as applied to such agreements considered and not followed. *Bilhaba Das v. Ravi Balakrishna Singh*, I. L. R. 19 Cal. 345; I. L. R. 19 I. A. 122, considered. *Bayer Bhai v. Suresh Das*. I. L. R. 15 All. 232

56. — *Compound interest*—*Mortgage deed*—*Penalty*. Where a mortgage deed stipulated for payment of half-yearly instalments of interest, and in case of default in such payments provided for compound interest—*Held*, that such a provision was not in the nature of a penalty; and there being no question of fraud or oppression, improper dealing, exorbitant amount, dishonest or unconscionable or otherwise consideration, the stipulation as to interest must be enforced. *Mangamma Maruti v. Bappa Ekar*, I. L. R. 29 Cal. 355 note, approved. *Srinivas Narayan Srinivas v. J. George Narayan Boy Choudhary*. I. L. R. 29 Cal. 260

57. — *Contract Act* (IX of 1872), s. 74—*Provision not enforced*, but enforceable. A mortgage-deed contained the following stipulation as to interest: "I will pay interest for the said amount at the rate of 14-4 per cent. per annum, and at the end of a year from the date of the bond I will pay the whole amount of interest due on the principal for that year. If I do not pay the interest in the way at the end of each year, I will be guilty of default. You will by insuring sum make interest upon the amount of interest (which will be repaid as principal), and

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

upon the principal mentioned in the bond at the rate of 13-2 per cent. per annum from the mortgaged property and from me, my heirs, assigns, and representatives and from my other properties. I will continue to pay interest upon the principal for every year from the date of the bond at the end of that year so long as the amount of the bond is not paid. In default of payment, you will act according to the conditions stated above. I will repay this money within three months from date and redeem the mortgage-property and mortgage-bond..... If I fail to pay up the principal money within the said specified time, I will continue to pay up interest upon the principal at the rate of 14-4 per cent. according to the said stipulation in the bond up to the date of the institution of the suit, and from the date of institution of the suit to that of the decree, and from the date of the decree to that of the realization of the amount." *Held*, that the plaintiff was not entitled to the higher rate of interest, it being in the nature of a penalty within the meaning of s. 74 of the Contract Act; *Eals Chand Eyal v. Shub Chander Eyal*, I. L. R. 19 Cal. 372, referred to; and this was so, although no sum was named within the meaning of that section, because such sum was at once ascertainable. *Baird Nath v. Seakant Das*. I. L. R. 22 Cal. 143

58. — *Contract Act* (IX of 1872), s. 74—*Penal clause*—*Mortgage*—*Conversion of contract to pay*. In a suit to recover principal and interest due on a mortgage, dated the 12th April 1882, it appeared that the instrument provided that the principal should be repaid with interest at 21 per cent. per annum in two instalments on the 5th May 1883 and the 25th April 1884, respectively, and provided as follows: "If the amount of each instalment be not paid on the date of such instalment, we shall make payment with interest at three times per cent. per annum from the date of the bond." No payment had been made on account of principal or interest. *Held*, that the enhanced rate of interest was a penalty under s. 74 of the Contract Act, and therefore was not recoverable, but that the plaintiff was entitled to recover the principal, together with interest calculated at 21 per cent. up to the dates when the instalments respectively became due, and at 12 per cent. from those dates to the date of the plaintiff and at 6 per cent. from that date until payment. *Sanappa v. Sanappa*, I. L. R. 12 Mad. 151; *Echaband Eyal v. Shub Chander Eyal*, I. L. R. 19 Cal. 372; and *Unar Eyal Echaband Eyal v. Shub Eyal*, I. L. R. 11 Bom. 106, followed. *GOVIND V. VESANTHARAN*. I. L. R. 13 Mad. 175

59. — *Contract Act* (IX of 1872), s. 74—*Enforceable*. In a mortgage-deed the interest payable was 2 per cent. per annum, and



INTEREST—*on'd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*cont'd*

the Interest Act (Act XXVIII of 1857) which takes away the equitable jurisdiction of a Court to relieve against penalties. The Court would relieve a defendant from the penalty of paying a higher interest if it was convinced that the stipulation was intended to be really a penalty for ensuring the payments of instalments on the dates agreed upon, and not as mere stipulation for the payment of a higher interest under the circumstances. *Ramendra Roy Chowdhry v. Scrajuddin Akmal Chowdhry*, 2 C. W. N. 231, referred to. *Unarkhan Mahomed Khan Dramulh v. Sale Khan*, 1 L. R. 17 Bom. 106, followed. *MANOO BEPARI v. DURG CHARAN SATI*

2 C. W. N. 333

63. ———— "Dharta" illiterate agriculturist—Unconscionable bargain. The High Court as a Court of Equity possesses the power exercised by the Court of Chancery of granting relief in cases of such unconscionable or grossly unequal and oppressive bargains as no man of ordinary prudence would enter into, and which, from their nature and the relative position of the parties, raise the presumption of fraud or undue influence. The principles upon which such relief is granted apply to contracts in which exceedingly onerous

155; *O'Rourke v. Bolingbroke*, L. R. 2 App. Cas., 514; *Earl of Aylesford v. Morris*, L. R. 8 Ch. Ap. 484, *Newell v. Snelling*, L. R. 13 Ch. D. 679, *Beynon v. Cook*, L. R. 10 Ch. Ap. 339, referred to. An illiterate karmi in the position of a present proprietor executed a mortgage-deed in favour of a professional money-lender to whom he owed Rs. 7 by which he agreed to pay interest on that sum at the rate of 24 per cent. per annum at compound interest. He further agreed that "dharta" or a yearly fine, at the rate of one anna per rupee, should be allowed to the mortgagee, to be calculated by yearly rests. It was also provided that the interest should be paid from the profits of certain malikana land of the mortgagor, and that, if the interest were not paid for two years, the mortgagee should be put in possession of this land. As security for the debt, a six pies zamindari share was mortgaged for a term of eleven years. The effect of the stipulation as to "dharta" was that one anna per rupee would be added at the end of every year, not only to the principal mortgage-

INTEREST—*cont'd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*cont'd.*

the "dharta" alone amounted to Rs. 211. Held, that the stipulation in the deed as the "dharta" was not of the kind referred to in s. 74 of the Contract Act (IX of 1872), and that there was no question of

1 L. R. 106 Bom. 106, followed. 1 L. R. 106 Bom. 106, followed.

64. ———— Award of interest at a penal rate—Compensation for special damage. Interest at a penal rate should not be awarded if there is no demand for it, or for a sum by way of compensation for special damage on the part of the plaintiff. *TIKANDAS JAYAHIRDAS v. GANGA RAM MATHURDAS*, 11 Bom. 203

65. ———— Notice of intention to enforce penal rate of interest. A decree-holder intending to enforce the penalty for delay in the payment of instalments is bound to tell the judgment-debtor so when the instalments are brought to him. *SHAMA CHURN SINGH v. PRATAP COOMAR GHOSAL*, 20 W. R. 292

68. ———— Contract Act, s. 74—Enhanced rate of interest on failure to pay on due date—Penalty—Mortgage—Compound interest at a rate higher than that of simple interest—Interest at contract rate up to the date fixed by Court for payment of mortgage-money—Subsequent interest at rate to be fixed by Court. A provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond, amounts to a provision for a penalty, and, under the terms of s. 74 of the Contract Act, reasonable compensation should be allowed. *Kalachand Kyal v. Shib Chunder Roy*, 1 L. R. 19 Calc. 392, followed. *Chaym v. Brij Bhukan*, 1 L. R. 17 All. 511, referred to. Stipulation for the payment of compound interest at a rate higher than that of simple interest is a penalty which should not be allowed. *Barid Nath Das v. Shamchand Das*, 1 L. R. 23 Calc. 143, followed. In a mortgage-decree, interest at the contract rate should be allowed up to the date fixed by the decree for the repayment of the money due, and after that date at such rate as the Court may fix. *Rameswar Koer v. Mahomed Mehdi Hossain Khan*, 1 L. R. 26 Calc. 39; *Maharaja of Bharatpur v. Ram Kanno Desi*, 1 L. R. 28 I. A. 35; *Estar Sajid v. Udit Narain Singh*, 1 L. R. 21 All. 351, referred to. *RAJESWAR PRASAD SINGH v. RAI SHAM KISREN* (1901) 1 L. R. 29 Calc. 43

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

there was a stipulation that on default of payment on the due date interest should run "from the date of default of promise" at 6 per cent. per mensem

to decide, notwithstanding the provisions of s. 2, Act XXVIII of 1855, whether the stipulation as to the enhanced interest was agreed upon as interest properly so called, or as a penalty, and whether in the circumstances of the case the debtor was entitled to equitable relief. *Ramendra Roy Chowdhry v. Serajuddin Ahmed Chowdhry*, 2 C. W. N. 234, and *Umar Khan v. Sale Khan*, I. L. R. 17 Bom. 104, referred to. *Per Chinoy, J.*—The case of *Markintosh v. Crow*, I. L. R. 9 Cal. 687, and *Kula Chand Kyal v. Shih Chander Roy*, I. L. R. 19 Cal. 372, do not lay down any rule of law precluding the Court from affording relief to a debtor, independently of s. 74 of the Contract Act (IX of 1872), even when the bond provides for increased rate of interest prospectively and not retrospectively, where a proper ground for such equitable relief is made out. *Per Rayner, J.*—The stipulation for increased rate of interest may be a penalty, but is not necessarily so merely because the increased rate is an exorbitant one; whether it is a penalty or not is rather a question of fact than one of law, and the Court must consider whether in the circumstances of the case the defendants had made out their claim to equitable relief. *Ramendra Roy Chowdhry v. Serajuddin Ahmed Chowdhry*, 2 C. W. N. 234, distinguished. *Parsi Napsi v. Gordin Rajaji*, 10 Bom. J. C. 382; *Umar Khan v. Sale Khan*, I. L. R. 17 Bom. 104; *Bichook Nath Pandey v. Ravi Lochun Singh*, 11 B. L. R. 135; *Magniram Marwari v. Rajpati Koori*, I. L. R. 20 Cal. 369 note; and *Surya Narain Singh v.*

80. — Contract Act (IX of 1872), s. 74—Interest Act (XXVIII of 1855), s. 2. A borrowed from B Rs 500 on a mortgage-bond agreeing that he would pay in return Rs 1,000 by a fixed number of instalments, and that on failure of any one instalment he would pay interest on the defaulted instalment at the rate of one anna per rupee per mensem until the date

Mad. 101, referred to. *Held*, further, that, even if the said stipulation in the bond did not amount to

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

a penalty under s. 74 of the Contract Act, and although under the provisions of s. 2, Act XXVIII of 1855, a man was free to contract interest at any rate that he chose on the borrowed money and

could see whether the provision as to enhanced interest was agreed upon as interest, or whether it was intended to be a penalty upon the principles of equity and good conscience, and that in this case the

referred to *RAMENDRA ROY CHOWDHRY v. SERAJUDDIN AHMED CHOWDHRY* 2 C. W. N. 234

81.

*Mortgage bond*  
—Failure to pay on due date—Stipulation for the payment of enhanced interest from date of default till date of redemption—Whether such stipulation is a penalty where a sum is mentioned in the contract as the amount to be paid in case of a breach of the contract—Contract Act (IX of 1872), s. 74 In a mortgage bond where the parties are adults the provision as to interest was to the following effect: "On account of interest of the said sum of money, you shall take the profits of the said lands, and I will pay Rs 20 per annum as the interest from year to year by getting the

principal; and for the said amount, when it will be, I will pay up to the date of repayment at the rate of half anna per rupee per mensem" *Held*, that, inasmuch as what was specified in the contract was only the enhanced rate of interest, but no definite amount was specified as being payable in the event of a breach,

2 C. W. N. 234, referred to. *DEO NATH CHANDER NIBARAN CHANDER CHUCKERBUTTY* I. L. R. 27 Cal. 431 4 C. W. N. 123

82.

*Penalty enjoining payments of instalments on due dates—Interest Act, XXVIII of 1855.* There is nothing in

INTEREST—*on'd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*cont'd.*

the Interest Act (Act XXVIII of 1855) which takes away the equitable jurisdiction of a Court to relieve against penalties. The Court would relieve a defendant from the penalty of paying a higher interest if it was convinced that the stipulation was intended to be really a penalty for ensuring the payments of instalments on the dates agreed upon, and not as

*Sale Khan, 1 L. R. 11 Bom. 100, 100W. 100W. MANOO BEPARI v. DURGIA CHARAN SATHI*

3 C. W. N. 333

63. ———— "*Dharta*" *illiterate agriculturist—Unconscionable bargain.* The High Court as a Court of Equity possesses the power exercised by the Court of Chancery of grant-

The principles upon which such relief is granted apply to contracts in which exceedingly onerous

of the usury laws *Chandrasekhar v. Subbarao, 1 L. R. 153, O'Rourke v. Bolingbroke, L. R. 2 App. Cas. 814; Earl of Aylesford v. Morris, L. R. 8 Ch. Ap. 484, Nevill v. Snelling, L. R. 15 Ch. D. 619, Beynon v. Cook, L. R. 10 Ch. Ap. 339, referred to.* An illiterate kurmi in the position of a present proprietor executed a mortgage-deed in

est should be paid from the profits of certain malikana land of the mortgagor, and that, if the interest were not paid for two years, the mortgagee should be put in possession of this land. As security for the debt, a six per cent zamindari share was mortgaged for a term of eleven years. The effect of the stipulation as to "*dharta*" was that one anna per rupee would be added at the end of every year, not only to the principal mortgage-money, but also to the interest due, and the total would be again regarded as the principal sum for the ensuing year. Ten years after the date of the mortgage, the mortgagor brought a suit for redemption on payment of only Rs 7 or such

INTEREST—*cont'd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*cont'd.*

the "*dharta*" alone amounted to Rs 11. *Held*, that the stipulation in the deed as the "*dharta*" was not of the kind referred to in s. 74 of the Contract Act (IX of 1872), and that there was no question of penalty, but that, looking to the relative positions of the parties and the unconscionable and oppressive nature of the stipulation, the benefit thereof should

64. ———— Award of interest at a penal rate—*Compensation for special damage.* Interest at a penal rate should not be awarded if there is no demand for it, or for a sum by way of compensation for special damage on the part of the plaintiff. *TIKANDAS JAVAHIRDAS v. GANGA RAM MATHURADAS* 11 Bom. 203

65. ———— Notice of intention to enforce penal rate of interest. *Adresca-holder*

66. ———— Contract Act, s. 74—*Enhanced rate of interest on failure to pay on due date—Penalty—Mortgage—Compound interest at a rate higher than that of simple interest—Interest at contract rate up to the date fixed by Court for payment of mortgage-money—Subsequent interest at rate to be fixed by Court.* A provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond, amounts to a provision for a penalty, and, under the terms of s. 74 of the Contract Act, reasonable compensation should be allowed. *Kalachand Kyal v. Shih Chander Roy, 1 L. R. 19 Cal. 392, followed. Chaymal v. Brij Bhawan, 1 L. R. 17 All 511, referred to.* Stipulation for the payment of compound interest at a rate higher than that of simple interest is a penalty which should not be allowed. *Baid Nath Das v. Shamsundari Das, 1 L. R. 22 Cal. 143, followed.* In a mortgage-deed, interest at

*Hossein Khan, 1 L. R. 26 Cal. 39; Maharaja of Bharatpur v. Ram Kanno Dhi, L. R. 28 I. A. 35; Bihar Sagar v. Udit Narain Singh, 1 L. R. 21 All 361, referred to. RAMESWAR PRASAD SINGH v. RAJ SHAM KISHAN (1901) 1 L. R. 20 Cal. 43*



INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

67. ————— *Usury Laws*  
*Repeal Act (XXVIII of 1855), s. 2—Contract Act*  
*Amendment Act (VI of 1899), s. 4—Penalty—*  
*Principal sum, bearing no interest, repayable by*  
*instalments—Provisions for interest in case of*  
*default* Defendant was indebted to plaintiff, as the stake-holder of a "chit fund," and undertook to pay the amount of the principal by half-yearly instalments. He further undertook that in case of default in the payment of such instalments, he would pay interest at the rate of one pie per rupee per diem from the date of default. No interest was payable on the principal sum unless default should be made, the instalments being in repayment of the principal sum alone, without interest. Default having been made, plaintiff sued on the bond, whereupon defendant pleaded that the rate of interest was penal and not recoverable. *Held*, that plaintiff was entitled to recover. The contract was not one which provided for the payment of a given rate of interest in any event and a higher rate in case of default. Under the agreement, the debtor incurred no obligation to pay interest at all on the money which he owed. His liability to pay interest only arose in the event

as from the date of default is not a stipulation by way of penalty. The explanation to s. 4 of the Contract Act of 1899, which provides that a Court may treat such a stipulation as a penalty, is permissive, and does not preclude it from holding otherwise. *Semble*: That the words "which is put in issue," in s. 4 of the Contract Act of 1899, mean "which is in issue," and that where there is an appeal from

68. ————— *Mortgage bond—*  
*Penalty—Increased rate of interest from date of*  
*default—Act VI of 1899, s. 4.* A stipulation in a bond, for increased interest from the date of default, may be a stipulation by way of penalty, and

69. ————— *Increased interest*  
*on default—Interest, provision for, in a bond—*  
*Penalty* Where, in a bond executed on the 1st December, 1888, the stipulation was that interest would run at the rate of 1½ per cent. per mensem, and that if the amount was not paid on the due date the interest on the amount of loan from after the ex-

INTEREST—*contd.*4 STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

piration of the fixed time would be charged at the rate of 5 per cent. per mensem up to the date of ultimate recovery: *Held*, that, the increased rate of interest being very high, and there being some evidence to show that the stipulation was inserted to ensure prompt payment by the debtor, the case ought to be sent back for consideration by the Court below, from the point of view that the provision as to increased interest might be penal, or that relief might be

7 C. W. N. 152.

70. ————— *Bond—Instal-*  
*ments—Failure to pay instalments—Interest at a*  
*higher rate from the date of the transaction—Pen-*  
*alty.* Defendants borrowed a sum of Rs200 from the plaintiffs and gave a bond, dated the 12th December, 1879, for Rs250, repayable by monthly instalments of Rs5. The bond provided that, in

which date no payments were made. The plaintiffs claimed interest from the defendants at the rate of

CHAND (1902) I. L. R. 27 Bom. 21

71. ————— *Act VI of 1899,*  
*s. 4—Stipulation for enhanced interest and for*  
*compound interest in case of default—Penalty.*

rate In case of default in the payment of

the Subordinate Court should find whether the provision of 9 per cent. was an unreasonable sum to allow

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

as compensation, and, if so, what compensation should be allowed as reasonable for the non-payment of principal in the manner agreed upon; the stipulation for payment of compound interest being regarded as compensation for non-payment of interest alone, and not for non-payment of principal. *ANNAMALAI CHETIA v. VEIDARADRAM CHETIA* (1902) . . . I. L. R. 28 Mad. 11

72. ————— *Penalty—Stipulation that interest shall be chargeable if instalments in repayment of principal be not paid on due date—Applicability of Act VI of 1899 to suits filed prior to its coming into force.* A stipulation in a bond that the principal sum shall be repaid by instalments on specified dates (no provision being made for interest) and that, on default of such payments of principal being made, interest shall be chargeable as from the date of the bond, is not in the nature of a penalty. *See* That the Contract Act Amendment Act of 1899 does not apply to a suit filed prior to the date upon which it came into force. *CHINNA VENKATASANI v. PEDDA KONDIAH* (1902) . . . I. L. R. 28 Mad. 445

73. ————— *Act VI of 1899 (Indian Contract Amendment Act), s. 4—Bond—Penalty.* Held, that a stipulation in a bond for payment of compound interest on failure to pay simple interest on the same amount is not a . . . the Indian VI of 1899 . . . 25 All. 28

74. ————— *Penalty—Compound interest in lieu of simple—Act VI of 1899, s. 4.* Held, following the ruling in *Ganga Dayal v. Bucheku Lal*, I. L. R. 25 All. 26, that a stipulation for the payment of compound interest at the same rate as was payable upon the principal is not a stipulation by way of penalty, within the meaning of the Explanation to s. 74 of the Indian Contract Act, 1872. *JANKI DAS v. ANUAD HESAY KNAY* (1902) . . . I. L. R. 25 All. 159

75. ————— *Act VI of 1899, ss. 1 and 4—Bond—Stipulation for enhanced interest, from date of bond, on breach of covenant to pay interest—Penalty.* In a bond executed on the 8th of November, 1892, to secure a sum . . .

INTEREST—*contd.*4. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—*contd.*

also, that, under s. 74 of the Indian Contract Act, as amended by Act VI of 1899, the stipulation for enhanced interest as from the date of the execution of the bond was a stipulation by way of penalty, against which relief should be granted. *BAHU BHUKHAN DAS v. SAMI-UD-DIN ANUAD KNAY* (1902) . . . I. L. R. 25 All. 189

## INTEREST ACT (XXXII OF 1839).

*See* COMPROMISE—CONSTRUCTION OF, ENFORCING EFFECT OF, AND SETTING ASIDE, COMPROMISES . . . I. L. R. 28 Calc. 955

*See* INTEREST.

*See* ORDER REST. ACT, ss. 12, 141.

I. L. R. 28 All. 299

1. ————— *Act XXXII of 1839—Certificate of the Administrator-General registering a debt—"Written instrument"* A certificate of the Administrator-General admitting a debt to be due is not such a "written instrument" as is contemplated by the Interest Act (XXXII of 1839), because the amount mentioned therein is not payable by virtue of the certificate which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. *OURITA NATH MITTER v. ADMINISTRATOR-GENERAL OF BENGAL* . . . I. L. R. 25 Calc. 54

2. ————— *Interest not claimable where no agreement and no demand in writing—Hindu Law not applicable in cases of payment of interest.* Interest is not claimable where there is no agreement to pay interest and no demand in writing so as to bring the case within the pro-

followed. *SUBRAMANIA AIYAR v. SUBRAMANIA AIYAR* (1903) . . . I. L. R. 31 Mad. 250

## INTEREST ACT (XXVIII) OF 1855.

s. 2—

*See* INTEREST—MISCELLANEOUS CASES—COMPOUND INTEREST;

7 C. W. N. 878

MONEY LENT; I. L. R. 29 Calc. 623

*See* INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

I. L. R. 25 Mad. 343

## INTERLOCUTORY JUDGMENT.

*See* CIVIL PROCEDURE CODE, 1882, s. 28.

I. L. R. 33 Bom. 293

*Judgment based upon an assumption or hypothesis subsequently ascertained*

INTERLOCUTORY JUDGMENT—*contd.* | INTERNATIONAL LAW.

to be erroneous—Re-opening the portion of the case affected by the error. The High Court on appeal delivered an interlocutory judgment remanding the case for a finding on a certain issue. On the case coming again before a differently constituted Bench of the High Court for final disposal: *Held*, that the remanding judgment was conclusive on all points therein specially decided beyond possibility of revision, but that it was otherwise with regard to any part of the judgment, which could be shown to be based on such mistake or error as it would have been the duty of that Bench to correct, if it had been brought to its notice, when the judgment was delivered. *PER BATHURST, J.*—In so far as any part of the remand judgment is based on an assumption or hypothesis, which is now ascertained to be erroneous, it is, we think, competent to us—or rather it is incumbent on us—to disregard it, and to re-open that part of the case affected by the error. *BALYANT RANCHANDRA v. SECRETARY OF STATE (1908)* . . . I. L. R. 32 Bom. 432

## INTERLOCUTORY ORDER.

*See* APPEAL—DECREE.

I. L. R. 24 Calc. 725

*See* APPEAL—EX PARTE CASES.

5 C. W. N. 153

*See* APPEAL—ORDERS . . . 7 W. R. 222

5 N. W. 160

I. L. R. 3 Mad. 13

I. L. R. 8 Bom. 280

*See* APPEAL TO PRINCIPAL COURTS—CASES IN WHICH APPEAL LIES OR NOT—AFFIRMABLE ORDERS.

*See* CIVIL PROCEDURE CODE, 1908, s. 2.

I. L. R. 31 All. 545

*See* COSTS—COSTS IN THE CAUSE.

I. L. R. 25 Bom. 230

*See* INSTRUCTION . . . I. L. R. 31 Calc. 151

*See* LITIGANT, CL. 15.

*See* LITIGANT.

I. L. R. 28 Bom. 292

*See* N. W. P. LAND REVENUE ACT, s. 241.

*See* SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

I. L. R. 9 Mad. 256

I. L. R. 4 All. 91

I. L. R. 14 Calc. 768

I. L. R. 18 Bom. 35

Civil Procedure Code, 1882, s. 499, application for order under. An application for an order under s. 499 of the Code of Civil Procedure can only be made by a plaintiff after summons has been served, and after reasonable notice of the intention to apply for the order has been given in writing to the defendant. *SENGUPTA v. RAMASAMI* . . . I. L. R. 7 Mad. 341

*See* "FOREIGN JUDGMENTS."

I. L. R. 32 Mad. 489

## INTERPLEADER SUIT.

*See* BILLMENT . . . 5 B. L. R. Ap. 31

*See* CIVIL PROCEDURE CODE ACT, 1882, s. 473 (c), 585 (2) I. L. R. 30 All. 22

*See* COSTS—SPECIAL CASES—INTERPLEADER SUIT . . . 1 Mad. 360

*See* PRACTICE . . . I. L. R. 32 Bom. 582

*See* SMALL CAUSE COURT, MORTGAGE—JUDGMENT—CONFESSION FOR ACQUISITION OF LAND.

I. L. R. 20 Mad. 155

1. Person in position of mere stakeholder—Procedure. Where a party in the position of a mere stakeholder is made a defendant in a suit, his proper course under the Civil Procedure Code is to pay the money into Court and ask that the parties really interested may be substituted for himself as defendants. *AARAM BUTTAN v. COMMERCIAL TRANSPORT ASSOCIATION* . . . 2 Ind. Jur. N. S. 113

2. Defendant not claiming whole subject-matter—Suit irregularly framed. An interpleader suit is not improperly constituted merely because one of the defendants does not claim the whole of the subject-matter. *HARGREAVES v. CUTTS, CR. & P. 197*, observed upon. *SECRETARY OF STATE v. MOHAMMED HOSSAIN* . . . 1 Mad. 360

3. Claims by plaintiff against goods in respect of which suit brought—Civil Procedure Code, 1882, s. 470 and 473—Costs of plaintiff—Freight—Wharfage—Demurrage. In May 1893, S (defendant No. 4), a resident at Hissar in the Punjab, consigned 600 bags of rapeseed to K of Bombay, and delivered them to the plaintiff for carriage to Bombay. While the goods were in transit to Bombay, S, the consignor, ordered the plaintiffs to deliver them to his agent F, instead of to the consignee, and on the 15th May F requested delivery from the plaintiffs. Before the goods could be delivered, however, the firm of F D S & Co. (defendants Nos. 1, 2, and 3) claimed them, alleging that they had been assigned to them by K for valuable consideration. The plaintiff thereupon filed this suit, praying that the defendants should be required to interplead, and that they should be restrained from suing them (the plaintiffs) in respect of the said goods. The plaintiffs claimed to charge the goods with payment of freight, wharfage, and demurrage, and their costs of suit. *Held*, (i) that the suit was properly instituted by the plaintiffs as an interpleader suit so as to entitle them to their costs; (ii) that S, the fourth defendant, was entitled to the goods, subject to the plaintiffs' charges for freight and costs; (iii) that the plaintiffs' charges for wharfage and demurrage could not be allowed. The goods remained in the plaintiffs' possession, not by reason of any neglect or default of the owner.

**INTERPLEADER SUIT—*conold***

to take delivery of them, but by the act of the plaintiffs themselves, who kept and refused to deliver them for their own protection and benefit. All that they could presumably be entitled to was a reasonable warehouse rent, which, however, they had not claimed. *BUMRAI, HARODA AND CENTRAL INDIA RAILWAY CO v SASSOON*

I. L. R. 18 Bom. 231

**INTERPRETATION OF STATUTES.**

See STATUTES, INTERPRETATION OF

See *BENGAL TENANCY ACT (VIII) OF 1885*, s. 106 . . . 12 C. W. N. 987

See CONSTRUCTION

See HIGH COURT . I. L. R. 35 Calc. 701

**INTERPRETER.**

— omission to administer oath to—  
See *FEJZUJ* . I. L. R. 38 Calc. 808

See SANCTION FOR PROSECUTION  
I. L. R. 38 Calc. 808

— Sworn interpreter, necessity for—*Criminal Procedure Code, 1861, s. 193*. There was no necessity, under s. 193, Code of Criminal Procedure, 1861, for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement. *QUEEN v MADAN MUNDUL*  
18 W. R. Cr. 71

**INTERROGATORIES.**

See PRACTICE—CIVIL CASES—INTERROGATORIES

— evidence taken on—

See COMMISSION—CRIMINAL CASES.  
I. L. R. 19 Bom. 749

1. — *Discovery—Fishing questions—Practice—Defective pleadings—Issues—Code of Civil Procedure (Act XIV of 1882), ss. 121, 127*. Interrogatories are not in this country to be framed to anticipate or supply defects of pleading or to ascertain the case of the other side. Where the pleading of either party is too vague, the Court may call for a further or fuller written statement, or may frame and record issues until the case raised by the pleadings is ascertained with sufficient clearness. A plaintiff may interrogate with a view to obtain information or admission in support of his own case, and this right extends not only to his original case but also to any answers which he has to make to the defendant's case, subject to the qualification

in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it. *ALI KADER SYED HOSSAIN ALI v GOWIND DASS*  
I. L. R. 17 Calc. 840

2. — *Production of documents—Code of Civil Procedure, 1862, ss. 121,*

**INTERROGATORIES—*conold***

125, 129, 130, 133, and 134—*Definition of term*

value as the opinion of a party to suit on what is really a question of law. Under the Civil Procedure Code, interrogatories for the purpose of eliciting

*Dass, I. L. R. 17 Calc. 840, and Weideman v. Walpole, I. R. 24 Q. B. D. 537, approved. Ss. 121, 125, 129, 130, 133, and 134 of the Code of Civil Procedure discussed. NITTON v DASS v. SOORJI CHUNDER LAW . I. L. R. 23 Calc. 117*

3. — Interrogatories, omission to answer, effect of—*Civil Procedure Code (Act XIV of 1882), ss. 121, 136—Practice. Omission to*

*Lalla Debi Pershad v. Santa Pershad, I. L. R. 10 Calc. 505, overruled. PRYU SIKH CHUNDER v. INDRO NATH BAKERJE . I. L. R. 18 Calc. 420*

**INTERVENOR.**

See DIVORCE ACT (IV of 1869), ss. 7, 11 AND 45 . . . 7 C. W. N. 504  
I. L. R. 30 Calc. 489  
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1 Agra Rav. 51

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9 W. R. 338

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See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES.  
I. L. R. 4 Calc. 650

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**INTERSTACY.**

See APPEAL—ORDERS—ORDER UNDER MAD. REG. III OF 1802, s. 16, cl. 7.  
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I. L. R. 29 All. 277

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— suit for distributive share under—

See **PARTIES—PARTIES TO SUITS—****LEGACY, SUIT FOR . 13 B. L. R. 142****INTESTATES' ESTATES ACT (XXV OF 1866).**See **LIMITATION . 10 C. W. N. 354****INTOXICATION.**1. — Offence committed under. Intoxication should not be treated as an aggravation of an offence. **QUEEN v. ZULFIKAR KHAN****8 B. L. R. Ap. 21; 18 W. R. Cr. 36**2. — Palliation of offence. Nor is it any excuse for it. **QUEEN v. AKURPUTTE GOVSAIN****5 W. R. Cr. 58****QUEEN v. BODHEL KHAN . 5 W. R. Cr. 79**

3. — Murder. In a case of murder committed in a drunken squabble, it was

**INVALID SALES.**See **SALE IN EXECUTION OF DECREE.****INVENTIONS AND DESIGNS ACT (V OF 1888).**1. — ss. 4 and 30—*Invention—Im-*further, that it is for the person who claims an exclusive privilege under the Inventions Act to prove that the facts exist which entitle him to the privilege claimed. **ELGIN MILLS Co. v. MUIR MILLS Co.****I. L. R. 17 All. 490**2. — ss. 4, 5, and 30—*New manufacture—"Process," meaning of* In a case where an inventor of a new manufacture or process sold the article produced by the process freely for a large number of years in the open market and then applied for a patent under the Inventions and Designs Act, 1888:—*Held*, that, where profit is openly derived from the employment of a secret process, there is a public use of such secret process within the meaning of the Act. The term "invention," having regard**INVENTIONS AND DESIGNS ACT (V OF 1888)—concl'd.**

— ss. 4, 5, and 30—concl'd.

entire title and interest of the inventor: s. 4, sub-s. (4), of the Act. **Wood v. Zimmer, Holt 58**, followed. In the matter of the INVENTIONS AND DESIGNS ACT, 1888. **GALSTAUN v. SHORT****I. L. R. 23 Cal. 702**1. — s. 20—*Infringement of patent—Patent consisting of a combination of parts—Infringement as to one or more of such parts. Held*, that a valid patent for an entire combination for a process gives protection to each part thereof, which is new and material for that process. **Parles v. Steens, L. R. 3 Eq. 233**, followed. **BETLER v. ANANJI BAHUBA (1901)** . **I. L. R. 28 All. 86**

2. — "District" and "District Court," meanings of—"District Court,"

— ss. 4 and 30—*Invention—Im-*

to be raised in defence to an action for the infringement of an exclusive privilege acquired under Part I of the Act, but must be raised under the provisions of ss. 30 and 31 of the Act, by applying to a High Court for a rule to show cause why the Court should not declare that the exclusive

**CHANDRA ADAR (1901)** . **22 C. W. N. 985**

— s. 30—

See **BURDEN OF PROOF.****10 C. W. N. 985**

30 on respondent—Respondent shewing cause by affidavits—Issue directed to be tried—Onus of proof at trial. The applicant obtained a rule under s. 30

respondent showed cause against the rule by affidavits, but the Court instead of discharging the rule, directed the issue to be tried. *Held*, at the trial that the onus of proof lay on the respondent. **ALEXANDER GRAY, In re (1906)** **10 C. W. N. 985**

s. 51—"Proprietor" of a design—Publication of design in British India. In 1899 the plaintiffs got a design for a curtain registered under the Inventions and Designs Act, 1888, as being the proprietors thereof. In 1901 they sued the defendants for damages for imitating this design. The defendants proved that they were making the curtains, which were alleged

**INVENTIONS AND DESIGNS ACT (V OF 1886)—concl'd.**

s. 51—concl'd.

to be an imitation of the plaintiff's registered design, for a Bombay firm, and also that the design had been sent to the Bombay firm from a firm in London in 1897, that is, before the plaintiff's design was registered, in order that certain of similar design might be manufactured in India and sent back to London for sale. The plaintiff failed to prove that they either had invented the design or had purchased it from the inventor. *Hell*, that the sending of the design by the London firm to the firm in Bombay, with which the former were in no specially confidential relations, amounted to a publication of the design in British India; and, as the plaintiffs were not the "proprietors" of the design, within the meaning of s. 51 of the Inventions and Designs Act, they were not entitled to any protection. *Rajah Rai v. Schar Chand* (1903) *I. L. R. 25 All. 493*

**INVESTIGATION.**

See LOCAL INVESTIGATION.

See POLICE INQUIRY.

**IRONICAL PUBLICATION.**

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**IRREGULARITY.**See CIVIL PROCEDURE CODE, 1882, ss. 306 AND 311 . . . *I. L. R. 28 All. 238*See CIVIL PROCEDURE CODE, s. 578.  
*I. L. R. 29 All. 563*

See EXECUTION OF DECREE—IRREGULARITY.

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*I. L. R. 28 Calc. 37*

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See MINOR—REPRESENTATION OF MINOR IN SUITS . . . *I. L. R. 30 Calc. 1021*

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*I. L. R. 14 All. 502*  
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*I. L. R. 23 Calc. 502*See JURY JURY IN SESSIONS CASES.  
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**1. FRAMING AND SETTLING ISSUES.**

1. ——— Mode of framing issues—  
Civil Procedure Code, 1859, s. 139, *Semble*.  
Under s. 139 of Act VIII of 1859, the issues were  
to be framed upon the plaint, written statements,  
and allegations of the parties or their counsel.  
NACKINTOSH v. TEMPLE . 2 Ind. Jur. N. S. 333

2. ——— *Plaint—Written*  
and oral statements. The issues are to be framed  
from all questions of law or fact upon which the  
parties may be at issue, and are to be collected, not  
merely from the plaint, nor from the written state-  
ments, but may also be taken from the oral state-  
ments of their pleaders. KOWSERLYA DASSER v.  
RAM JAGANNATH DEY SIRCAR . 8 W. R. 162

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3. ——— *Civil Procedure*  
Code, 1859, s. 139—*Plaint—Written and oral*  
statements Under s. 139, Act VIII of 1859,  
the Court may frame the issues from the oral  
examination of the parties or their pleaders, notwith-  
standing any difference between the allegations of  
fact contained in those examinations and the allega-  
tions contained in the written statements. SHA-  
HEZADI BEGUM v. HUSMAT BAKADUR  
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4. ——— *Civil Procedure*  
Code, 1859, s. 139. A Court cannot refuse to enquire  
into a plea set up by a plaintiff's pleaders in reply to  
questions put them by the Court, although such plea  
was not advanced in the original plaint. S. 139,  
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5. ——— *Civil Procedure*  
Code, 1859, s. 137. A Court in framing issues is  
not bound down to the language of the plaint and  
written statement, but may frame them not only  
from the pleadings, but also from the statements of  
the parties and their pleaders made before the Court.  
MAROMED MAHMOOD v. SAFAR ALI  
I. L. R. 11 Calc. 407

ISSUES—*contd.*1. FRAMING AND SETTLING ISSUES—*contd.*

6. ————— *Exact words of the Legislature relating to issues.* Where the rights in a case have to be determined by reference to the words of the Legislature then those words should be used for the purpose of the issues so far as circumstances permit. *LAKSHMAN DAS v. ANNA LANE* (1904) . . . I. L. R. 32 Bom. 358

7. ————— *Settlement of Issues—Civil Procedure Code, 1859, s. 139.* Issues are to be fixed under s. 139, Code of Civil Procedure, when both parties appear, and the Court can ascertain from them what are the points upon which they are at issue. The Court is not bound to fix any issue when the defendant does not appear, but ought to proceed under s. 111 to hear the case *ex parte*. *AMEER ALI SOWDAGER v. ISHAMOODEEN* . . . 15 W. R. 145

8. ————— *Form of issues requisite for trial.* The issues should raise matters fairly in controversy between the parties, even though the pleadings may be defectively drawn. *CANNANMAL AYAI v. VIJAYA RAGUNADA PANGA SAMY SINGAPULLEE* . . . 8 Mad. 114

8. ————— *Nature of issues*

or as are essential to support a plea and are denied by the plaintiff. Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment, ought not to be made the subject of a separate issue; nor should the motives of the plaintiff in bringing the suit be put in issue; for if he have a good cause of action, his motives, as ill-will, pique, etc., would not be an any answer to it. *BIRCH v. FURZEND ALI* . . . 3 N. W. 303

10. ————— *Duty of Court.* The duty of a Judge in clearly ascertaining the real points in dispute, and framing issues accordingly, pointed out. *APAYA v. RAMA* . . . I. L. R. 3 Bom. 210

11. ————— *Suit against minor—Issue not founded on plaintiff's affirmative*

WARDS . . . 22 W. R. 469

12. ————— *Suit for possession under deed of sale—Issues to be raised—Proof of title.* In a suit to recover possession based on

ISSUES—*contd.*1. FRAMING AND SETTLING ISSUES—*contd.*

a deed of sale:—*Held*, that the Court could have raised issues as to ownership and possession, as, even if the sale deed were not proved, the plaintiff might have been able to substantiate a title independently of it. *GOVIND v. VITHAL* . . . I. L. R. 20 Bom. 753

13. ————— *Raising issue on*

FEDERAL BANKING AND TRADING CO. v. PRANJIVAN-DAS HARJIVANDAS . . . 2 Bom. 272; 2nd Ed. 258

14. ————— *Inconsistent issues—Undue influence—Trial of issues.* The execution of a *hibadama* having been denied by the plaintiff, a Mahomedan widow and purdanasheen, in a suit brought by her to have it set aside as fabricated, she also alleged that undue influence had been exercised upon her. It was decided upon the evidence that the instrument was genuine, having been executed by her of her own free will. The above questions being inconsistent with one another, the latter should not have been admitted to form part of an issue together with the former. On an issue of undue influence, rightly raised, a Court should consider whether the gift in question (a) is one which a right-minded person might be expected to make; (b) is or is not an improvident act on the donor's part; (c) is such as to have required advice, if not obtained by the donor; and (d) whether the intention to make the gift originated with the donor, the principles being always the same, although the circumstances may differ. *MAHOMED BUCKER KHAN v. HOSSEIN BIKI* . . . I. L. R. 15 Calo. 884

I. L. R. 15 I. A. 81

## 2. FRESH OR ADDITIONAL ISSUES.

1. ————— *Raising issues not raised in pleadings—Proceedings against policy or morality.* Although a Court may have the right, and is perhaps even under an obligation, to take cognizance *motu proprio* of any objection manifestly apparent on the face of a proceeding showing that it is against morality or public policy, yet where this is only to be collected from the evidence by inference and is capable of explanation or answer by counter-evidence, it is highly inconvenient, and may lead to the most direct injustice, to enter into the enquiry if the issue has not been presented by the pleadings or the points recorded for proof. *FISCEER v. KAMALA NAIKER* . . . 3 W. R. P. C. 33; 8 Moo. I. A. 170

2. ————— *Question raised at hearing of suit.* *Held*, that the Court was not in its own motion competent to determine a question which was not alleged, nor raised by the pleadings of the parties. But if the question was raised even on



ISSUES—*contd.*[2. FRESH OR ADDITIONAL ISSUES—*contd.*

the day of the hearing of the case at any time before the decision of the case, the Court ought not to have rejected it, because it was not raised by the written statement, but ought to have framed issues to determine the question. **DYASHUNKER v. MAHOMED AMEEN-OD-DEEN KHAN** . . . 3 Agra 246

3. — *Suit for pre-emption* When the plaintiff claimed pre-emption on one ground, and the Court raised an issue as to his right on another ground, to which the parties assented, and the case was decided against him as he had not proved his right on that ground;—*Held*, that the Court would not interfere with the finding on special appeal. **SHEW SUKRY LALL v. WASED ALI KHAN** . . . 13 W. R. 205

**SHEOJETTUN ROY v. ANWAR ALI** 13 W. R. 189

4. — *Suit on mortgage*—*Validity of mortgage.* Where a plaintiff fails to show that a mortgage, created by certain persons as executors and executors of a Hindu will, has been validly created by them in that capacity, the Court will, unless it is manifestly inequitable to do so, allow him to maintain it.

5. — *Suit for declaration of title.* On the evidence, the defendant wished to raise issues as to the unchastity and inability of the plaintiff to succeed, and as to her share on behalf of another person, not having alleged that she was doing so, neither of which matters were referred to in his written statement; but leave to raise them was refused, and the Court held that the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. **SWARNAMAYI RAU v. SRINIBASH KOYAL**

6 B. L. R. 144

6. — *Suit as heir of*

*deceased son.* Where the son of a deceased person, on appeal, sues his grounds and regards the second adopted son as a trespasser, and seeks to recover the property on the ground of its having belonged to the ancestor. **GOTEE LALL v. CHUNDRAOOLEE BHOOGJEE**

11 B. L. R. P. C. 391; 19 W. R. 13  
L. R. I. A. Sup. Vol. 131

7. — A defendant is not precluded from setting up a defence which does not appear in her written statement where the plaintiff does not set forth the true facts, and the Court will allow an issue to be raised on it. **SOONDER NARAIN PANDAH v. NAMIDAR**

21 W. R. 407

**DOORGA NARAIN BOSE v. BROJO KISORE GHOSE**  
23 W. R. 172

ISSUES—*contd.*2. FRESH OR ADDITIONAL ISSUES—*contd.*

8. — *Amendment of plaint—Civil Procedure Code, 1859, ss. 139-141.* In 1817, the ancestor of the plaintiffs had obtained from the zamindar a mawasi istemran lease of a certain portion of his property. In 1837 the entire zamindari was put up to sale for arrears of Government revenue, and was purchased by Government as the highest bidder, who thereupon granted a lease for a term of twenty years to W. This revenue sale was never set aside; but in 1842 the Government restored the estate to the Rajah zamindar with all the prior incumbrances, but subject to his confirming the lease to W. In 1844, the father of the plaintiffs brought a suit to recover possession of their tennah, but the suit was dismissed by the principal Sudder Ameen on the ground that the right to sue had not accrued, and could only arise on the expiration of the lease to W. This judgment was reversed by the Sudder Dewany Adawlut, but was restored and affirmed on appeal by the Judicial Committee. In the meantime, and before the expiry of the lease to W, owing to certain fraudulent transactions on the part of A, who had got into possession of the estate as the purchaser of the interests of certain mortgagees of the Rajah, the property was again put up to sale for arrears of Government revenue, and was purchased by M, a party to the transactions abovementioned. The Rajah, however, succeeded in getting this sale reversed in 1866, and obtained possession of his estate in 1871. In a suit, instituted on the 23rd Octo-

Ameen's decision, confirmed by the Privy Council, was to postpone their right to obtain possession of their tenure, until after the expiration of the lease to W; that when that lease expired, the property was in the possession of M, of the fraudulent character of whose title they had no knowledge and that their right to sue in the present case consequently arose only in 1871. The defence was that the plaintiff disclosed no cause of action; that the cause of action, if any, was barred by the law of limitation; and that the tenure was destroyed by the proceedings connected with the sale in 1837, which was never set aside. The Judge held that the plaintiff disclosed a cause of action which arose in 1837, and that the suit was consequently barred. He accordingly dismissed the suit without taking any evidence. On appeal to the High Court, it was admitted on the part of the plaintiffs that the sale of 1837 was never set aside; but it was contended that the restoration of the zamindari to the zamindar, "with all the former incumbrances," gave rise to an equity of a personal character against the Rajah, and those taking under him with notice of the plaintiffs, title to restore the plaintiffs' tenure, which equity fastened upon him on his obtaining actual possession of the estate; and that therefore the cause of action

ISSUES—*contd.*2. FRESH OR ADDITIONAL ISSUES—*contd.*

accrued only in 1871. On the part of the defendants it was objected that the plaintiffs had no right to make equity.

*Remunda* could not now beset up *res. that*, under ss. 139 and 141 of the Civil Procedure Code, the plaintiffs might be allowed to amend their case in any stage before a final decision; and inasmuch as if the plaintiffs' case as so amended were proved, the suit would not be barred, it was necessary for the determination of the question of limitation that the case should be remanded to the lower Court for trial. *RAMDIAL KHAN v. AJODHYA RAM KHAN*. I. L. R. 2 Calc. 1; 25 W. R. 426

9. ————— Civil Procedure Code, 1877, s. 149 (1859, s. 141)—Where an injury

## PERSHAD SINGH

I. L. R. 5 Calc. 64; 4 C. L. R. 353

10. ————— Issue raised by Court which was not raised by parties. The plaintiffs in a suit denounced in the plaint their two signatures to a sale-deed as forgeries, and never

if the signatures of the plaintiffs appeared that

independent and were a case for themselves  
VALIULLAH

I. L. R. 10 All. 627

11. ————— Civil Procedure Code, 1882, s. 149—Court's authority to frame new issues—Amendment of plaint. A Court is not

sued the defendant as a trespasser claiming damages for wrongful occupation and for injury done to the land in dispute. Some time after the issues had been framed, the plaintiff applied for an amendment.

ISSUES—*contd.*2 FRESH OR ADDITIONAL ISSUES—*contd.*

suit was based on the relation of landlord and tenant, and (ii) whether the thikans in dispute

for the rent claimed. *res. that* the subordinate Judge had no authority, under s. 149 of the Code of Civil Procedure (Act XIV of 1882), to frame the new issues. *NABAYAN GANESH v. HARI GANESH*. I. L. R. 13 Bom. 664

12. ————— Guardian, power of, to make contract to bind minor—Alienation of

him by the widow and succeeded to his estate. The lease having expired, a renewal for five years was taken by the managers, but was surrendered before that period elapsed, during the minority of the son, against whom, on his attaining full

It did not purport to deal with the estate to which he afterwards succeeded, but was entered into by the managers in their own names. *Held*, that the case, as originally made in the plaint and raised by the issues framed in the Court of first instance, which covered a wider ground, viz., that the son was personally bound by the contract, as being beneficial to him, and on the ground that he had ratified it after attaining full age could not be altered in appeal into what would be a wholly different claim and raise entirely new

have been in fact a new suit. *Held*, also, that the

13. ————— Civil Procedure Code, ss. 556, 557—Framing a new issue by the Appellate Court—Evidence recorded in one suit admitted by consent at the hearing of another—Appellate Court, power of. In the Court of first instance the appellant, upon the title of a sister's son, was one of the plaintiffs who obtained a decree for an inheritance, the suit having been heard at the same time with another, in which relations of the deceased owner, alleging themselves to be of the same gotra

ISSUES—*contd.*2. FRESH OR ADDITIONAL ISSUES—*contd.*

with him, also obtained a decree as his heir. Evidence in the latter suit was received in that of the appellant by consent of parties, both suits having been brought against the same defendant, whose title as widow of a son alleged to have been adopted by the last owner was set up in both, but was not proved. Appeals having been filed in both suits, in first brought by the sister's son a new issue was framed by the Appellate Court, under s. 566, Civil Procedure Code, as to whether he was entitled as nearest of kin, or was excluded by the other claimants whose suit was, at that time compromised. *Held*, that after what had taken place in regard to both suits the Appellate Court could frame this issue, although it was new, and had not been raised in the defendant's written answer. With reference to the evidence in the one suit having been imported as a whole into the other at the first hearing, and the admission of evidence upon the trial of the new issue, *Held*, that the parties intended that the evidence should be admitted and that no irregularity had taken place materially affecting the decree of the High Court, which dismissed the suit of the sister's son on return made under s. 507. *CHAND DIX & NARAINI KEAR*. I. L. R. 14 All. 368

14. ——— Additional Issue—*Matter not in plaint, but consistent with it.* It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it) or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any persons present on their behalf or made by the pleaders of such parties or persons. *MONDEE v. DONGRE*. I. L. R. 5 Bom. 409

15. ——— Civil Procedure Code, 1859, s. 141. Where a Court shortly before decision recorded a proceeding declaring its intention to frame additional issues, and reserved the actual framing of the issues for the time of giving judgment, its procedure was held not to be warranted by s. 141 of the Code of Civil Procedure. *KANUL KANIVEE DASSEE v. OHHOY CHERRY GHOSH*. 15 W. R. 151

16. ——— Fresh Issue—*Raising fresh issue on alternative plea.* Where, from the way in which the issues were framed and the pleadings worded, it was clear that there was no contention on the part of the defendant as to whether the terms

defendant was entitled to fall back upon an alternative plea and raise the question of compliance. *SHUNOCHUREE DASSEE v. SHROWDAMINEE DASSEE*. 7 W. R. 306

17. ——— Raising new issues. The Court will not raise an issue so as to

ISSUES—*contd.*2. FRESH OR ADDITIONAL ISSUES—*contd.*

NEHORA ROY v. RADHA PERSHAD SING. I. L. R. 5 Cal. 64

See OHHOY COOWAR CHATTERJEE v. DHIRAJ MAHTAB CHAND. 22 W. R. 299

18. ——— Special appeal

v. BHAGWAN DUTT. 2 B. L. R. Ap. 15:11 W. R. 10

KHOODEE RAM DUTT v. KISHEN CHAND GOLECHA. 25 W. R. 145

19. ——— Mode of dealing with issues. If by inadvertence or other cause the recorded issues do not enable the Court to try the whole case on the merits, an opportunity should be afforded by amendment, and, if need be, by adjournment for the decision of the real points in issue. *HUNOCHAN PERSHAD PANDEY v. MUNDRAJ KOOHWANZE*

6 Moo. I. A. 393: 18 W. R. 81 note

RAM PERSHAD DUTT v. KRISTO MOHEN SHAW. 18 W. R. 297

20. ——— Civil Procedure Code, 1859, s. 141—*Raising fresh issue after hearing the evidence.* In a case in which, after the evidence of both parties had been taken, the principal defendant asked for permission to file an amended written answer which would in effect raise a new question as part of the defence:—*Held*, that, although the mode of making the application was perhaps somewhat informal, it was the duty of the Munsif, if it appeared that this was the real question between the parties, to amend the issues in order to its determination. Where a Munsif rejected such application and decreed the case, and it appeared to the Judge on appeal that the evidence on the record was sufficient to determine the question:—*Held*, that the lower Appellate Court was in error in giving effect to the defence. *BOLYE MEAN v. KHEETO GOBAL*. 20 W. R. 208

21. ——— Civil Procedure Code, 1859, ss. 133, 141—*Adding or amending issues.* All that can be done under s. 133, Act VIII

22. ——— Amendment of Issue—*Civil Procedure Code, Act VIII of 1853, s. 141—Civil Procedure Code, Act X of 1877, s. 143.* A Judge is not bound to make any amendment in the issues of a case, except for the purpose of more

ISSUES—*contd.*2. FRESH OR ADDITIONAL ISSUES—*contd.*

effectually putting in issue and trying the real question or questions in controversy as disclosed by the pleadings on either side. **NEHRA ROY v. RADHA PERSHAD SINGH**

**I. L. R. 5 Calc. 64 : 4 C. L. R. 359**

**BILJE BIBE v. MOSHUR DOSS**

**2 Ind. Jur. N. S. 118**

23. ———— *Amendment of issues at hearing—Practice* Although under certain circumstances a Judge at a trial may allow amendments or raise issues other than those settled, yet, when a Judge at the settlement of issues has

**I. L. R. 4 Calc. 572**

24. ———— *Varying or raising fresh*

**RAM NARAY ROY v. NIL MONEE ADHIKARIE**

**23 W. R. 189**

**MACKINTOSH v. LALL CHAND MALEE**

**23 W. R. 332**

25. ———— *Expression of opinion by Court on issue not formally raised—Refusal to permit additional issue on appeal.* Parties are not bound by an opinion of the lower Court on a matter not in issue in the same manner as if the Judge had decided an issue formally and

s. 354, the Court would consider it right to frame an additional issue. **NAWAB NAZIM OF BENGAL v. AMIRAO BEGUM**

**21 W. R. 59**

26. ———— *Production of evidence on appeal.* Where a quite new and

the issues framed in the first Court the parties were induced to al  
not be right  
account of  
**MENDLE v.**

**See ESHAN CHUNDER SEIN v. DEONAYE**

**11 W. R. 61**

ISSUES—*contd.*2. FRESH OR ADDITIONAL ISSUES—*contd.*

27. ———— *Objection not raised to issues.* Where no objection was taken in the grounds of (regular) appeal to the issues as framed in the Court of first instance, nor was there any such contention in those grounds as that the High Court ought to direct the subordinate Court to raise the proper issues, the Court refused to remand the case with a view to other issues being raised and tried, as it thought it would not be justified to travel out of the record and make a case for the defendants which they did not make in their pleadings in the Court below and which was not in issue in that Court. **JOWADEENISA SATUDAI KHANAN v. JHAMAN LALL MEISER**

**23 W. R. 158**

## 3. ISSUES IN RENT SUITS.

*See BENGAL TENANCY ACT, s. 148.*

**1 C. W. N. 153**

1. ———— *Procedure—Act X of 1859, s. 65.*

to what the former rate had been, until the last day of hearing, after both parties and several of the witnesses had been examined in respect of the

adjourned, and a convenient day fixed for trial upon the new issue. Case remanded accordingly. **SRIHART MANDAL v. JADENATH GHOSE**

**I B. L. R. A. C. 110 : 10 W. R. 163**

2. ———— *Recording issues—Collector—Act X of 1859, s. 65.* Where both parties are at issue on any question upon which it is necessary to hear further evidence, the Collector was bound, under s. 65, Act X of 1859, to declare and record such issues. **SHOOKOONAR SINGH v. CAUSE**

**8 W. R. Act X, 105**

3. ———— *Suit for arrears of rent—Incensor under Civil Procedure Code, s. 73. D.C.S.* the zamindar, brought a suit against B, a raiyat,

**B. DAYAL CHAND SAHAY v. NARIN CHANDRA ADHIKARI**

**8 B. L. R. 180 : 10 W. R. 935**

ISSUES—*contd.*

## 4. EVIDENCE ON SETTLEMENT OF ISSUES.

1. ———— *Summons to witness.* Act VIII of 1859 conferred no authority on a Judge to issue summonses to witnesses to attend on the settlement of issues. The written statements must be

1 Ind. Jur. O. S. 15 : 1 Hyde 147

Evidence, however, might, if necessary, be taken at the settlement of issues, *see s. 140 of Act VIII of 1859 and s. 148 of the Civil Procedure Code, 1852.*

2. ———— *Non-attendance of witnesses*  
—Necessary issues—Adjournment for hearing evidence. If the parties do not secure the attendance

## 5. ISSUES IN SPECIAL SUITS.

1. ———— *Suit to be declared proprietors of land and to assess rate of rent—Issue*

which the first defendant was the recently appointed

and only embraced a part of the matter in dispute, and the issue "what is a fair and reasonable rate of rent" directed to be sent down to the lower Court, KUTTY SUBBHANIYA v. CHINNA MUTTEE PILLAI . . . 3 Mad 26

2. ———— *Suit by tenant for possession after alleged illegal ejection—Question of right of occupancy.* The question of a prescriptive right of occupancy cannot arise as an issue in a case where a tenant sues to recover possession of land from which he alleges he has been illegally

recover. BHARDOO AIL v. LALMOO SINGH . . . 7 W. R. 27

3. ———— *Issue raised between co-defendants—Validity of will* One of the defendants to a suit having relied on the validity of a

ISSUES—*contd.*5. ISSUES IN SPECIAL SUITS—*contd.*

will, the former of which was alone contested below by the plaintiff, the lower Court was right in not trying the issue as to the will, which was one raised between co-defendants. BHUWAN CHUNDER BANERJEE v. DUKHNA DEBIA . . . 8 W. R. 356

4. ———— *Issues raised in suit for kabullat with intervenor.* In a suit for a kabullat of twenty-five parcels of land, where the defendant alleged that he only held three, and that he was not the tenant of the plaintiff, but of a third party

Held, that the raiyat was entitled to be heard whether he paid the rents to the plaintiff and whether he was bound to give the kabullat asked for, and plaintiff was entitled to be heard whether the raiyat held three parcels or twenty-five. RADHAKISHORE TALUKDAR v. GOLUCK CHUNNER ROY . . . 11 W. R. 368

5. ———— *Suit to have right declared to usufruct of property—Discretion of Court.*

missed on certain issues in the Court of first instance,

determine. GOBIND CHUNDER BANERJEE v. BISE . . . 12 W. R. 19

6. ———— *Suit for land forming endowed property—Validity of grant—Limita-*

one of whom the portion in dispute had come into the possession of his (defendant's) vendor. Held, that the material point to try was whether plaintiff's ancestors had from the time of the grant been in possession, or whether the land

ISSUES—*contd.*5. ISSUES IN SPECIAL SUITS—*contd.*

had been inherited according to the ordinary rule of inheritance taken from the house of the

ABBOTT . . . . . 12 W. R. 134

7. ——— Suit for damages for ejectment. In account of lessors had another party, and that with the exception of a specified sum collected by himself the remaining

8. ——— Suit for ejectment—*Issue as to wrongful possession of defendant.* Where certain zamindars sued to recover their possession of

9. ——— Suit for possession—*Sale of mortgaged under-tenures for arrears of rent.* After foreclosure, a mortgagee was executing his decree for possession when an objection was preferred on the part of the landlord as purchaser of the tenure which had been sold in satisfaction of his own decree for rent. A suit was accordingly framed under s. 229, Civil Procedure Code 1859, in which the mortgagee was made plaintiff and the claimant defendant. *Held*, that the whole question was, which of the two parties claiming was entitled to possession; and the issue to be decided was whether or no the tenure was sold subject to previous incumbrances. CHUNDER MONEE DABEE v. MOHESH CHUNDER BANERJEE. 12 W. R. 480

10. ——— Suit for possession where defendant turns out to be a mortgagee—*Procedure.* In a suit for possession of a piece of land where defendant pleads limitation, and his witness unexpectedly discloses that his possession is that of a mortgagee. *Held*, that it was impossible for the Court to overlook that testimony, and that it was its duty to frame an issue, and expressly on the fact of the mortgage, and provide for the rights of the mortgagee for if the mortgage was found to subsist in defendant, the plaintiff could not in this case recover a decree for possession, but should be referred to a suit properly framed for

ISSUES—*contd.*5. ISSUES IN SPECIAL SUITS—*contd.*

redemption. MUZBOOT SINGH v. CHUNDER MASHEE KOOR . . . . . 16 W. R. 44

11. ——— Suit by patnidars for rent—*Plea of lakhiraj title.* In a suit by patnidars for rent where the defendants plead a lakhiraj title set up long before the plaintiffs acquired their patni, the issue to be tried is, not whether the lakhiraj title is valid or not, but whether plaintiffs have at any time received rent for the lands in dispute. PURBOODDEEN MULLICK v. MOHAMMAD BIRRE . . . . . 14 W. R. 149

12. ——— Suit for damages and injunction for cutting bund—*Issues of title and cause of action.* In a suit to have the portion of a bund cut by the defendant closed up, and for an injunction restraining the defendant from so cutting the bund in future as to injure the plaintiff. *Held*, that the plaintiff was entitled to recover whether the

whether the defendant had also used his own property as to injure the property of his neighbour. NUND KISHORE SINGH v. RAM KISHORE SINGH DEB . . . . . 17 W. R. 359

13. ——— Suit by mortgagee for possession without foreclosure—*Raising issue by Court—Civil Procedure Code, 1859, s. 141.* In a suit to recover possession of certain premises on the allegation that defendant had sold them to plaintiff's

transaction and examined a witness thereon. The result was that the transaction was found to be not

on the Court of first instance, under Act VIII of 1859, s. 141, to frame an issue as to the nature of the transaction, and that the suit was properly dismissed by the lower Appellate Court because plaintiff had not foreclosed the mortgage. NUNDO LALL MITTER v. PR. SUNDO MOYEE DEBIA . . . . . 18 W. R. 333

14. ——— Suit for possession without demand of possession—*Decision by Appellate Court without raising issue on point not raised.* A suit to recover possession of land in the wrongful possession of the defendant having been decreed by the first Court, the decision was reversed by the lower Appellate Court because it did not appear

ISSUES—*contd.*5. ISSUES IN SPECIAL SUITS—*contd.*

that there had been any demand of possession. *Held*, that, before deciding the case in this way, the lower Appellate Court ought to have framed an issue as to whether there had been a demand of possession. **MAHOMED RASID KHAN CHOWDHURY v. JOODOO MIRDHA** . . . . . 20 W. R. 401

15. ——— Suit for enhancement of rent—*Raising issue as to notice of enhancement—Procedure.* In a suit for arrears of rent at enhanced rates, where it is found that a single notice has been issued, although there are two holdings at two rents, the Court should frame an issue which will allow the plaintiffs and the defendant, if they wish it, to give evidence—the former to show that the two holdings are now held at one consolidated rent, and it may be enhanced as of one holding—and the latter that he is entitled to have the enhancement made in such a way that he may give up one and retain the other. **NIDHOO MONEE JOGINEE v. KISHEN NATH BANERJEE** . . . . . 20 W. R. 442

16. ——— Suit for fees for officiating at marriages—*Duty of Judge—Framing issues.* Plaintiff sued to recover certain fees from defendant, alleging that he had a right to officiate at

the plaintiff was entitled to the right alleged by him, and the issue was accepted by the parties without any objection. That Court held that, albeit plaintiff was head or senior of the caste he could not have any right in that character to any fees at weddings, and accordingly dismissed the suit. In appeal the District Judge found that, if any such right had ever existed in the plaintiff, it has been taken away by Act XIX of 1844; he was also of opinion that the plaintiff had not been invited to assist and did not assist at the marriage ceremony in question, and he affirmed the decree of the Court below. *Held*

by custom to the fees claimed by him. **APAYE v. RAMIA** . . . . . I. L. R. 3 Bom. 210

17. ——— Issues in special suits—*Civil Procedure Code (Act XIV of 1882), s. 331—Specific Relief Act (I of 1877), s. 9—Suit for possession—Execution of decree—Obstruction—Application, for removal of obstruction registered as a suit—Questions arising in such suit.* In the case of a claim numbered and registered under s. 331 of the Civil Procedure Code (Act XIV of 1882) in a suit between a decree-holder and an obstructing claimant, the only issue arising is whether the person obstructing was in possession of the property in question on his own account or on account of some person other than the judgment-debtor (*i.e.*, the

ISSUES—*contd.*5. ISSUES IN SPECIAL SUITS—*contd.*

defendant in the original suit). No question requiring the decree to be re-opened can be raised. **MAHOMED ISHAK BASHOTTAPPA BIN TAKAPPA (1901)** . . . . . I. L. R. 27 Bom. 302

## 6. OMISSION TO SETTLE ISSUES.

1. ——— Omission to raise proper issues—*Civil Procedure Code, 1859, ss. 139-141—*

(VIII of 1859), ss. 139-141, settled or recorded the issues in the suit, although he allowed evidence in the cause to be taken. In such circumstances the Judicial Committee postponed the hearing of the appeal until a certified copy of the proceedings in the cause should be transmitted, and, in the alternative of no such issues being settled, set aside the decree of the Sudder Court at Agra, with directions to that Court to remand the suit to the lower Court to be tried upon issues to be settled and recorded in conformity with the provisions of Act VIII of 1859. **REWUN PERSHAD v. JANKEE PERSHAD** . . . . . 11 Moo. I. A. 25

2. ——— Omission to raise issue on point in dispute—*Parties unprejudiced.* Where the Court found that the defendant was not prejudiced by the fact that no issue was framed on a certain question, it confirmed the decision of the Court below. **NATTAM VENKATARAMAN alias BALLAKONDA VENKATA NARAYANA ROW v. NATTAM RAMAIA alias BALLAKONDA RAMA ROW** . . . . . 2 Mad. 470

3. ——— Omission to frame issues—*Ground for new trial.* Where, on an appeal, the counsel for the appellant admitted he could not succeed on the merits, as the evidence stood on the record, and their Lordships were of opinion that substantial justice had been done, the mere omission to settle issues by the Court of first instance, which was not made a ground of appeal to the first Court of appeal, but was noticed and commented on by that Court, was held not to constitute a fatal mistrial of the cause so as to render a new trial necessary. **REWUN PERSHAD v. JANKEE PERSHAD**, 11 Moo. I. A. 25, commented on. **MITNA v. FUZEER** 6 B. L. R. 148; 15 W. R. P. C. 15 13 Moo. I. A. 573

**MAHOMED BASIROOLLAH BROONIA v. AHMED ALI** . . . . . 22 W. R. 448

4. ——— *Inefficient ground for remand.* Where the lower Court had omitted to frame proper issues, the High Court refused to send the case back with a view to this being done, because the parties had not been prejudiced at all by the omission, both of them having adduced evidence upon all the questions upon which

ISSUES—*conold.*6. OMISSION TO SETTLE ISSUES—*conold.*

they were at difference PERLADH SINGH BAHADUR v. BROUGHTON . . . 24 W. R. 275

5. ———— *Remand of case*

—*Civil Procedure Code, s. 351* In a suit for maintenance, where the objection was taken on appeal to the Privy Council that no issues had been directed in the Courts below:—*Held* that an order of the High Court, referring the matter to the lower Court for enquiry "to ascertain the amount of maintenance which might appear to be justly and properly payable, with reference to the means of the defendants and the other facts of the case, and to proceed to a decision in the manner indicated in s. 351 of the Civil Procedure Code," was equivalent to a direction of issues, and rendered any further issues unnecessary. KACHEKALYANA RENGAPPA KALAKKA TOLA UDIAR v. KACHIVIGAJAYA RENGAPPA KALAKKA TOLA UDIAR

2 B. L. R. P. C. 72; 11 W. R. P. C. 33  
12 Moo. I. A. 495

## 7. DECISION ON ISSUES.

1. ———— Issues as bases of adjudication It is not the written statements of parties

BOSE . . . . . 12 W. R. 229

2. ———— Necessity of deciding on all issues raised—*Remand.* In appealable cases the lower Courts should, as far as is practicable, pronounce their opinions on all the important points, for

PUDDOMONEE DASSEE

5 W. R. P. C. 63; 10 Moo. I. A. 476

ISSUES—*conold.*7. DECISION ON ISSUES—*conold.*

*Held* that the defendant was not entitled to a right of occupancy. *Held*, that the finding upon the question of notice based upon the admitted facts being sufficient to dispose of the whole case, the Court erred in proceeding to determine any other issues raised in the suit. BARMANDEO NARAIN SINGH v. MACKENZIE . . . I. L. R. 10 Calc. 1095

4. ———— Decision of case at settlement of issues—*Opportunity to produce evidence.* It is competent to a Judge to determine a case on the day when the issues are settled, if he is satisfied that the evidence then before him is decisive of the matter in dispute, unless one of the parties

22 W. R. 426

ISTAFA.

——— meaning of—

See LANDLORD AND TENANT.

I. L. R. 32 Calc. 51; 8 C. W. N. 895

ISTEMRARI TENURE.

See LEASE.

See LEASE—CONSTRUCTION.

I. L. R. 30 Calc. 883



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